TRIAL PRACTICE AND COURTROOM PROCEDURES

BEFORE

MAGISTRATE JUDGE MARK J. DINSMORE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA

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GENERAL MATTERS

1. Counsel are expected to display the utmost professionalism and civility in all dealings with the Court, opposing counsel, witnesses, jurors, and anyone else connected with the trial.

2. Counsel are expected to take all reasonable steps to minimize disruptions and avoid delays in trials, including giving the Court advance notice, to the extent possible, of any potentially thorny evidentiary or legal issues, or other complications.

3. Counsel are encouraged to raise any questions about the Court's trial procedures with Geeta DeVellen, Magistrate Judge Dinsmore's Courtroom Deputy. Ms. DeVellen may be reached at (317) 229-3908 or *Geeta_DeVellen@insd.uscourts.gov*.

4. Counsel are expected to be fully familiar with this Court's local rules, a copy of which can be obtained on the Court's website, *www.insd.uscourts.gov*.

5. During trial Counsel should stand when speaking for the record and when addressing the Court. Counsel should use the lectern, except for brief objections during testimony.

6. Colloquy between co-counsel or between counsel and parties while opposing counsel are questioning or arguing is inappropriate if it is distracting to others.

7. Colloquy or argument directly between counsel is not permitted. All remarks should be addressed to the Court.

8. Do not exhibit familiarity with witnesses, jurors, or opposing counsel. The use of first names is discouraged. During argument to the jury, no juror should be addressed individually or by name.

9. No person in the courtroom should ever exhibit, by facial expression, bodily movement, or other conduct, any opinion (*e.g.*, surprise, happiness, disbelief or displeasure) concerning any testimony, attorney argument, or any particular ruling by the Court. Counsel should admonish their clients and witnesses to avoid such behavior. Individuals who cannot abide by this requirement will be asked to leave the courtroom.

10. Do not ask the Court Reporter to mark testimony. Any requests for re-reading of questions or answers should be addressed to the Court.

11. After trial has begun, any documents that are not filed electronically should be tendered to the Courtroom Deputy for filing, rather than to the Clerk's Office.

12. It is not necessary to seek the permission of the Court to approach a witness to work with an exhibit.

COURT HOURS AND PROMPTNESS

1. Trial usually begins at 9 a.m. and continues with a mid-morning break of approximately ten minutes and a one-hour break for lunch at noon. After the lunch break, the afternoon session normally continues until 5 p.m., with two mid-afternoon breaks of approximately ten minutes each. Times to break and adjourn may vary slightly, to permit the conclusion of a witness's testimony, to allow counsel to finish with direct or cross-examination, or if the Court must attend to other business.

2. The Court makes every effort to commence proceedings at the scheduled time. Promptness is expected from counsel and witnesses. Counsel should be in the courtroom at least 15 minutes prior to the start of each day's proceedings, as the Court may want to meet with counsel. The Courtroom Deputy should be informed of any anticipated scheduling problems, and the Court will attempt to work with counsel to resolve them.

3. If a witness was on the stand at a break or adjournment, that witness should be on the stand ready to proceed when Court reconvenes.

4. If the conclusion of a witness's testimony is followed by a break or adjournment, the next witness should be ready to take the stand when the trial resumes.

5. Do not run out of witnesses. If there is a substantial delay between witnesses, the Court may deem that you have rested.

THE VENIRE and VOIR DIRE

1. A list of the venire and copies of the questionnaires completed by the venire will be made available to counsel at least one day before the start of trial. The questionnaires must be picked up in person; they may not be emailed or faxed to counsel. As soon as the jury has been chosen, all copies of the questionnaires must be returned to the Courtroom Deputy.

2. In civil cases, voir dire ordinarily will be conducted of all prospective jurors at the same time.

3. A seating chart will be available the morning of trial.

4. The Court will conduct most of the voir dire. Pursuant to the Court's scheduling orders, counsel shall submit before trial any questions they would like the Court to consider asking.

5. After the Court concludes its voir dire, counsel may have a brief opportunity to question the panel. Counsel conducting voir dire should do so from the lectern. Counsel should not make any argument during voir dire, and should not ask jurors if they would be able to enter a verdict of a certain amount.

6. Each side will be entitled to a minimum of three peremptory challenges for the entire venire. On a case by case basis, depending on the number of prospective jurors summoned and the number of prospective jurors excused for cause, additional peremptory challenges may be allowed. When all challenges have been completed and there remain more prospective jurors than required, the appropriate number of prospective jurors will be chosen from those with the lowest order of draw numbers.

7. All peremptory challenges will be exercised simultaneously and in writing. A party may not collaborate with another party while exercising challenges without leave of court.

8. The Court ordinarily seats a jury of eight members. However, in certain cases, based upon the expected length of the trial, additional jurors may be seated. There are no alternate jurors ; all jurors selected will participate in deliberations.

OPENING STATEMENT AND CLOSING ARGUMENT

1. The Court will honor counsel's reasonable requests concerning the amount of time for opening statements and closing arguments. These limits will ordinarily be set at the final pretrial conference.

2. During opening statement, if counsel intends to use an exhibit or other display to which admissibility has not been stipulated, the matter shall be raised in advance with the Court and opposing counsel. Likewise, during final argument, if counsel intends to use an exhibit or other display that is not in evidence, counsel shall also raise the matter in advance with the Court and opposing counsel. Failure to do so may result in the Court prohibiting the use of the proposed exhibit or display.

3. When the Court says "two minutes remain" for your opening or closing to the jury, that means your time has expired, so conclude as soon as possible or you will be cut off.

4. During the argument of opposing counsel, remain seated at the counsel table and be respectful. Never divert the attention of the Court or the jury. Counsel should so instruct their clients and witnesses.

5. Confine opening statements to what you expect the evidence to show. It is not proper to use the opening statement to argue the case, to instruct as to the law, or to express counsel's personal opinion.

6. If plaintiff is going to suggest a damages number to the jury, that number must be stated in the opening segment of plaintiff's closing argument, so defendant has an opportunity to respond.

7. Although plaintiff is permitted to open and close final arguments, the large majority of the time must be spent in the opening portion.

8. Jurors' comments after trials have indicated that they resent long closing arguments. Be brief.

9. Closing argument should never include statements of counsel's personal beliefs or insults of any kind.

FACILITIES

1. A TV, DVD player, an easel, and a dry erase board and markers can be made available. Counsel who plan to use them should make arrangements with the Courtroom Deputy before trial begins. Counsel should expect to bring with them any other equipment, such as overhead projectors, screens, and other easels which they wish to use to display exhibits.

2. If counsel wish to use a Video Evidence Presentation Systems ("VEPS") , three weeks' notice (unless the case management plan dictates a different period) to the Courtroom Deputy prior to the start of the trial is required to be sure one of the systems will be available. If a VEPS is not available, counsel will need to provide any such equipment.

3. There is one witness room down the hall from the courtroom, which will be open and available during trial. Witnesses should generally be asked to report to the witness room.

4. Counsel should advise their clients and witnesses to avoid lingering in the hallway outside the courtroom before, during, and after trial each day. All efforts should be made to avoid contact with any seated or potential juror.

5. The facilities of the chambers, including the telephones and the copier, are not available to counsel during trial. Counsel should enter chambers and the jury room only by invitation of the court staff.

6. Cellular phones and beepers may be used outside the courtroom but must be turned off (not just on silent or vibrate) in the courtroom.

7. Unless otherwise directed, tables in the well area are not assigned by party in civil cases. The first party to arrive on the first morning of the trial has first choice. Parties are, of course, permitted to agree between themselves.

8. On days of trial, the courtroom will be opened by 8:00 a.m., but can be opened earlier by special request made to the Courtroom Deputy.

9. The courtroom will not be locked during the noon recess (unless by agreement of all parties), and court staff will not be present to watch any materials left in the courtroom.

10. The courtroom will be locked overnight.

11. Food and drinks are not allowed in the courtroom, except for bottled water.

12. A pitcher of water and cups will be made available for each table and the witness chair.

EXAMINATION OF WITNESSES

1. Witnesses should be treated with appropriate fairness and consideration. They should not be shouted at, ridiculed, or otherwise abused.

2. Counsel should conduct examination of witnesses from the lectern.

3. Counsel should avoid questions that:
    a. begin "It is my understanding that . . .," or "Do I understand correctly that . . . ."
    b. recapitulate the witness' testimony.
    c. ask a witness for a "best guess" or other obvious speculation.
    d. are argumentative.
    e. contain preparatory remarks, such as summarizing what was stated in opening statements, what other witnesses have said, or what is contained in exhibits.
    f. ask, "Is it fair to say?"
    g. ask if the witness agrees with counsel, with some other testimony, or to some fact stated by counsel.
    h. are stated in the negative such as, "Did you not receive a high school degree?" or "You didn't see the accident?"

4. Avoid responding to answers with editorial comments of approval or disapproval. Such responses are likely to draw a quick rebuke without a private warning.

5. When the trial begins, please provide the Court and the Court Reporter with a list of witnesses you expect to call. Please attempt to have the correct spellings for the Court Reporter.

6. Have all witnesses spell their names on the record.

7. The Court may allow jurors to submit questions. If so, jurors will prepare written questions. The Court will review the questions and ask counsel for objections outside the hearing of the jury. The Court will then ask the permitted questions and counsel will be allowed to ask additional questions of the witness based on the answers to the jurors' questions. The identity of the juror asking a particular question will not be disclosed.

OBJECTIONS TO QUESTIONS

1. Stand when making objections. This calls the Court's attention to you and allows you to be heard more readily.

2. When making an objection, state only that you are objecting and specify the ground or grounds for that objection as briefly as possible.

3. Do not use objections for the purpose of making a speech, recapitulating testimony, or attempting to guide the witness.

4. Unless the ruling is obvious, the Court will ordinarily ask for a brief response from opposing counsel. Further argument upon the objection will not be heard until permission is given or argument is requested by the Court.

5. Where more than one attorney appears for a given party, the attorney who handles the direct examination of a witness shall also interpose objections when the witness is being examined by other counsel. The attorney who will cross-examine a witness shall interpose any objections during direct testimony.

DIFFICULT QUESTIONS—ADVANCE NOTICE

If counsel have reason to anticipate that any question of law or evidence is not routine, will provoke an extensive argument, or will require a proffer outside the presence of the jury, counsel should confer and attempt to resolve the matter. If agreement is not possible, advance notice should be provided to the Court to allow for appropriate scheduling arrangements to be made to address the matter in the most efficient manner possible.

STIPULATIONS

1. Stipulations concerning exhibit admissibility and authenticity, as well as stipulations of fact, are not only encouraged, but expected.

2. Even if the admissibility of an exhibit is stipulated to, the exhibit must be offered during questioning of a witness or otherwise on the record in order to be admitted into evidence and included as part of the trial record.

USE OF DEPOSTIONS AT TRIAL

1. Pretrial orders in civil cases will ordinarily require advance designation of depositions or deposition excerpts to be offered at trial. This matter will ordinarily be addressed in a pretrial conference.

2. Where a deposition is to be read for impeachment purposes, the relevant excerpts must be identified orally for the record by page and line reference. Before using portions of depositions for impeachment, counsel should ordinarily allow the witness to read them after the identification has been made for the record. A deposition used for impeachment need not be filed or marked as an exhibit.

3. Confer with opposing counsel to edit depositions to be used at trial, and remove unnecessary material. This also applies to video depositions.

4. If a deposition is to be read at trial, those portions to be read shall be marked on the original transcript and the original transcript shall be marked as an exhibit and offered as an exhibit at trial. However, the exhibit will not be included with the exhibits provided to the jury for its deliberations.

5. If a video deposition is to be shown at trial, both the video and the original transcript of the deposition (with the portions to be shown marked) shall be marked and offered as exhibits, but will not be included with the exhibits provided to the jury for its deliberations.

6. If a deposition is to be read at trial other than for impeachment, the party seeking to use the deposition shall place a person in the witness box. Counsel seeking to use the deposition shall read the selected questions, and the witness in the box shall read the answers of the deposed witness to those questions.

7. If a deposition is to be used at trial other than for impeachment and objections were made at the deposition, counsel should confer before the final pretrial conference and raise any disputed issues with the Court so they may be addressed at the final pretrial conference.

8. The parties should stipulate, if possible, that the reading of depositions not be taken by the Court Reporter.

9. Summaries of deposition transcripts are recommended and encouraged but must be stipulated or otherwise provided to opposing counsel in advance of the final pretrial conference so any disputes with regard thereto may be resolved by the Court.

10. Medical experts who routinely examine and treat patients in their practices and who have been deposed in a particular case will be presumed by the Court to be "unavailable" for in-court testimony pursuant to Fed. R. Civ. P. 32(a)(4) so that their deposition testimony may be offered into evidence at trial by any party. This presumption also applies to treating health care providers even if their deposition testimony is being offered on firsthand

observations rather than as expert opinion. The purpose of this presumption is to avoid the inconvenience and delay to jurors, health care providers, and their patients caused by the scheduling of in-court trial testimony. If a party objects to the application of this presumption and the admissibility of deposition testimony instead of in-court testimony from such a witness, a written objection to the presumption, containing a showing of good cause why it would be prejudicial to permit the witness to testify by deposition, must be filed at least 45 days before the trial date. A party opposing such an objection may still attempt to demonstrate under Fed. R. Civ. P. 32 that the deposition testimony ought to be admitted.

EXHIBITS

1. Exhibits should be marked for identification before trial and a descriptive list provided to the Court and the Court Reporter.

2. All exhibits should be identified by number only (not as "Plaintiff's Exhibit 1" for example). Counsel shall confer and agree from the commencement of discovery on a numbering system that will avoid confusion and duplication. It is recommended that the parties utilize a numbering system in which the first deposition exhibit is marked No. 1 and so on up to No. 8, for example, for the last one. The first exhibit in the second deposition should be marked No. 9 and so on. The same document should be numbered only once for all depositions. Thus, for example, the employment contract would be the same exhibit with the same number for all depositions. Then, the same exhibit numbers would be used for trial purposes. Numbers for trial exhibits need not be consecutive.

3. The Court expects counsel to prepare sufficient copies of documentary exhibits for each juror, the witness stand, opposing counsel, and two for the Court. In civil trials that will usually mean thirteen total. If more than a few documents are involved, the Court strongly urges that exhibit notebooks with tabs be prepared for each juror, the witness stand, opposing counsel, and the Court. This practice might not be necessary when some exhibits are too bulky or if there are other reasons not to use individual copies. This subject will be discussed at the final pretrial conference.

4. For all documents not in notebooks, but which may be admitted into evidence, have an appropriate number of copies available on three hole punched paper, along with tabs, so that if admitted, the exhibits may be distributed to the jury, the Court, opposing counsel and the Courtroom Deputy for inclusion in the notebook or notebooks kept at the witness stand.

5. During the trial, exhibits admitted into evidence are kept on the table in front of the jury box or at the witness stand if exhibits are contained in a notebook or notebooks. Each counsel is responsible for exhibits taken from the table or the witness stand. At each recess or adjournment, return all exhibits to the table or witness stand. Exhibits which have been offered but not admitted are also part of the record of the case and are kept by the Courtroom Deputy.

6. Each counsel shall keep a list of admitted exhibits. Counsel and the Courtroom Deputy shall confer at the close of the evidence to ensure that only admitted exhibits are sent to the jury. Controlled substances, currency, firearms, or other dangerous materials are generally not sent with the jury; counsel are asked to substitute photographs.

7. If an exhibit must be marked for identification in open court, counsel should state for the record what they are doing and describe briefly the nature of the exhibit. Counsel should not expect the Court to provide exhibit labels.

8. Ordinarily, exhibits admitted into evidence may be displayed to the jury at the time of admission or in conjunction with other exhibits at the conclusion of the witness' examination by the "offering" counsel, but permission of the Court should be sought before doing so.

9. When counsel or witnesses refer to an exhibit, mention should also be made of the exhibit number so that the record will be clear.

10. Where maps, diagrams, pictures, or similar materials are being used as exhibits, and locations or features on such documents are being pointed out by witnesses or counsel, such locations should be indicated by appropriate markings on the documents if they are not readily apparent from the exhibits themselves. Unnecessary markings should be avoided. Marking on exhibits should be made only after considering the views of opposing counsel and only after receiving the Court's permission. Counsel should then describe the markings for the record. Exhibits with overlays or with moveable parts can be very useful.

11. Where counsel expect to offer answers to interrogatories or requests for admissions extracted from several separate documents, they should prepare copies of the individual materials rather than thumbing through extensive files while the Court and the jury wait for counsel to locate the particular items. The copies should only be the particular interrogatory or request to admit together with the caption and signature page. These materials should ordinarily be the subject of stipulations and should be addressed at the final pretrial conference.

12. All exhibits other than those on 8 1/2" x 11" or 14" x 11" paper will be returned to the parties at the end of the proceeding unless the Court specifies otherwise. Parties will be responsible for delivering them to the Court of Appeals if and when necessary.

13. Each page of each exhibit should have an identifying number, which should be used in conjunction with the exhibit number in identifying particular pages of the exhibit for the record.

14. If deposition exhibits will be referred to at trial, either during impeachment or from reading a transcript or showing a video, and the numbering thereof is not consistent with the numbering system used at trial, a stipulation containing a cross-reference to trial exhibit numbers and any deposition exhibits to which reference may be made at trial should be utilized.

15. If over-sized exhibits or models are to be used, counsel need to make arrangements with the Courtroom Deputy at least two weeks before start of trial.

16. Be sure there is a proper line of sight for the jury, Court, witness, and counsel when using easels, over-sized exhibits, or models.

JURY INSTRUCTIONS

1. Electronically file and serve proposed jury instructions pursuant to the pretrial orders. Shortly before you submit your instructions, counsel may obtain from the Courtroom Deputy a copy of recent instructions so that counsel may focus on the substantive instructions.

2. Each tendered instruction must include a citation to the authority on which counsel rely.

3. The Court will convene an instructions conference at an appropriate time, generally near the conclusion of all the evidence. The conference will be held at the end of a day or early in the morning or at the conclusion of all testimony, depending on the circumstances of the particular case. The Court will provide a draft to counsel and the conference will be held on the record to discuss objections.

4. Instructions of the jury will typically precede final arguments.

5. All jurors are given a copy of the final instructions and verdict forms so they can follow along while the Court reads the instructions and take the instructions with them for their deliberations.

EXPERTS

Counsel may establish qualifications; the Court will not declare a witness to be "an expert."

JURORS

1. Jurors are permitted to take notes in notebooks and in the exhibit books, and their notebooks and exhibit books accompany them during their deliberations.

2. Jurors expect counsel to look at the witness to whom a question is directed and not to look at the jurors.

3. Jurors do not appreciate counsel or the parties staring at them during the trial.

AGENDA FOR THE FINAL PRETRIAL CONFERENCE

1. Review of witness lists to determine who will testify and subjects of their testimony.

2. Review of exhibit lists and discussion of authenticity, admissibility, and objections. Bring one copy of proposed exhibits to conference.

3. Discussion of status of settlement

4. Stipulations.

5. Discussion of testimony that will be offered by way of deposition (objections).

6. General discussion of Preliminary Instructions and Joint Issue Instruction.

7. Discussion of length of voir dire, opening statements, and closing arguments.

8. Motions in limine.

9. Any objections regarding exhibits.

TRANSCRIPTS

1. Parties desiring daily transcript of testimony must make their own arrangements, at least two weeks in advance of the start of the trial, directly with the Court Reporter. The Courtroom Deputy can provide contact information for the appropriate Court Reporter.

2. Parties desiring a transcript of court proceedings must make their own arrangements with the Court Reporter, preferably before the start of the particular proceeding.

3. Before trial, counsel shall provide the Court Reporter with a list of words, terms, technical terminology, proper names, acronyms, and case citations that would not be found in a generic spell check.