

**INDIVIDUAL RULES OF TRIAL PROCEDURE IN CIVIL CASES
HON. STEPHEN C. ROBINSON
UNITED STATES DISTRICT JUDGE
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TRIAL PROCEDURE IN CIVIL CASES

Unless otherwise ordered, civil trials before Judge Robinson shall be conducted in accordance with the following practices:

PRETRIAL PROCEDURES

Preparation of cases for trial

1. At least ten (10) business days before trial, counsel for each of the parties must file the original with the Clerk's Office, with proof of service on opposing counsel and with a courtesy copy to chambers, of the following:
 - a. In all cases, a statement of agreed facts;
 - b. In all cases, motions addressing any evidentiary or other issues which should be resolved *in limine*; and
 - c. In jury cases, proposed jury charges with supporting legal citations, proposed *voir dire* questions for prospective jurors, and proposed special verdict forms. Proposed jury charges and the proposed special verdict form should also be submitted via e-mail to the Court's law clerk.
2. Additional submissions in non-jury cases:
 - a. Three weeks before the trial date, each party shall serve, but not file, the following: (i) affidavits constituting the direct testimony of each trial witness, except for testimony of an adverse party, a person whose attendance must be compelled by subpoena, or a person for whom a party has requested and the Court has agreed to hear direct testimony during the trial; (ii) three business days after submission of such affidavits, counsel for each party shall submit a

- list of all affiants whom he or she intends to cross-examine at the trial. Only those witnesses who will be cross-examined need appear at trial. The original affidavit shall be marked as an exhibit at trial. All parties must submit any objections to the direct testimony affidavits in writing two weeks before the trial date;
- b. One week before the trial date, all deposition excerpts to be offered as substantive evidence, as well as a one-page synopsis (with citations) of those excerpts for each deposition. Counter-designations and summaries of opposing counsel may be submitted at any time up to the end of trial or the time of filing post-trial briefs, if any. The excerpts, summaries, counter-designations, and counter-summaries will supplant the reading of depositions;
 - c. One week before the trial date, detailed proposed findings of fact and conclusions of law, with supporting legal citations.
3. By the Friday preceding the trial date, all exhibits must be pre-marked in the order in which they are expected to be used (using numerals for plaintiff's exhibits and letters for defendant's exhibits). Each party shall serve on each opposing party:
- a. A complete set of documentary exhibits; and
 - b. A complete list of the names and addresses of witnesses. Expert witnesses should be designated as such and their areas of expertise indicated. Each side may utilize only one expert witness in any area of expertise.
4. At the beginning of the trial, the following must be handed to the Courtroom Deputy Clerk:
- a. A complete set of documentary exhibits;
 - b. A copy of the list of witnesses; and
 - c. Two copies of the list of all exhibits.
5. Post-trial procedures:
- a. Accuracy of transcripts: counsel must raise promptly any issue concerning the accuracy of transcripts certified by the official Court Reporter to be used for purposes of appeal. The Court does not proof read transcripts of jury charges. Counsel perceiving material errors shall stipulate to appropriate corrections or proceed

by motion with notice to the Court. Non-material defects in syntax, grammar, spelling, or punctuation should be ignored.

TRIAL PROCEDURES

1. Trials will generally be conducted Monday through Friday from 9:00 a.m. to 2:15 p.m. The Court will be available to meet with counsel from 8:30 a.m. to 9:00 a.m. Testimony will begin at 9:00 a.m. A brief recess will run from approximately 11:00 p.m. – 11:30 p.m. During deliberations jurors will deliberate until 5:00 p.m.
2. Jurors will be selected by the struck panel method as described below.
3. Counsel may request sidebars to discuss matters that are inappropriate to discuss in the presence of the jury. However, counsel are expected to anticipate any problems that might require argument and to raise those issues with the Court in advance of the time that the jury will be hearing the evidence.
4. If counsel intends to distribute copies of documentary exhibits to the jury, they must make a separate copy of the document for each juror.
5. Counsel should make certain that they have custody of all original exhibits. The Court does not retain original exhibits and the Clerk is not responsible for them.

Jury Selection in Civil Cases: Struck Panel Method

The Court will conduct a *voir dire* of the number of panelists computed by combining the number of jurors to be selected and the number of peremptory challenges. In the ordinary case with two alternate jurors, there will be a *voir dire* of 16 panelists. After the *voir dire*, we will determine whether there are any challenges for cause. Each panelist removed for cause will be replaced, so that there is a full panel before any peremptory challenges are exercised.

Next, peremptory challenges are exercised against the panelists who compose the potential members of the regular jury, that is, against the first 12 panelists. Peremptory challenges will be exercised simultaneously, with the Plaintiff and the Defendant each submitting a written list of the three panelists, respectively, that they wish to excuse. Any overlap among the lists of challenges will not result in parties receiving additional challenges. The six jurors will be selected starting with the unchallenged juror with the lowest number. For example, if there was an overlap, the five challenged panelists would be excused and the first six of the remaining seven would be seated. The seventh juror, that is, the unchallenged juror with the highest number, would now be the first potential alternate juror.

Finally, peremptory challenges are exercised against the panelists who compose the potential alternate jurors, that is, against (the last juror(s) from any overlap in the regular jury panel, and) panelists thirteen through sixteen. Again, peremptory challenges will be exercised simultaneously. In the event of an overlap in challenges, the two alternate jurors will be selected from those with the lowest numbers.

Conduct of Trial

Undisposed of pre-trial issues will be resolved at or prior to the beginning of the trial. However, it is the responsibility of counsel to bring them to the attention of the Court.

No paper may be delivered to the Court (or handed up to the bench during trial) unless it has been served on opposing counsel. The Court attempts to start on the time and expects counsel, witnesses and parties to be available when needed. Do not run out of witnesses. Witnesses will be taken out of order if the next witness is unavailable. Failure to have witnesses available during trial may result in preclusion of their testimony. Attorneys speaking on the record must stand. There is to be no cross-discussion on the record. Any attorney is free at any time, without asking leave, to walk to the adversary's table to confer privately with opposing counsel. Such discussion shall not be audible to the jury. Offers to stipulate shall not be made in the presence of the jury, unless they have previously been agreed to informally between the attorneys in the absence of the jury. Stipulations may be oral, but preferably should be in writing and received as an exhibit.

Questions and arguments are delivered from the lectern. Counsel may approach the witness or the Clerk without asking leave whenever it is necessary. And, if counsel is standing near the witness for the purpose of pointing something out on an exhibit, opposing counsel may also be present to observe first-hand what is being pointed out. Do not stand between the witness and the jury.

Objections

Objections are to be limited to "objection" and, if requested, a brief explanation of the rule relied upon (e.g., "Objection; Rule 403", or "Objection: Leading"). Do not state or argue grounds of objections in the presence of the jury unless asked by the Court. If not satisfied with the ruling, raise it at the next recess. Only if counsel believes it cannot wait for a recess should counsel request to approach the bench (for a side bar conference with counsel for all parties and the court reporter present). The Court attempts to minimize the number of side bar conferences; please save for a recess any matters that do not require immediate resolution.

Court Reporter

Please respect the Court Reporter's function. If the spelling of names of people, places or things is unusual, give a list of such names or words to the Court Reporter at the start of trial. Speak distinctly; do not speak while someone else is speaking. When referring to an exhibit, be sure to mention it by number or letter so that the record is clear as to what is being discussed. Answers given by a witness relating to distances in the courtroom or objection before the witness should be clarified by a statement for the record so that the transcript will convey a clear report of what took place at trial.

When depositions or documents are read, the reader should proceed slowly enough for the court reporter to record what is being said. Depositions are to be read by stating the word

“Question” and then reading the question, then stating the word “Answer” and reading the answer.

Transcript

In civil jury cases, counsel are **required** to order daily copy of the official transcript, in order to facilitate resolution of disagreements on the appropriate jury charge, and to respond quickly to questions from the jury during deliberations.

Exhibits

Counsel are responsible for marking their own exhibits. All exhibits must be pre-marked. At the start of the trial each party must provide the Court with three copies of the exhibit list, three copies of the witness list and one set of pre-marked documentary exhibits assembled sequentially in a loose-leaf binder(s), or in separate manila folders labeled with the exhibit numbers and placed in a suitable container for ready reference. Counsel must exchange copies of their trial exhibits before trial begins (see instructions for preparing the joint pretrial order).

Counsel shall also provide copies to the Judge of any depositions which are intended to be offered, in whole or part, into evidence. Depositions are not generally to be offered in their entirety. Except in the rare instance where all the testimony is relevant, copy the relevant pages only, staple the extracts from each deposition, and offer each as an exhibit.

Except where otherwise directed by the Court, each side of the case keeps track of its own exhibits.

Exhibits that contain extraneous not admissible matter should be redacted prior to trial, and surplus writing on the back of photographs, etc., should be obscured. The Court will not be delayed by such matters during trial.

Neither counsel nor a witness may read from exhibits not in evidence. Counsel may pass to the jury or read from exhibits that are in evidence, upon obtaining leave of the Court. Blow-ups, etc. may be used with prior permission.

At the end of the trial, all exhibits received in evidence are automatically sent into the jury room at the commencement of jury deliberations. Counsel are responsible to see that those things sent into the jury are genuine and actually have been received in evidence. Copies of the Jury Charge will be sent into the jury room; if counsel wish to review those copies before they are sent in, they should ask to do so.

Interrogation

Questions that constitute speeches on the part of counsel are forbidden. Compound or leading questions should be avoided. Counsel are not to comment on the substance or validity of the witness' answer. All such comments should be reserved for summation.

It is not necessary to repeat the direct testimony during cross-examination. Don't waste time.

Traditional decorum should be observed at all times. This means that rudeness or shouting are to be avoided, and witnesses should receive respect and common courtesy. All witnesses are to be referred to by their last name, preceded by the appropriate appellation (Ms.; Mr.; Dr.; Professor; etc.).

Opening Statement

An opening statement should be a concise representation to the jury of the **facts** that your side of the case expects to prove, or the position as to facts that the other side has undertaken to prove. It is not a place for a discussion of the law or an appeal to emotion or prejudice. The contemporaneous objection requirement applies to opening and closing statement.

Closing Argument

A closing argument should be limited to the evidence and the ultimate factual conclusions or inferences that the speaker wishes to have the jury reach or reject. The Court will explain its proposed jury charges in advance, to all counsel, as required by the Rules, before the closing arguments are given. The Court, however, reserves the right to comment on any improper or unfounded red herring argument made during summation, when the jury is charged.

Miscellaneous

The Court usually permits the jurors to select the foreperson; counsel should thus refrain from addressing juror number 1 as "Mr. Foremen" or "Madam Forewoman." The Court permits jurors to take notes. Post-verdict motions must be made within the time permitted by the Rules.