

**TRIAL PROCEDURES OF HON. KIMBA M. WOOD**  
**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF NEW YORK**  
(Revised 12/05/08)

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**I. Prior to Trial**

Counsel in civil cases must comply with the Court's separate instructions for preparing the Joint Pretrial Order and with the Court's schedule for filing a complete Joint Pretrial Order. See the Court's separate Instructions to Counsel Concerning Jury Selection.

**II. 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 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, and doctors' testimony will be taken, whenever possible, at a time convenient to the doctor, even if it means interrupting the testimony of another witness. 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.

### **III. Objections**

Objections are to be limited to "objection" and the number of the Federal Rule of Evidence relied upon (e.g., "Objection; Rule 403"). Do not state or argue grounds of objections in the presence of the jury unless asked to 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.

### **IV. 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 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 objects 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.

### **V. Transcript**

In 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.

### **VI. Exhibits**

Counsel are responsible for marking their own exhibits. Counsel must give a copy of each exhibit to the Court before

using it at trial. In civil trials, counsel must exchange copies of their trial exhibits before trial begins (see instructions for preparing the joint pretrial order).

The Court's copy of the premarked exhibits should be assembled sequentially in a notebook and tabbed, or if a party prefers, each exhibit will be placed in a separate manila folder with number or letter visible on the lip, and the folder will be placed in a suitable container or box for ready reference. Each counsel will provide to the Court two copies of his or her final exhibit list. 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 only the cover sheet and the relevant pages, 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. While an exhibit is being used, it may be left in the possession of the Deputy Court Clerk.

Exhibits that contain extraneous matter, not admissible, 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. Witnesses, except for physicians, should not be asked to read exhibits.

At the end of the trial, all exhibits received in evidence, except for dangerous items such as narcotics, are automatically sent into the jury room at the commencement of jury deliberations. A redacted copy of the Indictment containing only those matters being submitted for verdict is also sent into the jury room, but pleadings in civil cases are not. Counsel are responsible to see that those things sent in to 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.

Readbacks of testimony during jury deliberations can be avoided by the parties agreeing to send the jury the appropriate portions of the trial transcript, with any colloquy or side-bar conversations redacted.

## **VII. Interrogation**

Questions that constitute speeches on the part of counsel are forbidden. Similarly, questions that begin with "Didn't you testify" or "You testified" or "I believe you testified" are usually inappropriate. Whatever the witness testified to, the jury has already heard, and such questions will usually violate Rule 403, Fed.R.Evid. Only after an inconsistent answer has been given is it permissible (if necessary) to remind the witness of his prior testimony. Otherwise, such matters should be reserved for the closing argument or summation.

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 and shouting are to be avoided, and witnesses should receive respect and common courtesy.

## **VIII. 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 statements.

## **IX. 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.

## **X. Miscellaneous**

The Court usually permits the jurors to select the foreperson; counsel should thus refrain from addressing juror number 1 as "Mr. Foreman" or "Madam Forewoman."

In a long trial, the Court may permit short interim summations. Counsel should attempt to agree with respect to whether such summations will be helpful to the factfinder.

The Court permits jurors to take notes.

Post-verdict motions must be made within the time permitted by the Rules.