

STANDING ORDER ON JURY SELECTION PROCEDURES
JUDGE ROBERT M. DOW, JR.

This memorandum describes the jury selection procedure that Judge Dow has adopted for both civil and criminal cases.

1. Summoning the prospective jurors. Prospective jurors will be summoned from the juror waiting room as early as possible on the first day of trial – usually around 9:00 for trials that begin on Mondays and 9:15 to 9:30 on trials that begin on other days of the week (because of the regular status and motion call on those days). The venire will consist of approximately 16-20 persons in civil cases and approximately 40 persons in single-defendant criminal cases (more if there are multiple defendants).
2. Introductory matters. After the prospective jurors arrive in the courtroom, Judge Dow will give introductory remarks and a brief agreed description of the case that previously will have been provided by counsel for the parties. Counsel will be asked to identify the persons sitting at counsel table, and Judge Dow will read a list of prospective witnesses and others whose names are likely to come up during the trial that the parties will have provided prior to trial. The prospective jurors will be asked whether they know or have had dealings with any of these persons. Judge Dow will also ask a few general questions of the venire regarding, among other things, special needs and the jurors' availability to serve for the anticipated duration of the trial.
3. Questioning of the prospective jurors. The prospective jurors then will be called in the sequence in which they appear on the printout received from the Jury Department. The first fourteen prospective jurors will be seated in the jury box in numerical order, while the remaining members of the venire will occupy the front row (or rows) of the spectator benches. Judge Dow will ask each of the prospective jurors, in order, to address the "autobiographical" information requested in questionnaire for prospective jurors (available on Judge Dow's website and provided to prospective jurors when they arrive in the courtroom). Judge Dow then will question the prospective jurors as to (i) general matters concerning, for example, the jurors' willingness to keep an open mind, follow the Court's instructions on the law, etc., and (ii) case-specific questions that Judge Dow has approved from those submitted by the parties in the Final Pre-Trial Order. Any question that a prospective juror prefers to answer in private is reserved and asked in chambers, with counsel present. Following the completion of Judge Dow's questioning of the prospective jurors, Judge Dow will ask the parties, typically in chambers or at side bar, whether they would like him to pose any additional questions to particular jurors or to the panel as a whole.
4. Challenges for cause. After the questioning is complete as to all prospective jurors in the venire, each party will be asked, outside the presence of the venire, to make any challenge(s) for cause and to state the basis for any such challenge(s). Judge Dow will rule on all challenges for cause before peremptory challenges are made.

5. Peremptory challenges. The parties then may make their peremptory strikes. Each party will simultaneously submit a sheet of paper to Judge Dow on which they have written the name and juror number of each juror they wish to strike peremptorily up to the permissible number – 3 per side in civil cases; 10 for the defendant and 6 for the government in criminal cases. If more than one party challenges the same prospective juror, the first overlapping challenge will be charged to the plaintiff or the government, the second to the defendant, and so on. This sequence may permit the parties to exercise additional peremptory challenges. The peremptory challenges will be read into the record outside of the presence of the venire, and each party will be given an opportunity to raise any appropriate issues regarding the exercise of peremptory challenges.

6. Impaneling the Jurors. Judge Dow ordinarily will impanel eight jurors in civil cases. A minimum of six jurors is required for deliberations. There are no alternate jurors in civil cases; all jurors who are seated at the conclusion of a civil trial are “regular” jurors and will deliberate. In criminal cases, Judge Dow will impanel twelve jurors and two alternate jurors (more if the trial is expected to be lengthy). Jurors in both civil and criminal cases will be impaneled in numerical order, based on the order in which they were originally seated. In civil cases, the first eight jurors who have not been excused will constitute the jury; in criminal cases, the first twelve will constitute the jury and the next two (or more) who have not been excused will serve as the alternate jurors.¹

7. Juror Notes, Exhibits, Instructions. Jurors will be allowed to take notes during the trial and will be instructed on the use of notes both in the preliminary and final instructions. In many cases, the volume of exhibits to be used during trial will be sufficient to justify the use of exhibit books for each juror. Whether to use exhibit books in each particular case will be discussed at the Final Pre-Trial Conference. When exhibit books will be used, all proposed exhibits that have not been excluded prior to trial should be included in the exhibit books, even if there is a pending objection that has been reserved by the Court.² Jurors will be instructed when to turn to exhibits after the attorneys indicate which exhibit they wish to address and the Court has ruled on any remaining objections. Only after the Court has admitted the particular exhibit will the jury be instructed to turn to the appropriate tab in the notebook. Once counsel has finished with an exhibit, counsel or the Court may advise the jury to close the notebooks. Exhibit notebooks will remain in the courtroom during recess and will be collected at night by the parties.

To the extent feasible, the parties are directed to work together to produce a single exhibit notebook (or notebooks, if exhibits are voluminous) for each juror. If that is not

¹ Accordingly, if a party is uncertain whether to use a peremptory challenge to excuse a lower-numbered juror and a higher-numbered juror, the party is encouraged to use the challenge on the lower-numbered juror because, of those two jurors, the lower-numbered juror will be seated first.

² The Court will endeavor to rule on objections to exhibits, if possible, in advance of trial. As with all disputed matters in general, counsel should make every effort to “front” remaining issues with respect to exhibits during a break, outside of the presence of the jury, at an appropriate time prior to the portion of the testimony during which counsel proposes to use the exhibit.

feasible, each party is expected to provide its own separate exhibit notebook in sufficient copies for each juror, the Court, the court reporter, and opposing counsel. For the sake of clarity, exhibits should be numbered, labeled, and tabbed in easily identifiable fashion.

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Any questions, objections, or requests for modifications of these procedures should be raised at or before the Final Pre-Trial Conference.

Enter: March 24, 2008

Robert M. Dow, Jr.
United States District Judge