

## **STANDING ORDER ON TRIAL CONDUCT AND PROCEDURES FOR ALL TRIALS BEFORE JUDGE DOW**

The procedures set forth below are designed to ensure a fair trial for all parties. Counsel and parties are advised to familiarize themselves with these procedures prior to trial and to raise any questions or concerns no later than the final pre-trial conference if at all possible.

1. Counsel will treat each other and all witnesses, including adverse witnesses, professionally and courteously. Unless otherwise permitted by the Court, counsel shall refer to all witnesses over the age of 18, including their clients, as “Mr.” or “Ms.” Or by their official title (*e.g.*, “Captain” or “Dr.”). The use of first names or nicknames is prohibited.
2. All opening statements, closing arguments, and examination of witnesses must be conducted from the podium unless otherwise allowed by the Court. Only one attorney from each side may inquire of a particular witness. That same attorney is responsible for making and responding to objections regarding that witness. Counsel shall obtain permission from the Court before approaching a witness.
3. On direct or cross-examination of a witness, counsel are reminded that they may not (i) testify by improperly incorporating facts into their questions so as to put before the jury information that has not been received in evidence; (ii) use an objection as an opportunity to argue or make a speech in the presence of the jury; or (iii) show the jury a document or anything else that has not yet been received in evidence without prior leave of Court.
4. Counsel are reminded that the traditional rules regarding opening statements and closing arguments will be enforced by the Court. With regard to both opening statement and closing arguments, counsel are admonished not to make statements or arguments that will engender objections. The Court will intervene *sua sponte* and not wait for objections if it observes the failure of counsel to adhere to basic legal principles and standards of civility. In making closing arguments, counsel shall be limited by the evidence presented during trial and are reminded of the prohibition against appealing to the jurors’ perceived prejudices.
5. Throughout the trial and during closing arguments, counsel shall not (i) comment adversely on the failure of any defendant in a criminal case to testify in his or her own behalf; (ii) make statements of personal belief to the jury; (iii) make personal attacks on other counsel in the case; (iv) appeal to the self-interest of the jurors; or (v) make potentially inflammatory racial, ethnic, political or religious comments.
6. Counsel should disclose the identity and order of trial witnesses as far in advance as possible, but in no event less than 24 hours before the beginning of the trial day in which the witnesses are to be called. Once the trial begins, the trial will not be recessed because a witness on call is unavailable, except in extraordinary circumstances. The Court will endeavor to accommodate out-of-town and expert witnesses if counsel alerts the Court and the other side in advance. The party calling a witness shall arrange for that

witnesses' presence until cross-examination is completed, including the following trial day if necessary. The failure to have a witness present for cross-examination following direct examination is grounds to strike the witnesses' testimony.

7. Unless otherwise stipulated, examining counsel must show each exhibit to opposing counsel prior to showing it to a witness. The subject matter of demonstrative and summary exhibits should be disclosed in the process of preparing the Final Pretrial Order and the final proposed exhibits must be shown to opposing counsel in advance of trial, even if not offered into evidence, to allow the Court to consider any objections without wasting the time of the jury. All exhibits should be marked in advance.
8. Counsel must stand for all objections. Counsel should instruct their witnesses not to answer a question while an objection is pending. Counsel should not stand during witness examination unless to make an objection.
9. Counsel should avoid argumentative objections. Summarize objections by noting by number the rule of evidence (*e.g.*, "Rule 608(b)") or by describing the nature of the objection (*e.g.*, "hearsay," "prior ruling," "foundation," etc.). If the Court desires further discussion or argument concerning an objection, counsel will be directed to side bar and/or the matter will be taken up at a break outside the presence of the jury. For purposes of making a record and assisting appellate review, counsel may explain or amplify their objections on the record after the jury has been excused for a break, for lunch, or for the day.
10. Counsel are reminded that their own opinions regarding facts or issues in a case are irrelevant and should not be communicated to the jury (*e.g.*, "I think" or "we believe").
11. Counsel are reminded to secure clearance from the Court before posing questions or engaging in procedures in the presence of the jury that carry a risk of undue prejudice, or that by law or customary procedures require judicial pre-approval.
12. To minimize the need for side bars, counsel are directed to "front" all anticipated issues before the trial day begins, during breaks, or at the close of the day – when the jury is not in the courtroom. To the extent possible, any legal matters or evidentiary issues that are may arise during the course of a trial and have not been the subject of a motion in limine or pretrial motion should be called to the Court's attention and discussed between counsel no later than the night before the witness or exhibit is to be offered – and earlier if at all possible. To avoid keeping the jury waiting while legal or evidentiary issues are discussed and resolved, the following procedure shall apply if counsel cannot reach resolution of the issue: The proponent of the objection or evidence shall fax to chambers and to opposing counsel that evening, or in any case no later than 7:00 am the next morning, in succinct terms, a statement of the evidentiary issue or objection and their position, with supporting legal authority. The opposing party shall fax to chambers and to opposing counsel by no later than 8:30 am its contrary position with supporting legal authority. The Court will discuss and rule during the time for preliminary matters each morning before jury is brought to the courtroom for the day's trial proceedings.

13. A typical trial day will begin shortly after the Court completes its daily status and motion call, which on most days will be between 9:30 and 10:00 am. Trial days ordinarily will end approximately 4:30 pm, with between 60 and 75 minutes for a lunch break. Because the Court does not have a regular status and motion call on Mondays or Fridays, the trial day may begin as early as 9:00 am on those days. Trial counsel are expected to be present to discuss any preliminary matters no later than 8:45 am on Mondays and Fridays and 9:15 am on Tuesdays, Wednesdays, and Thursdays. The Court will provide as much advance notice as possible if deviation from the ordinary schedule will be necessary.
14. All persons at counsel table should avoid reactions, facial expressions, and other expressions, verbal or non-verbal, that might be observed by the jury.
15. Witnesses (other than parties and experts) are generally excluded from proceedings until they testify. Counsel should instruct witnesses not to discuss court proceedings with those who have not yet testified. Witnesses are sequestered during adverse examination; they are forbidden from discussing the case with anyone during breaks or recesses unless otherwise ordered by the Court.
16. Counsel are in charge of their own exhibits. Large exhibits may be stored in the cloakroom overnight.
17. Coats and jackets should be hung in the cloakroom rather than draped over benches.
18. Beepers and cell phones must be turned off while court is in session and tape recordings of judicial proceedings are prohibited under Local Rule 83.1.

Dated: March 11, 2008

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Robert M. Dow, Jr.  
United States District Judge