

Standing Order for Criminal Trials Before Magistrate Judge Fuentes

This Standing Order applies to all criminal pretrial and trial procedures.¹ The purpose of these requirements is to promote a fair and expeditious trial. The Court will set a deadline for the filing of the pretrial filings as described below, subject to variation by agreement and with the Court's assent.

1. *Joint Pretrial Statement.* The parties shall file on the docket a Joint Pretrial Statement with the following items, and also email the complete Statement to Judge Fuentes's Proposed Order email account in MS Word format:

a. *Case Statement.* The parties shall confer and provide a concise agreed statement of the case to be read by the Court to the jury pool during jury selection. This is a neutral description of the case, with just enough information to introduce the case to the jury and to ask potential jurors whether they happen to know anything about the case. After reading the case statement, Judge Fuentes also ordinarily reads the third paragraph of Pattern Instruction 1.02: "The information (or indictment) is simply the formal way of telling the defendant what crimes the defendant is accused of committing. It is not evidence that the defendant is guilty. It does not even raise a suspicion of guilt."

b. *Trial Length/Number of Jurors.* State the estimated number of trial days, including jury selection and deliberations, premised on six-hour trial-testimony days (the six hours already accounts for lunch and breaks). Provide estimated sub-totals for the government's case and the defense case (if any is anticipated). Propose time limits for opening statements and closing arguments, per side. Government rebuttal closing arguments shall be no longer than 20 percent of the length of the opening closing. Propose the number of alternate jurors.

c. *Voir Dire Questions.* Attached to this Standing Order is the juror letter with standard background questions that the Court asks prospective jurors during voir dire (the background letter is provided to the jurors when they are in the Jury Department room). For additional questions, the parties must file a list divided into (a) agreed-upon questions and (b) proposed questions to which there is an objection. A short basis for any objection must accompany the list. Each side is limited to **15 proposed disputed questions**, unless a motion is filed before the pretrial conference that explains good cause for proposing more than the limit. Each side shall provide the other with proposed voir dire questions five business days before the due date of the Joint Pretrial Statement and shall confer by two business days before the due date in order to generate this section of the Statement.

d. *Stipulations and Uncontested Facts.* In numbered paragraphs, set forth any stipulations and uncontested facts. No later than **five business days before the pretrial conference**, the parties must serve on each other proposed stipulations. No later than two

¹ This Standing Order is based heavily on U.S. District Judge Edmond M. Chang's Standing Order Governing Criminal Pretrial & Trial Procedures, available at https://www.ilnd.uscourts.gov/assets/documents/forms/judges/chang/Website_CRIMINAL_Pretrial_and_Trial_Procedures.pdf, with some modifications.

business days before the due date, the parties must confer in good faith to arrive at as many stipulations and uncontested facts as possible.

2. *Witness Description Lists.* On the same date as the Joint Pretrial Statement, each party shall file a list of witnesses (and email an MS Word version to Judge Fuentes’s Proposed Order email account), including expert witnesses, divided into (a) witnesses who will be called; and (b) witnesses who might be called. For each witness, provide a very concise (one or two sentences) description of the witness and the witness’s role in the case. For example: “Martha Washington is the case agent for the case. She also participated in executing the search warrant.” Or: “George Washington is XYZ Corporation’s Chief Operating Officer. He questioned the defendant about the allegedly fraudulent accounting entries.” The names of witnesses on the lists will be read to the jury during jury selection to ensure that potential jurors do not personally know any witnesses.

3. *Exhibit Lists and Proposed Exhibits at Pretrial Stage.* Each party must file an exhibit chart on the same date as the Joint Pretrial Statement. The charts must state the following: (a) the exhibit number; (b) the date of the document or exhibit, if applicable; (c) a concise, neutral description of the exhibit; (d) a concise statement of the exhibit’s relevance; and (e) whether there is an objection to the exhibit’s admission, and if so, a concise explanation of the objection. The chart’s format shall be substantially similar to the example below.

No.	Date	Description	Relevance	Objection
1	2/14/23	2023 Valentine’s Day Card	Proves romantic relationship between sender and recipient	FRE 402 relevance; FRE 403 confusion, unfair prejudice. Defendant sends these cards to 20 platonic friends every year.

Because of the need to work together to create the charts (because of the objection column), the parties must exchange their respective proposed exhibit charts **10 business days** before the deadline for filing the charts, and the objecting side must return the chart with the objection column filled in **five business days** before the deadline.

With regard to creating and naming the electronic versions of the exhibits, the parties must use the exhibit-file format and exhibit-naming convention for the Jury Evidence Recording System (JERS). Information on JERS is attached to this Standing Order.² No later than **five business days before the pre-trial conference**, the parties must submit to chambers a three-ring binder containing all of the proposed, pre-marked exhibits in hard copy. If the exhibits are voluminous so that hard-copy exhibits are impractical, the Court will accept a USB storage device, DVD, or CD. In the binders or electronic storage device content, the parties also must include a clearly delineated set of copies of objected-to exhibits only. Unless the parties agree otherwise, the party that is objecting to an exhibit is responsible for providing the copy of the objected-to exhibit and with having copies ready for use by the objecting and non-objecting parties at the pre-trial

² Ideally, any exhibit in /pdf format will have undergone Optical Character Recognition (OCR) and be text-searchable.

conference. During the pretrial conference, the parties should raise any objections to exhibits that can be resolved before trial, in order to promote an expeditious trial and to avoid sidebars.

4. *Motions in Limine*. The motions in limine must be briefed as thoroughly as possible (the Court will set a briefing schedule in each case). The Court's experience indicates that some issues raised in these motions will need to be decided during trial, based on the evidence already admitted and the context of an offer into evidence and any objection. But to the extent that an issue can or should be decided in advance of trial, the Court's goal is to be in a position to decide as many of those issues as possible before the pretrial conference **by relying on the briefs**; any remaining motions in limine will be decided at the pre-trial conference, if at all possible. The Court expects that some motions in limine will be agreed (e.g., no reference to punishment before the jury). Unless set separately, the deadline on motions in limine includes *Santiago* motions by the government to allow co-conspirator statements. *Santiago* motions must be specific in identifying the offered statements, so that the parties may brief, and the Court may analyze, the propriety of each statement. In general, the Court expects the parties to exercise judgment in raising significant evidentiary issues through motions in limine, to avoid unfair surprise. If a party does not raise an issue in a motion in limine and then objects to its admission after opposing counsel has referred to the issue in opening statement, the objection or oral motion to exclude must be raised at sidebar, and the Court will entertain a response contending that the objection was waived or forfeited.

5. *Jury Instructions / Verdict Forms*. The parties must confer to attempt to agree on as many jury instructions as possible, as well as the verdict form. Where applicable, the Court generally prefers the Seventh Circuit's Pattern Instructions, *see* The William J. Bauer Pattern Criminal Jury Instructions of the Seventh Circuit (Thomson Reuters 2020) ("Seventh Circuit Pattern Instructions"), but of course the parties may propose modifications to those instructions and may propose additional, non-Pattern Instructions. The proposed jury instructions must state, on an instruction-by-instruction basis, the following information: the proponent of the instruction, the legal authority for the instruction, and whether there is an objection to the instruction. If an instruction is disputed, the proponent of the instruction should concisely explain the basis for the instruction, if more explanation is required beyond the identified legal authority (often citing to the Pattern or to a case will be explanation enough). Moreover, if an instruction is disputed, the objecting party must concisely state—on the page immediately following the instruction—the grounds for the objection, as well as any proposed modification or alternative. The same principles apply to proposed verdict forms. The jury instructions filing also must be emailed to Judge Fuentes's Proposed Order email account in MS Word format (a deadline will be set in each case). Further, counsel are kindly requested to review the preliminary Seventh Circuit pattern instruction on juror conduct (Seventh Circuit Pattern Instructions at 17-18) and consider whether any further instruction is needed concerning jurors' use of electronic devices during the trial. The Court generally considers these devices to be significant distractions, but they have become a part of everyday life, and many people require them to allow contact in the event of some personal emergency. The Court will not bar these devices from the trial, but the Court may entertain a suggested further non-pattern instruction. *See* The Judicial Conference Committee on Court Administration and Management, "Proposed Model Jury Instructions, The Use of Electronic Technology to Learn or Communicate about a Case" (June 2020), available at https://www.uscourts.gov/sites/default/files/proposed_model_jury_instructions.pdf.

6. *Jury Selection.* As noted above, in the Jury Department, jurors are provided with a letter stating the general background questions each juror will answer during voir dire. Jurors will be seated in the jury box and in the gallery according to the random-order list, in panels of four. The Court will ask the background questions of all jurors in the panel. After each juror answers, the Court will ask the additional questions approved, during the pre-trial conference, for voir dire. After that questioning, counsel will have a chance to propose follow-up questions at a sidebar (though the Court will ask the questions). After that last round of questioning, counsel will exercise for-cause challenges. Double-strikes count against both sides, and no back-striking (exercising a peremptory strike against a juror against whom no strike was exercised during the voir dire of that juror's panel of four) is permitted. Non-struck jurors will then be seated on the jury, and the Court will move to the next panel of four venire members, further in the order indicated on the random-order jury list. The first 12 non-struck jurors emerging from this process will comprise the jury.³ Then the parties will exercise their peremptory (or peremptories, if more than one) challenge for the alternate (or alternates, if more than one).

7. *Exhibits at Trial Stage.* Just as at the pretrial stage, when preparing exhibits for the trial itself, parties once again are to use the JERS exhibit format and naming convention. As stated in the JERS instructions, **five business days before trial**, each party shall supply the exhibits in digital format in a three-ring binder (or on a USB drive, DVD, or CD if the exhibits are voluminous). The Court disfavors double-sided copies. The exhibit binders should separate the exhibits with tabs that correspond to the exhibit number.

8. *Displaying Exhibits on the Video Monitors.* If you need instruction on the courtroom display technology equipment, please call the Systems Department (312-435-6045) within the Clerk's Office. The Court's regular courtroom, Room 1838, does not contain a jury box, so another courtroom will be selected for the trial and identified for counsel in advance. Counsel should direct their pretrial preparation and equipment rehearsals toward the courtroom selected for the trial. Most of the building's trial courtrooms' evidence-display technology has separate controls for the counsel-table video monitors, the witness's monitor, and the jury's monitors. The judge will leave the counsel-table monitors set to display during the entire trial. Generally, the judge also will leave the witness's monitor set to display during the entire trial, because usually the other side does not have an objection to the witness being shown the proposed exhibit. But to give the other side time to object to even that step, the offering party should state something to the effect of, "Your Honor, I'd like to show Government's Exhibit HUD-1 Settlement Statement to the witness." If the opposing party objects to even showing the witness the exhibit, that is the time to object. Otherwise, the offering party may display the exhibit to the witness via the offering party's laptop or the document camera. To publish the exhibit to the jury, preface your request with something to the effect of, "Your Honor, may we publish Government's Exhibit HUD-1 Settlement Statement to the jury?" The Court will ask whether there is an objection, and then if publication is allowed, the Court will turn on the jury's video monitors. When done with that exhibit, say something to the effect of, "Your Honor, we're done with that exhibit," and the Court will turn off the jury's video monitors (and that also will be a signal to your co-counsel or assistant if you have someone putting on and off an exhibit via a laptop). As we get deeper into the trial, we might be able to

³ See Fed. R. Crim. P. 23(b) ("A jury consists of 12 persons unless this rule provides otherwise;" though the parties may, with the Court's approval, stipulate in writing that the jury "may consist of fewer than 12 persons.")

avoid turning off the jury monitors at certain points. For example, if you're asking a witness about an exhibit or set of exhibits already allowed into evidence and already published, you may signal that you're going to move onto an exhibit that already has been published (e.g., "Your Honor, we're done with that exhibit, and I'd now like to show Government's Exhibit HUD-1 Settlement Statement, which has already been published." The Court will ask whether there is any objection, and if not, the jury monitors will remain on.

9. *Witness Examinations / Jury Addresses.* To respect the jury's time, always have enough witnesses available so that we make use of the full trial day. The preferred location for counsel during witness examinations will be the podium, with counsel being free to move between the podium, the end of counsel's own table, and the end of the jury box. Counsel must speak loudly enough for the witness, judge, jury and court reporter to easily hear and must speak into the microphone at the end of the jury box so that the audio-recording system can record counsel's statements. Jury addresses must take place at the podium as well, though some freedom of movement is allowed: Even if you speak loudly for us to hear you, again the audio-recording system relies on the microphones to record what you say, and the recording is necessary for transcript preparation or to resolve a dispute over what a transcript says. Custom and practice in the Northern District of Illinois has been to seat the government at the counsel table closest to the jury, although on occasion, some defense counsel have objected to this geography and have complained that jurors pick up on nonverbal cues and communications sent deliberately or inadvertently by counsel closest to the jury. Some defense counsel have requested, and some courts have allowed, a reconfiguration of the tables so that both tables are equidistant from the jury. The Court will not reconfigure the tables. But if defense counsel objects to the government's table being closest to the jury, the Court will resolve the dispute either by agreement or by the flip of a coin. The Court naturally expects that any counsel seated nearest to the jury will make diligent efforts not to send any nonverbal cues or communications to jurors. The Court also will not allow any movement of the podium or any other courtroom furniture without advance permission.

10. *Objections.* When you object, you must stand so that the Court and the witness are on alert that an objection will be made. Before trial, counsel should instruct their witnesses not to answer a question when they see the opposing lawyer stand and while an objection is pending. You must state a short, non-argumentative basis for the objection (e.g., relevance, hearsay), and responses must be similarly short and non-argumentative. Ideally, there will be little or no need for a sidebar if objections and responses are succinct.

11. *Juror Questions.* The parties will be heard at the pretrial conference about whether they have any position as to jurors being allowed to ask questions. The Court is inclined to allow juror questions after a witness examination, but only upon submission of the question(s), by the jury foreperson to the court security officer, in writing at the conclusion of a witness's examination and cross-examination. At sidebar, the Court will examine the questions and share them with counsel, so that any objections may be made outside the presence of the jury. If the objection is sustained, or if the Court finds the question to be improper or objectionable, the question will not be asked, and the jury will be told that the Court determined that the question should not be asked. The Court kindly requests that prior to submitting their proposed jury instructions, the parties review the Court's proposed instructions regarding jury questions, available on the Court's web site.

12. *Interim Statements.* Some courts have allowed counsel to make “interim statements” to the jury during the trial, i.e., after opening statement and before closing argument. The Court’s preference is to disallow interim statements. If the parties wish to make such statements, they should so propose at the pretrial conference.

ENTER:

DATED: May 2, 2023



U.S. Magistrate Judge Gabriel A. Fuentes

JURY EVIDENCE RECORDING SYSTEM (JERS)

1. Introduction to JERS

JERS is a computer system that the jury will use to review exhibits on a wide-screen video monitor, rather than reviewing paper copies. The jury room has the JERS computer, a touch-screen monitor for the jury to pick an exhibit to display, and the wide-screen monitor. JERS can display what otherwise would have been on paper (including photos), and JERS also can play audio and video files.

We're experimenting with this system to start moving toward as much digital presentation as possible, with all of its display and cost-reducing advantages. With JERS, the jury can zoom-in on parts of an exhibit, and for audio and video, there's no need for a party to supply the jury with a laptop for deliberations. We hope that in the future there will be other advantages, such as a text-search function. Thanks in advance for your patience as we continue to learn how best to use JERS.

JERS is not directly used to present evidence in court *during* trial; right now, it's just used to display exhibits during deliberations. But JERS does *indirectly* affect your trial preparation because you must supply your exhibits to the Court in digital format, and you must name your exhibits using a specific convention. This in turn affects your preparation even for the *pretrial conference*, because Judge Chang requires that the parties exchange proposed exhibits before the pretrial conference (more on this below, as well as in Judge Chang's Standing Order Governing Proposed Pretrial Orders).

2. File types usable with JERS

JERS accepts these common file types:

Documents and Photographs: .pdf, .jpg.

Video and Audio Recordings: .avi, .wmv, .mpg, .mp3, .wma, .wav

3. Exhibit-naming convention

To use JERS, both sides must use the following exhibit-naming convention, which also will serve as the file name for the digital file: the exhibit number, followed by an underscore, followed by a neutral description of the exhibit. The convention is thus:

<exhibit number>__<exhibit description>.<file extension>¹

Examples:

1_Financial Statement 2009 Annual.pdf
2_Contract 2010 Renewal.pdf
3_Photo Front Door.jpg
4_Audio Dec 11 2013 Phone Call.mp3
5_Video Traffic Stop.wmv

Use **consecutive numbers** to designate exhibits; do *not* use letters to distinguish exhibits. Also, do *not* use an “exhibit part,” such as 1A or 2A. Just use consecutive numbers (plus the neutral description). The neutral description cannot be more than 200 characters (hopefully, you’ll never come close to that limit).

You might reasonably wonder whether JERS will mix-up the parties’ exhibits because both sides are using numbers. We have tested this convention and it works because JERS itself adds a party prefix for each side (“Pla” (or “Gov” for government) and “Def”) when we import the files into JERS, party-by-party.

If there are **multiple parties** on a particular side, then you must coordinate with your co-plaintiff’s or co-defendant’s attorney to generate a consecutively numbered set of exhibits. In the rare case of dual juries, we’ll discuss how to handle the JERS submission.

If you’re using litigation-display software that imprints a “**digital**” exhibit **sticker** on documentary exhibits, that’s fine, though you should confine the exhibit sticker to the party designation (*e.g.*, Pla or Gov, and Def) and the exhibit number.

One last thing: a **physical object** of course will not be imported into JERS, but you should still assign a consecutively numbered exhibit designation to it, along with a neutral description. Then create a one-page .pdf with the exhibit number and neutral description on it, and submit those exhibits as part of the JERS disc. By creating this stand-in for physical objects, we accomplish two things: (1) we can print a comprehensive exhibit list before the trial for the Court and for the parties,

¹ The file-type extension (*e.g.*, .pdf, .wmv) is automatically added by your computer; it’s included here for completeness.

which we all can use to track whether an exhibit is allowed into evidence (including physical objects); and (2) the jury's exhibit list will be complete, and it will serve as a reminder of what physical objects were allowed into evidence.

4. Pretrial conference exhibits

In order to maintain consistency in the record, you must use the JERS exhibit-naming convention even at the pretrial-conference stage (please refer to Judge Chang's Standing Order Governing Proposed Pretrial Orders for more detail). Five business days before the pretrial conference, supply the exhibits to the Court (and to the other side) on a USB drive, DVD, or CD. Consistent with the Standing Order, you'll also be supplying to chambers three paper copies of only the *objected-to* exhibits, double-sided in three-ring binders.

5. Trial exhibits before the trial's start

After the pretrial conference, **do not renumber** the exhibits, even if during the pretrial conference the Court deemed some of them inadmissible. This will preserve consistency of exhibit numbering from the pretrial conference and throughout trial, and the record will be clearer.

Five business days before the trial, **supply the trial exhibits** to the courtroom deputy and to the other side, again on a USB drive, DVD, or CD. At this trial stage, you need not include exhibits that have been deemed inadmissible (you may include exhibits that still have a chance of being allowed, *e.g.*, if the other party opens the door to evidence deemed otherwise inadmissible). Consistent with the Standing Order Governing Proposed Pretrial Orders, you should continue to include even those exhibits that are not likely to be allowed directly into evidence, but to which the Court will likely need to refer (*e.g.* deposition transcripts for impeachment of will-call witnesses). The Court will run a test to ensure that the exhibits are imported correctly into JERS. For now, also supply **one copy of the exhibits in paper** form (hopefully soon we'll be able to dispense with this requirement, when we have increased confidence in JERS). This paper set will serve as the backup to JERS, in the event that JERS suffers a technical failure during deliberations.

6. Trial exhibits newly added during trial

When an exhibit is allowed into evidence during trial and the exhibit was not previously supplied on the JERS disc, not surprisingly the exhibit must follow the same exhibit-naming convention as described above. Counsel for the offering party must supply the exhibit in digital format as soon as possible (a thumb drive comes in handy for this), and the courtroom deputy will import it into JERS.

7. Close of Evidence

Before closing arguments, we'll confer on the record to ensure agreement on which exhibits were allowed into evidence during the trial. After jury instructions, the lawyers will confer with the courtroom deputy to examine the list of exhibits to be released to the jury for deliberations on JERS. The jury will **not be supplied with paper copies**, unless there is good cause for a particular exhibit (or if JERS breaks down).

Physical-object exhibits that the Court allows the jury to examine during deliberations will be provided to the jury as usual, via the court security officer.

8. Use of JERS by the jury

At the end of jury instructions, the Court will inform the jury that they will be using the JERS system. The jury will watch a video tutorial that explains how to use the system. Judge Chang will accompany the jury into the jury room to view the tutorial, but will instruct the jury that, like any other question during deliberations, the jury must ask questions about JERS in writing (and like any other jury question, the Court will share it with counsel before responding). The JERS computer is not equipped to allow the jury to access the internet, or indeed any other program other than JERS.

If JERS fails during deliberations, the jury will ask for help in writing. The systems staff will not be permitted in the jury room without the Court's express permission, and only after the jury has been escorted out of the jury room. If the problem is not fixable in a short time, the Court will provide the jury with the paper-copy backup of the allowed exhibits.