

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION  
JUDGE FREDERICK J. KAPALA**

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**TRIAL PROCEDURES - CRIMINAL TRIALS**

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**JURY SELECTION**

**A. SUMMARY OF THE CASE**

Counsel should submit to the court a brief agreed statement of the case to be read to the jury which explains in simple terms the general nature of the offense and such limited details of where and when the occurrence at issue took place. The purpose of the summary is to acquaint the jurors with the case in preparation for voir dire.

**B. LIST OF POTENTIAL WITNESSES**

Counsel for each party shall submit to the court a list of potential witnesses (other than defendant) and their current general locale to be read to the jury for purposes of voir dire.

**C. INTRODUCTION OF PEOPLE AT COUNSEL TABLE**

Counsel for each party shall submit to the court the names of all counsel and the persons seated at counsel table.

**D. NUMBER OF JURORS AND PEREMPTORY CHALLENGES**

In criminal felony cases there are ten peremptories for the defendant and six for the government, including when there are multiple defendants. Rule 24(b)(2). However, the court may consider additional peremptories on motion. Rule 24(b). Normally, one alternate juror shall be selected and one additional peremptory challenge allowed.

**E. VOIR DIRE**

The court will conduct all questioning of the jurors from a prepared list of court questions available in the clerk's office. As set forth in a pretrial order additional submitted questions from counsel will be considered by the court. Defendant's counsel is to advise the court prior to voir dire whether the defendant desires the court to instruct the jury as to defendant's right not to testify.

**F. CURRENT JURY SELECTION PROCESS**

Twelve jurors shall be randomly called to the jury box. The court will conduct the questioning. Upon the completion of the court's examination of the original twelve jurors or any juror called to replace

an original juror excused for cause, counsel and the court shall proceed to a side bar. Any challenge for cause shall be made first. Acceptance or peremptory challenge to a juror shall proceed by the government's counsel first for juror number 1, then by defendant's counsel as to that juror. Thereafter, beginning with defendant's counsel as to the next juror, each counsel will alternate who goes first in accepting or challenging a juror.<sup>(1)</sup> Once a juror is accepted by both sides, the juror cannot be later challenged or back struck. Additional jurors will be called to replace challenged jurors. Additional side bars will be held each time replacement jurors have been examined by the court. Counsel at a side bar may request of the court clarification questions or follow up questions to a juror before exercising a challenge or acceptance.

## **EXHIBITS**

Exhibits will be premarked by the parties. Each side shall prepare a trial exhibit list which is to be exchanged with opposing counsel prior to trial. At the beginning of trial, the trial exhibit list will be provided the court and the court reporter.

Generally, exhibits may be offered into evidence as soon as the foundation has been laid unless otherwise specified by the court. Objections to foundation are to be made at that time. Any other objection and the reason for objection shall be made at that time. If there is to be extended argument on admission, the court shall rule at a side bar or during a recess.

Offer exhibits that have identical foundation requirements at the same time laying one foundation and identifying all the exhibits.

Exhibits may or may not be circulated to the jury upon admission depending on the nature of the exhibit at the court's discretion. In complex cases or cases of many exhibits, exhibit books for the jurors may be prepared by a party.

All admitted exhibits normally go to the jury room; however, the court will make a ruling outside the presence of the jury on each exhibit going to the jury room prior to final argument.

Trial exhibits are not to be used in the opening statement without prior approval of the court.

## **TRIAL BEHAVIOR**

Stand when addressing the court, questioning a witness and making an objection. State the precise reason for the objection without a speech. A response to an objection from the opposing party is not required unless invited by the court or requested of the court. Counsel shall not argue between themselves but shall address arguments through the court. The court discourages side bars on objections. If counsel wishes to make a further record on a ruling on an objection, it will be allowed during a recess or, in limited circumstances, during a side bar.

Counsel shall be courteous toward each other and the court.

During court proceedings counsel shall not address each other using the person's given name.

Counsel shall ask questions from the podium and may approach a witness at any time without permission. Counsel during questioning and opening and final argument are to remain within the area of the podium. Non-examining counsel should remain seated during witness examination unless standing to make an objection or, with the court's permission, to see an exhibit.

Do not greet or introduce yourself to adverse witnesses. To avoid improper prior communication, counsel and their witnesses should not discuss the case in the general public areas of the courthouse in the presence of other persons before trial and during recesses. Counsel, the parties and their agents shall not speak with jurors (other than acknowledging a greeting) before or during trial.

All persons at counsel table shall avoid facial expressions, reactions, and other expressions, verbal or nonverbal, that might be observed by the jury.

Beeepers and cell phones must be turned off.

### **MOTIONS IN LIMINE**

Motions in limine shall be filed and served on opposing counsel as set forth in a pretrial order.

### **JURY INSTRUCTIONS**

Proposed jury instructions by both sides shall be in conformance with the 7th Circuit Criminal Pattern Jury Instructions where applicable and shall be filed with the court and exchanged prior to trial as set forth in a pretrial order.

### **SCHEDULING**

Once a jury trial is set, the court rarely grants a trial continuance. Generally, jury cases are tried from the beginning date through completion. The court schedules its other matters around the jury trial so that the jury trial will proceed as expeditiously as possible to completion. Trial normally begins at 9 A.M. The morning session ends at 12:15 p.m. and trial resumes at 1:45 p.m. The afternoon session will last until 5 P.M. There will be one 15 minute recess in the morning and in the afternoon. Counsel are expected to be prompt in attendance, as will the court. The court will not tolerate tardiness. Witnesses shall be scheduled to fill up the day.

### **TRIAL NEEDS**

Should an attorney, party or anticipated trial witness have a physical handicap which would require any special need or adjustment in my courtroom, the requesting attorney should advise the court in advance of any proceeding so that an accommodation can be made. Use of audio, video or other special equipment shall be arranged prior to trial through the court or its staff.

### **POST-TRIAL CONTACT WITH JURORS**

Pursuant to Local Criminal Rule 31.1, no party, agent or counsel shall communicate with any member of a jury without first receiving permission of the court.

### **FAMILIARITY WITH LOCAL CRIMINAL RULES**

Counsel shall be conversant with the Local Criminal Rules of the Northern District of Illinois and its Local Rules insofar as they are applicable.

### **PROFESSIONAL CONDUCT**

All Counsel are to read and familiarize themselves with the Rules of Professional Conduct of the

Northern District of Illinois and, in particular, Local Rule 83.53.6 on trial publicity. Cases will not be tried in the news media and the court will insure the rights of the defendant and the government to a fair trial.

1. The court, alternatively, may employ either a challenge system whereby each lawyer shall tender to the court a private list naming those jurors to be challenged and the court will excuse from that list such jurors of the first twelve and, using the same method, replacement jurors; or the "struck" jury system.