JUDGE CASTILLO'S TRIAL PROCEDURES

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TRIAL CONDUCT AND PROCEDURES IN JUDGE CASTILLO'S COURTROOM

These instructions are designed to promote civility, efficiency and professionalism in courtroom conduct in cases tried before this Court. Trials can be inherently stressful. Adherence to these suggested procedures should lead to a less stressful, fair and efficient trial. Attorneys should adhere to all applicable instructions during all trials -- civil or criminal, bench or jury.

I. GENERAL RECOMMENDATIONS

1. The Court makes every effort to commence proceedings at the scheduled time. Similarly, counsel and witnesses should be on time for each court session. Trials are generally conducted between the hours of 9:30 a.m. to 5:00 p.m. The Court makes every effort to ensure that the trier of fact receives six hours of **uninterrupted** testimony during every trial day. Trial dates take precedence over any other business. If counsel have matters in other courtrooms, they should arrange in advance to have them continued or have an associate cover them.

2. **This Court is very sensitive to the need to give proper consideration to an efficient use of the trier of fact's time during any trial. Therefore, counsel should be prepared to provide the Court with an estimate as to the number of trial hours this case will take to present to the trier of fact. In appropriate cases, this Court may set express time limits on the presentation of evidence. See FASA Corp. v. Playmates Toys, Inc., 892 F. Supp. 1061, 1070-71 (N.D. Ill. 1995) (citing MCI Communications Corp. v. Am. Tel. & Tel. Co., 85 F.R.D. 28 (N.D. Ill. 1979).**

3. If a civil case settles or if a defendant in a criminal case intends to plead guilty, the minute clerk shall be notified promptly. **Jury costs and witness fees may be assessed for a failure to inform the clerk of a settlement or a guilty plea until the day of trial.** See Local General Rule 54.2.

4. Try to anticipate evidentiary problems and other difficult questions of law that might provoke argument so that the Court can resolve them on a pretrial motion or prior to the day's trial proceedings. **This Court strongly encourages the pretrial resolution of evidentiary issues through the use of written motions in limine and usually will set a briefing schedule that will allow these motions to be ruled upon in advance of trial. The standards that apply to pretrial rulings on motions in limine are set forth in Charles v. Cotter, 867 F. Supp. 648, 655 (N.D. Ill. 1994). Counsel should meet and discuss any disputed evidentiary matters prior to filing any motions in limine. Resolution of any disputed**

evidentiary matters can be documented in an agreed order.

5. **Counsel should <u>never</u> seek to question the Court's evidentiary rulings in front of the jury. Counsel must seek to pursue such matters <u>outside</u> the presence of the jury. The Court will not interrupt the presentation of evidence to receive extensive argument on evidentiary matters which should have been anticipated by the parties.** Counsel may be ordered to proceed to other matters if a significant evidentiary dispute occurs during the middle of the presentation of evidence.

6. In a jury trial, if there is an offer of stipulation, first confer with opposing counsel about it. When in the presence of a jury, do not offer to stipulate to anything and do not ask for a stipulation. Wherever possible, whether included in the Pretrial Order or not, the Court will attempt to resolve issues of hearsay, authentication, and best evidence by stipulation of the parties. Even where admissibility because of issues of relevancy is unresolved, pre-testimony stipulations as to these other issues will save the Court considerable trial time.

7. Colloquy, argument or stray argumentative remarks between attorneys is not permitted, especially when made in the presence of the jury. Address all remarks to the Court.

8. Do not address the jury directly during the evidentiary stage of the trial. Inquiries about the jury' s ability to hear or see something, for example, should be directed to the Court.

9. Please stand whenever addressing the Court or the jury. This includes the making of objections.

10. No person shall ever, by facial expression or any other conduct, exhibit any opinion concerning any testimony which is being given by a witness. Counsel should admonish their clients and witnesses about this all too common breach of courtroom procedure.

II. JURY INSTRUCTIONS, JURY SELECTION AND JURORS

A. Jury Instructions

11. Counsel are to meet before trial for the purpose of designating agreed jury instructions. **Counsel should prepare their instructions using a Courier 10 font with a 5-space indentation and double spacing**. The working sets of instructions shall be numbered by each party to facilitate orderly discussion of disputed

instructions (*i.e.*, Plaintiff's Instruction No. 1). Each party should provide one clean original and a numbered copy of each offered jury instruction for the Court and for each party.

12. This Court strongly favors use of the Seventh Circuit Pattern Civil and Criminal Jury Instructions, which are available on the Seventh Circuit's website. Any proposed instruction should use simple language, grammatical structure and organization, and should avoid undue complication and inconsistency.

13. Counsel shall deliver clean and numbered sets of both agreed and disputed jury instructions to the Court's chambers no later than the first day of trial unless otherwise directed by the Court. All disputed instructions shall be accompanied by a concise statement of the party's objection to the proposed instruction **as well** as a proposed substitute instruction if one is necessary. In criminal cases the United States Attorney's office and defense counsel, where appropriate, will have final responsibility for giving "clean" jury instructions to the Court after the Court's Jury Instruction Conference. In civil cases the Court will inform counsel of the designated final responsibility for providing the Court with "clean" jury instructions.

14. Prior to the Jury Instruction Conference the Court will inform the parties of the instructions it plans to use in the case. During the Jury Instruction Conference the parties will have a full opportunity to comment on the Court's proposed instructions.

B. Jury Selection and Jurors

15. The goal of the Court during jury selection is to select fair and unbiased jurors who desire to serve in the administration of justice. To achieve this objective, the Court attempts to conduct a broad, non-leading, searching examination of a prospective juror's potential bias or prejudice. Proposed voir dire from the parties are welcome as long as it is not argumentative.

16. This Court uses the "strike" method of jury selection. The jurors' names are called one at a time, at random, until all names have been called. The first seven jurors called are seated, in the order called, in the first row of the jury box. The next seven jurors called are seated in the second row of the jury box in the same manner. The remaining jurors sit in the front rows of the spectator section. Counsel will be furnished with a sheet of paper with numbered lines. As the jurors' names are called, counsel should write the name of the juror on the line

corresponding to his or her number (*i.e.*, the first name called will be on line one, the second name called will be on line two, and so on).

When all the jurors are seated, the Court will conduct a general and individual examination of each juror. When the Court completes its preliminary examination, counsel for the parties are given an opportunity to confer with the Court to request any additional questions they deem necessary concerning the backgrounds and qualifications of the jurors and also to assert any potential challenges for cause. Counsel may also request a limited time period to conduct any appropriate supplemental voir dire. All attorney voir dire must be non-argumentative. When all interrogation is completed, the jurors are excused for 15 minutes, during which time counsel exercise their peremptory challenges by placing a check mark beside the name of each juror they wish to excuse.

In the usual civil case, 8 jurors will be selected. There are no alternates. All jurors will participate in the deliberations and the verdict. See Fed. R. Civ. P. 48. Normally, each side will have 3 peremptory challenges. See 28 U.S.C. § 1870. At the conclusion of the recess, each side hands its marked list to the minute clerk. The Court then compares the two lists and determines the names of the first 8 jurors whose names have not been struck.

In the usual criminal case, the government may excuse 6 jurors (7 if there are one or more alternates), and the defense may excuse 10 jurors (11 if there are one or more alternates). At the conclusion of the recess, each side hands its marked list to the minute clerk. The Court then compares the two lists and determines the names of the first 12 jurors whose names have not been struck. They constitute the regular jurors. The 13th and 14th names which have not been struck are the number 1 and number 2 alternates.

It is important for counsel to make tentative decisions about peremptory challenges as the interrogation of the jurors proceeds. The 15 minute recess at the end will be more than adequate to review tentative choices and to make final decisions, but counsel may find themselves rushed if they start thinking about the matter for the first time only after the recess is called. The Court will insist upon marked lists being turned in at the conclusion of the recess, and any party failing to turn in the list at the required time simply will waive peremptory challenges.

Any issues the parties desire to raise with the Court concerning the discriminatory use of peremptory challenges by a party should be raised with the Court by requesting a conference with the Court once a party is shown the other side's peremptory challenges.

17. After conclusion of a trial, no party or attorney shall communicate or attempt to communicate with any juror without prior authorization of the Court.

III. WITNESSES

18. Counsel should not instruct witnesses during the course of testimony. If counsel feels that a witness needs instruction –*e.g.*, speak louder, answer in a responsive manner, repeat an answer –counsel should direct the request to the Court. Never instruct a witness to leave the witness stand. If counsel wants a witness to leave the stand during his or her testimony, request permission from the Court, thereby allowing opposing counsel the opportunity to make a timely objection.

19. Do not initially approach a witness without asking permission of the Court. **Once permission is granted, counsel need not request permission again for the purpose of working with the same witness**.

20. If a recess or adjournment interrupts a witness' s testimony, please have the witness back on the stand and ready to proceed when court is resumed.

21. Counsel should plan their case so that they will not run out of witnesses on a given day and cause unnecessary delay. The Court will attempt to cooperate with physicians, engineers, and other professional witnesses and will, except in extraordinary circumstances, accommodate them by permitting them to be put on the stand out of sequence. Counsel should anticipate any such possibility and discuss it in advance with opposing counsel. If there is any objection, confer with the Court in advance.

22. The Court encourages the parties to fully complete the questioning of any adverse witnesses in order to avoid the unnecessary expense and inconvenience of having the witness return at a later stage of the trial. Under such circumstances, the Court will allow the redirect examiner to exceed the scope of the adverse examination.

IV. EXHIBITS

23. The Final Pretrial Order in civil cases must contain a schedule of all agreed and disputed exhibits including documents, summaries, charts and other items expected to be offered in evidence. Items not listed will not be admitted without good cause shown. Cumulative documents, particularly among x-rays and photos, should be omitted. Duplicate exhibits shall not be scheduled by different parties, but may be offered as joint exhibits. All parties are directed to stipulate to the authenticity of exhibits wherever possible, and the exhibit list shall identify any exhibits whose

authenticity has not been stipulated and specific reasons for the failure to stipulate. Non-objected-to exhibits are received in evidence by operation of this Order, without any need for further foundation testimony. **Copies of exhibits shall be made available to opposing counsel and a bench book of exhibits shall be prepared and delivered to the Court at the start of the trial unless excused by the Court.**

The agreed exhibit list should read as follows:

> The following exhibits were offered by _____[parties' names]_____, received in evidence and marked as indicated:

The disputed exhibit list should read as follows:

> The following exhibits were offered by _____[parties' names]_____, received in evidence and marked as indicated:
>
> [State identification number and brief description of each exhibit.]
>
> Plaintiff(s)/Defendant(s) objected to their receipt in evidence on the grounds stated:
>
> [State briefly the ground of objection, such as competency, relevancy or materiality, and the provision of Fed. R. Evid. relied upon. Also state briefly the response to the objection, with appropriate reference to Fed. R. Evid.]

Copies of objected-to exhibits should be delivered to the Court at the time the final pretrial order is filed to permit rulings in limine.

24. Court time should not be used for marking exhibits. Documents and other exhibits should be pre-marked and numbered as exhibits and shown to opposing counsel before their use in court. Copies of exhibits are to be furnished to opposing counsel and the Court with an exhibit list.

25. At the time of making a request to identify an exhibit in court, counsel should briefly describe the nature of the exhibit. When counsel or witnesses refer to an

exhibit, mention should also be made of the exhibit number so that the record will be clear. Where maps, diagrams, pictures, etc. are being used as exhibits, and locations or features on such documents are being referred to by witnesses or counsel, such locations should be indicated by appropriate markings on the documents if not readily apparent from the documents themselves. Unnecessary markings should be avoided. Markings on exhibits should be made only after receiving the Court's permission.

26. Ordinarily, exhibits should be offered in evidence when they become admissible rather than at the end of counsel's case. If an objection to an exhibit is anticipated, the initial offer of the exhibit should be made outside of the presence of the jury.

27. If you intend to question a witness about a group of documents, avoid delay by having all the documents with you when you begin the examination.

28. Counsel should strongly consider having copies of all documents introduced into evidence available for each juror to review in the absence of some other alternative method of publication. In extensive document cases, a juror exhibit book should be prepared for each juror which contains all exhibits received in evidence.

29. The Court strongly encourages counsel to use visual evidence, such as overheads, diagrams, charts, graphs, models and enlarged photographs which will assist and aid in the presentation and evaluation of evidence by the jury.

V. USE OF DEPOSITION TESTIMONY, INTERROGATORY ANSWERS, ADMISSIONS

30. The Court should be alerted to any proposed testimony by written or video deposition which is objected to at least 72 hours prior to its being read or shown at trial. Counsel should also alert the Court prior to trial if an unusual number (more than three) witnesses are expected to testify by deposition.

31. Counsel should endeavor to create concise written summaries or condensed, edited videotapes of any proposed deposition testimony that is estimated to exceed ninety (90) minutes of trial time.

32. Portions of deposition transcripts used for impeachment may be read to the jury during the cross-examination, with pages and line numbers indicated for the record before reading.

33. Where counsel expects to offer answers to interrogatories or requests for admissions extracted from several documents, a document showing each such interrogatory and answer or admission shall be prepared and copies distributed to the Court and opposing counsel.

VI. OBJECTIONS

34. When objecting to questions or answers, counsel should state only that he or she is objecting and specify the legal ground or grounds of the objection. **Counsel should not use objections as an opportunity to recapitulate testimony, guide the witness, or argue factual issues.**

35. Argument on objections to questions in the presence of the jury will not be heard until permission is granted or unless requested by the Court. **Counsel may not argue about any ruling of the Court in the presence of the jury.** If counsel feels argument is necessary, counsel must ask for a sidebar conference.

36. Counsel should instruct their witnesses prior to trial that they must not answer any question which elicits an objection until the Court has overruled the objection. When an objection to a question is made, the questioner should wait for a ruling on that objection before proceeding to another question.

VII. TRANSCRIPT/COURT REPORTER

37. If counsel wishes to go off the record, he or she should request permission from the Court to do so. Counsel should never instruct the court reporter to begin or stop reporting.

38. Do not ask the reporter to read testimony. All requests for re-reading of questions or answers should be addressed to the Court.

39. Persons requesting a daily or hourly transcript of a trial or other evidentiary hearing that may reasonably be expected to last more than one day should place the order with the court reporter at least five business days prior to the first day of each proceedings.

January 25, 2017

Judge Ruben Castillo
United States District Court