

Pretrial Procedures in Criminal Cases

At least three weeks before a criminal trial, the parties will be scheduled to appear for a pretrial conference. The Defendant(s) must be present for the conference unless their presence is personally waived at a prior court proceeding.

I. Final Pretrial Submissions

The following should be filed five business days before the conference, unless otherwise indicated:

1. Agreed Case Statement.

The Court will read this statement to the jury during voir dire.

2. Witness Lists.

Separate lists for each side, noting witnesses who will be called to testify and witnesses who may be called to testify

For each witness, provide a very concise (2 or 3 sentences maximum) description of the witness and the witness' role in the case.

The Court will read the names of witnesses on these lists during jury selection.

3. Exhibit Lists.

A list by each side of all exhibits the party will definitely use at trial (including demonstratives, summaries or other specially prepared exhibits), which includes the following:

- a. the exhibit number for each document;
- b. the date of the document;
- c. a brief description of the document and a concise statement of the exhibit's relevance;
- d. whether there is an objection to admission of the document and, if so, a concise statement of the basis for the objection (e.g., Rule 403—undue prejudice or confusion; Rule 802—hearsay); and
- e. a concise statement of the asserted basis of admissibility, if there is an objection.

At least one week before the pretrial conference, the parties must provide the court with two sets of exhibit binders containing copies of the objected-to representative exhibits. If the

representative exhibits require more than a single binder, the parties must contact the Courtroom Deputy, Chez Chambers, to explain why additional binders are required. After the pretrial conference and rulings on exhibits, two binders of the final exhibits will be required to be given to the Court no later than the day before trial. Each binder should also include a summary checklist page for the Court to track admission of exhibits during trial.

Note: There is no need to list every conceivable exhibit that can possibly be used. The parties should submit a list of trial exhibits they definitely intend to introduce. Exhibits not likely to be used need not be listed. If, due to unforeseen circumstances during trial a party wishes to introduce an exhibit not previously listed, notice should be given as soon as possible to the opposing side and to the Court so that any objections can be discussed. Absent abuse of this process, an exhibit will not be deemed inadmissible simply because it was not included on the original exhibit list, provided the exhibit/document was earlier produced to the opposing side during discovery.

4. Motions in Limine.

The parties are directed to meet and confer on all motions in limine before filing them and determine which motions, if any, are unopposed and do not need to be filed. The parties should bring any unopposed motions in limine to the Court's attention at the pre-trial conference.

Unless otherwise ordered, all motions in limine must be filed three weeks before the final pre-trial conference. Responses are due one week before the final pre-trial conference. No replies should be filed unless ordered by the Court. Parties filing multiple motions in limine should submit their initial motions and the supporting exhibits in one document for the Court. Responses to motions in limine should also be submitted in one document.

5. *Voir Dire* Questions.

To the extent possible, the Court prefers that most questions asked of potential jurors be included in a written questionnaire as it encourages reflection and candor. Sample questions are provided below in section II.1 addressing jury selection procedures. To propose questions that should be included in the written questionnaire distributed to the venire, as well as questions the Court should ask orally, the parties must file a joint document that includes both: (1) joint questions in the form of a questionnaire; (2) a list of questions to be asked orally; and (3) proposed questions to which one party objects, and a short basis for the objection.

6. Jury Instructions. The parties are instructed to meet and attempt to agree on jury instructions and to file proposed instructions before the final pre-trial conference. The Court uses the 7th Circuit Pattern Jury Instructions where applicable, bearing in mind that statutory and binding case law govern over the pattern instructions.

See Pattern Criminal Jury Instructions

If the parties wish to modify a 7th Circuit Pattern Jury Instruction, the party proposing the modification must submit a redline to the Court showing the modification to the pattern instruction. The parties should concentrate their efforts on the substantive jury instructions related to the merits.

Each proposed instruction must indicate the proponent of the instruction and whether the instruction is agreed or disputed. The bottom of each instruction must identify the legal authority supporting the instruction. If an instruction is disputed, the grounds for the objection (and any proposed modification or alternate instruction) must be concisely stated on the same page immediately following the disputed instruction. The party proposing the instruction may then state concisely the reasons supporting the instruction as proposed.

The Court will read the final instructions prior to closing arguments. Jury instructions may be used and electronically projected during closing arguments.

7. Evidence Projection Systems.

Judge Cummings's courtroom (1219) is equipped with a digital evidence projection system. The Court expects trial counsel to use this system and be thoroughly conversant with the manner with which it operates. As early as possible prior to trial (but not less than four weeks before), counsel should contact Alexander Zeier, the Courtroom Technology Administrator, to schedule a training session. Mr. Zeier can be reached at (312) 435-6045.

II. Additional Pretrial Information

(1) Jury Selection:

On the morning of jury selection, prior to entering the courtroom, the venire will be given a written questionnaire with questions proposed by the parties and approved by the Court. Sample questions are included in the attached documents below. These are examples only, and will require revision for each particular case. The parties' submissions of supplemental questions should not exceed two pages. The parties will be given copies of the jurors' written answers. The parties will also be given a copy of the list of potential jurors that is generated by the Clerk's Office.

Sample Criminal Questionnaire

The entire venire will then enter the courtroom and be sworn. The first twelve prospective jurors from the list will be called and seated in the jury box. The Court will ask the jurors questions related to their questionnaire answers and the questions the parties and the Court determined at the final pretrial conference should be asked orally. Jurors will be given the opportunity to answer sensitive questions at sidebar if they wish.

The parties will then be given the opportunity to question the prospective jurors. The Court will then go to sidebar to hear challenges for cause and rule on those challenges.

The parties will submit peremptory challenges in writing simultaneously. The government is allowed 6 challenges and the defendant is allowed 10, pursuant to Federal Rule of Criminal Procedure 24, unless otherwise requested and approved by the Court. If the parties challenge the same juror, only one side will be charged for that challenge, beginning first with the government, and alternating between the parties for all later joint challenges. The remaining unchallenged jurors will constitute part of the jury and cannot be stricken with later challenges. (No back-strikes will be allowed.). All twelve prospective jurors (whether selected for the jury or not) will be asked to leave the jury box and take their seats back in the gallery.

A new group of twelve potential jurors will then be called in the order from the list to the jury box. The first 12 non-challenged jurors and (typically) 2 alternates will be seated. The same procedure will be followed until the entire venire has been questioned.

(2) Instructions for Trial Counsel: Please Read Carefully

Your compliance with the following requests will be greatly appreciated:

- (i) Please be on time for each court session. Trial engagements take precedence over any other business. If you have matters in other courtrooms, arrange in advance to have them continued or have a colleague handle them for you.
- (ii) Court time may not be used for marking exhibits. This must be done in advance of the court session.
- (iii) Please stand whenever you address the court. This includes the making of objections.
- (iv) Please speak into the microphone whenever speaking on the record in court. A portable microphone is available if counsel wishes to move away from the stationary microphones.
- (v) In your opening statement to the jury, do not argue the case. Confine yourself to a concise summary of the important facts.
- (vi) Please stand when you question witnesses. (Counsel with physical disabilities will be excused from this requirement.)
- (vii) On direct examination, if you intend to question a witness about a group of documents, avoid delays by having all the documents given to the witness when you start the examination.
- (viii) When you object in the presence of the jury, make your objection short and to the point. Do not argue the objection in the presence of the jury, and do not argue with the ruling of the court in the presence of the jury. Such matters may be raised at the first recess and will not be waived by waiting until the recess.

(ix) Do not ask the court in the presence of the jury to declare that a witness is qualified as an expert or qualified to express an expert opinion.

(x) It is not necessary to request leave of court to approach a witness to show the witness an exhibit.

(xi) Do not ask for a recess before cross-examination. If the direct examination should end at about the time the court would recess anyway, e.g., lunch time, a recess will be taken. Otherwise, be prepared to commence cross-examination immediately upon conclusion of the direct.

(xii) Upon completion of a witness's testimony in civil trials, jurors are permitted to submit written questions for the witness in accordance with procedures to be discussed at the Final Pretrial Conference. Such questioning by the jurors will also be permitted in criminal trials if all parties agree. The government and defense counsel should discuss this issue with the Court at the Final Pre-trial Conference.

(xiii) The Court permits interim statements if appropriate due to the length of the trial.

(xiv) Counsel are not permitted to contact jurors after trial without permission of the Court.

Thank you in advance for your cooperation.

(3) Final Pretrial Conference Topics

The following is a list of topics Judge Cummings will address during the final pre-trial conference. Counsel need only be prepared to discuss the topics that are also referenced in the final pretrial order. The remaining topics in the list below reference particular practices Judge Cummings will explain during the final pre-trial conference.

1. voir dire
2. written juror questionnaire
3. jury lists – alphabetical and random agreed
4. statement of case – short enough to fit on letter to jurors
5. motions in limine – agreed matters and preparation of order on rulings
6. exhibits: (i) pre-mark all; (ii) stipulate to as many as possible; (iii) seek admission outside jury's presence; (iv) must be admitted before displayed on screen
7. demonstratives and timelines
8. schedule for submission of disputed deposition designations
9. trial day
10. elevators

11. sidebars
12. trial technology – make sure to test it outside the presence of the jury
13. preliminary instructions and issue instructions before opening
14. instructions before closing (can project on screen)
15. interim statements
16. note pads
17. jury binders
18. jury questions
19. moving around courtroom
20. can always approach witness without permission
21. no speaking objections, unless requested; just – irrelevant, asked and answered, hearsay
22. talking to jury after verdict