

TRIAL COURT GUIDELINES

TRIAL COUNSEL: PLEASE READ CAREFULLY

Preface

Your compliance with the following requests will be greatly appreciated. These guidelines are not intended to be exhaustive or mandatory in every case. Note any trial judge's deviations at the pretrial conference.

Civility is the key to behavior in this district -- that includes everyone: the judge, staff, lawyers and witnesses. If you have any complaints about anyone's civility, including the judge, please bring the matter to the immediate attention of the court by asking for a conference in chambers.

Promptness

1. The judge makes every effort to commence proceedings at the time set. Promptness is expected from counsel and witnesses.

2. During jury deliberations, counsel must be present or available on 15 minutes' notice to counsel's office. Otherwise the right to be present is waived and consent is given for proceedings to take place in the courtroom during counsel's absence.

Decorum

1. Keep the trial low-key. It is not a circus, a contest of dramatic ability or an oratorical contest. It should at all times be a quiet, dignified search for the truth.

2. Rise when the jury and the judge enter and leave the courtroom.

3. Address all remarks to the judge, not to opposing counsel. Colloquy or argument between attorneys is prohibited.

4. Rise when addressing the judge and when making objections. (This calls the judge's attention to you.)

5. When offering a stipulation in a jury case, first confer with opposing counsel.

6. Do not exhibit familiarity with witnesses, jurors, opposing counsel, or court personnel. Do not use first names for witnesses, parties, opposing counsel or court personnel. During jury argument, do not address any juror individually or by name.

7. Do not bring food or beverages into the courtroom, nor allow witnesses to chew gum, etc. Men should not wear hats in court. Caution your witnesses and guests accordingly.

8. Stand a respectful distance from the jury at all times.

9. Address the court as "Your Honor," not "Ma'am" or "Sir," etc.

Statement of the Case

Each party shall submit a "statement of the case" for use by the court at the beginning of voir dire to advise the jurors of the nature of the case and the issues to be decided by the jury. The statement should be brief (normally two or three paragraphs in length) and neutral in tone and content.

Opening Statements

Confine your opening statements to what you expect the evidence to show. It is not proper to use the opening statement to argue the case, instruct as to the law, or explain the purpose of an opening statement. Unless the case is unusually complex, the average time should not exceed 30 minutes.

Voir Dire

The court will conduct voir dire of the jury. Some judges may permit counsel to ask brief follow-up questions of the jurors. If allowed, use generic questions of the entire panel or address individual jurors who raise a need for an individual response. Do not attempt to question each juror or condition jurors.

Witnesses

1. It is unnecessary to greet or introduce yourself to adverse witnesses. Commence your cross-examination without preliminaries. The right to cross-examine is not a right to examine crossly nor to ask the witness to pass on the credibility of another witness.

2. Examine witnesses while seated at counsel table, standing behind counsel table, or at the lectern.

3. Do not approach a witness or the bench without leave of court.

4. Do not hover over a witness, even when permission has been granted for you to approach the witness. Maintain a respectable distance from the witness.

5. If you need to point to an exhibit or to use the easel when you ask a question, return to your seat as soon as possible. Do not linger in the well of the court.

6. A whiteboard, white paper, chalk, pens, pointer, screen, TV and VCR are available. However, if you want an x-ray viewing box, tape recorder or similar equipment, you must furnish it or make arrangements with the courtroom deputy at least one day in advance.

7. Treat witnesses with fairness and consideration. Do not shout at, ridicule or otherwise abuse witnesses.

8. Do not ever, by facial expression or other conduct, exhibit any opinion concerning any witness' testimony. Counsel will admonish their clients and witnesses about this common occurrence.

9. When court is in session, do not address the reporter. Do not ask the reporter to mark testimony. Address all requests for re-reading of questions and answers to the judge.

10. If a witness is on the stand at a recess or adjournment, have the witness on the stand ready to proceed when court is resumed.

11. Do not delay proceedings by writing out witnesses' answers during questioning. Charts and diagrams, where possible, should be prepared in advance, but counsel may use the writing board for opening and close.

12. Where a party has more than one lawyer, only one may conduct the direct or cross-examination of a given witness.

Objections

1. When objecting, state only that you object and briefly specify the ground(s). Do not use objections to make a speech, recapitulate testimony, or to guide the witness.

2. Do not argue an objection until the judge grants permission or requests argument.

3. Give the judge advance notice if you have reason to anticipate that any question of law or evidence is difficult or will provoke an argument.

4. Sidebar or chambers conferences during trial are not to be utilized for discussion of evidentiary issues. Most evidentiary hearings will be conducted at court recesses or, if important enough to justify interruption of the trial, the jury will be excused and the matter heard

in open court (of course you may ask to approach the bench to request necessary recesses, etc.).

Exhibits

1. All exhibits will normally be marked and received in advance - per the court's order.
2. If you desire to display exhibits to the jury, sufficient additional copies must be available to provide each juror with a copy. Alternatively, use enlarged photographic, projected copies or juror notebooks.
3. Each counsel is responsible for any exhibits secured from the Clerk. At each noon-time or end-of-the-day adjournment, return all exhibits to the Clerk.
4. Let the Clerk know in advance the exhibits your next witness will be using.
5. All exhibits will be placed before the witness by the Clerk. Do not approach the witness with an exhibit without permission from the judge.
6. Show documents and other exhibits, where practical, to opposing counsel before their use in court.
7. In a rare case, when it is necessary to mark an exhibit in open court, ask that the Clerk so mark it and briefly describe the nature of the exhibit.
8. Exhibits not previously offered at the pretrial conference should be offered in evidence when they become admissible rather than at the end of counsel's case.
9. When referring to an exhibit, mention the exhibit number so that the record will be clear.
10. Counsel must review and certify on the record that what goes to the jury is correct before closing arguments.
11. At the end of trial, ordinarily exhibits will be returned to counsel.

Depositions

1. All depositions used at the trial must be in accordance with the Local Rules.
2. Portions of depositions used for impeachment may be read to the jury during cross-examination, with pages and lines indicated for the record before reading. The witness

should be asked whether he or she was asked the questions and gave the answers on the date of the deposition(s).

Closing Arguments

Never assert your personal opinion of: 1) the credibility of a witness; e.g., "I know Witness X is telling you the truth," 2) the culpability of a civil litigant, or 3) the guilt or innocence of an accused. Never assert your personal knowledge of a fact in issue or a fact not in evidence, nor argue the "Golden Rule" -- e.g., "Do unto others as you would have them do unto you," -- "Treat plaintiff/defendant as you would like to be treated in such a situation."

Jury Instructions

Proposed instructions will be discussed at the final pretrial conference and filed as ordered by the court. See Local Rule 51.1. Supplemental instructions must be filed and served as soon as the need for them becomes apparent. Attempt to agree on neutral instructions. Remember less is better than more and "advocacy" instructions will be rejected. Some judges require "joint submissions" of instructions.

Professionalism

Remember -- professionalism is paramount in this district.

References

Guidelines for Litigation Conduct, Section of Litigation, American Bar Association, August 1998.

Standards for Civility in Professional Conduct, 1998, Sponsored by the Professional Ethics Committee of the Federal Bar Association.