

**TRIAL PROCEDURE NON-JURY TRIAL**

**JUDGE GREGORY L. FROST**  
**U.S. DISTRICT COURT**  
**SOUTHERN DISTRICT OF OHIO EASTERN DIVISION**

**INTRODUCTION**

A lawsuit in which you represent a party has been assigned to me for trial. You will want to know what is expected of you and your opponent. The following procedures are designed to deal with your case promptly and efficiently without impeding your ability to present your client's case fully and fairly.

**COUNSEL TABLES**

The parties will occupy the counsel table chosen or agreed to before the opening of the first session of the trial.

The parties and all counsel will be present at counsel tables at all sessions **before** the Court enters the courtroom.

**APPEARANCES**

Counsel will enter their appearance with the Court Reporter and the Courtroom Deputy Clerk before the start of the opening session of the trial.

**COURT SESSIONS**

Trials will be held Monday through Friday of each week.

Thursday morning sessions may be shortened or canceled because the court regularly schedules final pretrial conferences and criminal matters on that day. Counsel should inquire regarding Thursday's schedule.

Morning sessions will begin at 9:00 a.m. and will recess at approximately 10:30 a.m. for 15 minutes.

Noon recess will be at approximately 12:00.

Afternoon sessions will begin at 1:00 p.m. and will recess at approximately 3:15 for 15 minutes.

Court will adjourn at approximately 5:00 p.m.

**TELEPHONE MESSAGES**

Telephone messages for trial counsel received by the Court's staff will be delivered to the Courtroom Deputy Clerk to be forwarded to the appropriate person.

### **ADDRESSES BY COUNSEL**

Counsel will address the Court in the following manner:

- (a) All addresses to the Court will be made from the lectern facing the Court.
- (b) Counsel shall stand when addressing the Court for any reason.

### **EXAMINATION OF WITNESSES**

Counsel shall conduct their examination from the lectern.

In advance of the trial, counsel will instruct his or her witnesses to answer questions with courtesy. Evasive answers, answering a question with a question or disrespect to opposing counsel will not be permitted.

Counsel are expected to extend equal courtesy to all witnesses. Counsel will wait until the witness has finished an answer before asking the next question. Multiple questions and repetitious questions will not be permitted. Counsel may not by any action, inflection or expression indicate disbelief of any witness's answer. Counsel shall admonish their clients and witnesses to desist from such conduct.

Witnesses shall be treated with fairness and consideration. They shall not be shouted at, ridiculed or otherwise abused. The untruthful or hostile witness can be examined firmly and extensively without abuse.

When a party has more than one attorney, only one may conduct the direct or cross examination of a given witness.

Counsel shall not approach a witness without asking the permission of the Court. When permission is granted for the purpose of working with an exhibit, counsel should resume the examination from the lectern when finished with the exhibit.

Counsel are responsible for witnesses speaking so that the testimony will be easily heard by all counsel and the Court.

Upon completing his or her examination of the witness, counsel shall advise the Court, after which the Court will advise opposing counsel to proceed.

During examination of a witness, counsel will first obtain permission of the Court if he/she wishes to confer with co-counsel

### **OBJECTIONS**

Counsel will stand when making an objection and will make the objection directly and only to

the Court.

When objecting, state only that you are objecting, and, if requested by the Court, state the grounds. Objections shall not be used for the purpose of making speeches, repeating testimony, or to attempt to guide a witness's testimony.

Argument upon an objection will not be heard unless permission is given or argument is request by the Court. Either counsel may request a bench conference.

### **DECORUM**

Colloquy, or argument between counsel will not be permitted. All remarks shall be addressed to the Court.

Counsel shall maintain a professional and dignified atmosphere throughout the trial.

During opening statements and final arguments, all persons at counsel table shall remain seated and be respectful so as not to divert the attention of the Court.

Do not ask the Court Reporter to mark testimony. All requests for re-reading of questions or answers shall be addressed to the Court.

### **EXHIBITS**

Counsel will assemble and mark **all exhibits and deliver them to the Courtroom just prior to the commencement of the trial.**

Exhibits shall be identified as follows:

**Joint exhibits will bear ROMAN NUMERALS**

**Plaintiffs' exhibits will bear ARABIC NUMBERS**

**Defendants' exhibits will bear LETTERS**

Third party exhibits may be numbered with Arabic numbers and an identifying letter prefix.

Counsel should have a list of all exhibits and supply the Court, the Courtroom Deputy and the Court Reporter with a copy of the same just prior to the commencement of the trial.

Counsel will not approach the witness to tender an exhibit, each exhibit will be placed before the witness by the Courtroom Deputy.

In formulating a question to a witness dealing with an exhibit, counsel shall specify the exhibit number/letter designation so that the record will be clear.

Counsel shall provide copies of exhibits to the Court and opposing counsel prior to the commencement of the trial.

Exhibits which are produced for the first time during trial, as in the case of exhibits used for impeachment, shall be tendered to the Courtroom Deputy for marking and then displayed to opposing counsel.

Each counsel is responsible for any exhibit secured from the Courtroom Deputy. At the end of the trial all exhibits that have been admitted shall be returned to and retained by the Courtroom Deputy.

### **DEPOSITIONS**

Counsel will confer in advance of trial and attempt to resolve objections by agreement. If any objections remain for ruling, counsel shall jointly prepare a list of objections identifying the page number and line(s) of the deposition where the objection will be found and stating in one sentence the grounds for the objection. This procedure applies to both written and video tape depositions. Thus video tape depositions which contain objections must be accompanied by a full or partial transcript. The jointly prepared list of objections and grounds for the same shall be delivered to the court prior to the commencement of the trial.

Video tape presentation must include all equipment a method for editing the sound to delete testimony as to which the Court has sustained an objection.

### **DEMONSTRATIVE EVIDENCE**

If any sketches, models, diagrams, or other demonstrative evidence of any kind will be used during the trial, they must be exhibited to opposing counsel one week prior to trial. Objections to the same must be submitted to the Court prior to the commencement of trial. Demonstrative evidence prepared solely for the purpose of final argument shall be displayed to opposing counsel at the earliest possible time but in no event later than one-half hour before the commencement of the arguments.

Counsel must supply his/her own easel, flip charts, etc. for trial.