INDIVIDUAL RULES AND PRACTICES FOR HEARINGS AND TRIALS

Honorable Jeannette A. Vargas, United States District Judge

Chambers
United States District Court
Southern District of New York
500 Pearl Street, Room 703
New York, NY 10007
(212) 805-0210
VargasNYSDChambers@nysd.uscourts.gov

1. Trial Practices to Ensure Efficiency and Time Management

A. Schedule. Unless otherwise decided by the Court, trials will generally be conducted Monday through Thursday from 9:30 a.m. to 5:00 p.m., with breaks throughout the day. When the jury is not seated, the parties may raise issues for rulings that may arise during the trial. In jury trials, in order to keep distractions during the trial to a minimum, counsel shall be present by 9:00 a.m. and available after 5:00 p.m. to discuss scheduling and any disputed matters that may arise.

B. Time Limits. The Court will impose time limits for opening statements and summations.

C. Sidebars. Sidebars during jury trials are strongly disfavored and will not be permitted if abused. Counsel are expected to anticipate any issues that might require argument and to raise those issues with the Court in advance of the time that the jury will be hearing the evidence, ideally in advance of the final pretrial conference.

D. Conferring with Opposing Party. Whenever possible, a party shall first raise any issue with the opposing party before raising the issue with the Court, including anticipated evidentiary and legal issues that require argument.

E. Witness Availability. The parties are expected to present witnesses throughout the entire trial day. Unless good cause is shown, if a party does not have another witness available on a given day, that party will be deemed to have rested. Counsel shall notify the Court and other counsel in writing, at the earliest possible time, of any particular scheduling problems involving witnesses so that other arrangements can be made to fill the trial day.

F. Witnesses Called by Multiple Parties. If multiple parties intend to call a particular witness, the parties shall ensure that the witness does not need to be called twice. Where a defense witness is called by the plaintiff (or a rebuttal witness is called by a defendant), the Court will allow counsel to go beyond the scope of the direct examination on cross-examination to avoid the need for the witness to be recalled.

2. Jury Selection

The jury will be selected by the struck panel method, as described in Attachment A.

3. Exhibits and Demonstratives

A. Unless otherwise ordered by the Court, no later than three business days before the start of the trial or hearing, the parties shall jointly email to the Court a Microsoft Excel document listing all exhibits sought to be admitted. The list shall contain six columns labeled as follows: (1) "Exhibit Number"; (2) "Description" (of the exhibit); (3) "Authenticity Objection"; (4) "Admissibility Objection"; (5) "Date Identified"; and (6) "Date Admitted." The parties shall complete the first four columns, but leave the fifth and sixth columns blank, to be filled in by the Court during trial. If a party objects to an exhibit, the objection should be noted in the third and/or fourth columns by indicating the Federal Rule of Evidence that is the basis for the objection and any other authority. Any objections not made may be deemed waived, and any exhibits not objected may be deemed admissible at trial.

B. Exhibits must be pre-marked (that is, with exhibit stickers or the like) and should generally be labeled by party and exhibit number (e.g., "GX-1," "PX-1," "DX-1," etc.) rather than letter (e.g., "DX-AA").

C. Three business days before the start of trial, each party must submit a flash drive containing .pdf files of that party's pre-marked documentary exhibits, with the file name corresponding to the relevant exhibit number, and in a criminal case, Section 3500 material in sequential order separated by numbered parts. Each party should simultaneously submit a single set of pre-marked exhibits (and in a criminal case Section 3500 material) assembled sequentially in two-inch binders, or in separate manila folders labeled with the exhibit numbers and placed in a suitable container for ready reference. If submission of electronic copies would be an undue burden on a party, the party may seek leave of Court (by

letter-motion filed on ECF) to submit prospective documentary exhibits in hard copy alone.

D. Where a hard copy exhibit is used, sufficient copies should be made, as appropriate, for witnesses, opposing counsel, jurors, the court reporter, any interpreters, and the Court. If counsel intends to publish hard copies of documentary exhibits to the jury rather than using the Court's audio-visual system, a separate copy should be provided for each juror to avoid unnecessary delay.

E. In advance of each hearing or trial session, counsel for the party going forward at that session should inform opposing counsel of the exhibits counsel intends to introduce at the session. The parties should raise any objections to an exhibit, other than authenticity or foundation, before the opening of the session. If possible, the Court will rule on the objection then, thereby eliminating the necessity for a colloquy or sidebar when the exhibit is offered.

F. Any exhibit offered in evidence should, at the time it is offered, be shown to opposing counsel unless it was provided, pre-marked, to counsel before the proceeding.

G. At the end of the hearing or trial, counsel should make sure they have their exhibits. The Court does not retain them, and the Clerk is not responsible for them.

H. If counsel intends to use demonstrative aids (including PowerPoint presentations) during opening statements or during the examination of any witness, the aids should be furnished to opposing counsel at least one day in advance of their use. The parties should confer in an effort to resolve any objections to their use. Any objections that are not resolved shall be raised with the Court prior to the anticipated use of the demonstrative.

I. If counsel plans to use a deposition at a hearing or trial, for impeachment or any other purpose, a copy of the deposition should be provided to the Court in advance of the hearing or trial session during which the deposition is to be used.

4. Promoting Juror Understanding

A. Jury Instructions. All instructions to the jury will be in plain language that is as understandable as possible to non-lawyers.

A. Preliminary Instructions. The Court will give preliminary instructions on the law at the beginning of the trial before the parties' opening statements. The preliminary instructions will explain the jury's role, trial procedures, the nature of evidence and its evaluation, basic relevant legal principles, including definitions of unfamiliar legal terms, the parties' claims and defenses, what the parties need to prove in order to sustain their claims and defenses, burden of proof and any pertinent instructions.

Preliminary instructions will facilitate better decision-making by jurors as well as a greater understanding of their duty in the decision-making process. Jurors' ability to recall relevant evidence and apply the law to the facts will improve if they understand in advance the context in which they will be required to evaluate or analyze the evidence presented during the trial.

B. Supplemental Instructions. The Court will give supplemental instructions during the course of the trial, as necessary, to assist the jury in understanding the facts and law.

C. Final Instructions. The Court will give final instructions on the law at the end of the presentation of evidence before the parties' closing statements. The Court will communicate clearly to the jury that the instructions given at the end of the trial will control deliberations. Each juror will be provided with a written copy of the final instructions for use while the jury is being instructed and during deliberations.

B. Juror Note Taking. Jurors will be permitted but not required to take notes during the trial. Jurors will be instructed that the notes are to aid their memory of the evidence and are not to substitute for their

recollection of the evidence in the case.[1] The Court will provide each juror with a notebook or paper and pens. The notes will be collected and destroyed at the conclusion of the trial.

C. Juror Deliberations. When jurors submit a question during deliberations, the Court, in consultation with the parties, will supply a prompt, complete and responsive answer or will explain to the jurors why it cannot do so.

D. The Court is open to techniques to enhance juror comprehension, including alternating the sequencing of experts, deposition summaries, and other aids.

5. Conduct During a Hearing or Trial

Unless excused by the Court or incapable on account of disability, anyone at counsel table, including, as appropriate, any counsel or party, shall abide by the following rules and practices:

A. Stand as Court is opened, recessed, or adjourned.

B. Stand when the jury enters or exits the courtroom.

C. Stand when addressing, or being addressed by, the Court.

D. Stand at the lectern while examining any witness; except that counsel may, with the Court's permission, approach the Courtroom Deputy's desk or the witness for purposes of handling or tendering exhibits.

E. Address all remarks to the Court, not to opposing counsel.

F. Request permission before approaching the bench or the witness box, and hand any document that counsel wishes to have the Court examine to the Courtroom Deputy.

G. If counsel intends to question a witness about a group of documents, counsel should avoid delay by having all the documents with him or

[1] Sample jury instruction: "If you took notes during the course of the trial, you shall not show your notes to or discuss your notes with any other juror during your deliberations. Any notes you have taken are to be used solely to assist you. The fact that a particular juror has taken notes entitles that juror's views to no greater weight than those of any other juror. Finally, your notes are not to substitute for your recollection of the evidence in the case. If you have any doubt as to any testimony, you may request that the testimony be read back to you as I mentioned earlier."

her when commencing the examination. Where practicable, counsel should provide all the documents in the group to the witness (ideally in a binder) and conduct the examination from the podium to avoid the need to approach the witness separately for each document.

H. Counsel should not make speaking objections before the jury. In making objections before the jury, counsel should state "objection" only and provide the legal ground (e.g., "relevance" or "hearsay") only if elaboration is requested by the Court.

I. Counsel should refrain from making motions (*e.g.*, a motion for a mistrial) in the presence of the jury. Such matters may be raised at the next recess.

J. Offers of, or requests for, a stipulation should be made privately, not within the hearing of the jury. In most instances, stipulations should be reduced to writing in a form that can be marked and admitted at trial.

K. Be respectful of opposing counsel, the litigants, and witnesses.

L. Refer to all persons, including witnesses, other counsel, and parties by their surnames and not by their first or given names.

M. All witnesses shall wear civilian clothes – no uniforms or badges.

N. Only one attorney for each party shall examine, or cross-examine, each witness. The attorney stating objections, if any, during direct examination, shall be the attorney recognized for cross-examination. The attorney who conducts direct examination shall be the attorney who states any objections during cross-examination.

O. Commence cross-examination without preliminaries.

P. In examining a witness, counsel shall not repeat or echo the answer given by the witness.

Q. Counsel should not face or otherwise appear to address him or herself to jurors when questioning a witness. In opening statements and arguments to the jury, counsel shall not express personal knowledge or opinion concerning any matter in issue.

6. Accuracy of Transcripts

Counsel are responsible for raising promptly any issue concerning the accuracy of transcripts certified by the Court Reporter to be used for purposes

of appeal. Counsel perceiving an error that is material shall stipulate to the appropriate correction or, if agreement cannot be reached, shall proceed by motion on notice. Non-material defects in syntax, grammar, spelling, or punctuation should be ignored.

7. Use of Electronic Devices

A. Electronic Devices in the Courtroom. Attorneys' use of personal electronic devices (including mobile phones) and general purpose computing devices (such as laptops and tablets) within the Courthouse and its environs is governed by Standing Order M10-468. When Court permission is required under the Standing Order, attorneys seeking to bring electronic devices to the Court should email a completed Model Court Order to VargasNYSDChambers@nysd.uscourts.gov as early as possible, and no later than five business days before the relevant trial or hearing.

B. Wi-Fi in the Courtroom. If Wi-Fi is requested, counsel shall check the appropriate box on the form. If approved and signed by Judge Vargas, a copy of the Order will be sent to the requesting attorney, who will receive a network name, username, password and instructions from the District Executive's Office on or before the first day of the scheduled proceeding. Wi-Fi access is limited to the approved attorney (who may not share their username or password with others) for the duration of the proceeding and for the assigned courtroom (unless Judge Vargas or another judicial officer grants permission for it to be used in another courtroom).

C. Technology Walkthrough. If a party wishes to use audio-visual equipment at a hearing or trial, it is that party's responsibility to ensure that any required approvals are obtained and that the necessary equipment is set up and working properly in advance of trial. The parties should contact Chambers by email and the Audio and Visual Department at 212-805-0134 to make the necessary arrangements for a technology walk-through and to test the equipment. The walkthrough should take place no later than one week in advance of the start of the trial or hearing.

ATTACHMENT A

Procedures for Jury Selection

The Court will select jurors using the struck panel method as follows. The Court will conduct a *voir dire* of panelists computed by totaling: the number of jurors to be selected (8 in most civil cases and 12 in criminal cases); the number of alternates (none in civil cases and usually 2 in criminal cases); and the number of peremptory challenges. Thus, in a civil case with an 8-person jury and 3 peremptory challenges per side, the Court will *voir dire* 14 panelists. *See* Fed. R. Civ. P. 47, 48; 28 U.S.C. § 1870. In trials expected to last for substantially more than a week, the Court will consider increasing the number of jurors in a civil case and the number of alternates in a criminal case.

In a single-defendant criminal case in which the defendant has 10 and the Government 6 peremptory challenges, plus 1 each with respect to alternates, *see* Fed. R. Crim. P. 24, the Court will *voir dire* 32 panelists (12 jurors + 2 alternates + 10 peremptories for the defendant + 6 peremptories for the Government + 1 peremptory for the defendant for the alternates + 1 peremptory for the Government for the alternates).

The panelists will be *voir dired* (by the Court, not counsel) in the Courtroom. If issues are raised that are better discussed outside the presence of the entire panel (*e.g.*, sensitive issues, requests to be excused, etc.), the Court will follow-up with the individual jurors either at sidebar or in the robing room. If a panelist is excused for cause, that panelist will be replaced by another prospective juror from the pool and the new panelist will be *voir dired*. After the Court has *voir dired* all members of the panel, the Court will — at sidebar or in the robing room — give counsel an opportunity to propose follow-up questions and entertain challenges for cause.

Once all challenges for cause have been heard and decided, the parties will then exercise their peremptory challenges (in the Courtroom) against the panelists who compose the potential members of the regular jury (in the ordinary criminal case, against the first 28 panelists) and, in criminal cases, the potential alternates (in a case where 2 alternates are to be selected, panelists 29 through 32). Peremptory challenges will be exercised simultaneously, with each party submitting a written list of the panelists it wishes to excuse. Any overlap among the lists of challenges will not result in parties receiving additional challenges. The jurors will be selected starting with the unchallenged juror with the lowest number from the relevant pool (*e.g.*, 1 through 28 for the regular jury and 29 through 32 for the alternates). For example, in an ordinary criminal case, if there was an overlap of 1 peremptory challenge with respect to the potential regular jurors (*i.e.*, the first 28 panelists), the 15 challenged panelists would be excused and the first 12 of the remaining 13 would

be seated as the jury. The 13th panelist, that is, the unchallenged panelist with the highest number, would also be excused.