

## **TRIAL GUIDELINES FOR U.S. MAGISTRATE JUDGE JAMES P. O'HARA**

**JURY UTILIZATION:** To ensure efficient and cost-effective jury utilization, the court's goal is that the jury will hear at least six solid hours of uninterrupted testimony every single day of trial. The chief cause of trial delay is the bench conference which interrupts the presentation of evidence to the jury. With thoughtful planning and without prejudice to any party, the court hopes to hear and decide all legal issues without disrupting the continuity of trial. To accomplish this goal, counsel are advised that:

1. Absent extraordinary circumstances, the court will not hold bench or chambers conferences during the trial; trial testimony should be presented without interruption, and all legal issues should be raised in advance of trial or outside the jury's presence.
2. If unanticipated matters must be raised during trial, outside the presence of the jury, they should not be resolved at the jury's expense. Counsel may be required to temporarily proceed to other matters or call a different witness. The court will rule on disputed matters at a convenient time, outside the presence of the jury. If a lawyer believes that an evidentiary issue is extremely critical to the case and that it is absolutely necessary to hear argument on that matter, the court may ask counsel to defer questioning the witness on the objectionable area until the court rules on the objection at the next recess.
3. Matters to be discussed outside the presence of jury will not be considered during the hours designated for jury trial, and sidebar discussions are discouraged. Any matters to be considered outside the presence of the jury should be scheduled for 8:30 a.m. or a recess, during lunch, breaks, or after the conclusion of that day of trial, *with advance notice given to the court and all counsel*.
4. To make sure that counsel have sufficient opportunity to anticipate legal issues, witnesses and exhibits expected to be used in the trial should be disclosed to opposing counsel no later than 5:30 p.m. the day before. In this way, counsel will have time to raise an issue the next day either before the jury is seated or during one of the recesses.

**EXHIBITS:** Prepare to advise the courtroom deputy of any stipulated exhibits. The court will receive all stipulated exhibits into evidence at the beginning of trial.

**WITNESSES:** Counsel must ensure that sufficient witnesses are present to guarantee a full day of testimony. There should be no dead time caused by running out of witnesses. When a witness is on the stand at the time of adjournment or recess, that witness should be back on the stand when the court reconvenes. If a new witness is to be called, that witness should be seated in the front row, ready to be sworn.

#### **TRIAL PROCEDURE AND HOUSEKEEPING MATTERS:**

**First day of trial:** On the first day of trial, unless specifically ordered otherwise, counsel are expected to be present at 8:30 a.m. At that time, counsel will review court procedures with the courtroom deputy.

**Court reporting:** You can take a number of steps to facilitate record-taking in the courtroom:

- a. Give your business card to the court reporter before the proceeding begins.
- b. If your witnesses will present testimony containing unusual or technical vocabulary, prepare a list of such correctly spelled names and terms for the court reporter.
- c. Make certain that verbal responses are elicited from all witnesses or that some audible indication is made.

**Jury selection:** In a civil trial, the court will seat fourteen prospective jurors. Each side will have three peremptory challenges, and thus the court will ultimately seat eight jurors. All eight jurors will deliberate, i.e., none will be designated as alternates. The court will conduct much of the voir dire process, but counsel usually will be allowed approximately 20 minutes per side for supplemental interrogation. The court will typically inquire concerning the following subjects:

- a. Biographical information, including each prospective juror's job, spouse's job, marital status, number of children, and educational background;
- b. Whether jurors have personal knowledge of the case;
- c. Any knowledge of attorneys or law firms trying the case;
- d. Any knowledge of witnesses likely to testify;
- e. Prior service as jurors;
- f. Prior involvement in litigation as plaintiff, defendant, witness, etc.;
- g. Personal experience with the subject matter of the lawsuit; and
- h. Medical circumstances or personal reasons why a prospective juror cannot serve.

Counsel need not propose voir dire questions on these subjects. Counsel are cautioned that, in conducting their portion of the voir dire process, they shall not:

- a. Repeat questions asked by the court;
- b. Argue to the jury while discussing the specifics of the case;
- c. Ask for promises from the jury;
- d. Examine jurors concerning matters of law;
- e. Examine jurors concerning jury instructions;
- f. Examine jurors concerning opinions based on hypothetical facts; or
- g. Otherwise attempt to ingratiate or indoctrinate the jury.

**Opening statements:** Unless otherwise ordered, the court will allow 20 minutes for each opening statement.

**Closing arguments:** The court will instruct the jury before closing arguments are made by counsel.

**Hours of trial:** Arrive promptly for all court sessions. Unless notified to the contrary, the jury portion of the trial will be conducted each trial day from 9:00 a.m. to 12:00 p.m. and from 1:15 p.m. to 4:45 p.m.

**Courtroom etiquette:** Stand as court is opened, recessed, and adjourned. Stand when the jury enters or retires from the courtroom. Stand when addressing or being addressed by the court. Stand at the lectern while making opening statements or closing arguments. [Counsel with physical disabilities are excused from these requirements.]

Stand at the lectern while examining any witness. However, counsel need not request permission from the court to approach a witness if there is an obvious reason to approach the witness, e.g., to hand the witness an exhibit. But, counsel should not perch near the witness box without permission of the court.

Avoid disparaging personal remarks or acrimony toward opposing counsel, and remain detached from all ill feeling between the litigants or witnesses.

Refer to all persons, including witnesses, other counsel, and the parties, by their surnames (preceded by Mr., Ms., or other title), not by their first names or nicknames.

**Objections:** Only one attorney for each party will examine or cross-examine each witness. The attorney stating objections, if any, during direct examination will be the attorney recognized for cross-examination.

In making objections, counsel:

- a. Shall state only the legal grounds for the objection and withhold all further comment or argument unless the court requests elaboration; and
- b. Shall not argue further after the court has rendered its decision on the objection.

**Sequestered witnesses:** If witnesses are sequestered, counsel must assure that each witness called or to be called understands that:

- a. The witness **may not** discuss the testimony which he or she expects to give or has given in the matter before the court;
- b. The witness **may not** discuss with another witness (or anyone else who has knowledge of proceedings in the courtroom) the testimony that any other witness has given or expects to give in this matter;
- c. The witness **may not** discuss his or her testimony or expected testimony in the case; if anyone attempts to discuss such testimony with the witness, the witness must notify the court as soon as possible; and
- d. The witness **may** discuss his or her testimony or prospective testimony with counsel.