

TRIAL PRACTICE AND COURTROOM PROCEDURES

CHIEF JUDGE DANIEL L. HOVLAND

April 1, 2005

General

1. Counsel are expected to be familiar with the Local Rules of the United States District Court for the District of North Dakota. A copy of the Local Rules can be obtained on the Internet at www.ndd.uscourts.gov.
2. The usual trial schedule begins at 9:00 a.m. and continues after a convenient mid-morning recess until noontime. After the lunch hour, the afternoon session normally continues until 4:30 p.m. with one mid-afternoon recess. Times for recess and adjournment will vary slightly, to permit the conclusion of a witness's testimony, to allow counsel to finish with direct or cross-examination, or if the Court has been required to attend to other court business.
3. Colloquy or argument between attorneys is not permitted. Please address all remarks to the Court.
4. Please do not exhibit familiarity with witnesses, jurors or opposing counsel. The use of first names is to be avoided. During argument to the jury, no juror shall be addressed individually or by name.
5. After the trial has begun, documents should be tendered to the courtroom deputy for filing, rather than to the Clerk's Office.

Facilities

1. Counsel should expect to bring any equipment expected to be used at trial. A VCR, an overhead projector, a television presenter (ELMO), audio cassette tape player, a screen, and an easel for the display of oversized exhibits are available in the courtroom. The Court prefers the use of the ELMO system to present evidence. Please contact the Clerk of Court's Office to arrange for training on the use of the ELMO. Attorneys may also connect laptop computers to the system to present evidence on a computer/CD-ROM. Please coordinate the use of laptop computers with the Clerk of Court's Office to ensure system compatibility. There are large-screen television monitors provided. The courtrooms in Bismarck and Minot are also equipped to permit live video testimony during court proceedings. Please contact the Clerk of Court's Office to arrange for video testimony between the trial location and a federal court location with video conference capability nearest to the remote witness.
2. The facilities of the chambers, including the telephones and the copier, are not available to counsel during trial. Counsel should enter chambers during trial only by invitation of the Court's staff. A copier is available in the Clerk's Office at a per-page fee.

Court Hours

1. The Court makes every effort to commence proceedings on time. Promptness is expected from counsel and witnesses. Chambers should be informed of any anticipated scheduling problems and will attempt to work with counsel to resolve such problems.
2. If a witness was on the stand at a recess or adjournment, please have the witness on the stand ready to proceed when court is resumed.
3. Please have the next witness in the courtroom and ready to take the stand after a recess or adjournment. If a witness' testimony is expected to be brief, have the next witness immediately available, perhaps in the hallway outside the courtroom.
4. The Court attempts to cooperate with the busy schedules of physicians and other professional witnesses and will, except in extraordinary circumstances, accommodate the witnesses by permitting them to testify out of order. Please anticipate any such possibility and discuss it with opposing counsel. If there is an objection to calling a witness out of order, please confer with the Court in advance.

Jury Selection

1. A list of the prospective jurors and a seating chart will be provided to counsel on the morning of trial.
2. The Court will conduct voir dire. All potential jurors will be seated and questioned in a single session. The Court will question the entire panel on general topics such as knowledge of the case, the parties, the attorneys, and experiences with the judicial system. The Court will also individually question the prospective jurors concerning their background, education, work experience, and interests, in an attempt to disclose any bias or prejudice. Counsel are also permitted to question the jurors for approximately twenty (20) minutes after the Court concludes its questioning. See Local Rule 23.1(D) and Rule 47(a) of the Federal Rules of Civil Procedure. Counsel may request the Court to question jurors on sensitive or difficult issues. Please note that it is not proper to use voir dire to argue the case or instruct as to the law.
3. In felony criminal cases, 28 prospective jurors will be seated for voir dire. At the conclusion of voir dire, the Court will ask the attorneys at sidebar whether they wish to challenge any juror for cause. Thereafter, peremptory challenges are exercised alternately as provided by Local Rule 23.1(C). The government has six peremptory challenges and the defendant has ten challenges. See Fed.R.Crim.P. 24(b).
4. In civil cases, 14 prospective jurors will be seated for voir dire. Rule 48 of the Federal Rules of Civil Procedure provides that the court "shall seat a jury of not fewer than six and not more than twelve members." However, "no verdict shall be taken from a jury reduced in size to fewer than six members." As a general rule, a panel of eight jurors is seated in civil cases. If one or two jurors are excused during the trial, the remaining jurors can still decide the case. Peremptory challenges are exercised alternately as provided by Local Rule 47.1(C). Each side is entitled to three peremptory challenges. See Fed.R.Civ.P. 47 and 28 U.S.C. § 1870. The first eight unchallenged jurors will constitute the trial jury.
5. Prior to trial, counsel should inform the Court if they believe alternate jurors may be needed. Counsel may request additional challenges if additional jurors are chosen. See Fed.R.Crim.P. 24(c)(4) and Fed.R.Civ.P. 47. In civil cases, when the original jury is

larger than six persons, all remaining jurors will deliberate at the conclusion of the trial and reach a verdict.

Opening Statement/Closing Statement

1. Counsel should stand at the lectern during opening statement and closing argument. Please confine opening statements to what you expect the evidence to show. It is not proper to use the opening statement to argue the case or instruct as to the law.
2. The Court will honor counsel's reasonable requests concerning the amount of time for opening statements and closing arguments, and expects counsel to confer to resolve any discrepancies. See Local Rules 23.1(E) and 47.1(E).
3. During the argument of opposing counsel, please remain seated at the counsel table and be respectful. Never divert the attention of the Court or the jury. Counsel should so instruct their clients and witnesses.
4. Any exhibits received in evidence, or stipulated to by the attorneys, may be used in closing arguments. The Court's written jury instructions may also be used and referred to during closing arguments.

Examination of Witnesses

1. Witnesses shall be treated with fairness and respect. They shall not be shouted at, ridiculed, or otherwise abused. Please avoid responding to answers of witnesses with editorial comments of approval or disapproval.
2. Counsel may conduct the examination of witnesses from the lectern or from counsel table. Counsel should always attempt to speak into a microphone in the courtroom. A lapel microphone is available if counsel needs to be away from the lectern or counsel table.
3. Please attempt to rise when addressing the Court and when making objections. This calls the Court's attention to you and allows you to be heard more readily.
4. When the purpose of approaching the witness is to work with an exhibit, prior permission of the Court need not be sought. During a jury trial, you, the witness and the exhibit (if enlarged) should be facing the jury so that you can be seen and heard. Counsel should return to counsel table and resume the examination of the witness when finished with the exhibit, which should be as soon as possible.
5. Please request the permission of the Court to approach a witness ONLY when you wish to consult privately with the witness. Otherwise, permission need not be requested.
6. When the trial begins, please provide the court clerk and the court reporter with a list of the witnesses you expect to call. Please attempt to have the correct spellings for the clerk and court reporter.
7. The Court may allow jurors to submit written questions. The Court will review the questions and ask counsel for objections outside the presence of the jury. The Court may then ask the question(s) and counsel will be permitted to ask additional questions based on the answers given.
8. Counsel should establish the background and qualifications of an expert witness. However, the Court will not declare a witness to be "an expert."

9. Counsel should contact the Clerk of Court's Office to arrange in advance for the accommodation of witnesses with disabilities.

Objections

1. When rising to make an objection, please state only that you are objecting and specify the ground or grounds for that objection.
2. Please do not use objections for the purpose of making a speech, recapitulating testimony, or attempting to guide the witness.
3. Argument upon the objection will not be heard until permission is given or argument is requested by the Court.
4. Where more than one attorney appears for a given party, the attorney who handles the direct examination of a witness shall also interpose objections when the witness is being examined by other counsel. The attorney who will cross-examine a witness shall interpose any objections during direct testimony.
5. No person shall, by facial expression or other conduct, exhibit any opinion concerning any testimony which is being given by a witness or any particular ruling by the Court. Counsel should admonish their clients and witnesses to avoid such behavior.

Exhibits

1. Exhibits should be marked for identification in numerical order before trial and a descriptive list provided to the court clerk and the court reporter. The exhibits should be designated by numbers. Counsel may stipulate to block of numbers prior to trial.
2. In cases involving large numbers of documentary exhibits which counsel hope to display to the jury, the preparation of individual notebooks with tabs for the jurors, clerk, and the Court is helpful.
3. Exhibits which have been introduced into evidence are kept at the clerk's bench during the trial. Each counsel is responsible for exhibits taken from the clerk. At each recess or adjournment, please return all exhibits to the clerk. Exhibits which have been offered but not admitted are also part of the record of the case and are kept by the clerk.
4. Each counsel shall keep a list of exhibits received into evidence. Counsel and the clerk shall confer at the close of the evidence to insure that only admitted exhibits are sent to the jury.
5. If an exhibit must be marked for identification in open court, counsel should state for the record what they are doing and briefly describe the nature of the exhibit. Counsel should provide exhibit labels for their own exhibits.
6. Counsel shall confer before trial to reach as many stipulations as possible concerning the authenticity and admissibility of exhibits. Such stipulations are not only encouraged but expected. Counsel may move the admission of stipulated exhibits at the onset of trial.
7. Whenever possible, have photocopies of exhibits for the Court, opposing counsel, and the witness. A descriptive list of the exhibits counsel intends to introduce is a helpful tool for counsel, the Court, the court reporter, and the clerk.

8. Exhibits should be offered in evidence when they become admissible, rather than at the end of a witness's testimony or counsel's case.
9. As a general rule, exhibits admitted into evidence may be displayed to the jury at the time of admission or in conjunction with other exhibits at the conclusion of the witness' examination by the "offering" counsel, but permission of the Court should be sought in advance of executing either procedure. Publication by utilizing the ELMO system is the preferred means.
10. When counsel or witnesses refer to an exhibit, please make mention of the exhibit number so that the record will be clear.
11. Where maps, diagrams, pictures or similar materials are being used as exhibits, and locations or features on such documents are being pointed out by witnesses or counsel, such locations should be indicated by appropriate markings on the documents if they are not readily apparent from the exhibits themselves. Unnecessary markings should be avoided. Marking on exhibits should only be made after considering the views of opposing counsel and receiving the Court's permission. Counsel should then describe the markings for the record.
12. Where there has been extensive discovery and counsel expect to offer answers to interrogatories or requests for admissions extracted from several separate documents, please prepare copies of the individual materials rather than thumbing through extensive files while the Court and the jury sit waiting for counsel to locate the particular items.

Depositions

1. Depositions to be used at trial, either as evidence or for impeachment, shall be filed no later than the morning of trial.
2. Depositions to be used as evidence at trial shall be marked as exhibits. The parties shall stipulate, if possible, that the reading of depositions need not be taken by the court reporter.
3. When only a portion of a deposition is to be read, the relevant excerpts must be identified verbally for the record by line, question, and page reference. After the identification has been made for the record, and before portions of depositions are used for impeachment, allow the witness to review them silently.
4. Please confer with opposing counsel prior to trial to edit written and videotaped depositions which are to be used at trial and remove any unnecessary material.

Jury Instructions

1. Please file and serve proposed jury instructions at least five (5) business days prior to trial, unless a different schedule has been ordered by the Court. See Local Rules 23.1(F) and 47.1(F).
2. Please forward the proposed instructions on a computer disk or via email to chambers. The Court uses WordPerfect Version 10.
3. Each proposed jury instruction must include a citation to the authority on which counsel relied.

4. The Court will convene an instructions conference at an appropriate time, generally after or shortly before the conclusion of all the evidence.
5. The Court relies upon the Eighth Circuit Manual of Model Jury Instructions in civil and criminal cases.
6. The Court will read the final instructions to the jury before closing arguments are presented.

Difficult Questions - Advance Notice

If counsel have reason to anticipate that any question of law or evidence is difficult or will provoke an extensive argument or require a proffer outside the presence of the jury, and counsel have conferred and been unable to resolve the matter, please give advance notice to the Court to allow for appropriate scheduling arrangements to be made.