

INSTRUCTIONS TO COUNSEL CONCERNING TRIAL PROCEDURES

Judge Timothy S. Hillman
United States District Court
(Borrowed liberally from Honorable F. Dennis Saylor)

1. **Trial date.** In civil cases, trial dates are set after dispositive motions. Trial date in criminal cases is set as soon as the case is returned to Judge Hillman from the magistrate judge. Typical trial schedule is 9:00 a.m. to 1:00 p.m. We will take two short breaks at 10:30 a.m. and 12:00 noon. Occasionally trial will go all day if behind schedule or to accommodate witness travel.

2. **Trial Briefs.** In civil cases, trial briefs are required.

3. **Voir Dire.** Judge Hillman asks the voir dire questions of the entire venire; the number of jurors “yeses” is noted; jurors are drawn randomly and those who answered yes are questioned further at sidebar, those who are found indifferent are seated; parties alternate preemptive challenges (no back challenges); this is repeated until the jury is seated.

Juror questionnaires are used in complicated, lengthy cases, Judge Hillman will consider allowing attorney voir dire.

4. **Opening & Closing Statements.** There are no set time limits for opening or closing statements. Counsel shall not use demonstrative aids during openings without prior approval from the Court (with notice to opposing Counsel).

5. **Courtroom Technology.** Counsel should contact the courtroom clerk regarding use of equipment. Courtroom 2 in Worcester is equipped with 22 inch monitors at the following locations: jury box, attorney tables, lectern, witness box and for the Judge and his staff. The monitors at the witness, lectern, and judge locations can be touched on the screen to annotate over the evidence displayed on the all monitors. The 86 inch gallery cart can also be used as a touch screen to annotate over evidence.

The Worcester courtrooms do not provide INTERNET ACCESS to attorneys.

The courtroom evidence presentation system includes the following:

- Document camera to display paper documents onto the monitors as well as small physical exhibits, maps, and pictures
- HDMI and VGA inputs at all the attorney table locations as well as the podium to allow personal electronic device such as tablets and laptops to be able to show electronic evidence.
- Annotator to be able to use touch screens to identify specific aspects of evidence.
- Teleconference technology
- Video conference technology

6. **JERS.** The Jury Evidence Retrieval System (JERS) requires counsel to format and load all exhibits in advance of trial. Counsel should contact my Courtroom deputy, Martin Castles for instructions on its use, and to schedule access.

7. **Punctuality.** Counsel are expected to be punctual at all times. Each trial day will begin promptly at 9:00 a.m. If there are matters that counsel wish to bring to the court's attention before starting trial, they will be addressed before 9:00 am. Counsel should contact my Courtroom Deputy Martin Castles.

8. **Organization.** The most common juror complaint about trial counsel is that they are disorganized. Counsel are expected to be prepared and organized in all respects and to have a basic command of the evidence. Careful organization is particularly important in cases with substantial numbers of exhibits.

9. **Questioning Witnesses.** Counsel are generally free to question witnesses from any reasonable location in the courtroom while always being mindful of their responsibility to the official court reporter. Counsel should not, however, stand next to the witness when questioning the witness except as reasonably necessary to point out particular items in exhibits. Similarly, Counsel should address the jury during openings and closing from the podium unless given prior approval from the Court.

10. **Approaching Witnesses.** Counsel generally need not ask permission from the Court to approach a witness, but should acknowledge the Court's authority (e.g., "With the Court's permission, I am showing you Exhibit 12 . . .").

11. **Objections.** Objections should be made with the single word "Objection". Argument, if permitted, should normally take place at sidebar or otherwise outside the presence of the jury.

12. **Exhibit Numbers.** Exhibits should be given numbers, not letters, and not combinations of numbers and letters (e.g. Exhibit 2, not Exhibit B or Exhibit 2B). Exhibits may be grouped as long as numbers are used (e.g., Exhibits 2.1, 2.2, 2.3). This requirement applies to both agreed-upon and disputed exhibits.

13. **"Government" or "Defense" Exhibits.** Exhibits should be marked as "Exhibits," not as "Government Exhibits," "Plaintiff's Exhibits," or "Defendant's Exhibits."

14. **Order of Offering Exhibits.** Exhibits need not be offered in any particular order—for example, the first exhibit need not be Exhibit 1. If a particular exhibit is excluded or not offered, there will simply be a gap in the numbering sequence. The jury will be instructed that neither the numbering of the exhibits nor the fact that there may be gaps in the sequence has any evidentiary significance.

15. **Physical Form of Exhibits.** If documents are attached to one another, they should generally be stapled, rather than paper-clipped. Plastic sleeves for documents make 2

documents difficult to handle and should be used sparingly, if at all.

16. Deposition Exhibits. In order to avoid confusion, all deposition exhibit stickers should be removed from trial exhibits or otherwise obscured.

17. Copy of Exhibits for Court. In cases involving more than a few documents, counsel are strongly encouraged to provide a three-ring binder of expected exhibits to the Court, and my law clerk at the beginning of the trial.

18. Upcoming Witnesses. Counsel are required to provide opposing counsel, no later than the conclusion of the trial day, the names of the expected witnesses for the following day and a reasonable projection of the witness lineup for the day after that.

19. Accurate Estimate of Time. Counsel who are adequately prepared should normally be able to provide reasonably accurate estimates as to the amount of time necessary for trial events, including the length of opening statements and closing arguments, the length of witness testimony, and the length of the trial. Counsel are reminded that trial time is a limited resource and should be apportioned with care.

20. Order of Closing Arguments in Civil Cases. In civil cases, the order of closing arguments will be the following: plaintiff, defendant, plaintiff's rebuttal. Rebuttal argument in cases of ordinary complexity will normally be limited to five minutes.