

TRIAL PROCEDURES IN DEPARTMENT 40

Estimate of Trial Length

1. Before trial begins, the Court will review with counsel the witnesses each side expects to call to testify. The Court will inquire as to the substance of each witness's testimony, the length of direct and cross examination, the order of witnesses and whether witnesses are cumulative.

Pre-Trial Orders

1. Confer with opposing counsel regarding motions in limine and inform the court on the record of stipulations or the absence of an objection to any motions.
2. If evidence has been excluded prior to the start of trial, you may not refer to the evidence in voir dire, in argument to the jury or in questioning of any witness.
3. If you believe that the "door has been opened" on a subject that has previously been ruled upon, you must first raise the issue outside the presence of the jury with the court; you may not make an independent determination that the order is no longer in effect.

Witnesses

1. Plan to fill the entire court day with witnesses.
2. Call witnesses promptly; do not engage in discussions outside the courtroom that delay court proceedings.
3. Advise your witnesses of orders in limine.
4. Advise your witnesses to stop testifying when an objection is made and to proceed only after the Court has ruled on the objection.

The Jury

1. Please see the instructions set forth in the Court's Voir Dire Procedures.
2. Do not directly interact with or speak to the jury during the course of the trial (except during opening statement and closing argument) and advise your witnesses of this instruction.
3. If you wish to publish an exhibit to jury, ask the Court's permission before doing so.
4. Do not show or ask your witnesses to show anything to the jury unless it has been marked, and unless introduced only for illustrative or demonstrative purposes, admitted as an exhibit.

Form of Objections

1. Absent a request to seal or for a closed proceeding, all discussions with the Court need to be on the record; the Court will not permit "side bar" discussions or requests to talk "in chambers." Counsel may, of course, ask to be heard outside the presence of the jury.
2. Do not make "Speaking" objections. If you believe an explanation beyond the succinct basis of the objection is necessary, you should ask to address the issue outside the presence of the jury.
3. Wait for a ruling on any objection before proceeding. If you do not disagree with the objection, inform the court that you will rephrase the question before the court rules.

4. Do not speak over opposing counsel, witnesses or the court. Advise your witnesses of this instruction.

Interaction between Counsel and the Court

1. Do not interrupt the Court.
2. Do not confer with your client or co-counsel while the Court is speaking.
3. Address any argument or comments to the Court, not to opposing counsel.
4. Stand when addressing the Court unless you have requested and received permission to address the Court while remaining seated.

Use of Courtroom

1. You may move around the courtroom when examining witnesses but do not approach the witnesses without the Court's permission.
2. Be aware that the court uses the FTR Gold recording system and if you are not near a microphone your questions may not be recorded. Remind witnesses of the need to answer audibly in the affirmative or negative rather than shaking or nodding their heads or answering with an "uh-huh."
3. When court recesses at lunch and the end of the day, please exit the courtroom as quickly as possible. Court staff cannot leave the courtroom unattended and have other non-trial responsibilities during the recess.

Exhibits

1. Be prepared to address the admissibility of all exhibits prior to trial.
2. Anything shown to the jury must first be admitted as an exhibit.
3. Asking a witness to diagram, draw or write something on a tear sheet is acceptable but you must have the drawing marked as an exhibit and you may offer it for "illustrative" or "demonstrative" purposes. Such exhibits do not go to the jury room.
4. Please bring sufficient copies of your exhibits to trial. You must have a complete set for the court clerk to mark as the official set of trial exhibits and complete set for the court to use as working copies. Do not ask the staff to make copies of your trial exhibits.

Jury Instructions

1. E-mail a set of cited and un-cited proposed jury instructions in Word format to the court's bailiff.
2. File a set of cited proposed instructions with the court clerk.

During Deliberations

1. Provide the bailiff with contact information in case of a jury question or verdict.
2. Remain within fifteen minutes of the courthouse while the jury is deliberating.