

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF ILLINOIS**



CHAMBERS OF  
**JOE BILLY McDADE**  
SENIOR U.S. DISTRICT JUDGE

127 U.S. COURTHOUSE  
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**RULES OF CONDUCT BEFORE AND DURING TRIAL**

Counsel shall comply with all Local Rules and adhere to the following general rules in preparation for and during trial unless otherwise directed by the Court.

**I. GENERAL RULES OF CONDUCT DURING TRIAL**

- A. Counsel must not waste jurors' time. Consequently, counsel should:
1. arrive in the courtroom on time for all scheduled court appearances;
  2. raise anticipated legal arguments regarding evidence, witnesses, etc., at the beginning of the day prior to the scheduled arrival of the jury, after the jury has been relieved for a break, or after the jury has been relieved for the day;
  3. request side-bars only when absolutely necessary; and
  4. be well prepared. All motions should have a memorandum of law attached.
- B. Counsel must address themselves only to the Court except during opening statements, closing arguments, and examination of witnesses. Consequently, counsel should address comments and requests to the Court, which will be passed on if appropriate, and should not:
1. address comments to opposing counsel;
  2. ask jurors questions (i.e., "Can you see this exhibit?");
  3. address comments to the court reporter (i.e., "Read that back");
  4. address comments to the Clerk of the Court; or
  5. instruct witnesses.
- C. Counsel must stand when addressing either the Court or the jury and use the podium when examining witnesses and during opening statements and closing arguments so that the court reporter can accurately transcribe the proceedings. Walking back and forth is distracting and counsel must stay within arm's length of the podium. Also, counsel and the parties must stand when the jury enters and exits the courtroom.

- D. Counsel may not, under any circumstances, communicate with a juror during the pendency of a trial and may do so after the conclusion of the trial only with prior permission from the Court.

## **II. INSTRUCTIONS CONCERNING JURY SELECTION**

- A. Jury panels will consist at least as many individuals as the sum of the number of jurors to be selected, the number of alternates to be selected in a criminal case (generally 2), and the number of peremptory challenges.
  - 1. In a single defendant criminal case, in which the defendant has 10 and the Government has 6 peremptory challenges, plus 1 challenge each with respect to alternates, Judge McDade will voir dire at least 32 panelists, but likely closer to 40 panelists to allow for a few strikes for cause.
  - 2. In civil cases, in which each side has 3 peremptories, Judge McDade will voir dire at least 14 panelists for the minimum 8 person jury, but likely closer to 20.
- B. The Court will conduct voir dire examination. If counsel has particular, non-routine questions which they would like the Court to ask, those questions should be presented to the Court in writing at the final pretrial conference.
- C. After voir dire is completed, the first order of business will be to determine whether there are any challenges for cause. If there are any challenges for cause, the removed panelists will be struck.
- D. The exercise of peremptory challenges will follow next at a sidebar. Counsel will exercise a challenge by indicating the name of the juror challenged. Counsel will alternate in exercising challenges, with Plaintiff or the Government having the first challenge. In criminal cases, to compensate for the unequal number of peremptories, the defendant will strike two panelists during each round. A party may waive its right to challenge but may not reserve its challenge (i.e., “We will pass this time and take two the next time”). Also note that challenges may be made to any of the panelists regardless of where that panelist appears in the array. Back striking will not be allowed.
- E. When each side has exhausted its peremptory challenges, the first 12 unchallenged panelists constitute the jury in a criminal case and the first 8 to 10 persons constitute the jury in a civil case.
- F. After the 12-person jury is selected in a criminal case, each side has 1 additional challenge which is exercisable only with respect to the alternates, who are selected from the remaining unchallenged panelists after the jury has been selected. These final two challenges will occur once the other peremptory challenges have been exercised.

### **III. EXAMINATION OF WITNESSES**

- A. As previously stated, counsel should not instruct witnesses, but instead request the Court for an instruction.
- B. Counsel should not ask a witness to leave the witness box, but instead request that the Court grant the witness the right to leave the box at the conclusion of the testimony or for demonstrative reasons.
- C. When more than one attorney represents one party, only one attorney may question each witness, and only the questioning attorney may object to opposing counsel's questions of that witness.
- D. Counsel should ask leave to approach a witness with an exhibit the first time, and need not repeat the request for that witness thereafter.
- E. Counsel should not obstruct any juror's view of the witness with their person or an exhibit.
- F. Counsel should be mindful of the court reporter and not speak too quickly or begin a new question prior to a witness's completion of the answer to the previous question.
- G. When counsel has completed the examination of a witness, counsel should not address themselves to opposing counsel (i.e., "Your witness"), but instead address themselves to the Court (i.e., "Those are my questions," "I have no further questions," or "Thank you, Mr. Witness").

### **IV. OBJECTIONS**

- A. Counsel should attempt to limit their courtroom objections by motions in limine which should be in writing and filed before trial.
- B. Counsel should stand when making an objection.
- C. Counsel should very briefly state the grounds for an objection at the time the objection is made (i.e., "Objection. Argumentative.>").
- D. If counsel wishes to argue an objection or make a record, they should not do so in front of the jury, but instead must request a side-bar. All side bars should be kept to a minimum and the Court frowns on requests to have the jury frequently taken from the courtroom. The Court encourages counsel to anticipate evidentiary problems and handle as many objections as possible prior to trial or at the beginning of the morning or afternoon before the jury enters the courtroom.
- E. Once an objection is made, before continuing or proceeding to another question, the questioner should either wait for a ruling or ask to withdraw the pending question.

The questioner should not respond to the objection unless asked by the Court to do so.

## **V. TESTIMONY BY DEPOSITION**

- A. If a party intends to introduce testimony by deposition at trial pursuant to Federal Rule of Civil Procedure 32, it must so indicate in the final pretrial order.
- B. The party seeking to introduce deposition evidence must submit a copy of the deposition transcript to the Court one week prior to the start of trial. Prior to submitting this copy, each party must have been given the opportunity to mark it as follows:
  - 1. Highlight the portions of the deposition the party wishes to introduce as evidence. Each party should use a different color highlighter.
  - 2. Circle the portions the opposing party wishes to introduce to which it objects.
- C. Prior to the start of trial, the Court will determine which portions will be admitted into evidence.

## **VI. EXHIBITS**

- A. Counsel should always pre-mark exhibits and exchange them with opposing counsel.
- B. Each item, including pages, in a group exhibit must be marked.
- C. Always show exhibits to opposing counsel before showing them to a witness.
- D. If counsel wishes an exhibit to be published to the jury, they should ask for the Court's permission. If allowed, the Court will instruct the Deputy Clerk or the Court Security Officer to pass the exhibits to the jury. Exhibits may not be published before they are admitted into evidence. There should not be questioning of a witness while the exhibit is published.
- E. Disputes over the admissibility of exhibits should be raised outside the presence of the jury, preferably in a motion in limine before trial.

## **VII. JURY INSTRUCTIONS**

- A. Proposed jury instructions must be tendered to the Court at the final pretrial conference, unless otherwise directed by the Court.
- B. Jury instructions should be double-spaced. Multi-page instructions must be stapled, with page numbers. Judge McDade prefers that pattern jury instructions be used whenever possible in civil cases. Non-pattern instructions are discouraged in criminal cases unless necessity compels their usage.

- C. Counsel must furnish the Court with one clean and one annotated copy of each instruction. Paper clip each annotated copy on top of the corresponding clean copy. Number each annotated copy only.

**VIII. CONDUCT DURING JURY DELIBERATION**

- A. Counsel should furnish the Clerk of the Court with a telephone or pager number where they can be reached when the jury indicates that it has reached a verdict or when the jurors have a question that needs a response from the Court.
- B. Counsel should be able to arrive in the courtroom upon receiving a call within no more than fifteen minutes after being contacted by the Court.
- C. REMEMBER, counsel may not question jurors after a verdict has been reached without prior approval from the Court.