

# Jury Trial Procedure

Judge Andrew Stone

- 1) Questions? [3rdStoneteam@utcourts.gov](mailto:3rdStoneteam@utcourts.gov)
- 2) Scheduling trial
  - a. The Court will set a case for a scheduling conference promptly upon receiving a certificate of readiness.
  - b. The Court ordinarily requires that the parties mediate in good faith at least once prior to providing a trial date
  - c. The Court may require that a complete set of jury instructions (see below) be provided prior to the scheduling conference before a trial date is given.
  - d. The Court ordinarily sets a final pretrial approximately one week before the trial. See below.
- 3) Pretrial disclosures
  - a. Follow the rules for disclosures and objections using the trial date set by the Court.
  - b. Objections are critical. Please read the rule.
  - c. Objections are required to be filed; the actual disclosures are not. For this reason, please provide a courtesy copy of all disclosures (pretrial, initial and any supplemental) prior to the final pretrial. (email courtesy copies in pdf form to the email listed above).
  - d. One of the great functions of the disclosure and objection process is it narrows the extent to which the parties' disclosures leading up to trial must be litigated. Plan on discussing objections at final pretrial.
- 4) Exhibits
  - a. All exhibits to be pre-marked. Plaintiffs to use numerals; defendants, letters.
  - b. Exhibits should be marked in a sensible fashion to permit admission as marked. It is difficult to accurately track exhibits if they are offered only in part (e.g. "pages 3 through 16 of Exhibit 2").

- i. Bear in mind that a series of emails or texts between the parties may be easy to admit under the rules of evidence; inclusion of emails or texts from other third parties may complicate that.
  - ii. Do not simply designate all the documents produced for potential admission. Identifying an exhibit means a genuine intent to offer it through a competent witness who can identify it and provide foundation for its admission.
- c. Copies to be exchanged per rules, must be marked as above.
- d. Courtesy copies to be submitted in advance of pretrial to the court in electronic (preferably pdf) form, bookmarked by exhibit number. To the extent practical, each side should submit their exhibits in a single electronic document.
- e. Each side should submit (prior to trial commencing) a printed index of exhibits, identifying each by number and with a short description (e.g. "Letter dated \_\_\_" or "Photo") for the clerk's use during trial. It is helpful to provide space for indicating whether the exhibit was offered and whether it was received.
- f. Please be considerate of the jury and publish promptly after admission.
  - i. It is generally pointless to discuss a document with a witness if the jury can't see it.
  - ii. You may publish by using a projector, blow-ups, or handing copies out. Preferably, most original exhibits that are admitted should remain with the witness. Obviously, certain physical exhibits may need to be passed from juror to juror.
- g. The Court's audio visual equipment (projectors and document cameras) is extremely limited. You should plan on providing these on your own. The Third District has a limited number of media carts which provide, through an HD or VGA cable, display from your device onto a large-screen monitor for the jury and smaller screens for the court, witness and counsel tables. It includes high quality audio. You are encouraged to use these, but please recognize that they need to be reserved well in advance. The judge's team will be happy to help you reserve one.
- h. Do not use demonstrative exhibits in a manner that blocks the Court's or clerk's view of the jury.

## 5) Witnesses

- a. Counsel should cooperate in scheduling witnesses.
- b. Counsel should communicate best estimates of their anticipated examinations, and update each other as those estimates change.
- c. Counsel should cooperate in order to ensure that the next witness is ready to take the stand when the prior witness has completed testifying.
- d. Counsel should cooperate and attempt to minimize witness's wait times, particularly those under subpoena. Subpoenas should not require witnesses to wait inordinate periods of time to testify.
- e. Counsel should cooperate in order to accommodate witness's travel plans.
- f. Deposition testimony to be read in at trial (as opposed to being used for impeachment) should be designated and counter designated prior to final pretrial. Original designations should be made when final witness designations are delivered. Counter-designations and objections should be made with objections to exhibits and witnesses. If objections to the designated testimony are anticipated, copies of the applicable portions of the transcript should be brought to pretrial for the court's review.

## 6) Expert testimony

- a. The permissible scope of opinion testimony is often disputed at trial. This requires the Court to determine what disclosure of testimony was made in advance of trial.
  - i. If a written report was elected, provide a courtesy copy in advance of trial to the Court. As with exhibits, indexed pdfs are preferred. They may be emailed to the address above.
  - ii. If a deposition was elected, provide a courtesy copy of the expert disclosure in advance of trial, and if it is contended that the expert either limited that disclosure or expanded it in deposition testimony, be prepared to provide deposition testimony at trial demonstrating that the witness did so. Again, pdfs are preferred.

## 7) Final Pretrial

- a. Final pretrial will resolve disputes over jury instructions (unless previously discussed at the scheduling conference).
- b. Motions in limine, if not submitted and heard prior to the final pretrial, should be submitted no less than 72 hours before pretrial.

- i. Counsel are encouraged to confer in advance of filing or submitting stock motions in limine- simple stipulations can resolve many of these motions.
    - ii. Courtesy copies in pdf form of all papers regarding a particular motion in limine are appreciated. It is pointless (and more than a bit annoying to the Court) to provide courtesy copies that do not include the opposing papers.
  - c. Submit proposed Voir Dire (see below) no less than 72 hours prior to final pretrial.
  - d. Objections to pretrial disclosures (see above) will be discussed, and to the extent possible, resolved at the final pretrial.
- 8) The Trial day
- a. The jury will be asked to come early enough in order to assemble and be in the box at 9:00 a.m. Counsel should also plan on using time before trial to address anticipated issues. The Court will be available at least as early as 8:30, and can convene earlier if needed.
  - b. A morning break is taken between 10:15 and 10:45. Counsel examining a witness during this time should look for a convenient break in the examination and let the Court know when a good time to break is.
  - c. The jury is allowed a 90 minute lunch break. Again, counsel should look for a convenient time to break around noon.
  - d. Another 15 minute break is taken at a convenient time around 3:00.
- 9) Jury Instructions
- a. An agreed, complete set of jury instructions is required to be submitted no later than 72 hours in advance of final pretrial. Often, the Court will require jury instructions to be submitted earlier, at the scheduling conference before trial dates are provided. The Court has found that this improves the quality of pretrial disclosures and often helps determine the number of trial days needed. In addition to filing, an editable set (Word or WordPerfect) should be submitted in electronic form to the Judge's judicial assistant (use the email above) at the same time as the instructions are required to be filed. To the extent instructions are disputed, each

party's version should be included in the set where it is proposed to be given, along with any authority for the proposed instruction.

- b. Counsel should be prepared to discuss instructions and resolve disputes at the final pretrial or, if required earlier, as instructed.
- c. Failure to submit instructions in advance of final pretrial may result in the trial date being stricken. A party's failure to reasonably cooperate in submitting joint instructions may be deemed a waiver of objections to the instructions timely submitted by the other party.

#### 10) Voir Dire

- a. Proposed voir dire questions should be submitted no less than 72 hours in advance of final pretrial.
  - i. Seek stipulation on voir dire questions in advance. Questions must be neutrally worded and answerable by a raise of hands.
- b. Questionnaires are permitted if they will accelerate the voir dire process
  - i. This means that lengthier questionnaires must be distributed to the potential jurors well in advance of trial, by mail or internet links. Counsel must agree to this procedure, and stipulate to the form of survey enough in advance to allow responses to be received and reviewed by counsel in advance of the trial date.
  - ii. Shorter surveys may be stipulated to, submitted to the Court at final pretrial, for distribution to the panel on the day of trial. Bear in mind that counsel will have limited time to review these responses prior to commencing voir dire, so only short, basic surveys are useful when using this method.
- c. The default procedure is the panel is brought in, seated in order, and a card with very basic questions (Name, job, spouse's job, children, favored reading material, hobbies, something interesting about themselves) is passed from juror to juror. They stand and answer the questions in turn. The Court will ask questions to the group as to statutory qualifications and a few questions regarding the specific case subject. The Court will also read any questions proposed by counsel and agreed to by the Court. These questions should be neutral, and answerable by a show of hands.
  - i. After group questions, counsel will have an opportunity to follow up in chambers with individual jurors. Jurors are taken in the

order called, and challenges for cause are heard in chambers (on the record) after each potential juror is questioned. The process ends when enough jurors have been interviewed and not excused for cause to permit each side to exercise peremptories and leave enough to empanel the jury.

1. While the Court does not wish to unduly restrict the voir dire process, bear in mind that time taken empanelling a jury comes out of your allotted trial time. Be reasonable as to which jurors you choose to interview and the extent you question the ones you choose to talk to.
2. Ordinarily, the Court requires that trial testimony commence on the first day of trial. As a practical matter, this means that, after voir dire, jury selection and opening instructions, and allowing for testimony to commence no later than 4:00 or so, the time spent in voir dire can directly affect the time permitted for opening statements.

#### 11) Opening Statements

- a. The Court reserves the right to limit time for opening statements.
- b. Obtain a stipulation or a ruling from the Court as to any demonstratives or exhibits you intend to show the jury during opening.
- c. Do not exceed your allotted time. You do not want your first chance to address the jury to end with the Court cutting you off.
- d. You are welcome to use the lectern or move around the well, whichever you prefer.

#### 12) Timeline

- a. Certification of readiness
- b. Scheduling conference
  - i. Submit instructions if ordered
    1. Argue instructions at the conference if submitted
  - ii. Mediation completed
  - iii. Be prepared to discuss any remaining motions, including motions in limine

- iv. Plan on receiving trial date trial date—this may require knowing not only your own calendar, but the calendars of your witnesses as well.
- v. We typically can set a jury trial of five days or less within 4-6 months. Shorter trials are often set within 3. It is usually counsel's calendars that prevent setting at the first available date.
- vi. If you anticipate a trial longer than 1 full week, consider contacting the court for an earlier scheduling conference, prior to completing all discovery and mediation, but only when there is some certainty among all counsel as to when the case can be tried.
- c. Juror Questionnaires: If lengthy, stipulated to, approved by the Court, and distributed to potential jurors well in advance of trial to allow response
- d. Exchange of witness lists, exhibits and deposition designations: as per rule 26.—28 days before trial for disclosures, 14 days for objections.
- e. Audio Visual needs: inform Judge's judicial assistants as soon as this is known—requesting a media cart, screen, easel, projector, flip chart, etc. does not guarantee it will be available, requesting it late means it likely won't be.
  - i. Sometime before trial, test your AV or other visual aids using the courtroom. We are happy to help accommodate this.
  - ii. Don't assume any particular piece of equipment (white board, flip chart, etc.) will necessarily be available at trial. They get borrowed sometimes. Let us know what you will need.
- f. Two days prior to final pretrial
  - i. All Motions in limine fully briefed and submitted
  - ii. PDF copies of exhibits
  - iii. Courtesy copies of expert disclosures or reports (see above)
  - iv. Courtesy copies of initial, any supplemental, and pretrial disclosures
  - v. Proposed voir dire questions or agreed short questionnaire
  - vi. Complete set of jury instructions, stipulated to the extent possible
  - vii. Copies of deposition designations that are in dispute as to admissibility.

- g. Final Pretrial
  - i. Argue Motions in Limine
  - ii. Resolve disputed instructions
  - iii. Resolve proposed voir dire
  - iv. Address any other pending issues
    - 1. E.g. be prepared to discuss which exhibits the parties agree may be used in opening statements.
    - 2. Coordinate witnesses
    - 3. Resolve disputes over deposition designations
- h. Trial
  - i. Index of exhibits submitted to clerk