



A GUIDE

FOR TRIAL COUNSEL

CONDUCTING CIVIL JURY TRIALS

BEFORE JUDGE WILLIAM C. LEE

IN THE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF INDIANA

FORT WAYNE DIVISION

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BEFORE CHIEF JUDGE WILLIAM C. LEE
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I. INTRODUCTION

This booklet contains useful information for trial counsel conducting jury trials under the supervision of United States District Court Judge William C. Lee. The contents will afford the reader some practical "how-to" information, will facilitate presentation of the evidence, and may avoid possible embarrassment. Of course, to the extent there are any conflicting court orders, they prevail and counsel should remain always mindful of the requirements of the Order Controlling the Case.

The information in this booklet would formerly be given to counsel at the final pretrial conference, however, in order to reduce the time spent in such conferences, and so as to ensure uniformity, this guide has been developed. Unless a question arises, this information will not be addressed again in the final pretrial conference. Of course, after reading the guide, if you have any questions please bring them to the attention of the Court. In addition, any suggestions for improved procedures are always welcome.

II. TRIAL SCHEDULE

The usual hours for trial are from approximately 8:30 a.m. to 5:00 p.m. with about one-hour devoted to lunch around 12:00 noon. Of course, this is not a rigid schedule and minor

adjustments frequently occur so as to accommodate witnesses, and because other matters frequently arise. Ordinarily, the Court will not start the presentation of evidence on any trial day earlier than 8:30 a.m., and rarely will go past 5:00 p.m. However, counsel should always be present at 8:30 a.m. on the first morning of trial to discuss any last minute motions, rulings, and general "housekeeping" matters. Jury selection generally starts promptly at 9:00 a.m.

III. SEATING

There is no "customary" or "assigned" seating in the courtroom. Generally, seating is on a "first come, first served" basis. The Court will only become involved with assigned seating if it becomes necessary as a result of multiple parties, or because of security concerns.

IV. EXHIBITS

Exhibits to which no objections have been noted will be admitted the first morning of trial, in the presence of the jury, and immediately after opening statements. Since you will know what exhibits are then going to be admitted you may use them, if you so desire, in opening statements. You may also use exhibits about which there is some objection, but by doing so, you will be risking not having them admitted later during the course of the trial. Further, while an exhibit to which an objection has been raised may be used in opening statement, counsel must have a good faith belief that such exhibit will in fact be admissible at trial. Exhibits to which objections have been noted will not be admitted unless formally offered and admitted during the course of the trial. The courtroom deputy clerk (not the court reporter) is the custodian of all admitted exhibits.

V. VOIR DIRE

The Court will conduct *voir dire* of the jury and will pose questions covering what they know about the case, and if they have had any prior contact with counsel, the parties, or the witnesses in the case. The prospective jurors will have been drawn at random, by computer, and will appear in this random order on the list of jurors that will be given to you on the first morning of trial. The first fourteen names appearing on this list will be seated in the jury box. A jury box diagram is attached for your use. Those jurors who are actually seated in the box will be asked about such things as: prior jury service, participation in any lawsuits, whether they can follow the law as given to them by the Court and questions relating to the nature of the case which could impact on a juror's ability to serve in an impartial manner. The Court will ask reasonable follow-up questions. The Court will also ask those *voir dire* questions that you have previously submitted which the Court has found to be useful and appropriate. To assist you in drafting your *voir dire* questions, please be advised that you will be receiving on the first morning of trial a jury questionnaire form filled out by each prospective juror. (See attached). Please do not submit *voir dire* questions that will be covered by the juror questionnaire. If a juror questionnaire raises a question about a prospective juror, you can ask the Court to make further inquiry on the point when you approach the bench to make your jury strikes.

VI. THE JURY SELECTION PROCESS

Ordinarily, when there are no multiple parties and in a relatively short trial, the Court will seat eight regular jurors with no alternates and with three peremptory strikes per side. Eight jurors are seated so that in the event that one or two of the regular jurors becomes ill or disqualified

during the course of the trial the remaining six or seven jurors may still return a unanimous verdict. After the Court conducts the *voir dire* as described above, the Court will announce, "COUNSEL MAY APPROACH THE BENCH WHEN THEY ARE READY." At that point, you may approach the bench with your strikes when you are ready. Before receiving your strikes the Court will ordinarily inquire as to whether any follow-up questions are desired. The Court will then ask if either side has any strikes for cause. If so, they will be discussed and resolved. If the juror in question is stricken, a substitute juror will be called and questioned prior to the Court taking your peremptory strikes. The Court will then ask for peremptory strikes, alternating between the plaintiff's strikes and the defendant's strikes. After noting your strikes, those jurors who have been stricken will be excused. If each side has used their three peremptory strikes, there would be eight jurors remaining. These eight jurors will become the jury to try the case, and no further jurors will be called to the box. In all events--whether all challenges have been exercised or not--when the parties deem the jury acceptable, the jury will consist of the *first eight jurors who remain sitting in the jury box*.

VII. PRELIMINARY JURY INSTRUCTIONS

This Court's preliminary jury instructions will generally include the parties' agreed statement of the case along with approved pattern instructions relating to the duty of the jury to find the facts; what does and does not constitute evidence; the burden of proof; the expected conduct of the jury; and how the trial will proceed. If the parties feel that further preliminary instructions are required, they shall submit them to the Court no later than the trial management conference, which is usually just prior to trial.

VIII. WITNESSES

The Court may ask about the order in which witnesses will testify and their anticipated duration. Any motion to separate witnesses should be made before the presentation of evidence and counsel shall have the duty to aid the Court in insuring that a separation order is being followed since counsel will generally be more aware of who in the courtroom is a possible witness. Counsel shall provide to the Court, ON THE FIRST MORNING OF TRIAL, a separate list containing the names of witnesses, for the Court's use during voir dire.

IX. DEPOSITIONS

Consistent with the Court's "Order Controlling the Case" depositions for presentation to the jury should be limited to forty-five minutes per deponent. If the deposition is by video, any substantial editing necessary to meet the forty-five minute limit should be done well prior to the trial. Minor editing (to include testimony to which objections have been sustained) can probably most easily be addressed by simply "fast forwarding" the tape over the excised portion. In any event, if there are any objections within the transcript of the deposition these should be brought to the attention of the Court before the deposition is submitted to the jury so that the Court can rule outside the presence of the jury and in a more relaxed atmosphere.

X. EXHIBIT MANAGEMENT AND COURTROOM EQUIPMENT

The Court is interested in facilitating the presentation of evidence during the course of the trial. The courtroom is equipped with an Exhibit Display System (ELMO), and counsel are

encouraged to use this system, which will allow for display of documents, photographs, physical evidence, video tapes, and audio tapes, as well as computer presentations via counsel's laptop computer. If you are unfamiliar with our ELMO system, please contact Courtroom Deputy Lisa Steinke (260-423-3006), who will arrange for a demonstration and instruction on use of the system. Counsel may also ask leave of Court to have a witness read a small portion of a document into the record for the jury's consideration. The Court will not permit exhibits to be passed from one juror to the next -- a process which slows the pace of the trial and encourages impermissible juror discussion. Exhibits admitted into evidence will ultimately go to the jury when they retire to deliberate.

The Court also has available for your use an easel, a blackboard, a TV/VCR (VHS format), and an overhead projector. Any additional desired equipment should be brought by you and approved by the Court prior to use. You should also plan to submit a bench book of your exhibits in a three-ring exhibit binder(s), prior to trial in accordance with the time line attached to the Order Controlling the Case.

XI. JURORS

Ordinarily, the Court will not permit juror note taking. If you object to this, raise it at the final pretrial conference. The jurors will not be allowed to ask questions during the trial.

XII. FINAL JURY INSTRUCTIONS

While the "Order Controlling the Case" speaks to final jury instructions in more detail, the desired result is fairly easy to describe. Counsel are strongly encouraged to agree on proposed

jury instructions as much as possible, and submit to the court a set of agreed instructions. Those instructions to which agreement cannot be reached shall be filed and objected to pursuant to the time line included in the Order Controlling the Trial. Counsel will be presented with the “Court’s Proposed Final Instructions”, which will include a sheet describing the Court’s action on tendered instructions and objections thereto as early in the trial as possible, and they will have an opportunity to review these proposed instructions and dictate their objections to the Court Reporter, who will then present their objections to the Court. After whatever conferences are deemed necessary by the Court, counsel will be presented with the “Court’s Final Instructions” prior to the commencement of closing arguments. Counsel is not responsible for submitting the court’s general standard instructions generally utilized in all civil cases but if the Court does not use one of the standard instructions (and you think it should be included in the instructions), that should be brought to the attention of the Court. These standard instructions may be reviewed by counsel and can be found on Judge William Lee’s web page on the court’s web site innd.uscourts.gov.

XIII. CLOSING ARGUMENT

Normally a final argument of forty-minutes duration is sufficient. Absent good cause the Court will adhere to that time limit. Plaintiff’s counsel is free to divide the opening and rebuttal arguments in any way deemed appropriate. The Court will monitor the time and will advise plaintiff’s counsel prior to rebuttal argument how much time he or she has left. The Court will also inform counsel two minutes before expiration of all allotted time.

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CAUSE NO. AND NAME: _____

DATE: _____

14(A). Have you ever served as a juror in a jury trial?

YES NO

(B). If yes, type of case: Criminal Civil

(C). When was your service? _____

(D). Did the jury reach a verdict?

YES NO

What was the verdict? _____

15. Do you have religious convictions or conscientious scruples which you believe would affect your ability to sit in judgment of another person?

YES NO

16(A). Have you any preconceptions or attitudes about jury duty, the American legal system, the courts, its officers and attorneys which you believe would affect your ability to serve as a jury?

YES NO

(B). If yes, explain:

(C). What is the source of information which has contributed to your answer?

17. Indicate the frequency with which you have exposure to local news sources (such as newspapers, radio, television news):

Daily Weekends only
 Three times a week Infrequently

18. What sorts of things do you like to do in your leisure time?

19(A). Have you, a family member, relative, or a close friend ever been involved as a party or a witness in a civil lawsuit or as a victim, defendant or witness in a criminal case?

YES NO

(B). If yes, state how, when, where, type of suit and outcome:

20(A). Have you or any member of your immediate family received training in law, law enforcement, medicine or psychology?

YES NO

(B). If yes, explain:

Additional comments: (if responsive to a particular question, list question number followed by your response):

I hereby swear or affirm under the penalty of perjury that the answers to the foregoing are true and correct.

(Signature)

(Date)

