

## **CHIEF JUDGE FAWSETT'S JURY SELECTION AND TRIAL PROCEDURE**

1. Copies of the jury list containing names of jurors and their cities of residence obtained from the questionnaires completed by such jurors will be furnished to counsel at trial in non-capital cases and as provided by law in capital cases.

2. Members of the jury panel will be qualified generally at the commencement of their service. Thereafter, as each case is called for trial, the jury selection procedure shall be as follows:

(a) **Criminal cases - twelve person jury**

At least twenty-four persons will be selected from the panel by lot and seated in the order in which they are selected. The Court will then explain the nature of the case, the offense(s) alleged in the indictment, the presumption of innocence and the Government's burden of proof. The Court will also conduct a general voir dire examination. After completion of voir dire examination, counsel and their clients will be invited to the bench to suggest additional questions on voir dire and to exercise challenges for cause. A challenge for cause may be exercised as to any prospective juror seated in any seat of the jury box.

After disposing of the challenges for cause, if any, peremptory challenges will then be exercised in an alternating manner, two by the Defendant(s), one by the Government, etc., until the Defendant(s) has exercised eight (8) peremptory challenges and the Government has exercised four (4) peremptory challenges. Thereafter, the Defendant(s) shall have the right to exercise one (1) peremptory challenge and the Government shall have the right to exercise one (1) peremptory challenge in an alternating manner until the Defendant(s) has exercised a total of ten (10) peremptory challenges and the Government has exercised a total of six (6) peremptory challenges. The peremptory challenge shall be directed only to one of the first twelve (12) prospective jurors who have been seated or positioned in the first twelve seats of the jury box. Thereafter, as a

person seated or positioned in the first twelve seats of the jury box is challenged, the next juror seated outside the twelve seats, who has not previously been eliminated is a prospective juror, will have his or her name positioned within the twelve seats of the jury box. As an example, if the Defendant excuses with the first peremptory challenge the prospective juror in seat 4, the juror in seat number 13, will be deemed substituted in seat number 4; and if Defendant then excuses the juror in seat number 3, the juror in seat number 14 will be deemed substituted in seat number 3. If the Government then excuses the prospective juror positioned in seat number 4, the juror seated in seat number 15 will be deemed substituted in seat number 4, and if the Defendant then chooses to excuse the prospective juror positioned in seat number 4, the juror in seat number 16 will be deemed substituted in seat number 4, and so forth. The exercise of peremptory challenges will thus continue as to the persons whose names are positioned in the first twelve seats as described herein until all peremptory challenges are exhausted or the party (ies) accept the jury. Should any party announce, before exhausting that party's peremptory challenges, that the jurors whose names are then positioned in the first twelve seats are acceptable, the party will be deemed to have tendered the jury as to those twelve persons. If the adverse party(ies) then also tender the jury, all parties will be deemed to have waived any remaining peremptory challenges. However, if the adverse party exercises a peremptory challenge after a party tenders the jury, any remaining challenges of the party tendering the jury may be exercised in alternation with the adverse party's exercise of challenges as to any juror seated in the first twelve seats of the jury box until both sides tender the jury or all peremptory challenges are exhausted.

At least one alternate juror will usually be selected. Challenges to alternate jurors will be exercised in accordance with the Court's instructions given at trial after twelve jurors have been selected to be seated in the first twelve seats of the jury box to try the case as above described.

In cases involving multiple parties, counsel should confer with the Court in advance concerning the number of peremptory challenges allowed and whether they will be exercised jointly or otherwise pursuant to Rule 24(b), Federal Rules of Criminal Procedure.

(b) **Civil Cases - six to twelve person jury**

Prior to the random selection for seating of jurors, the Court will determine pursuant to Federal Rule of Civil Procedure 48 the number of jurors, not less than six nor more than twelve, to be selected. Thereafter, persons will be selected for the jury panel by lot and seated in the order in which they are selected. The Court will then explain the nature of the case and will conduct a general voir dire examination.<sup>1</sup> After completion of voir dire examination, counsel will be invited to the bench to suggest additional questions on voir dire and to exercise challenges for cause. A challenge for cause may be exercised as to any prospective juror seated in any seat of the jury box.

After disposing of challenges for cause, if any, three peremptory challenges per side will then be exercised in an alternating manner, one by the Plaintiff(s), one by the Defendant(s), etc. and peremptory challenges may be directed only to the prospective jurors who have been positioned by name in the first six to twelve seats of the jury box in accordance with the Court's determination as to the size of the jury panel. As an example, if the jury is to be composed of seven jurors, and Plaintiff excuses prospective juror seated in seat number 4, the juror in seat number 8 will be deemed substituted in seat number 4 of the jury box; and if Defendant then excuses prospective juror in seat number 3, the juror in seat number 9 will be deemed substituted in seat number 3, etc. The exercise of peremptory challenges will thus continue until all are exhausted or the parties accept the jury. Should any party announce, before exhausting the party's challenges,

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<sup>1</sup>Counsel should submit any proposed voir dire questions in writing to the Court at least ten (10) days prior to the commencement of the trial term.

that the jurors then deemed positioned in the specified number of jury seats are acceptable, and the opposing party(ies) also then tender the jury, all remaining but unexercised peremptory challenges will be deemed waived. However, if any one party tenders the jury another party thereafter exercises a peremptory challenge, remaining peremptory challenges of the first party may be exercised in alternating fashion as described herein until all challenges are exhausted or all parties tender the jury.

No alternate jurors are designated in a civil case in accordance with Federal Rule of Civil Procedure 48.

In cases involving multiple parties, counsel should confer with the Court in advance of commencement of trial concerning the number of peremptory challenges allowed and whether they will be exercised jointly or otherwise pursuant to 28 U.S.C. § 1870.

3. **Courtroom Decorum** (Please review Local Rule 5.03)

The purpose of this Rule is to state for the guidance of those heretofore unfamiliar with the traditions of this Court certain basic principles concerning courtroom behavior and decorum. The requirements stated in this Rule are minimal, are not all-inclusive, and are intended to emphasize and supplement, but not to supplant or limit, the ethical obligations of counsel under the Code of Professional Responsibility and the time honored customs of experienced trial counsel.

Unless excused by the presiding Judge, when appearing in this Court all counsel, including where the context applies, all persons at counsel table shall:

- a. Stand as Court is opened, recessed or adjourned.
- b. Stand when the jury enters or retires from the Courtroom.
- c. Stand when addressing or being addressed by the Court.
- d. Stand at the lectern while examining any witness, except that counsel may approach the clerk's desk for purposes of handling or tendering exhibits for review by a witness or by the Court.
- e. Stand at the lectern while making opening statements and closing arguments.

- f. Address all remarks to the Court, not to opposing counsel.
- g. Avoid disparaging personal remarks or acrimony toward opposing counsel and remain wholly detached from any ill feeling between the litigants or witnesses.
- h. Refer to all persons, including witnesses, other counsel and the parties, by their surnames and not by their first or given names.
- i. Allow only one attorney for each party to examine or cross examine each witness. The attorney stating objections during direct examination shall be the attorney recognized for cross-examination.
- j. Remain at counsel table or the lectern and do not approach the bench unless invited to do so by the court.
- k. State in making an objection only the legal ground(s) for the objection and withhold any further comment or argument unless elaboration is requested by the Court.
- l. Examine a witness without repeating or echoing the answer given by the witness.
- m. Make offers of, or requests for, a stipulation privately, not within the hearing of the jury.
- n. Refrain from expressing in opening statements and in arguments to the jury, personal knowledge or opinion concerning any matter in issue. Counsel shall not read or purport to read from deposition or trial transcripts, and shall not suggest to the jury, directly or indirectly, that it may or should request transcripts or the reading of any testimony by the reporter.
- o. Admonish all persons at counsel table that gestures, facial expressions, audible comments, or the like, as manifestations of approval or disapproval during the testimony of witnesses or at any other time during the proceedings in Court, are absolutely prohibited.

4. **Exhibits**

1. The attention of counsel is directed to the provisions of Local Rule 3.07 concerning the pre-marking and listing of tangible exhibits. The specific requirements of the Rule should be accomplished prior to the commencement of trial.

- a. Counsel for each party in any case shall obtain from the Clerk, in advance of trial, tabs or labels for the marking and identification of each exhibit proposed to be offered into evidence or otherwise tendered to any witness during trial.
- b. Upon marking the exhibits, counsel shall also prepare a list of such exhibits, in sequence, with a descriptive notation sufficient to identify each separately numbered

exhibit, and shall furnish copies of the list to opposing counsel and three copies to the Court at the commencement of trial. (See Local Rules 5.03, 5.04 and 5.05)

- c. Photographs of sensitive exhibits, i.e. guns, drugs and valuables, and of non-documentary evidence and reductions of exhibits larger than 8 ½ " by 14" shall be marked with the same number as the exhibit for which they are to be substituted and shall be given to the Courtroom Deputy at the time the original exhibit is offered into evidence.
- d. All exhibits, exactly as they will be offered into evidence at the trial with exhibit labels affixed, shall be provided to counsel for all other parties and to all parties proceeding pro se for inspection before commencement of the trial to avoid unnecessary waste of time in inspections of exhibits during the course of the trial.

5. **Depositions**

If depositions are to be used at trial in lieu of live witness presentation,<sup>2</sup> the parties shall meet together prior to trial to determine which portions of the deposition will be presented to the jury. On one copy of the deposition, the portion to be presented by Plaintiff shall be highlighted in blue and the portion presented by the Defendant shall be highlighted in yellow. Any disagreement as to presentation of all or a portion of the deposition shall be submitted to the Court no later than ten (10) days prior to the commencement of the trial in writing with the highlighted portion(s) of the deposition which are the subject of the dispute attached.

6. **What to bring to Court at the start of Trial: (Criminal/Civil)**

1. (3) three copies of your exhibit list
2. (3) three copies of your current witness list
3. (1) one agreed upon verdict form
4. Pre-tagged trial exhibits and substitute exhibit photographs
5. Bench copies of your trial exhibits for the Judge (in a labeled binder if possible)

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<sup>2</sup>This does not apply to depositions used for impeachment of a witness testifying in person at trial.