

COURTROOM GUIDELINES- CIVIL Judge Olin
Shinholser

THE REQUIREMENTS STATED IN THESE RULES ARE MINIMAL, NOT ALL INCLUSIVE; AND THEY ARE INTENDED TO EMPHASIZE AND SUPPLEMENT, NOT SUPPLANT OR LIMIT, THE LEGAL, EVIDENTIARY, AND ETHICAL OBLIGATIONS OF COUNSEL, THE RULES OF PROFESSIONAL CONDUCT, AND THE TIME HONORED CUSTOMS OF ATTORNEYS IN THE COURTROOM.

Counsel must be familiar with and follow the applicable sections of The Florida Bar Trial Lawyers Section Guidelines for Professional Conduct, which has been endorsed by the Florida Conference of Circuit Judges. Copies are available from the Florida Bar. Failure to comply with the Guidelines and the additional guidelines set forth below may result in correction or comment by the court without objection by opposing counsel. Counsel are encouraged to address any concerns about these guidelines with the court at any time, but preferably in advance of testing their limits in trial.

PRETRIAL

Settlement: Counsel for both parties are responsible for notifying the court immediately upon settlement so that the case may be removed from the trial docket. If settlement is likely but not yet consummated, the court requests the courtesy of being informed of and updated on settlement prospects at and after the pretrial conference.

Continuances: Trial, pretrial, status conference and case management conference continuances must be the subject of a written motion and hearing. Hearings other than pretrial, status conferences, case management conferences and deadlines established by court order may be continued by stipulation of counsel *upon agreement by the court*. Counsel should provide as much notice as possible to avoid inconvenience and lapses in scheduling. Care should be taken in continuing hearings or deadlines that affect readiness for trial, such as motions in limine and motions and discovery or disclosure deadlines regarding witnesses and experts. If counsel disagree, or if required by the court, a written motion for continuance or modification may need to be filed and set for hearing. Any variance of court ordered deadlines shall be resolved prior to the expiration of the deadline.

Only the attorney who set a hearing may unilaterally remove a hearing from the docket. If a hearing is cross-noticed, it may not be unilaterally removed from the docket. Opposing counsel shall be notified of any unilateral cancellation sufficiently in advance of the hearing to avoid cost of preparation and travel. The court shall be notified of cancellation at the earliest possible time. Repeated cancellation of hearings at the last minute may result in closer control by the court on setting and canceling hearings.

Discovery Issues: When discovery disputes occur, counsel must confer and make a good faith effort to resolve all or part of the issues before involving the court. If a hearing is necessary, it should be timely scheduled in order to avoid potential trial delay. The court will endeavor to provide immediate assistance with the resolution of true emergency deposition and discovery issues if available and the contact is not *ex parte*. Motions to Compel shall be accompanied by a signed statement of submitting counsel that opposing counsel has been contacted and all efforts to resolve the discovery issues in dispute have been exhausted prior to filing the motion. See Florida Rule of Civil Procedure 1.380 (a) (2); motions failing to include the certificate required will be denied automatically without hearing.

Ex Parte Contact: Please see *Guidelines, supra*, at pages 9-10.

Pretrial Conference Checklist: The following matters are appropriate for consideration and to be raised at pretrial conference. Of course, this list is not exclusive.

Pretrial Stipulation prepared/trial counsel present
Statement of case to be read to venire
Length of trial
Scheduling problems (witnesses or attorneys)
Motions in Limine
Witness issues
Rule of Sequestration
Motion in Limine
Other pending motions and pleading amendments Need
for additional or ongoing discovery Witness lists and
witness issues and limitations Exhibit lists
Marking Exhibits before trial
Special damages
Estimates for:
Time for opening Time
for closing Time for
voir dire
Number of peremptory challenges Voir
dire issues
Pretrial publicity
Extra Jurors needed?
Stipulations and Admissions
Admissibility of Exhibits
Use of exhibits or visual aids during opening
Matters of fact or law about which there is no dispute
Judicial notice
View of Scene (including transportation requirements)
Trial briefs or memos regarding issues other than routine matters of evidence, law or procedure Proposed
jury instructions and copy for jury
Proposed verdict forms
Special audio visual needs
Defendant security issues
Need for translator/interpreter
Deposition testimony/designation
Juror note taking
Jurors questioning of witnesses
Responsibility for court reporter

TRIAL

Motions in Limine: Unless good cause is shown why the motion could not have been filed and heard prior to pre-trial, motions will not be heard the morning of jury selection or trial. Motions must be heard before trial at a scheduled hearing. Counsel should provide authorities in advance to the court and opposing counsel whenever possible.

Voir Dire: The court will initiate questioning. Counsel should not be repetitive, instruct on the law, ask

potential jurors to define legal terms, pre-try the case, disclose the facts and issues of the case beyond the information provided by the court, or seek "commitments" from each individual juror on ultimate or multiple issues. Counsel should make every effort to avoid wasting the jurors' time, but should not be overly solicitous of jurors and should not request in open court that jurors receive comfort breaks or other considerations. See Guidelines, *supra*, item 28 at page 13. Counsel should inquire of the entire panel whenever possible to seek out individuals to be questioned on a given issue.

Back striking is permitted as required by law. Questions on these guidelines should be sought in advance to avoid comment or correction, which may occur during voir dire with or without objection from the opposition.

Courtroom Etiquette and Decorum: Please see Guidelines, *supra*, at pages 11-13. Counsel shall stand when addressing the court or the jury and should seek permission to approach the bench, the clerk, the witness, or the jury. Everyone shall stand when the jury enters and leaves the courtroom.

Counsel shall not speak to jurors during recess, even on subjects foreign to the cause.

Counsel shall ensure that the client, client's supporters, lawyer's staff, and witnesses also avoid contact with jurors. Only one person shall speak at a time, and all statements for the record in open court shall be addressed to the court and not opposing counsel. When co-counsel are present, only one lawyer will be recognized to participate for each witness or trial phase.

Counsel should admonish all persons at counsel table that gestures, facial expressions, audible comments, and the like, as manifestations of approval or disapproval of anything occurring in the courtroom are absolutely prohibited.

Counsel shall not interrupt a question or statement of opposing counsel or the answer of a witness unless the content of the statement or question is patently objectionable or there are grounds to believe that a matter is being included which cannot properly be disclosed to the jury.

During opening statement or final argument, counsel may move from behind the podium, but counsel shall remain a respectful distance from the jury; counsel will not cross the outer rail of the jury box nor personally hand any item to a juror. It is not necessary to get permission to approach the clerk to pick up exhibits during final argument, but it is helpful to obtain and line up exhibits before starting the argument. During argument or opening statement, counsel shall not read or purport to read from transcripts of the trial, hearings, statements, or depositions, nor shall counsel suggest to the jury that the jurors may or should request transcripts or the reading of any testimony by the court reporter. Current case law prohibits counsel from arguing to the jury that witnesses equally available to both sides did not appear or should have appeared in trial.

Counsel should promote respect for the court and its rulings by yielding gracefully to rulings of the court. Ample means to correct errors are afforded by orderly procedure. Once the court has ruled, the time for argument has passed. The record should be made before the ruling, giving the court the full benefit of all arguments and authorities when the decision is made.

Counsel should, whenever possible, share information with the court and opposing counsel on numbers of witnesses and duration of testimony for the current and following day.

Counsel should cooperate on sharing visual aid equipment. Counsel shall not alter exhibits, charts, graphs, and diagrams without opposing counsel's permission or leave of court. Counsel should accede

to reasonable requests for waivers of formalities if the client's interests are not adversely affected.

Consideration for the Jury: Counsel shall make every effort to avoid inconvenience, delay, or waste of the jurors' time. Repetition and unnecessary evidence or activity degrades the process and undermines the effectiveness and confidence of jurors in the system.

Consideration for Nonparty Witnesses: Counsel shall treat all witnesses with fairness and consideration, and no abusive language or offensive personal references will be indulged. Witnesses shall be called by their surnames and not their given names or nicknames in front of the jury. Counsel shall be civil and courteous in dealing with witnesses in court and with regard to process and subpoenas. If a witness will necessarily receive rough treatment in court because of the circumstances of the case, the court would prefer to be notified in advance.

Expert Witnesses: The court does not "accept," "quality," or otherwise comment on the expert's qualifications in front of the jury. Counsel should not offer the expert to the court for qualification as an expert in front of the jury. *See* Ehrhardt, Florida Evidence, §702.1, f. 22. Any limitations on the expert's testimony ruled upon out of the hearing of the jury may result in a proffer of excluded evidence. Asking to proffer and providing the proffer are the responsibility of counsel. Impeachment, prior consistent and inconsistent statements shall be used only in accordance with the rules of procedure, evidence, and case law. *See* Ehrhardt, Florida Evidence, §§608.4 and 614.1.

Juror Note taking and Juror Questions: Jurors will be permitted to take notes in any case in which jurors request to take notes and the parties and judge agree. In cases likely to exceed five days, jurors are instructed that they may take notes. *See* F.S. §40.50 (1). Parties who wish to allow the jurors to take notes shall make a request for note taking prior to the start of the testimony of the first witness. Instructions on note taking (or the absence of note taking) are given if the issue is raised by the jury, the court, or the parties. Juror questions of witnesses will be permitted. *See* F.S., §40.50(3).

Objections and Conduct Before the Jury: In making objections, counsel should state only the legal grounds for the objection and should withhold all further comment or argument unless elaboration is requested by the court. In making argument, objecting, introducing exhibits, or identifying documents used for impeachment, counsel shall not disclose to the jury any factual or legal matter that is not admissible or will not be properly admitted into evidence. Counsel shall abstain from any conduct or colloquy calculated to detract the jury's attention from the relevant facts or otherwise influence the jury or spectators. However, sidebar conferences are also distracting and annoying to jurors and shall be employed only when necessary.

Exhibits and Evidence: Counsel shall show opposing counsel any items to be displayed to the jury in the opening statement or final argument out of the presence of the jury so that rulings may be obtained in advance, if necessary. Trial exhibits shall be marked in advance by the clerk, and an exhibit list for the court and the clerk would be welcome. Whenever possible, counsel should agree on items to be admitted, and any evidentiary issues should be anticipated and resolved before the jury returns to the courtroom. When items that have been marked in advance are retrieved from the clerk to be shown to a witness, they should still be shown to opposing counsel before they are presented to the witness. Exhibits may be stipulated into evidence, which makes the case flow faster in front of the jury. Exhibits that are stipulated or otherwise received in evidence should still be offered to be shown to the opposition before presenting them to a witness or publishing them to the jury. Demonstrative exhibits and charts that may be used in the trial should also be marked in advance by the clerk and identified by number when used in the trial for a clear record, even though they may not be admitted into evidence and go back with the jury. When an exhibit or group of exhibits (e.g., photos) have been marked in advance for identification and then received in evidence, it is not necessary to immediately have the clerk mark the exhibits as being

received into evidence. To save time, the exhibits may be used or displayed and then later returned to the clerk for marking into evidence. Counsel are responsible for ensuring that the correct exhibits are accepted into evidence and marked and sent back to the jury room for deliberations.

When counsel wishes to publish an item of evidence to the jury, counsel will first seek court permission. If permission is granted, the item should be handed to the bailiff and the bailiff will hand the item to the jury. Counsel will not hand or receive items directly to or from a juror.

Jury Instructions: A full set of jury instructions will routinely be made available to the jury at the time that they are read to the jury and during deliberations. At the initiation of the plaintiff, counsel for both sides shall provide a complete set of agreed instructions at the outset of the trial as well as a diskette or emailed set of instructions for use in chambers. The instructions should have two versions: captioned for use in the charge conference and "clean" or uncaptioned for the jury. The parties shall likewise provide any additional requested instructions in clean and captioned format at the outset of trial along with a diskette or emailed version. Any nonstandard or case-specific instructions shall be accompanied by authority or basis for deviation from standard instructions. A charge conference will be held to confirm agreement on the charges provided at the start of the trial and to address any additional instructions and resolve outstanding issues at a time during trial that will create the least inconvenience to the jury. Counsel should confer and agree as far as possible on the instructions prior to the charge conference. After the charge conference, the court will consider modifying the instructions at any time up to the actual charging of the jury, provided the changes or additional instructions are occasioned by circumstances in the trial. Counsel are responsible for ensuring a complete record as to submitted instructions, arguments to the court, and rulings. Instructions may be provided to the clerk as well as the judge for this purpose.

Closing Arguments:

Counsel shall provide the court with an estimate of the length of closing argument. Improper argument in closing may be interrupted and ruled upon by the Court without objection if the Court deems the argument to be prejudicial or fundamentally unfair or improper. Counsel are encouraged to preview any questionable argument with the Court and opposing counsel prior to closing.

Documentation:

Counsel are responsible for the accuracy, timeliness, and completeness of any documents filed by counsel or counsel's staff. Counsel for both parties are responsible to ensure that an accurate Final Disposition Form is timely submitted at the conclusion of the case.

*Thanks to Judge Ralph Artigliere for the basic format and wording for this document.