

INDIVIDUAL RULES OF PRACTICE

JOHN D. RUSSELL
UNITED STATES DISTRICT JUDGE

CRIMINAL CASES

(Rev. April 1, 2024)

Parties must act with the highest degree of professionalism and courtesy in their dealings with other parties, the Court and Court staff, and anyone else involved in the litigation. Abusive conduct of any kind will not be tolerated and should promptly be brought to the Court's attention. For the avoidance of doubt, this provision applies to discovery communications and conduct in depositions.

1. GUIDELINES FOR ALL SUBMISSIONS

a. Designation of Lead Trial Counsel. At the outset of each case, or upon reassignment of a matter to this Court, each party must identify to the Court one individual who shall serve as Lead Trial Counsel for that party. This designation must be provided to the Court in the party's first submission (including in reassigned cases). The designation of Lead Trial Counsel cannot be changed absent prior approval by the Court. As specified below, Lead Trial Counsel is required to personally attend all conferences before the Court and to be personally involved in discovery disputes before they are brought to the Court.

b. Amended or Corrected Filings. Any amended or corrected filing (including but not limited to amended pleadings) shall be filed with a redline showing all differences between the original and revised filing. Any motion to amend a pleading shall similarly be filed with a redline showing all differences between the operative pleading and the proposed amended pleading.

2. INITIAL CONFERENCES

The Court will hold an initial conference promptly after presentment and arraignment before a Magistrate Judge. At the initial conference, the Court will set a schedule for the completion of discovery, the filing of any

motions, the filing of any notices required by the Federal Rules, and the trial. Where motions are permitted, the length and format of any memoranda of law must be in accordance with the Court's Local Rules.

3. PRETRIAL EXCHANGES IN CRIMINAL CASES

Each of the parties in a criminal case must, at least three business days before trial, deliver to the Clerk of Court for delivery directly to Chambers: (a) a final and binding list of the witnesses that the party expects to call (other than the defendant), in the likely order of appearance, and (b) a list of the exhibits that the party expects to offer on its direct case. Please note that this deadline differs from the deadline set forth in Local Criminal Rule 23.

4. TRIAL EXHIBITS

a. In all criminal trials, the parties during trial shall tender to the bench two copies of any exhibit a party seeks to offer into evidence at the same time the party hands the original exhibit to a witness during an examination. Plaintiff's and defendant's exhibits shall both be marked by numbers (e.g., "Plaintiff's Exhibit 1," "Defendant's Exhibit 1").

b. Parties are not required to provide the Court with copies of exhibits in advance of trial but are expected to have all exhibits marked and available on the morning of the start of trial.

5. PROPOSED JURY INSTRUCTIONS

Proposed jury charges must be submitted to the Court at least one week before trial. Any proposed jury charge submitted thereafter will not be considered by the Court, except upon a showing that the proposed charge relates to an issue that could not reasonably have been expected to arise at trial. In addition, the Court's standard practice is to give the jury a one-page preliminary instruction shortly before or after opening statements, highlighting some of the issues and legal requirements in the case. The parties should submit their proposals for preliminary instructions at least three business days before trial.

6. PROPOSED VOIR DIRE REQUESTS

Proposed voir dire requests must be submitted to the Court at least three business days before the start of jury selection. The jury will be selected by calling forward a total number of venire to account for all jurors and alternates plus the number of peremptory challenges based on the number of parties; once passed for cause, the parties must use all peremptory challenges to reduce the panel to the number of jurors plus alternates. The Court does not use jury questionnaires. Except in rare circumstances, the Court will conduct all questioning at voir dire.

7. MOTIONS IN LIMINE

Motions in limine are not a matter of right and should be largely limited to critical matters on which pre-trial rulings are critical. After a trial date is set, any party, without further leave of Court, may serve such a motion directed at limiting the proof at trial, provided the motion is served upon all parties by no later than two weeks before trial and courtesy copies contemporaneously submitted to chambers. All oppositions to motions in limine must be filed, and courtesy copies submitted to Chambers, at least one week before trial. Any party referencing a proposed trial exhibit in such motion papers must submit a courtesy copy of that exhibit to the Court along with the motion papers. Such motions will normally be resolved by the Court on the morning of the first day of trial.

8. BRADY DISCLOSURES

Materials and information required to be disclosed pursuant to *Brady v. Maryland* and its progeny (“*Brady* Material”)—whether in written or recorded format, or otherwise—must be disclosed to defense counsel according to the following schedule:

- a.** *Brady* Material known to the Government at the time of indictment—other than purely impeachment materials and information required to be produced pursuant to *Giglio v. United States* and its progeny (“*Giglio* Material”)—must be produced to defense counsel no later than two weeks following the date of the filing of the indictment, regardless of whether the parties are engaged in plea discussions. *Brady* Material includes (simply by way of example) not only information that tends to exculpate a defendant or support a potential

defense to the charged offense(s), but also information that tends to mitigate the degree of the defendant's culpability or to mitigate punishment. This requirement applies regardless of whether the Government credits the *Brady* Material.

b. *Brady* Material (other than *Giglio* Material) that becomes known to the Government following filing of the indictment must be disclosed, absent exceptional circumstances, within two weeks of when it becomes known and, in any event, no later than four weeks prior to any trial or guilty plea.

c. Absent exceptional circumstances, *Giglio* Material must be disclosed four weeks prior to the date of the start of trial or guilty plea. Such material includes (simply by way of example) a witness's prior inconsistent statements, written or oral; benefits given and promises made to the witness; information that tends to show that the witness has a personal motive to inculcate the defendant; and information that tends to show that the witness has a physical or mental impairment that could affect the witness's ability to perceive, recall, or recount relevant events. *Giglio* Material developed less than four weeks before trial (*e.g.*, as a result of further interviews of witnesses) must be disclosed immediately.

d. To achieve adequate compliance with the foregoing rules, the Government has a continuing obligation to seek *Brady* Material and *Giglio* Material from law enforcement and regulatory agencies that are or have been involved in the prosecution of the defendant or in parallel proceedings or investigations involving the defendant.

e. The above timetables, being necessary to fulfill the constitutional obligations imposed by *Brady v. Maryland*, *Giglio v. United States*, and their progeny, apply regardless of whether the *Brady* Material and *Giglio* Material also happen to be producible pursuant to the Federal Rules of Criminal Procedure or the Jencks Act and the timetables applicable thereto.

f. For good cause shown, the Government may seek a protective order delaying disclosure of such materials and information, but

applications for such orders should only be made in exceptional circumstances.

9. PROTECTIVE ORDERS

The Court will not enter a protective order in criminal cases unless it is in the form found on Judge Russell's information page on the Court's website. If the parties request a Protective Order, please contact the Courtroom Deputy, and the Court will send a formatted order to counsel for the parties for execution. Upon receipt of a fully executed form, the Court will sign and enter the Protective Order.

10. TRIAL

a. Local Rules: You are expected to be familiar with Local General Rule 3, concerning courtroom behavior, and adhere strictly to each of the requirements of this rule.

b. General Courtroom Protocol:

(1) Do not leave the courtroom while trial is in progress without obtaining leave of Court.

(2) Attorneys should not directly address opposing counsel in open court without leave of Court.

(3) Computers may be used by counsel, as long as the use is unobtrusive and is cleared through the courtroom deputy prior to the morning of trial.

(4) Do not place on the courtroom furniture, including chairs, conference tables, or benches, any objects which might scratch or mar the surfaces including briefcases with metal closures or feet, demonstrative aids, exhibits, etc.

(5) Do not chew gum or eat mints, candy, etc. in the courtroom.

(6) No beverages, including bottled water, are allowed in the courtroom.

(7) Coats, umbrellas, or briefcases of attorneys and litigants should be kept in the coat closet behind the defense counsel table.

c. Prior to trial:

(1) If you have reason to anticipate that any question of law or evidence is particularly difficult, give the Court as much advance notice as possible.

(2) Objections to proposed jury instructions and pertinent case law should be provided to the Court prior to trial.

d. Voir dire: If prior to trial the Court approves supplemental voir dire examination by counsel, the following rules will apply:

(1) Voir dire examination may not be conducted in a manner designed to inform the jury of the anticipated evidence or the applicable law, nor to provide the type of information which is normally included in the opening statement.

(2) The only purpose of voir dire examination is to gain knowledge about a prospective juror which will aid in making an informed challenge.

(3) A statement disguised as a question will not be permitted.

(4) Counsel may not ask a question based on a hypothetical statement of the facts or the law.

(5) Voir dire may not be used to explain the burden of proof.

(6) Do not attempt to elicit promises or assurances of any kind from jurors nor ask them to give any indication of what their verdict would be based on certain conditions.

(7) Each side is limited to 10-15 minutes unless additional time is approved by the Court prior to trial.

e. Opening statements: Opening statement is to be used to outline the proposed evidence, not for argument. Take as much time as you dare.

f. Exhibits:

(1) Court time may not be used for marking exhibits. This must be done in advance of the court session.

(2) Advise opposing counsel and the Court of the exhibits to be used in advance of the day's court session.

(3) Exhibits to which there is no objection should be offered and received in evidence without the necessity of formal identification.

(4) If you intend to question a witness about a group of exhibits, avoid delay by having the witness notebook already on the witness stand.

(5) While the Court permits exhibits to be passed to the jury, this procedure should be used sparingly and reserved for truly significant exhibits. Use of the Court's electronic publication system is preferred. If possible, when you wish to publish an exhibit to the jury, have a copy for each juror. Juror exhibit books are encouraged and will be allowed with prior approval of the Court.

g. Witnesses:

(1) Witnesses should be readily available to avoid needless delay.

(2) Please stand whenever you address the Court or interrogate witnesses. (An exception is made for physical infirmity.) Use the lectern unless your comment is to be brief.

(3) Examination of a witness will include direct examination, cross examination, one re-direct examination, and one re-cross examination except in exceptional circumstances.

(4) Attorneys will not interrupt each other or a witness except to assert an objection, and the attorneys will never interrupt the Court for any reason.

(5) Do not greet or introduce yourself to adverse witnesses. Commence your cross-examination without preliminaries. Do not face or otherwise appear to address yourself to jurors when questioning a witness.

(6) Except for children, address witnesses by their surnames, for example, Mr. A, Sergeant B, or Doctor C.

(7) Never assert your personal opinion as to the credibility of a witness or the guilt or innocence of an accused, nor as counsel assert personal knowledge of a fact in issue, nor assert a fact not in evidence.

(8) Do not react to a statement by another counsel or a witness being examined by another counsel by any gesture or facial expression signifying agreement, disagreement, approval or disapproval. Advise your clients they are subject to this same limitation.

(9) Where more than one attorney represents a party, only the attorney handling the particular witness may respond to an objection or raise an objection in regard to his/her testimony. Likewise, only one opposing attorney should make or argue motions or other objections as to that witness.

h. Jury Protocol:

(1) Stand a respectful distance from the jury at all times. Statements and arguments to the jury will be made from the lectern.

(2) When you object in the presence of the jury, make your objection short and to the point. Do not argue the objection in the presence of the jury, and do not argue with the ruling of the Court in the presence of the jury. Do not make motions (e.g., motion for mistrial) in the presence of the jury. Bench conferences should be kept to a minimum.

(3) Except in ruling on an objection, the Court will not, in the presence of the jury, declare that a witness is qualified as an expert or qualified to render an expert opinion, and counsel should not ask the Court to do so.

i. Juror Notebooks: In cases of appropriate complexity, the Court will permit the parties to distribute to each juror identical notebooks.

(1) Counsel are required to confer on the contents of the notebooks prior to commencement of the trial. Any argument or disagreements should immediately be brought to the attention of the Court.

(2) Juror Notebooks may include copies of the following:

- The Court’s preliminary instructions;
- Selected exhibits that have been ruled admissible or that the parties agree will be admitted without objection (or excerpts thereof);
- Stipulations of the parties;
- With agreement of counsel, other material not subject to genuine dispute, which may include:
 - Photographs of parties, witnesses or exhibits;
 - Curricula vitae of experts;
 - Agreed upon glossaries;
 - Agreed upon chronologies or timelines; and
 - Blank paper for the jurors’ use in taking notes.
- During the course of the trial, the Court may permit the parties to supplement the materials in the notebooks with additional documents as they become relevant and after they have been ruled admissible or otherwise approved by the Court for inclusion.