

TRIAL CONDUCT AND DECORUM

Magistrate Judge Michelle H. Burns

The purpose of this protocol is to emphasize, not supplant, certain portions of the ethical principles applicable to the lawyer's conduct in the courtroom and to preserve the dignity of the courtroom environs and the judicial process. This protocol also is intended to further efficient and orderly fact-finding. Your compliance with the following will be appreciated:

1. Be on time for each court session. Trial engagements take precedence over any other business. If you have matters in other courtrooms, arrange in advance to have them continued or have a colleague handle them for you.
2. At the final pretrial conference, give the courtroom deputy and judge the caption of the case and the names and addresses of all persons at counsel table and all witnesses to be called.
3. Stand and do not pace when addressing the judge, jury or witnesses.
4. Stand at the podium at all times when addressing witnesses. Except upon express permission of the court, all communications to the court shall be made from a position at counsel table or from the lectern. Counsel shall not approach opposing counsel, the bench, a witness, the court reporter's table or the clerk's desk without the permission of the court.
5. Do not appeal to emotion or prejudice during opening statement to a jury. Confine yourself to a concise summary of the important facts that you expect to prove or your position on facts the opposition has undertaken to prove.
6. Exhibits:
 - (a) Court time may not be used for marking exhibits. This must be done in advance of the court session.
 - (b) Provide copies of exhibits for the judge at the commencement of the trial.
 - (c) Counsel shall arrange with the clerk for the use of chalkboards, tripods, video recorders, overheads, or other visual aids sufficiently in advance so that they may be set up while the court is not in session.
 - (d) Diagrams, charts, drawings and other demonstrative or visual evidence shall, whenever practicable, be prepared by witnesses before testifying. Effort should be made to avoid using time during the presentation of evidence for these purposes.

- (e) All exhibits shall be shown to opposing counsel before being offered.
- (f) Hand all papers intended for the court or witness to the clerk or bailiff, who, in turn, will pass them to the Judge or witness.
- (g) If you intend to question a witness about a group of documents, make an attempt to have all of the documents in front of the witness when you start the examination.
- (h) Do not offer depositions wholesale; offer only relevant, redacted portions of the transcript and always in accordance with Rule 32 of the Federal Rules of Civil Procedure. Plaintiff will highlight in yellow those portions it wishes to offer. The Defense will highlight in blue those portions it wishes to offer.

7. Witnesses:

- (a) Only one attorney for each party shall examine or cross-examine a witness. The attorney stating objections during direct examination shall be the attorney recognized for cross-examination.
- (b) Refer to all persons, including witnesses, other counsel, and parties, by their surnames and not by their first or given names.
- (c) In examining a witness, counsel generally shall not repeat or echo the previous testimony or answers given by a witness.
- (d) The examination and cross-examination of each witness shall be limited to questions addressed to the witness. Counsel shall refrain from making statements, comments or remarks prior to asking a question or after a question has been answered.
- (e) Counsel shall 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, are prohibited.

8. Objections are to be limited to stating “objection” and the basis for the objection (“Objection, leading”) or the number of the Federal Rules of Evidence relied upon (“Objection, Rule 403”). Do not explain or argue the grounds for objections in the presence of the jury unless asked to do so by the Judge.

9. Address all remarks to the Judge, not opposing counsel, and do not make disparaging or acrimonious remarks toward opposing counsel or witnesses.

10. Gum chewing or reading of newspapers or magazines are not permitted while court

is in session. Beepers, cellular telephones and other noise-making electronic equipment must be turned off while in court.

11. Counsel should try to anticipate problems that will arise during trial and take them up with the court and opposing counsel out of the presence of the jury. Appropriate motions in limine in advance of trial are encouraged. If during trial it becomes necessary for an attorney to confer with the court at the bench, the court's permission should be obtained.

12. Counsel shall not make motions (e.g., a motion for a mistrial) in the presence of the jury. Such matters may be raised at recess.

13. Offers of, or requests for, a stipulation should be made privately, not within the hearing of the jury.

14. Professionalism and civility are not aspirational but mandatory in this courtroom.