

TRIAL PROCEDURES

The Court takes pride in handling trials in an orderly and efficient manner. It should be important to all members of the Bar for the public to perceive that we are conducting their business in a fair and efficient manner. This is particularly important when dealing with jury trials. Some delays are inevitable in a jury trial to insure that both parties' rights are treated fairly. However, through the years the Court has noted some practices that lead to totally unnecessary delays. The below-listed procedures are instituted to avoid these unnecessary delays.

1. During voir dire,¹ counsel should only read a list of potential witnesses and other names that will necessarily come up during the trial. The practice of reading every name on the discovery list, even though counsel is well aware that certain witnesses will not be called, is inappropriate.

2. Asking hypothetical questions based on the facts of the case during voir dire is legally impermissible. Counsel should expect the Court to interrupt should this occur.

3. Trials start at 8:30 a.m. All witnesses that are present should be in the courtroom when court starts (not out in the hallway). Counsel does have discretion to have reliable witnesses arrive at a later time. However, if counsel exercises this discretion, trials will not be continued, recessed or mistrialed because a witness does not show up as scheduled or the attorney misjudges the pace of the trial. Any issues with the scheduling of witnesses should be raised with the Court before the trial starts, not part way through the trial. If in doubt, raise the issue with the Court.

4. The Court will be provided with a list of probable witnesses at the beginning of the trial. The Court would prefer that the witnesses be provided in the order of likely appearance. However, this is not required if counsel believes this would violate work product. The list does not need to be in pleading form and may be handwritten if circumstances so dictate.

¹ Although technically voir dire is the start of a trial, the Court is making a distinction between voir dire and the evidentiary portion of the trial. When the Court refers to the trial, it is referring to the evidentiary portion of the trial.

5. The Court and opposing counsel will be provided with a probable evidence list at the beginning of the trial. All exhibits should be marked and numbered as listed. All evidence will be shown to opposing counsel after it is marked. It is opposing counsel's obligation to carefully examine the evidence before the trial begins. During trial, the party offering the evidence is obligated to make opposing counsel aware of any changes in the numbering of the exhibits or the offer of any evidence not previously numbered or displayed. Opposing counsel may rely on this numbering, and therefore, it is unnecessary to further present evidence to opposing counsel before offering the item in evidence. Upon request, the Court will allow a brief recess to get all evidence marked if evidence custodians do not arrive with the evidence early enough to get evidence marked before court starts. However, this does not relieve the parties of the responsibility to have an evidence list before court starts at 8:30 a.m. The form of the list is the same as indicated in paragraph 4.

6. During the trial, it is counsel's obligation to have the next witness in the courtroom when court resumes from a break. It is not the bailiff's job to go find your witness. Nor is it acceptable to start looking for your witness after court resumes. Generally, we only have one bailiff if the defendant is on bond, and that bailiff is responsible for handling the jury. If the defendant is in custody, we generally have two bailiffs, but one is responsible for the custody of the defendant and the other is responsible for handling the jury.

7. For further guidance on the conduct of counsel during all court proceedings, please refer to "Customary and Traditional Conduct and Decorum in the Circuit Court" on the Second Judicial Circuit website.

James C. Hankinson
Circuit Judge
Second Judicial Circuit