

TRIAL RULES FOR TRIAL COUNSEL

JUSTICE VITO M. DESTEFANO

1. **Be Prepared:** Prior to jury selection, counsel are cautioned to ascertain the availability of all witnesses and subpoenaed documents. If you have non-English speaking witnesses, or any other special needs, e.g. easels, blackboards, shadow boxes, television, subpoenaed material, etc., it is your responsibility to notify the Court, in advance, so as not to delay the progress of the trial.
2. **Marked Pleadings Plus:** Plaintiff's counsel shall furnish the Court with copies of:
 - A. Marked pleadings as required by CPLR 4012;
 - B. A copy of any statutory provisions in effect at the time the cause of action arose upon which either the plaintiff or defendant relies;
 - C. The bill(s) of particulars;
 - D. All expert reports relevant to the issues;
 - E. All reports, depositions and written statements which may be used to either refresh a witness' recollection and/or cross-examine the witness.
 - F. If any part of a deposition is to be read into evidence (as distinguished from mere use on cross-examination) you must, well in advance, provide the Court and your adversary with the page and line number of all such testimony so that all objections can be addressed prior to use before the jury.
3. **Pre-Marked Exhibits:** All trial exhibits shall be pre-marked for identification, and copies of a list of exhibits must be given to the Court before the trial actually begins. Failure to comply with this rule may result in sanctions, which may include an order precluding the offering of such exhibits at trial. See,

Davis Eckert v State of New York 70 NY2d 633, 518 N.Y.S. 2d 957.

4. Pre-Trial Conference: At this conference counsel should be prepared:

- A. To alert the court as to all anticipated disputed issues of law and fact, and provide the Court with citations to all statutory and common law authority upon which counsel will rely.
- B. To stipulate to undisputed facts and the admissibility of clearly admissible documents and records.
- C. To alert the Court to any anticipated *in limine* motions or evidentiary objections which counsel believes will be made during the course of the trial.
- D. To provide the Court with a copy of all prior decisions and orders which may be relevant to said *in limine* applications.
- E. To discuss scheduling as well as the number of witnesses to be called at trial, and the estimated length of the trial.
- F. A list of the names of all witnesses (other than rebuttal witnesses) to be called by you and for each such witness the elements of proof to be supplied (in the case of plaintiff) or addressed (in the case of defendant) by such witness.
- G. To alert the Court as to any anticipated problems regarding the attendance at trial of parties, attorneys or essential witnesses, and any other practical problems which the Court should consider in scheduling.
- H. To alert the Court to any anticipated requests for a jury instruction relating to missing witnesses and/or documents.
- I. To alert the Court to any anticipated request for apportionment as to alleged culpable non-parties pursuant to CPLR Article 16.

5. No Communication with Jurors: In order to maintain the

appearance of total impartiality, once the jury has been selected no one is to communicate in any form at any time with any juror. This includes both verbal and non-verbal communication, including, without limitation, nods, shrugs and shaking the head. Do not even say "hello" or "good morning".

6. **Check-In:** At the start of each day on trial, check in with the clerk of the Court so that he is aware of your presence.
7. **Trial Objections and Arguments:** If a lawyer wishes to make an objection, it can be accomplished by standing and saying the word, "objection", and by adding thereto up to three more words so as to state the generic grounds for the objection, such as "hearsay," "bolstering," "leading," or "asked and answered." If you believe further argument is required, ask permission to approach the bench. This request will almost always be granted. Keep in mind that you will always be given the opportunity to make a full record.
8. **Courtroom Comments and Demeanor:** All remarks should be directed to the Court. Comments should not be made to opposing counsel. Personal remarks, including name-calling and insults, to or about opposing counsel will not be tolerated. Remember do not try to "talk over" each other; only one person speaks at a time or the record of the proceeding will be incomprehensible. Simple requests (e.g., a request for a document or an exhibit), should be accomplished in a manner which does not disrupt the proceedings or your adversary. If you require a significant discussion with your adversary, such as a possible stipulation, ask for permission to approach the bench. I will grant that request, and you will have a chance to talk to each other outside the presence of the jury. In addition, grandstanding in the presence of the jury, i.e., making demands, offers or statements that should properly be made outside the presence of the jury is inappropriate.

9. Use of Proposed Exhibits: Do not show anything, including an exhibit or proposed exhibit to a witness without first showing it to opposing counsel. If this procedure is claimed to compromise trial strategy, a pre offer ruling outside the presence of the jury should be first obtained.
10. Examination of Witnesses: Do not approach a witness without permission of the Court. Please allow the witness to complete his/her answer to your question before asking another question. Do not interrupt the witness in the middle of an answer, unless it's totally unresponsive, in which event you should seek a ruling from the court. Direct examination, cross, redirect and re-cross are permitted.
11. Jury Charge and Verdict Sheet: At the commencement of the trial all counsel shall submit suggested jury charges and a suggested verdict questionnaire. Amendments thereto shall be permitted at the final charging conference. If counsel relies on a Pattern Jury Instruction [PJI] without any change thereto, it should be referred to by PJI number and topic only. If any changes to the PJI are suggested, then the entire proposed charge should be set forth and the changes should be highlighted or otherwise called to the Court's attention. Citations to appropriate statutory or common law authority shall be given in support of suggested non-PJI jury charges or suggested PJI modifications.