

UNITED STATES DISTRICT COURT
Eastern District of Pennsylvania

JUDGE SLOMSKY'S COURTROOM AND TRIAL PROCEDURES

Updated December 2009

1. Scheduling of Cases

The Scheduling Order will set a date certain for trial or the date when the case will be placed in the trial pool. For cases in the trial pool, counsel shall be prepared to commence trial upon 48 hours notice.

2. *Voir Dire*

Counsel must discuss *voir dire* questions and resolve any differences before the panel is brought to the courtroom. If they cannot agree, counsel must advise the deputy clerk that the judge must rule upon the disputed issues. Judge Slomsky permits counsel to conduct *voir dire* in civil cases. There is generally a time limit of thirty (30) minutes for each side for *voir dire*. Judge Slomsky conducts *voir dire* in criminal cases.

3. Trial Objections and Sidebars

Sidebar conferences are discouraged and are rarely permitted. Only unanticipated issues will necessitate a sidebar conference.

Judge Slomsky does not permit speaking objections. Objections shall be made by reciting the appropriate rule number or a one word basis.

4. Motions *in Limine*

Motions *in limine* must be filed by the deadline set in the Scheduling Order. Judge Slomsky will usually rule upon such motions before or at the final pretrial conference.

5. Examination of Witnesses Out of Sequence

The Court will permit counsel to examine his/her own witnesses out of turn for the convenience of a witness.

6. Opening Statements and Summations

Judge Slomsky usually does not place a time limit on opening statements and summations. However, depending upon the issues in the case and the length of the trial, he may suggest time limits. He will discuss the time needed with counsel.

Rebuttal should not take more than five minutes and must not be a rehashing of counsel's closing argument.

7. Examination of Witnesses by More Than One Attorney

Only one attorney for a party may examine the same witness or argue the same legal point. More than one attorney for a party may examine different witnesses or argue different legal points.

8. Examination of Witnesses Beyond Redirect and Recross

The Court will permit limited re-cross examination on matters not previously covered by cross examination or in special circumstances.

9. Offers of Proof

Counsel should discuss privately any evidentiary issue that may have been unanticipated. Only after they have been unable to reach agreement, should counsel bring the matter to the deputy clerk's attention at the beginning of the day or during an appropriate break when the jury is not present.

10. Videotaped Testimony

Counsel must discuss in advance of trial all objections to the presentation of videotaped testimony to resolve all conflicts. If counsel cannot resolve their disagreements, they should present any outstanding disagreements at least ten days prior to the final pretrial conference by providing a transcript of the testimony with the challenged question and answer highlighted, and a list setting forth each objection by page and line numbers and the basis for the objection.

The videotape must be edited prior to trial to eliminate pauses and speed-ups so there are no interruptions. Counsel should check with the deputy clerk to determine whether the courtroom is equipped for playback or whether counsel must provide playback equipment.

11. Reading of Material into the Record

Judge Slomsky has no special practice or policy for reading stipulations, pleadings or discovery material into the record. Reading of material into the record may be done in a manner agreed upon by Judge Slomsky and counsel.

12. Preparation of Exhibits

At the final pretrial conference, the parties shall provide the Court with one copy of each exhibit and three copies of a schedule of exhibits which shall briefly describe each exhibit. At the trial, the parties shall provide the Court with two copies of each exhibit. Exhibits shall be arranged and tabbed in a single three ring binder containing all exhibits numbered consecutively.

13. Lay Witness Opinion

Any party expecting to offer lay opinion testimony pursuant to Federal Rule of Evidence 701 regarding issues of liability or damages shall provide the opposing parties with information or documents supporting the testimony at the time required for submission of expert reports.

14. Offering Exhibits into Evidence

Exhibits are to be placed in evidence during testimony, at a convenient time during a party's case-in-chief, or at the close of each party's case-in-chief. If the latter, counsel should review the exhibits in advance so that agreed upon exhibits can be admitted quickly and disputed exhibits ruled upon at a time that will not impose on the jury.

Exhibits may be published to the jury at the end of the party's examination of the witness or prior to a break. If the exhibit is necessary to explain the testimony, Judge Slomsky may permit it to be published during the testimony. Ordinarily, permission should be sought prior to the witness taking the stand.

15. Motions for Judgment as a Matter of Law

Motions for judgment as a matter of law and motions for judgment on partial findings may be oral or written. Oral argument will be permitted if counsel request it.

16. Proposed Jury Instructions and Verdict Forms

Counsel must meet and discuss proposed jury instructions and verdict forms for the purpose of submitting agreed upon jury instructions and verdict forms. The proposed instructions should cover only the substantive issues regarding the elements of each cause of action and each defense. Basic instructions, such as the burden of proof, credibility and procedure, should not be submitted.

Counsel are expected to cooperate in the preparation of the joint proposed instructions. Failure to cooperate in the process will result in the imposition of sanctions.

Submitting a proposed point does **not** constitute a waiver of objection. Counsel are instructed to work on proposed instructions regardless of counsel's position with respect to a point's applicability. If the Court sustains an objection to a particular instruction, it will not be submitted to the jury. Objections to jointly submitted points will be discussed and ruled upon at the charging conference.

If counsel cannot agree, proposed alternative instructions must be submitted with authority for each instruction. If a model jury instruction is used, the party submitting it shall state whether the proposed instruction is unchanged or modified. If a party modifies a model instruction, additions shall be underlined and deletions shall be placed in brackets. Counsel shall also submit proposed jury instructions and verdict forms on a disk in WordPerfect format.

17. Proposed Findings of Fact and Conclusions of Law

In a non-jury trial, counsel shall submit findings of fact and conclusions of law upon which they agree. In addition, each party shall submit any additional proposed findings of fact and conclusions of law for the consideration of the Court.

Proposed findings of fact and conclusions of law in a non-jury trial should be submitted at least seven (7) days before the trial or trial pool date. They should be on hard copy and on a disk in WordPerfect format. The parties may submit revised or supplemental findings of fact and conclusions of law with specific reference to trial evidence at the conclusion of the case. A schedule for the submission of revised findings/conclusions will be discussed at the conclusion of trial.

18. Juror Notetaking

As a general rule, Judge Slomsky does not allow the jury to take notes. In an appropriate case, he may permit notetaking.

19. Written Jury Instructions

Judge Slomsky does not give the jury a copy of the written jury instructions. However, he may do so in an appropriate case.

20. Exhibits in the Jury Room

After the jury has retired to deliberate, counsel shall review the exhibits to determine which exhibits will go out with the jury. If counsel cannot agree, they should request a ruling immediately after the jury retires to the deliberations room.

21. Handling of Jury Request to Read Back Testimony

Judge Slomsky will advise the jury that testimony is usually not in transcript form to give them. However, if a transcript is available, he will consider having appropriate portions read if requested by the jury. He may allow tapes and videotapes to be replayed to the extent necessary.

22. Availability of Counsel During Jury Deliberations

Counsel must be available upon fifteen (15) minutes notice during jury deliberations. As a practical matter, this means that counsel must stay in or near the courthouse. Counsel must leave their office and cell phone numbers with the deputy clerk.

23. Taking the Verdict and Special Interrogatories

Judge Slomsky has no general practice for taking a special or general verdict. He usually submits interrogatories to the jury in civil cases. The courtroom deputy will take the verdict in the presence of the Court, counsel and the parties.

24. Polling the Jury

Judge Slomsky has no standard practice for polling the jury. He generally allows it if requested.

25. Interviewing the Jury

After a verdict has been recorded and the jury has been discharged, counsel may interview jurors. The jurors are told that they are permitted to talk to counsel and others, if they desire, but they need not do so. Counsel shall respect the jurors' desire not to speak to them. Counsel is not permitted to disclose facts to the jury that were previously excluded by evidentiary rulings or would undermine the jury's confidence in its verdict.

26. Courtroom Decorum and Professionalism

Judge Slomsky will insist on punctuality and courtesy from counsel to the Court and to each other, both in the presence of the Court and otherwise. The examination of witnesses should be conducted from the lectern or from counsel table. Counsel should rise to address the Court and should seek permission of the Court before approaching witnesses or the bench. In addition, counsel will direct all comments to the Court or to the witness under examination and not to other counsel or to the jury. Counsel are reminded that their own opinions regarding facts or issues in a case are irrelevant and should not be communicated to the jury (e.g., "I think . . . , we believe . . ."). To the extent possible, the parties should notify the Court of any issues that will need to be ruled upon at the start of the day's proceedings, or during a recess out of the jury's presence. Unless leave is otherwise given, counsel shall make opening statements and closing arguments from the lectern and shall speak into the microphone.