

February 2017

GENERAL OBSERVATIONS ABOUT CRIMINAL JURY TRIALS
BEFORE JUDGE GERRARD

General: First, counsel may remain seated to question witnesses and, in fact, counsel should remain seated during questioning when digital audio is in use. Second, Judge Gerrard will conduct a general voir dire examination, and then, each lawyer will be allotted 20 minutes to conduct his or her voir dire examination. Third, Judge Gerrard will sometimes use a court reporter and at other times he will use digital audio in Lincoln (counsel will be advised in advance).

Trial hours: 8:45 a.m. to noon and 1:15 p.m. to 4:30 p.m., with 15 minute breaks in the morning and the afternoon.

Jury selection: Court conducts limited examination. See the attached  sample of voir dire questions often asked by the Court. Counsel are also given 20 minutes per party to conduct voir dire examination.

Opening statements: 20 minutes per party. No movement about the courtroom when digital audio is in use.

Closing argument: 30 minutes per party. Plaintiff may reserve up to 10 minutes for rebuttal, but it must be true rebuttal and should not raise new issues or points of argument not addressed in the initial argument. No movement about the courtroom when digital audio is in use. Final instructions are given before closing arguments, except that a “housekeeping” instruction is given after argument.

Preliminary jury instructions: The Court gives a standard set of preliminary jury instructions after voir dire and before opening statements. The proposed preliminary jury instructions will be provided to counsel prior to the date of the trial.

Final jury instructions: Counsel shall provide requested jury instructions pursuant to the order setting trial, but no later than 1 business day prior to the start of trial. An informal (off the record) conference will be held on final jury instructions sometime at, or near, the end of trial. A formal (on the record) conference will follow after Judge Gerrard has considered the remarks made at the informal conference.

Court reporter/digital audio: Judge Gerrard, at some trials, will use a court reporter—and, at other trials, will use a digital audio recording system (counsel will be advised in advance). When the Court uses a digital audio system, the standard procedure is to upload all recordings to CM/ECF as soon as possible after each day’s trial session. When digital audio is in use, please remember that it is important to use a microphone whenever counsel speaks. If counsel fails to do so, the judge or court clerk will interrupt counsel and remind counsel to use the microphone.

Objections: No speaking objections. For foundation objections, state what foundation is lacking. If you desire a bench conference, state your request. Bench conferences should be infrequent, and only for good cause.

Table microphone (when digital audio in use): When digital audio is in use, there are table microphones which should be pulled directly in front of counsel and about 6 inches away from counsel. Note that the microphone can be muted for client conferences by pushing the button on the base of the microphone.

Courtroom audio: What is spoken in the courtroom during trial and during breaks is broadcast to Judge Gerrard’s chambers. *Be aware that during a recess what is being said in the courtroom can be heard in chambers.*

Number of jurors: Counsel shall be prepared to state whether they desire that alternate jurors be seated. If no alternate is seated, counsel should be prepared to stipulate that a jury of 11 persons may render a verdict no matter when the 12th juror is excused.

Placement of counsel at counsel tables: For security purposes, in Lincoln, the defendant(s) and defense counsel must use the table next to the east wall and not the table next to the jury box.

Exhibits: To the extent practical, exhibits are to be pre-marked and listed on forms approved by the Court. Once an exhibit has been received, it is to be given to the courtroom deputy. Exhibits identified on the exhibit list, but not offered, or if offered and not received, are to be delivered to the courtroom deputy at the close of trial. Before the exhibits are delivered to the jury, counsel shall confer with each other in the presence of the courtroom deputy about which exhibits should go to the jury room. *Please provide Judge Gerrard with a copy of each exhibit.*

Video presenter: Counsel are encouraged to use the video presenter when displaying exhibits. When digital audio is in use, there is a microphone at the presenter and questions should be propounded to a witness from that microphone, when the video presenter is in use.

Dealing with jury after submission: Counsel shall remain in the courthouse or should be available for return to the courtroom on short notice, until after the jury has returned its verdict. Counsel shall keep the courtroom deputy advised of where he or she can be reached at all times. Jury questions will normally be taken up on the record in the courtroom with counsel and the defendant(s) present.

No recross examination: Judge Gerrard does not normally permit recross examination. The cross examination should be limited to the scope of the direct examination, and redirect examination limited to the scope of the cross examination.

Note taking but no juror questions: Judge Gerrard allows jurors to take notes. The Court does not permit jurors to ask questions during trial.