

New as of April 2009

## GENERAL OBSERVATIONS ABOUT CIVIL JURY TRIALS BEFORE JUDGE KOPF

Revision Note: Judge Kopf has changed his practice in three respects. First, counsel may remain seated to question witnesses. Second, each lawyer will be allotted 20 minutes rather than 10 minutes to conduct voir dire. Third, Judge Kopf uses digital audio rather than a court reporter.

Trial hours: 9:00 a.m. to noon and 1:30 p.m. to 4:30 p.m. with 15 minute breaks in morning and 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 a party to conduct voir dire. Deputy clerk times each party and will interrupt if you go over time.

Opening statements: 20 minutes a party. Deputy clerk times each party and will interrupt if you go over time.

Closing argument: 30 minutes a party. Plaintiff may reserve 15 minutes for rebuttal, but it must be true rebuttal and should not raise new issues or points of argument not addressed in the first argument. Final instructions are given before closing arguments, except that a "housekeeping" instruction is given after argument. Deputy clerk times each party and will interrupt if you go over time.

Preliminary jury instructions: The court gives a standard set of preliminary jury instructions after voir dire and before opening statements. See the attached sample standard preliminary jury instructions.

Final jury instructions: Please provide final jury instructions no later than three days before trial. An informal (off the record) conference will be held on final jury instructions sometime during the trial. A formal (on the record) conference will follow after Judge Kopf has considered the remarks made at the informal conference. **Special Note: Judge Kopf expects the lawyers to have an in person meeting (not involving the court) to discuss jury instructions, and to formulate (to the extent possible) an agreed set of instructions prior to trial. Thus, Judge Kopf will expect to receive three days prior to trial: (1) a joint set of instructions which all parties agree may be given; and, (2) a set of instructions suggested by the individual parties that address the areas of disagreement in the joint set of instructions. The draft instructions that are submitted should not be abstract propositions of law, but should be instructions which are carefully tailored to the facts of the particular case. Failure to follow these instructions may be considered a waiver of the right to object to the court's instructions and may be grounds for sanctions.**

Digital audio: Judge Kopf does not use a court reporter. He uses a digital audio recording system and the standard procedure is to upload all recordings to CM/ECF as soon as possible after each day's trial session. *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. If you want the bench conference recorded, state your request and wait to speak until the digital audio recording system is turned on at the bench.

Table microphone: There are table microphones which should be pulled directly in front of counsel and about six inches away from counsel. Use these microphones for making objections. Note that the microphones 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 Kopf's chambers. *Be aware that during a recess what is being said in the courtroom can be heard in chambers.*

Number of jurors: Judge Kopf uses a 7 or 8 person jury (no alternate) in a civil case.

Placement of counsel at counsel tables: Either table may be used by either counsel, but use the same table throughout the trial.

Exhibits: 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 Kopf with a copy of each exhibit. *Make sure that you have complied with the progression order and Fed.R.Civ.P. 26 regarding pretrial disclosure of objections to exhibits.* If all parties are represented by counsel, the exhibits shall be returned to counsel at the conclusion of trial. *Counsel shall pick up the exhibits as directed by the courtroom deputy and give the appropriate receipt.*

Video Presenter: Counsel are encouraged to use the video presenter when displaying exhibits. *There is a microphone at the presenter and questions may be propounded to a witness from that microphone if it is also necessary to use the presenter during that questioning.*

Depositions: All depositions (except those which will be used only for impeachment) are to be on file with the clerk as trial starts. Provide Judge Kopf with a copy of deposition transcript as it is being read or played. Unless objections have been ruled upon earlier, objections will be ruled upon as the deposition is used.

Dealing with jury after submission: Unless counsel are instantly available, Judge Kopf will take the verdict and respond to jury questions without first consulting counsel. Nevertheless, counsel shall leave a telephone number where counsel can be reached at any and all times during jury deliberations.

No recross examination: Judge Kopf 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 Kopf allows jurors to take notes. Judge Kopf does not permit jurors to ask questions during trial.

## BACKGROUND QUESTIONS FOR PROSPECTIVE JURORS

During the process of selecting a jury Judge Kopf may ask that each prospective juror give the court and counsel for the parties a brief summary of the juror's background. If Judge Kopf asks for background information he generally would like you to give the following information.

- A. Please state your name (this helps with pronunciation).
- B. Please state name of the city where you live.
- C. Please state your marital status and number of children if any.
- D. Please state, if employed, where you have worked during the last five years.
- E. Please briefly describe what types of things you did at work during the last five years.
- F. If married, please state where your spouse has worked during the last five years.
- G. If your spouse worked during the last five years please briefly describe what type of things your spouse did at work.

STANDARD VOIR DIRE QUESTIONS IN CIVIL CASES

Ladies and Gentlemen, you have been handed a document entitled "BACKGROUND QUESTIONS FOR PROSPECTIVE JURORS" (a copy is attached). Starting with the first prospective juror, please answer those questions for us. You may remain seated as you give your answers.

I will now ask the lawyers to introduce themselves, their co-counsel, their client, and to name the witnesses they are likely to call during trial. We will start with plaintiff's counsel.

Ladies and Gentlemen, I will now ask the panel as a group a series of questions. If your answer would be "yes" to any question please raise your hand as I may have further questions of you.

Do any of you know any of the parties?

Do any of you know any of the lawyers?

Do any of you know any of the witnesses?

Do any of you know anything about this case aside from what you have been told in this courtroom?

Have any of you ever served on a criminal or civil jury in state or federal court?

Have any of you, or any close personal family member, ever participated in a lawsuit as a party or a witness?

Do any of you have any difficulty with the legal principle that a person has the right to sue another person in court?

Do any of you have any difficulty with the legal principle that a person who has been sued in court has the right to defend against the suit?

This case is expected to take about (stating the expected time), will the length of the case cause any of you extreme hardship?

Do any of you have any difficulty with the legal principle that as jurors you must follow the law as I give it to you even if you think the law is wrong?

Can any of you think of anything which should be called to my attention which might have some bearing on your ability to act as a fair and impartial juror?

I will now allow the lawyers an opportunity to ask questions. We will start with counsel for the plaintiffs.

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## *Preliminary Jury Instructions for Use in Civil Cases*

### *Introduction*

Ladies and gentlemen: I will take a few moments now to give you initial instructions about this case and about your duties as jurors. At the end of the trial, I will give you further instructions. I may also give you instructions during the trial. Unless I specifically tell you otherwise, all instructions-- both those I give you now and those I give you later -- are equally binding on you and must be followed.

### *Serving as a Juror on this Civil Case*

This is a civil case; this is not a criminal case. Accordingly, you will not be asked to decide if someone committed a crime. The case is brought by one or more plaintiffs against one or more defendants. The plaintiff[s] make[s] various claims. The defendant[s] deny[ies] plaintiff[s]' claims. It will be your duty to decide from the evidence whether the plaintiff[s] is [are] entitled to a verdict against defendant[s]. From the evidence you will decide what the facts are. You are entitled to consider that evidence in light of your own observations and experiences in the affairs of life. You will then apply those facts to the law which I give you in these and in my other instructions, and in that way reach your verdict. You are the sole judges of the facts; but you must follow the law as stated in my instructions, whether you agree with it or not.

### *What Testimony to Believe*

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says, or only part of it, or none of it.

In deciding what testimony to believe, consider the witnesses' intelligence, their opportunity to have seen or heard the things they testify about, their memories, any motives they may have for testifying a certain way, their manner while testifying, whether they said something different at an

earlier time, the general reasonableness of their testimony and the extent to which their testimony is consistent with other evidence that you believe.

*No Sympathy or Prejudice*

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you. You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be.

*What Is and Is Not Evidence*

I have mentioned the word "evidence." "Evidence" includes the testimony of witnesses; documents and other things received as exhibits; any facts that have been stipulated, that is, formally agreed to by the parties; and any facts that have been judicially noticed--that is facts which I say you may accept as true. During the trial certain evidence may be presented to you by the lawyers reading to you from one or more depositions or by your viewing one or more videotaped depositions. A deposition is the giving of oral testimony under oath at some time before trial. Each of the attorneys had an opportunity to be present and to ask questions. Deposition evidence is under oath and is entitled to the same consideration that you would have given had the witness appeared personally at this trial.

Certain things are not evidence. I will list those things for you now:

1. Statements, arguments, questions and comments by lawyers are not evidence.
2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustain an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
3. Testimony that I strike from the record, or tell you to disregard, is not evidence and must not be considered.

4. Anything you see or hear about this case outside the courtroom is not evidence, unless I specifically tell you otherwise during the trial.

5. Exhibits that are identified by a party but not received in evidence are not evidence.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I will tell you when that occurs, and instruct you on the purposes for which the item can and cannot be used. You should also pay particularly close attention to such an instruction, because it may not be available to you in writing later in the jury room.

Some of you may have heard the terms "direct evidence" and "circumstantial evidence." You should not be concerned with those terms. The federal law makes no distinction between the weight to be given to direct and circumstantial evidence.

*No Transcript Available But Note-Taking Allowed*

At the end of the trial you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and it is not feasible to play back lengthy testimony. You must pay close attention to the testimony as it is given.

If you wish, however, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note-taking distract you so that you do not hear other answers by the witness. When you leave at night, your notes will be secured and not read by anyone.

*Jurors Not Allowed to Question Witnesses*

I do not permit jurors to ask questions of a witness whether orally or in writing. Moreover, I do not allow jurors to give me a question for presentation to the witness. In other words, you will not be allowed to question witnesses directly or indirectly.

### *Conduct of the Jury*

You must strictly obey the following rules during all recesses and throughout the trial:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

Second, do not talk or correspond with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors. In particular, do not “blog, tweet or twitter” or post anything on “My Space,” “Facebook” or “You Tube” or similar sites about this case or about your service as a juror until this trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it. If someone should try to talk to you about the case please report it to me.

Fourth, during the trial you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case--you should not even pass the time of day with any of them.

Fifth, if there is news coverage of this case, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it.

Sixth, do not do any research or make any investigation about the case on your own. Do not conduct research on the Internet about this case or about anyone involved with it. Do not consult any books such as dictionaries or similar references about this case or about anyone involved with it.

Seventh, do not make up your mind during the trial about what the verdict should be. On the contrary, keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

Eighth, if you need to communicate with me do so only in writing by giving the courtroom deputy a note which is signed by you and dated. Please do not ask the courtroom deputy questions about the law or the evidence. The courtroom deputy is not allowed to answer such questions.

*Richard S. Koff*

United States District Judge

(Saved as CVPrelim.2.on rgk civil)