

APPENDIX J

# Best Practices for Trial Management

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# Introduction

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The CJJ Committee Recommendations emphasize that the management of civil cases must be proportionate to the needs of each case.<sup>1</sup> This right sizing involves triaging each case at the time of filing and, ideally, assigning it to one of three case pathways. It is noteworthy that, while each pathway has unique features, there is one statement in the Recommendations that is repeated for all pathways: “Judges must manage trials in an efficient and time-sensitive manner so that trials are an affordable option for litigants who desire a decision on the merits.”

The best practices described below are aimed at helping trial judges prepare for and manage civil trials fairly and in ways that reduce cost and delay. Unless stated specifically, these best practices apply to both bench and jury trials. The best practice statements do not explicitly address aspects of jury trial management related to improving juror performance. Managing jury trials “in an efficient and time-sensitive manner” assumes practices that promote juror comprehension and satisfaction. Much of the literature referenced in footnotes addresses juror comprehension and competence.

The best practice statements address litigation events that occur during the actual trial dates as well as before trial. Trial management steps taken before the scheduled trial date often yield time savings on trial days because the judge has led efforts to identify and settle legal and logistical issues well before any jurors are empanelled.

# Pretrial Conference

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Effective trial management requires effective pretrial planning. This preparation is best accomplished in a comprehensive pretrial conference. The timing for the pretrial conference depends on the complexity of the case. The more complex the case, the more time is likely needed to prepare for the trial. At a minimum, the pretrial conference should be held one week before the scheduled trial date. The pretrial conference should address the following issues:

## TRIAL PROCEDURE ISSUES

- Secure stipulations concerning trial procedures<sup>2</sup>
- Time limits per side<sup>3</sup>
- Identify needed courtroom technology resources, require demonstrated technology proficiency by presenters, and iron out IT platform compatibility issues

## EVIDENTIARY ISSUES

- Schedule prompt hearing on preliminary questions that are likely to be intricate and dispositive of whether a trial is necessary to avoid the expenditure of unnecessary trial preparation time (for example, permissible scope of expert testimony by means of *Daubert/Porter/Frye* hearings<sup>4</sup>)
- Clarify how rulings on motions *in limine* will be handled
- Secure stipulations for uncontested evidence<sup>5</sup>
- Decide how deposition testimony and read-backs will be presented<sup>6</sup>
- Premark exhibits<sup>7</sup>
- Use of demonstrative aids (e.g., charts, models, computer animations/simulations)<sup>8</sup>
- Arrangements for out-of-courtroom evidence views (transportation, security, admonitions to jurors)

# JURY ISSUES

- Prepare a case summary for use during *voir dire*<sup>9</sup>
- Describe the scope of permissible questions during *voir dire*, general procedure (time limits per side for questioning, use and contents of written juror questionnaires, extra peremptory challenges for multi-party cases, clarity as to roles of judge and lawyer during *voir dire*)<sup>10</sup>
- Propose questions for the judge to pose during the open court *voir dire* questioning<sup>11</sup>
- Settle on jury instructions (both preliminary ones for trial commencement and final)<sup>12</sup>
- Decision-making aids for jurors (notebooks, note-taking, questions, interim summaries)<sup>13</sup>
- Content of juror notebooks, if any<sup>14</sup>
- Special considerations for high-profile trials (anonymous juries, juror sequestration)<sup>15</sup>

# First Day of Jury Trial – Voir Dire

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## PRE-SCREENING OF JUROR QUALIFICATIONS

The expenditure of courtroom time to conduct *voir dire* (including the time of numerous prospective jurors, the attorneys, and court staff) can be reduced if jury administrators effectively prescreen juror qualifications before venire panels are sent to courtrooms for *voir dire*.<sup>16</sup> A careful administrative review of the qualification questionnaires of citizens in the jury assembly room can justify a prompt dismissal of the prospective juror (due to, for example, lack of citizenship, language capacity, etc.) before he or she becomes part of a venire panel. This obviates the need for the court and the parties to discover these disqualifications by means of time-consuming question-and-answer dialogues in the courtroom. In especially lengthy trials, the court should consider having the jury administrator prescreen jurors for hardship due to financial or preexisting commitments.<sup>17</sup>

## EFFECTIVE ORIENTATION

Prior to a venire panel entering a courtroom, a modern orientation video or well-trained court staff should instruct prospective jurors about the logistics of courtroom movement, the purpose of *voir dire* questioning, and other parts of a standard jury trial.<sup>18</sup>

## USING PRETRIAL QUESTIONNAIRES

In appropriate cases, the court should authorize the preparation and use of pretrial questionnaires to prospective jurors before the commencement of oral jury selection. Use of questionnaires can streamline the open court *voir dire* process by enabling the parties to use the written responses to focus their questioning during *voir dire* and more readily identify potential juror bias.<sup>19</sup> Use of questionnaires can also prevent the contamination of a venire panel and the time and expense of restarting the *voir dire* due to hostile jurors speaking out in open court. Responses to questionnaires may be more expansive and candid than oral responses in the courtroom especially with respect to sensitive personal information. Discovering such valuable information during *voir dire* can lessen the occurrence of an expensive mistrial caused by prejudicial discoveries made later in a trial.

# The Trial

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## TIME LIMITS

In the absence of an abbreviated trial program established by rule or statute, judicial creation and enforcement of equitable time limits on the parties is a straightforward way to maximize the efficient use of judicial and juror resources.<sup>20</sup> Likewise, judicial creation and enforcement of a “no sidebars” policy can avoid unnecessary recesses in jury trials.

## MANAGE JUROR DOCUMENTS

A judge, with the help of well-trained court staff, should guide jurors in the management of juror notepads, exhibits, and collection of juror written questions (where authorized).<sup>21</sup>

# Jury Deliberations

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## PROVIDE COPIES OF JURY INSTRUCTIONS

Judges should provide copies to jurors of any preliminary and final jury instructions. The instructions should be available to the jurors in the deliberation room.<sup>22</sup>

## USE PLAIN LANGUAGE

Judges should instruct the jury in plain and understandable language regarding the applicable law and how they are to conduct deliberations.<sup>23</sup> The better jurors understand their role, the law, and the issues in the case, the more likely they will complete their task without unnecessary interruption and delay.

## HELP JURIES AT IMPASSE

When a deliberating jury has reached an impasse or has communicated questions to the court, the judge in consultation with the parties should offer meaningful assistance to the jury consistent with local jurisprudence.<sup>24</sup> To simply communicate to the jury that they should keep trying to reach a verdict or reread the previously stated final jury instructions can prolong deliberations needlessly.

# After a Jury Trial

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## WELCOME JUROR FEEDBACK

After conclusion of a trial, judges on the record and in open court should give jurors an opportunity give feedback to the court about the positives and negatives of their jury experience.<sup>25</sup> If this encouragement is provided regularly, the court will likely improve its trial management systems. Such improvements can improve juror yield and prevent expensive delays in the commencement jury trials caused by insufficient numbers of citizens responding to jury summonses on any given day. This is especially relevant for large urban court systems.

## SET TIMELINES FOR COMPLETING POST-TRIAL MATTERS

Once a verdict has been entered, the court should promptly consult with the parties and determine dates for post-trial motions, assessment of taxable costs, post-verdict hearings (if needed), and entry of final judgment. Failure to promptly identify dates for completion of these wrap-up topics can lead to a case languishing in limbo on the docket. This best practice presents a prime example of how CJI Committee Recommendation #1 (“Courts must take responsibility for managing civil cases from time of filing to disposition.”). If a trial judge simply leaves it up to the parties to decide when post-trial matters get resolved, there is too great a likelihood that the press of other business or other factors will cause an unnecessary delay in case resolution.



# Notes

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1. Acknowledgement: This appendix was principally authored by Judge Gregory E. Mize (CJI Committee Reporter) with generous assistance from Judge Jerome Abrams (CJI Committee member), and Paula Hannaford-Agor (Director, NCSC Center for Jury Studies).
2. Stephen D. Susman & Thomas M. Melsheimer, *Trial by Agreement: How Trial Lawyers Hold the Key to Improving Jury Trials in Civil Cases*, *Voir Dire* 16 (Fall/Winter 2013).
3. **ABA Principles for Juries and Jury Trials (2005)** [hereinafter ABA Principles], Principle 12(A) (“The court, after conferring with the parties, should impose and enforce reasonable time limits on the trial or portions thereof.”); **G. Thomas Munsterman et al., Jury Trial Innovations (2006)** [hereinafter Jury Trial Innovations], § 4.1 (Pretrial Limits on Each Party’s Time at Trial). See also Patrick Longan, *The Shot Clock Comes to Trial: Time Limits for Federal Civil Trials*, 35 *Az. L. Rev.* 663 (1993).
4. **Federal Judicial Center, Manual for Complex Litigation 4th** §23.35 (Expert Scientific Evidence: Motion Practice).
5. Jury Trial Innovations, *supra* note 3, at § 4.2 (Pretrial Admission of Exhibits and Deposition Testimony); Gus J. Solomon, *Techniques for Shortening Trials*, 65 *F.R.D.* 485, 491 (1975)(address delivered before the Ninth Judicial District Conference in Reno, NV, Aug. 2, 1974, describing procedural matters, including pretrial admission, that can be disposed of during the pretrial conference).
6. Jury Trial Innovations, *supra* note 3, at § 4.10 (Deposition Summaries); ABA Special Committee on Jury Comprehension, *Jury Comprehension in Complex Cases* 37–38 (1989)(reporting unanimous negative juror responses to depositions being read at trial).
7. Jury Trial Innovations, *supra* note 3, at § 4.2 (Pretrial Admission of Exhibits and Deposition Testimony).
8. *Id.* at § 4.9 (Computer Simulations).
9. *Id.* at § 3.2 (Opening Statements to the Entire Jury Panel).
10. ABA Principles § 11 (“Courts should ensure that the process used to empanel jurors effectively serves the goal of assembling a fair and impartial jury.”), See also Gregory E. Mize & Paula Hannaford-Agor, *Building a Better Voir Dire*, *Voir Dire* 10 (Spring 2008).
11. *Id.*

12. Jury Trial Innovations, *supra* note 3, at § 5.9 (Pre-instructing the Jury); Larry Heuer & Steven D. Penrod, *Instructing Jurors: A Field Experiment with Written and Preliminary Instructions*, 13 L. & Human Behav. 409 (1989); Saul M. Kassin & Lawrence S. Wrightsman, *On the Requirements of Proof and the Timing of Judicial Instructions on Mock Juror Verdicts*, 37 Personality & Soc. Psychol. 1877 (1979).
13. Jury Trial Innovations, *supra* note 3, at §§ 4.7 (Juror Notebooks); 5.6 (Juror Notetaking); 5.7 (Juror Submission of Questions for Witnesses); 5.10 (Interim Commentary). *See also* B. Michael Dann & Valerie P. Hans, *Recent Evaluative Research on Jury Trial Innovations*, Ct. Rev. 12 (Spring 2004).
14. Jury Trial Innovations, *supra* note 3, at § 4.7 (Juror Notebooks).
15. **Timothy R. Murphy et al., *Managing Notorious Trials* 63–98 (1998).**
16. ABA Principles, *supra* note 3, at § 10(A)(5) (“Jury officials should determine the qualifications of prospective jurors by questionnaire or interview, and disqualify those who fail to meet eligibility requirements.”); Jury Trial Innovations, *supra* note 3, at § 2.11 (Screening for English–Language Proficiency).
17. Paula Hannaford–Agor, ***Jury News: Managing Excusal Requests in Lengthy Trials*, 29(4) Ct. Mgr. 44 (2015).**
18. Paula Hannaford–Agor, ***Jury News: Conduct an Effective Jury Orientation – Because First Impressions Are Always Lasting*, 28(2) Ct. Mgr. 38 (2014).**
19. Jury Trial Innovations, *supra* note 3, at § 3.3 (Case-Specific Questionnaires to Assist Jury Selection); Dennis Bilecki, *Efficient Method of Jury Selection for Lengthy Trials*, 73 Judicature 43 (June–July 1989); ABA Principles, *supra* note 3, at §11(A)(1) (“In appropriate cases, the court should consider using a specialized questionnaire addressing particular issues that may arise. The court should permit the parties to submit a proposed juror questionnaire. The parties should be required to confer on the form and content of the questionnaire. If the parties cannot agree, each party should be afforded the opportunity to submit a proposed questionnaire and to comment upon any proposal submitted by another party.”).
20. Jury Trial Innovations, *supra* note 3, at § 4.1 (Pre-trial Limits on Each Party’s Time at Trial); ABA Principles, *supra* note 3, at § 10.
21. Jury Trial Innovations, *supra* note 3, at §§ 5.6 (Juror Notetaking) and 5.7 (Jurors’ Submission of Questions for Witnesses); ABA Principles, *supra* note 3, at §13 (“The court and parties should vigorously promote juror understanding of the facts and the law.”).
22. Jury Trial Innovations, *supra* note 3, at § 6.5 (Written or Recorded Instructions for Jurors); ABA Principles, *supra* note 3, at §14(B) (“Jurors should be instructed with respect to the applicable law before or after the parties’ final argument. Each juror should be provided with a written copy of instructions for use while the jury is being instructed and during deliberations.”).
23. Jury Trial Innovations, *supra* note 3, at § 6.2 (Plain-English Jury Instructions); ABA Principles 14(A) (“All instructions to the jury should be in plain and understandable language.”); **Peter M. Tiersma, *Communicating with Juries: How to Draft More Understandable Jury Instructions* (2006).**
24. Jury Trial Innovations, *supra* note 3, at § 6.11 (“Reclosing”: A Dialogue with the Jury at Impasse); Gregory E. Mize, *Thinking Outside the Jury Box: The D.C. Circuit Needs to Embrace Common Sense*, Washington Lawyer (November 2005); B. Michal Dann, “*Learning Lessons*” and “*Speaking Rights*”: *Creating Educated and Democratic Juries*, 68 Ind. L. J. 1229 (1993).
25. Jury Trial Innovations, *supra* note 3, at §§ 7.1 (Advice Regarding Post-Verdict Conversations), 7.2 (Informal Meetings Between the Judge and Jury), and 7.5 (Juror Exit Questionnaires).