

April 24, 2017

Counsel --

For some time, I have been considering new approaches to the trial of civil cases, and wanted to give you a heads-up on the changes, which I will implement on May 1, 2017, in all pending and newly filed cases. In other words, if you have a case that has already been filed, these new procedures will apply to you. There is no opt-out process. **Please Note: These changes only affect cases assigned to me and will not affect cases assigned to any other judge in the District of Kansas.**

The purpose of these changes is to see if we can improve the way we are doing things. At this point, we are trying only 1 1/2 - 2% of the civil cases that get filed. The reasons we hear with alarming frequency are that the federal system is too expensive, it takes too much time to get to trial, and there are far too many hoops to jump through on the way to trial. We will continue to explore options to make things better. In the meantime, here are the changes.

Pretrial. I intend to start doing my own pretrial work in **some, but not all, cases**, which would include scheduling conferences, discovery issues, expert issues, and anything else that might arise. Unless I specify that counsel are to be present live and in person, a telephone conference is presumed.

Motions. I want to begin having oral argument on motions, and would prefer that you have counsel with five years or less experience argue them. Argument does not mean standing up and saying, "I've said it all in my brief, so unless the court has questions, I'll not take the time to argue it." I am talking about coming in and selling me on why your position is correct and fair.

Exhibits. All are to be numbered sequentially without any designation as to plaintiff's or defendant's exhibits. There will be no duplicative exhibits. Each exhibit will be deemed admitted into evidence if no objection to that exhibit is filed by the close of business on Wednesday before the start of trial on the following Tuesday. The court will consider the admissibility of any exhibit to which a party objects. If the objection, in the discretion of the court, is groundless, frivolous, or without significant merit, the court will impose costs on the objecting party.

Jury Information. The parties will be provided the jury information you typically receive the day of the trial one week before trial unless I enter a different order. If the parties agree that certain jurors are unacceptable for their case, the court will summarily dismiss those jurors pretrial without need for voir dire.

Number of Jurors. The court is returning to seating twelve jurors in civil trials.

Time Limits. I **may** impose time limits in some trials. If I do, the presumption will be an equal amount of time per side, which the parties may agree to modify. Each time's allotment will include: opening statement, voir dire, direct examination of the party's witnesses, cross examination of the opponent's witnesses (if a witness is testifying for both sides, the parties will note when the examination switches from cross-examination to a direct examination), argument on motions during trial, and closing argument.

Trial Schedule. No change from my current practice. Day 1 is 9:00 am to 5:00 pm. Thereafter, presumably 8:30 am to 1:30 pm, unless the court announces otherwise.

Opening Statements. No change from my current practice -- the parties will give full opening statements before we begin jury selection.

Jury Selection. The lawyers and I begin by telling the jury some basic information about ourselves (approximately 2-3 mins/person). The panel then does the same. I will cover some things with the panel, then the lawyers voir dire the panel. Lawyers will not rehash areas I have covered, including, but not limited to, matters such as burden of proof. Further, counsel will not be permitted to ask the jurors to

commit to anything other than listening and viewing the evidence with an open mind, while following my instructions. Once all parties pass the panel for cause, the court will, in alternating fashion, begin with the earliest juror called and ask if either party has an objection to that juror. If one party has an objection, that juror will be excused, and it will be a peremptory charged to the objecting party. Once twelve jurors are approved, the jury will be seated, even if one or more parties have peremptory challenges remaining.

Instructions. I am going to give the jury a complete set of instructions at the outset of the case, and the instructions will include a Table of Contents. Each juror will receive a copy of the instructions. Each will keep her or his copy, and the juror may take notes on the set during the trial, and take them to the jury room during deliberations. I will not instruct at the end of the trial, except as to changes, if any, to the set given at the outset. Continuing current practice, the court will shred juror notes at the end of deliberations.

Juror Discussions During Trial. At the end of each court day, I am going to allow the jurors to discuss what they have heard for a limited period of time when all jurors are present, and will give an appropriate instruction about not reaching any conclusions until presentation of the evidence is complete. Before jurors leave the courthouse each day, I will give the standard comprehensive admonishment, which includes not only the prohibition on discussing the case, but prohibits independent research of any kind.

Questions from Jurors. Jurors will be permitted to submit written questions to ask of witnesses. The parties may object on any recognized basis to each question, and the court will rule on each. The court will ask the jurors' questions.

Sidebars. I never much cared for them. Unless there is a matter of huge urgency or I have red flags waving all over the place, there will be no sidebars.

I am not seeking comments about these changes -- there will be plenty of time for comments down the road. I do think it is time to gather some real evidence about differences some of these practices make in the fairness of our system as well as juror understanding of and appreciation for the system. As far as I have been able to determine, each of these changes is in practice in one or more jurisdictions, and all fall within the ambit of the court's inherent responsibility for overseeing procedure.

J. Thomas Marten
United States District Judge