



## CRIMINAL CASE MANAGEMENT PROCEDURES

**Judge David W. Dugan**

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## Motion Practice

When filing motions, parties should follow the Federal Rules of Criminal Procedure and adhere to the strict deadlines set in the Order for Pretrial Discovery and Motion Practice issued by the Magistrate Judge at arraignment.

- ***Motion to Dismiss, Motion to Suppress, Motion in Limine***

Generally, motions to dismiss indictments and motions to suppress evidence will be set for hearing. If Judge Dugan determines that a hearing is needed on other motions, the Courtroom Deputy Clerk will notify counsel by entering an electronic notice of hearing.

A supporting memorandum for any motion where appropriate is encouraged. Motions to dismiss indictments and motions to suppress evidence must be filed with a supporting memorandum. The supporting memorandum may be combined with the motion in a single pleading or filed separately.

Motions *in limine* may (but need not) be filed with supporting memorandum or highlighted caselaw. As mentioned above, motions to suppress must be filed by the deadline imposed in the Magistrate Judge's Order for Pretrial Discovery. Counsel is cautioned that this is an early deadline. In rare circumstances, and only on good cause shown, Judge Dugan may consider a late-filed pretrial motion. Parties seeking consideration of an untimely motion to dismiss or motion to suppress shall seek leave to file out of time *prior to* filing their motion.

By contrast to civil cases, motions *in limine* in Judge Dugan's criminal cases must be filed no later than **21 calendar days before trial**. Responses to motions *in limine* must be filed within 7 days after service of the motion. Cognizant of the Seventh Circuit's concerns regarding the issuance of rulings on motions *in limine* on the morning trial commences, *see e.g., United States v. Buckner*, 91 F.3d 34 (7th Cir. 1996), Judge Dugan will attempt to rule on such motions in advance of trial. At times, however, it may be necessary to reserve ruling on motions *in limine*. The Court will set a hearing where helpful or necessary to resolve issues raised by the motions *in limine*.

- ***Motion to Continue***

Any motion to continue trial should delineate a sufficient basis for the Court to determine whether the ends of justice served by the requested continuance clearly outweigh the interests of the public and the defendant in a speedy trial, so as to toll the "clock" under the Speedy Trial Act, 18 U.S.C. 3161(h). Whenever possible, a motion to continue should address whether opposing counsel (including, in multi-defendant cases, counsel for any non-moving defendant) object(s) to the requested continuance. Motions to continue may be filed under seal, where

appropriate.

## **Final Pretrial Conference**

A Final Pretrial Conference will be set only after the parties inform Judge Dugan of their intention to proceed to trial. At the Final Pretrial Conference, the parties may address any issues relevant to the trial, including the anticipated length of trial, any anticipated evidentiary issues with respect to witnesses or exhibits, and/or issues relating to the jury instructions.

If the defendant elects to enter a plea of guilty, counsel should contact the Courtroom Deputy Clerk, Dana Winkeler, at [Dana\\_Winkeler@ilsd.uscourts.gov](mailto:Dana_Winkeler@ilsd.uscourts.gov) or (618) 482-9012 to arrange for a change of plea hearing.

## **Jury Selection**

- ***Jury Questionnaires***

Jury questionnaires are completed by each venire person before being placed on a venire panel. The completed questionnaires are placed in binders according to venire number and provided to each party before jury selection begins. Questionnaires must be returned to Courtroom Deputy Clerk Dana Winkeler after the jury is selected. Questionnaires are confidential and may not be retained by any party.

- ***Voir Dire***

Judge Dugan conducts preliminary voir dire which also includes some demographic and qualification questions. After Judge Dugan concludes preliminary questioning, each party may participate, with limitations imposed by the Court, in voir dire separately. Counsel also may request that Judge Dugan question jurors on certain issues that may be sensitive or which a party would rather the Judge ask instead of counsel. In its discretion, the Court may conduct the voir dire without participation of counsel. In light of privacy concerns, counsel should only refer to prospective jurors by their juror number.

- ***Selection Methodology***

The jury is selected outside the presence of the venire in open court. Challenges for cause are entertained first. Then the parties will be permitted to caucus privately before the striking process begins.

Generally, in a noncapital felony case, the government will be given 6 peremptory challenges, and the defendant or defendants jointly shall have 10 peremptory challenges. See Federal Rule of Criminal Procedure 24(b). Additional peremptory challenges will be permitted if/and depending on the number of alternate jurors

being seated. In its discretion, the Court may allow additional peremptory challenges if the size of the venire permits, after challenges for cause have been determined.

Typically, twelve jurors will be chosen, and one or two alternate jurors will also be selected, depending on the length of the trial.

- ***Jurors***

Jurors are permitted to take notes during trial and may refer to them during deliberations. Jurors are paid an attendance fee and reimbursed for travel to the courthouse. See the court's website at [www.ilsd.uscourts.gov](http://www.ilsd.uscourts.gov) for information.

## **Trial Procedure**

- ***Firm Trial Dates***

The Court sets and enforces firm trial dates in criminal cases. If a criminal case is not ready for trial on the date originally set, a new firm trial date will be set in compliance with the Speedy Trial Act. **The Court places upon the Government the obligation to determine includable and excludable days in making Speedy Trial Act calculations and to notify the Court of any potential Speedy Trial problems.**

- ***Trial Hours***

Trials generally begin at 9 a.m., although a different time may be specified by Order or Notice in a given case. Generally, Judge Dugan expects counsel to arrive 30 minutes prior to the trial's scheduled start time.

Especially as to *jury* trials, the Court makes every effort to conclude each day no later than 4:30 p.m.

Motions, jury instruction conferences, and other matters may be handled with counsel before the jury arrives or after the jury has been dismissed for the day, as directed by Judge Dugan. During trial, counsel is strongly encouraged to bring to the attention of the Court any matter requiring its immediate consideration so as to avoid the unnecessary delay of trial or unnecessary juror wait time.

- ***Attorney Conference Rooms***

A conference room is available near Judge Dugan courtroom for attorney-client and attorney-witness consultation. Please see the Courtroom Security Officer for access.

- ***Attorney Availability During Jury Deliberation***

Counsel should give the Courtroom Deputy Clerk a telephone number where they can be reached when the jury indicates it has a verdict or a question. Counsel

should be able to arrive in the courtroom within 10 minutes after being contacted.

- ***Post-Verdict Juror Interviews***

Counsel may not question jurors after a verdict has been reached without prior approval of the Court.

- ***Courtroom Audio System***

Judge Dugan's courtroom transmits live audio/video from the courtroom to Judge Dugan's chambers. Attorneys, witnesses, and anyone attending court proceedings should be aware that, unless the microphones near them are deactivated, their statements may be heard in chambers.

Note: For information regarding **Courtroom Technology System** in Judge Dugan's courtroom, see "Miscellaneous" section below.

## **Mandatory Exhibit List**

The parties shall prepare an [Exhibit List](#) using Judge Dugan's approved form (a revision of AO Form 187). In addition to this exhibit list, the parties will receive an email from Judge Dugan's Courtroom Deputy Clerk, Dana Winkeler, ahead of trial with information about preparing a separate exhibit list for use with the Jury Exhibit Retrieval System (JERS). Both exhibit lists must be prepared by all parties. Exhibit lists are generally due the Wednesday before the first day of trial. The Courtroom Deputy will provide more information regarding the deadline in an email ahead of trial.

All exhibits should be pre-marked with Western Arabic numerals for each exhibit. Government's exhibits should be numbered as Government Exhibit 1, Government Exhibit 2, *et seq.* Government exhibits shall begin numbering with 1 and continue through 99. Defendant's exhibits, should be pre-marked and numbered sequentially, beginning with number 100 and continuing in sequential order. Should the Government have more than 99 exhibits, please notify counsel so that Defendant's exhibits can then begin with 200 (instead of 100). The reasoning for the numbering system is to avoid duplication of exhibit numbers. Duplicate exhibits are not permitted. In other words, if an exhibit is offered by the Government, Defendant should not offer the same exhibit.

Other points to note when preparing the exhibit list:

- Letters should not be used to identify exhibits (*i.e.*, use only 1, 2, 3, 4; do not use 1A, 1B, 2A).
- Do not designate any exhibits as "group" exhibits.
- Designate multiple page exhibits with one exhibit number, using page numbers for further identification.
- Do not group sets of multiple photographs. Give each photograph a separate exhibit number.

- Do not assume that the Court will allow any exhibits to be passed among jurors. Publication will be handled by evidence presentation technology or by use of juror notebooks.

Specific questions about preparing the exhibit list should be directed to the Courtroom Deputy Clerk, Dana Winkeler, by email message to [Dana\\_Winkeler@ilsd.uscourts.gov](mailto:Dana_Winkeler@ilsd.uscourts.gov) or raised at the Final Pretrial Conference.

## **Witness Lists**

Counsel for each party shall e-mail a final list of the witnesses they intend to call at trial to Courtroom Deputy Dana Winkeler at [Dana\\_Winkeler@ilsd.uscourts.gov](mailto:Dana_Winkeler@ilsd.uscourts.gov). This list shall be submitted at the same time as the exhibit lists, generally the Wednesday before the first day of trial, unless a different date is specified. Questions regarding the Witness Lists may be addressed to Dana Winkeler at (618) 482-9012

## **Jury Instructions**

Unless this deadline is altered by an Order entered by Judge Dugan in a specific case, the parties must submit their entire set of proposed jury instructions in Microsoft Word format to the Court **no later than noon the business day before the final pretrial conference**. Questions regarding the deadline for submitting proposed instructions may be addressed to the law clerk assigned to that case. Jury instructions *are not* filed with the Clerk of Court. **Rather, they are submitted to Judge Dugan's chambers via email to [DWDpd@ilsd.uscourts.gov](mailto:DWDpd@ilsd.uscourts.gov).**

Each instruction should be marked to designate the party offering the instruction (e.g., "Government's Instruction No. 1") and the source of the instruction (e.g., "Seventh Circuit Pattern Instruction No. \_\_\_\_"). Counsel should designate the instruction as modified (e.g., "Seventh Circuit Pattern No. \_\_ MODIFIED"), if the instruction has been modified in any way whatsoever. The parties should work together in an effort to produce one set of proposed instructions. If the parties are unable to agree on certain instructions, each party may submit a version of the contested instructions.

The Court will compile a packet of proposed final instructions and give the instructions to the parties during trial before a formal jury instruction conference is held. It is not necessary to submit both "marked" and "clean" instructions. Once the final set of instructions has been approved, the Court will remove the annotations from the instructions. Each juror will receive a copy of the final instructions.

## **Correspondence with the Court**

Absent exigent or special circumstances, defendants in criminal cases are not to attempt to contact, correspond with, or send letters directly to Judge Dugan. All out-of-court communication with Judge Dugan should be made through counsel via motion. Any correspondence received will be filed in CM/ECF as a sealed document

## Courtroom Technology Features and Usage Guidelines

The courtroom technology system can broadcast video and audio content from a variety of sources/devices to all areas of the courtroom. The flexibility to support a myriad of devices and content types comes at the expense of a “plug and play” approach. In other words, connecting your unique device and displaying your unique content may require some slight configuration changes to your device. Therefore, **it is strongly recommended that you communicate with the court’s IT department regarding your evidence presentation intent PRIOR to your court appearance. (Counsel can call Courtroom Deputy Dana Winkeler at (618) 482-9012 and coordinate contact with the IT department.)**

- ***Document Camera (aka “Elmo” Camera)***
  - The courtroom is equipped with an electronic camera (“ELMO”) that can be used to display physical documents or objects to electronic viewing monitors disbursed throughout all areas of the courtroom.
- ***Computing Devices(i.e., laptops and mobile devices)***
  - The courtroom is equipped with “connector inputs” at three locations (prosecution table, defense table, and presentation cart) to facilitate the connection of any electronic computing device having a VGA or HDMI output connector on that computing device. Once connected, the entire screen and the audio output of the device can be broadcast to the electronic viewing monitors and speakers disbursed throughout all areas of the courtroom.
- ***Video Conferencing***
  - The courtroom is equipped with a video conferencing system that can be used to connect to outside parties and simultaneously broadcast that outside parties’ image and audio throughout the entire courtroom.  
**NOTE:** The outside party must have access to very specific video conferencing equipment OR have a laptop with a webcam attached along with a special software package installed that is downloaded from the court. Participants wishing to video conference must make arrangements in advance and conduct a test with the court’s IT department.
- ***Annotation***
  - The courtroom has a touch screen monitor with annotation features located at the presentation cart and at the witness box. This device can be used to annotate “on top of” any video image being displayed from any device connected to the system. The annotations display to the electronic viewing monitors disbursed throughout all areas of the courtroom.
- ***Audio Conferencing***
  - The courtroom is equipped with an audio-conferencing system that can be used to allow multiple outside parties to communicate with the courtroom via telephone. The outside party audio can be broadcast to the courtroom.

## **Courtroom Demeanor**

During trial, attorneys are encouraged to stand at either counsel table or the podium while addressing the Court, the jury, or any witness. Attorneys who are soft-spoken will be required to use the microphone at the counsel table or podium. Attorneys need not seek permission to approach a witness. **Side-bar conferences are permitted only in extraordinary circumstances.**

Evidentiary objections shall be made by stating in a short and concise manner the nature of the objection and the specific Federal Rule of Evidence on which the objection is based. Speaking objections will not be tolerated.

Attorneys and litigants are at all times expected to be respectful to the witnesses, jurors, Courtroom staff and the Court. In the event that an attorney or litigant disagrees with a statement or ruling of the Court, there exist ample avenues on which to seek reconsideration or review of any such statement or ruling. While in the Courtroom or in the presence of any juror, other expressions or physical manifestations of disagreement or displeasure with the Court or its rulings (such as “rolling of the eyes”, “huffing” or “puffing”, etc.) are inappropriate and will likely result in the imposition of sanctions.

## **Guidelines for Remote Appearances**

Remote proceedings are official court proceedings. All participants must maintain appropriate demeanor and decorum at all times. Appropriate attire is mandatory for any remote appearance before the Court. A participant should dress for a remote proceeding as if he or she were attending the proceeding in the courtroom. Flagrant disregard of this requirement may lead to the exclusion of the participant from the hearing.

No participant may, without written authority from the Court, record, copy, broadcast, live-stream or otherwise electronically duplicate any remote proceeding.

## **Timeliness**

Please be on time for each court session. This applies to attorneys and to any witness being called by a party.

Trial engagements take precedence over any other business. If you have matters in other courtrooms, arrange in advance for the handling of such matters by you or have an associate handle them for you.

One guiding principle for all jury trials is that the jurors’ time must not be wasted. The jurors should go home from every day of trial with the feeling that they have had a good, solid day of progress toward conclusion of their service and that the parties and their lawyers did not waste their time. In keeping with this principle, if an issue or motion arises during trial that must be addressed, it should be brought to the Court at the close of



business, after the jury leaves or during a break, so as not to increase the jury's wait time.

### **Organization of Trial Materials**

Judge Dugan has specific preferences for how documents and other trial materials should be organized and provided to the Court and to the jury. If a case is proceeding to trial, Judge Dugan's courtroom deputy will provide the parties with additional information regarding his directives for these matters. This includes but is not limited to the handling of exhibits, deposition transcripts, and video or audio presentations. The Court expects the parties to comply with these directives as if set forth fully herein.

### **Disclaimer and Notice**

To the extent Judge Dugan's preferences conflict with the Federal Rules of Criminal and Civil Procedure, the Rules of course govern. Attorneys must examine these instructions on a regular basis, because changes are made to this page without notice.

### **Case Management/Electronic Case Filing System**

The Court's CM/ECF system requires electronic filing of all pleadings, with a few narrow exceptions. Additionally, the Court's Orders are sent to the parties electronically rather than by regular mail. Participation in CM/ECF is mandatory.

While Judge Dugan and his law clerks run daily reports for their cases, they do not always receive immediate notification of newly filed motions. For this reason, **if an attorney e-files an urgent or time-sensitive motion (such as a motion to continue a setting set on the following day), s/he should phone the law clerk assigned to the case and alert him/her that the motion has been filed.**

### **Communication with the Court**

Attorneys and litigants ordinarily should communicate only by motion or memorandum. Urgent matters or general inquiries can be sent by email message to [DWDpd@ilsd.uscourts.gov](mailto:DWDpd@ilsd.uscourts.gov) (with a copy to all counsel of record); the message will be forwarded to the appropriate person in chambers.

*Ex parte* oral communications with the Court on substantive matters in a pending case are prohibited.

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