

**IN THE COURT OF COMMON PLEAS  
LAKE COUNTY, OHIO**

<b>THE STATE OF OHIO</b>	)	<b>CASE NO. 0__CR00__</b>
	)	
Plaintiff	)	<b>JUDGE EUGENE A. LUCCI</b>
	)	
vs.	)	<b><u>ORDER OF PROCEDURE</u></b>
	)	<b>(CRIMINAL)</b>
_____	)	
	)	
Defendant	)	<b>(Revised 10/28/2003)</b>

In the interest of the most economical and efficient use of the court's time during the pendency of the case and trial and to speed the case to conclusion, the following order is hereby made in this cause and shall be binding on all parties hereto:

**GENERAL**

**Indigency**

{1} Counsel representing indigent defendants must be appointed by judgment entry. If counsel has not been appointed in this manner at arraignment, counsel must file a motion for appointment, together with an affidavit under the defendant's signature, setting forth the facts of his indigence. Counsel shall also present the court with a judgment entry.

**Clients Present**

{2} Counsel, without exception, must have his or her client present at all stages of the proceedings. Failure of a defendant to appear can result in revocation of bail and issuance of a bench warrant.

**Intervention in Lieu**

{3} Upon the filing of a motion for intervention in lieu of conviction, pursuant to R.C. Section 2951.041, defendant's counsel must file an affidavit with the court citing that counsel has familiarized himself or herself with the defendant's record and defendant is eligible for intervention in lieu of conviction.

**Pretrials & Offers**

{4} A pretrial conference will not be scheduled, unless requested by either of the parties. In lieu of a pretrial conference, the State of Ohio shall make its written offer to the defendant and present a copy thereof to the judge's office (not filed with the clerk of court), **not later than three weeks before the scheduled trial date**, or as soon thereafter as practicable if three weeks' time is not afforded by the scheduling of the trial.

### **Motions**

{5} Motions should be filed so as not to necessitate a delay in trial dates. All motions will be heard on briefs unless the court, in its discretion, considers the issues to require a hearing.

### **Pleas, Reductions, Dismissals**

{6} The Court is to be notified by telephone immediately when a *nolle prosequi* is entered or when defendant wishes to change his or her plea. If a plea is to be entered, it must be done before the trial date. **No pleas to reduced charges will be entertained by the court, unless the court is notified fourteen days prior to trial.** The only plea accepted on the day of trial shall be a plea of guilty to all counts of the indictment.

### **Testing on Sexual Offenses**

{7} In the event the defendant is charged with any violation of R.C. Sections 2907.02, 2907.03, 2907.04, 2907.24, 2907.241, or 2907.25, the defendant shall be tested for venereal disease, and in the event the defendant is charged with any violation of R.C. Sections 2903.11(B), 2907.02, 2907.03, 2907.04, 2907.05, 2907.12, 2907.24, 2907.241, or 2907.25, the defendant shall be tested for the virus that causes acquired immunodeficiency syndrome, all pursuant to R.C. Section 2907.27. It shall be the responsibility of both prosecutor and defense counsel to make a determination whether the tests have been carried out and advise the court accordingly.

### **Address or Bond Changes**

{8} Defendant and his or her counsel are obligated to notify the court of any change of address and change of conditions of bond.

### **Positive Substance Tests, Failure to Report**

{9} On referral to the Adult Probation Department for a pre-sentence report or psychiatric or psychological factors for study, the defendant testing positive for alcohol or drugs, or failing to report as referred, ordered or scheduled, will have his or her bail revoked and will be committed to jail until the date of sentencing.

{10} Defendants sentenced to community control sanctions testing positive for alcohol or drugs will be treated similarly and held without bail until disposition of the violation of community control sanction charge.

## **JURY TRIAL PROCEDURES**

{11} The court will adhere to the following jury trial procedures, unless otherwise modified at the time of trial:

### **Juror Questionnaires**

{12} When the court's prospective jurors are summoned, they are provided an extensive questionnaire to fill out and return. The questionnaire asks about 70 questions, including approximately 20 questions pertaining to the juror's social preferences, which the prospective jurors may answer. Many lawyers find this information useful, but may be reluctant to ask about a juror's

social preferences because they do not want to be perceived as wasting time, intruding on the juror's privacy, or asking what might seem to be irrelevant questions. To assist counsel as they prepare for voir dire, the court will make the completed juror questionnaires available to them several days before the trial. Counsel shall not ask a juror the same questions that the juror answered on his or her questionnaire; however, counsel may ask jurors to explain their answers and may follow-up with additional questions.

### **Orientation Videotape**

{13} On the first day of trial, prior to the commencement of the jurors' service, the court will show them an up-to-date jury orientation videotape. The video gives the jurors a lesson in civics, with an emphasis on the court system and juror duties.

### **Mini-Opening Statements**

{14} Counsel may give a mini-opening statement to the prospective jurors after the introduction of the trial participants. The mini-opening statement should be a short statement of what the case is about, that is, each side's claims and/or defenses, limiting themselves to the basic facts of the case, without becoming argumentative. Each counsel's statement should take no more than a couple of minutes. The purpose of the mini-opening statement is to allow the prospective jurors to have a better appreciation or understanding of counsel's questions, to alleviate the possibility of juror discomfort or a juror challenging the necessity for a question when counsel's questions are perceived by jurors to be too personal or embarrassing to answer publicly. Counsel will give a full opening statement after the jury is seated.

### **Jury Selection Method**

{15} The jury will be selected using the "struck" method, as opposed to the "strike and replace" method. In the "struck" method, all prospective jurors are questioned, and challenges are made outside the presence of the jurors, with the first thirteen (including one alternate) remaining persons in sequential order being the jury. After questioning by the court and counsel, the challenges are exercised out of the presence of the jurors. First, the court will entertain challenges for cause. Then in alternating order, counsel exercise their four peremptory challenges plus one challenge for each alternate expected to be seated. If a party "passes" on the exercise of a peremptory challenge, that challenge is waived.

### **Alternate Selection**

{16a} The alternate will be selected at random from the panel of jurors seated in the case immediately prior to the jury retiring to deliberate. The court will use a random procedure for selection of the alternate: plaintiff's counsel shuffles a set of playing cards, and defense counsel selects one, which corresponds to the number of the juror who will serve as the alternate. The court will not discharge any alternate, as Criminal Rule 24 provides, but rather, the court will sequester the alternate juror in the courthouse while the jury is deliberating. If one of the regular jurors cannot complete his or her service, the court will put the alternate into the jury room, and the jury will then recommence its deliberations.

{16b} In the alternative, if the parties request, the court will designate the alternate during jury selection, known only to the court and counsel, to be the thirteenth juror selected. The alternate juror will not be told that he or she is the alternate; the panel will be told that the alternate has not yet been selected; that all jurors must pay attention as if they were a regular juror; and that the alternate will be named just before the jury retires to deliberation. In this method, the parties exercise four peremptory challenges each to seat the first twelve jurors, and then exercise one peremptory challenge for each alternate after the first twelve regular jurors are determined.

### **Rules on Voir Dire Questioning**

{17} The case may not be argued in any way while questioning the jurors. Counsel may not engage in efforts to indoctrinate jurors. Jurors may not be questioned concerning anticipated instructions or theories of law. This does not prevent general questions concerning the validity and philosophy of reasonable doubt or the presumption of innocence. Jurors may not be asked what kind of verdict they might return under any circumstance. Questions are to be asked collectively of the entire panel whenever possible.

### **Jury Instructions**

{18} The court will provide the jury with both preliminary (substantive) and final instructions in writing, prior to the judge reading the instructions to the jury. The parties shall submit preliminary instructions sufficient to apprise the jury of the relevant legal and factual issues two weeks in advance of trial. Final instructions shall be submitted to the court at least two days prior to the commencement of final arguments. The jurors will be told that the final instructions control their deliberations and verdict, regardless of what they were told in the preliminary instructions. The court will charge the jury after closing arguments. If the parties request, the court will charge the jury before closing arguments, to enhance the jurors' ability to apply the applicable law to the facts, better evaluate the arguments of counsel, and make counsel's use of the court's instructions during closing arguments flow smoother. If the jury is charged before arguments, the court will instruct the jury on how to conduct their deliberations and other housekeeping matters after closing arguments, and if necessary, correct any misstatements of the law by counsel during final arguments.

### **Juror Note Taking**

{19} Jurors will be permitted to take notes during trial. The jurors will be informed that no juror is required to take notes; the fact that the notes taken by a juror support his or her recollection in no way makes his or her memory more reliable than that of the jurors who do not take notes. The court further will caution the jurors to not let the taking of notes divert their attention from what is being said or is happening in the courtroom during the trial. All notes are a confidential matter for the consideration of the jury only. Each note taker will leave his or her notes on his or her chair during all recesses and until deliberations begin. At that time, the jurors will be allowed to take their notes to the jury room. All notes will be returned to the bailiff for destruction at the time the jury is discharged.

### **Juror Questions**

{20} Jurors are permitted to submit written questions to witnesses through the court. The court will decide whether all witnesses may be questioned by jurors or only those witnesses whose

testimony is complex or confusing to a jury. Prior to opening statements, the jurors will be told that they may ask questions of witnesses. The court will also explain the procedure for asking questions: that the court may not ask certain questions because of evidentiary rules, that the judge is the “gatekeeper” over which questions may be asked of a witness, and that they should not speculate on what the answer might have been, nor should they speculate on why the court chose not to ask a particular question. After counsels’ examination of the witnesses, the jurors write down their questions and submit them to the judge through the bailiff. If the question is one that obviously should be asked, the court will ask the question in a non-leading fashion. Otherwise, the court will provide counsel an opportunity to review and object to any juror question, out of the hearing of the jury. After completion of the juror questions of a witness, trial counsel may then ask follow-up questions of the witness on matters raised by the juror questions.

### **Juror Notebooks**

{21} The jurors will receive a three-ring notebook prior to opening statements by counsel, which may contain the preliminary instructions of the court, blank paper for taking notes, suggestions for conducting deliberations, and the final instructions at the proper time. Counsel can decide what other items should be included, such as photographs, exhibits, documents, or a glossary of technical terms. If counsel cannot agree on the contents of the notebook, the court will make the final determination. The bailiff will collect the notebooks at the day’s adjournment, to be secured and returned to each juror when court reconvenes. If documents are not stipulated for admission prior to trial, then as the exhibits are identified, offered, and admitted, they can be given to each of the juror for inclusion in their notebooks. If counsel will provide copies of admitted exhibits to each juror, the exhibit should be on 8-1/2 by 11 inch, three-hole punched paper. At the time of the distribution of the notebooks to each juror, the court will instruct the jurors concerning the purpose and use of the notebooks. The notebooks shall be available to the jurors during deliberations.

### **“Plain English”**

{22} Counsel are urged to use “plain English” during trial and to avoid “legalese” vocabulary when they communicate with the jury. In cases of legal, medical, expert, or complex terminology, counsel should use everyday language and keep things as simple and straightforward as possible. Even terms that lawyers take for granted, such as “plaintiff,” “defendant,” or “indictment,” should be replaced with or explained by more familiar words. In addition, counsel are urged to submit proposed jury instructions in plain English.

### **Trial Motions and Objections**

{23} Motions or objections to evidence or procedure shall not be accompanied by explanation or reason for the motion or objection in the jury’s hearing.

### **Exhibits**

{24} All documents and exhibits shall be marked for identification purposes, together with an index, and shall be shared with opposing counsel at least two working days prior to trial, and a copy of the index shall be provided to the judge’s office. The plaintiff shall mark exhibits using numbers and the defendant shall mark exhibits using letters. The parties shall not copy the court with trial exhibits, especially medical records, prior to trial.

### **Trial Briefs & Proposed Instructions**

{25} No later than two weeks prior to the trial, the parties shall file their trial briefs; proposed jury instructions and jury interrogatories, which are to be submitted on a 3-1/2 inch floppy disc or CD-ROM, or via e-mail to [CommonPleasIV@lakecountyohio.org](mailto:CommonPleasIV@lakecountyohio.org), in WordPerfect or Word format, together with a hard copy; any motions *in limine*; and any videotape depositions, to allow time for proper editing on any objections to testimony.

### **Interim Commentary**

{26} In lengthy or complex litigation, the court will allow for interim commentary by counsel as it sees fit during the course of the trial, especially before a lengthy expert is about to take the stand. At periodic intervals during the trial, counsel will be given a chance to explain to the jury the significance of the evidence or testimony presented to them. Opposing counsel will have the opportunity to respond to any interim commentary. The court may limit any such interim comment to a total amount of time to be divided as counsel chooses, or allow a few minutes after pre-designated segments, or days of trial. Counsel may use this time to explain to the jury the significance of testimony or evidence that it has presented, or is about to present. The purpose of such commentary is to enhance juror understanding of the evidence, assisting jurors in recalling the evidence, allowing counsel to clarify, organize and place evidence in the proper context.

### **Suggestions for Conducting Deliberations**

{27} The court will provide jurors guidance regarding how to conduct their deliberations – which they may accept or reject. The suggestions will include the appointment of a foreperson; avoidance of an early vote; providing all jurors an opportunity to present opinions and comments; procedure for asking questions regarding the instructions, the law, or the evidence; procedure for handling exhibits; procedure for filling out jury interrogatories and verdict forms, including the number of jurors needed to properly reach a verdict; and handling disagreements among jurors.

### **Post Verdict Meeting and Surveys**

{28} After the jury has been dismissed, the judge will meet with the jurors to give them an opportunity to ask questions about the trial or post-trial procedure. The court may invite the jurors to talk to the attorneys for the purpose of providing the attorneys an opportunity to improve their advocacy skills and receive constructive feedback on their trial techniques. The court will inform the jurors that this is voluntary on their part; they have no duty to talk to the attorneys or anyone about their experience as jurors. Counsel shall not criticize or argue with jurors about their verdict.

**IT IS SO ORDERED.**

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**JUDGE EUGENE A. LUCCI**

(10/28/2003)

c: Assistant Prosecuting Attorney  
Attorney for Defendant