

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

THE STATE OF OHIO)	CASE NO. <u> CR000 </u>
)	
Plaintiff)	JUDGE EUGENE A. LUCCI
)	
vs.)	<u>ORDER OF PROCEDURE (CRIMINAL)</u>
)	
DEFENDANT)	
)	
Defendant)	(Revised 01/01/2022)

{¶1} To make the most economical and efficient use of the court’s time during the pendency of the case and trial, create a culture of collegiality and professionalism by being explicit about the court’s expectations, and speed the case to conclusion, the court makes the following order of procedure binding on the parties. This order of procedure supplements the Local Rules of Court for Lake County, which are also binding on the parties. If this order of procedure conflicts with the Local Rules, then the order of procedure controls.

GENERAL

Indigency

{¶2} 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. In order to enable the court to comply with R.C. 120.33 and the regulations adopted thereunder, appointed counsel’s motion for approval of payment of appointed counsel fees and expenses must be submitted within 30 days of the final disposition of or termination of the case. Failure to submit the motion for approval of payment of appointed counsel fees and expenses within 30 days will result in the waiver of any right to payment for fees and expenses.

Client Present

{¶3} Counsel, without exception, must have his or her client present at all stages of the proceedings. Failure of a defendant to appear may result in revocation of bail and issuance of a bench warrant. If the defendant is incarcerated in the Lake County Adult Detention Facility, the court will arrange for the conveyance to court.

Intervention in Lieu

{¶4} Upon the filing of a motion for intervention in lieu of conviction, pursuant to R.C. 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 the defendant is eligible for intervention in lieu of conviction. Defendant’s counsel shall also file a time waiver, signed by the defendant, that complies with R.C. 2951.041(A)(1).

Pretrials & Offers

{¶5} A pretrial conference will not be scheduled, unless requested by either of the parties or otherwise set by the court. 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

{¶6} 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. A time waiver, signed by the defendant, must accompany any motion to continue filed on behalf of the defendant.

Pleas, Reductions, Dismissals

{¶7} 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

{¶8} In the event the defendant is charged with any violation of R.C. 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. 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. 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

{¶9} Defendant and his or her counsel are obligated to notify the court of any change of address and change of conditions of bond by filing a notice with the clerk of courts.

Positive Substance Tests, Failure to Report

{¶10} 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.

{¶11} 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.

Matters Requiring Extra Time

{¶12} Counsel shall notify the court immediately if an interpreter will be necessary. Counsel should also notify the court, prior to the court's scheduling a change of plea or sentencing hearing, if possible, that the hearing may take significantly longer than 45 minutes for a plea and 30 minutes for sentencing (e.g. because of characteristics of the defendant, witnesses, victims, or experts, or numerosity thereof, or the plea will be to a SB201 qualifying non-life felony of the first or second degree).

Email Addresses

{¶13} In order to facilitate communication between the court and the parties, each attorney and each self-represented party who is admitted to bail must notify the court of his or her email address and telephone numbers immediately upon entering an appearance. Notice of a current or changed email address or telephone number must be given timely to the court by filing the notice with the Lake County Clerk of Courts. All hearing notices will be sent by email.

Attorney Withdrawal

{¶14} If an attorney is required or desires to withdraw as counsel of record for a party, the court usually will grant the request effective upon the appearance of new counsel of record for that party, unless the trial or other court proceeding will be impeded. The attorney must serve his or her client with a copy of the motion to withdraw and document service in the certificate of service. A motion to withdraw is required, even if withdrawal is mandated by the code of professional conduct.

TRIAL PROCEDURES

Motions to Continue

{¶15} No motion to continue a trial date will be granted without a written motion supported by affidavit or appropriate documentation, and shall include the signature of the client. The motion must be accompanied by an order with a blank space for the court to insert the next appropriate court date. The court requires strict adherence to Superintendence Rule 41. The unavailability of a witness, expert or otherwise, will not be grounds to continue the trial date. Counsel shall preserve by written or video deposition, any key or indispensable witnesses, or face the possibility of going forward at trial without the testimony. All date conflicts shall be documented by either copies of the conflicting notice or statement enumerating the case number, jurisdiction, judge, and date of scheduling. In determining priority, all scheduled dates shall relate back to the date the first notice was issued by this court for the trial.

Juror Questionnaires

{¶16} When the court's prospective jurors are summoned, they are provided a lengthy, but easily completed, questionnaire to fill out on-line. To assist counsel as they prepare for jury selection, the court will make the completed juror questionnaires available to them in Excel, a question key and instructions, 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 Video

{¶17} On or before the first day of trial, prior to the commencement of the jurors' service, the court may show them a jury orientation video. The video gives the jurors a lesson in civics, with an emphasis on the court system and juror duties.

Mini-Opening Statements During Voir Dire

{¶18} 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 (i.e., each side's claims and defenses), limiting itself to the basic facts of the case, without becoming argumentative. Each counsel's statement should take no more than a couple of minutes. The purposes of the mini-opening statement are: to allow the prospective jurors to have a better appreciation or understanding of counsel's questions; to minimize the possibility of juror discomfort; and to help jurors to be willing to answer questions that might otherwise be perceived as being too personal or embarrassing to answer publicly. Counsel will give a full opening statement after the jury is empaneled.

Jury Selection Method

{¶19} 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 given numbers and are questioned simultaneously. After questioning by the court and counsel, all challenges are exercised out of the presence of the jurors. First, the court will entertain challenges for cause. Then, in alternating order, counsel will exercise their four peremptory challenges, plus one challenge for each two alternates expected to be seated. If a party "passes" on the exercise of a peremptory challenge, that challenge is waived. After the challenges, the jury consists of the first 13 or more remaining persons (including one or more alternates) in numerical order.

Alternate Selection

{¶20} Immediately prior to the jury retiring to deliberate, the alternate(s) will be selected at random from the panel of jurors seated in the case. The court will use the following procedure to select the alternate: plaintiff's counsel shuffles a set of playing cards corresponding to the number of jurors who have been seated, and defense counsel selects one (or more, depending on the number of alternates seated). The number on the card corresponds to the number of the juror who will serve as the alternate during deliberations (in the order drawn, if more than one alternate is seated). After giving the jury the final charge of jury instructions, the court will not discharge any alternate. Rather, the court will sequester the alternate juror(s) in the courthouse while the jury is deliberating. If one of the regular jurors cannot complete his or her service, the court will put an alternate into the jury room, in the order selected if there is more than one alternate juror, and the jury will then recommence its deliberations anew.

Rules on Voir Dire Questioning

{¶21} The case must not be argued in any way while questioning the jurors. Counsel must not try to indoctrinate jurors. Jurors must not be questioned concerning anticipated instructions or theories of law. This rule does not prevent general questions concerning the validity and philosophy of the standard of proof or the burden of proof. Jurors must not be asked what kind

of verdict they might return. Questions are to be asked collectively of the entire panel whenever possible.

Jury Instructions

{¶22} The court will provide the jury with both preliminary procedural (and substantive, if possible) instructions orally, and final instructions in writing, prior to or contemporaneously with the judge reading the instructions to the jury. Two weeks in advance of trial, the parties must submit, by email to CommonPleasIV@LakeCountyOhio.gov in Word or WordPerfect format, preliminary instructions sufficient to apprise the jury of the relevant legal and factual issues. Final instructions must be submitted to the court at least two days prior to the commencement of final arguments in the same manner. 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 usually will charge the jury before closing arguments. Often, when the court charges the jury before closing arguments, it enhances the jurors' ability to apply the applicable law to the facts, enables the jurors to better evaluate the arguments of counsel, and helps counsel to use the court's instructions during closing argument. 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 the court in its initial final instructions or by counsel during final arguments.

Juror Note Taking

{¶23} Jurors will be permitted to take notes during trial, and will provide them a three-ring binder, paper, and pen. The court will inform the jurors that no juror is required to take notes. The court will also explain that the mere fact that 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 did not take notes. The court will also caution the jurors not to let note-taking divert their attention from what is being said or from what 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 when the jury is discharged. Counsel and the parties and witnesses shall not look at the juror notes or attempt to read them.

Juror Questions

{¶24} Jurors usually will be permitted to submit written questions through the court for witnesses to answer while the witness is still on the stand, after the parties' questioning has concluded. The court will decide whether all witnesses may be questioned by jurors or, with advance notice by the court to the parties, only those witnesses whose testimony is complex or potentially confusing to a jury. Unless otherwise noted by the court, the former is the default procedure. 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 or discuss with other jurors those juror questions that were not asked by the court. After the parties' examinations of the witnesses, the jurors will write down their questions and submit them to the judge through the bailiff. If the question is one that obviously should be

asked – for instance, a question pertaining to clarification of issues raised by a parties' examination – then 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. However, the court usually will ask a juror's question if the court would allow a party to ask that same question. After completion of the juror questions of a witness, trial counsel will then be given an opportunity to ask follow-up questions of the witness on matters raised by the juror questions. The court reserves the right to alter this procedure, and if it does, will provide notice thereof prior to commencement of trial.

Juror Notebooks

{¶25} Prior to opening statements by counsel, the jurors will each receive a three-ring notebook. The notebook will contain blank paper for taking notes and for writing juror questions. 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 secure the notebooks at each day's adjournment, and return them 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 juror for inclusion in their notebooks. If counsel intend to provide copies of admitted exhibits to each juror, the exhibit should be on 8-1/2 by 11 inch, standard 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 will be available to the jurors during deliberations. Counsel should strive to produce exhibits or other demonstratives in electronic form for display on a large screen monitor or as a paper blow-up, to facilitate ease of viewing and comprehension by the jury.

“Plain English”

{¶26} Counsel are urged to use “plain English” during trial and to avoid “legalese” or Latin or French 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,” “voir dire,” or “cause of action,” should be replaced with or explained by more familiar words. In addition, counsel are urged to submit proposed jury instructions in plain English, if possible and appropriate.

Trial Motions and Objections

{¶27} When the jury is present, and counsel wishes to make an oral motion or objection to evidence or to procedure, the motion or objection must not be accompanied by any explanation or reason that the jury can hear. The court may request a one-word explanation of the objection to facilitate the court's ruling. If counsel wishes to explain the basis for the motion or objection, or to argue against it, then counsel must request a sidebar discussion. The court liberally will permit counsel to place objections or opposition to objections, or other matters, on the record and out of the hearing of the jurors at most breaks.

Exhibits

{¶28} At least two working days prior to trial, all documents and exhibits must be marked for identification purposes, together with an index, and must be shared with opposing counsel. A

copy of the index must also be provided to the judge's office prior to trial. The plaintiff must mark exhibits using numbers, and the defendant must mark exhibits using letters, to avoid confusion. Prior to trial, the parties should not copy the court with the actual trial exhibits, especially voluminous or medical records. All exhibits consisting of firearms, bladed instruments, blunt instruments, or any other thing which can be used as a weapon shall be unloaded and secured so that the exhibit(s) cannot readily be rendered capable of being used as a weapon.

Trial Briefs & Proposed Instructions

{¶29} No later than two weeks prior to the trial, the parties must file their trial briefs and any motions in limine. Proposed jury instructions, jury interrogatories, and verdict forms also must be submitted no later than two weeks prior to trial. The jury instructions, interrogatories, and verdict forms must be submitted via e-mail to CommonPleasIV@LakeCountyOhio.gov, in WordPerfect or Word format. Any video depositions must be filed early enough to allow sufficient time, usually two weeks, for proper editing of the video, if editing is desired.

Interim Commentary

{¶30} 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 an expert with lengthy testimony 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 the court may 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 has been presented, or is about to be presented. The purposes of such commentary are: to enhance juror understanding of the evidence, to assist jurors in recalling the evidence, and to allow counsel to clarify, organize, and place evidence in the proper context.

Suggestions for Conducting Deliberations

{¶31} The court will suggest to the jurors how they should conduct their deliberations, and will explain that the jurors may accept or reject the court's suggestions. The suggestions will include: appointing a foreperson; avoiding an early vote; and providing all jurors an opportunity to present opinions and comments, and handling disagreements among jurors. The court will also instruct the jurors regarding: the proper procedure for asking questions about the instructions, the law, or the evidence; the proper procedure for handling exhibits; and the proper procedure for filling out jury interrogatories and verdict forms, including the number of jurors needed to properly reach a verdict.

Post-Verdict Meeting

{¶32} After the jury has been discharged, 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; that 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, and in that regard, shall comply with the code of professional conduct. A violation of this provision shall subject a self-represented party to contempt of court.

IT IS SO ORDERED.



JUDGE EUGENE A. LUCCI

(01/01/2022)

COPIES TO:

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