

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

_____)	CASE NO. 0 CV 00
_____)	
Plaintiff(s))	JUDGE EUGENE A. LUCCI
vs.)	<u>ORDER OF PROCEDURE (CIVIL)</u>
_____)	
_____)	
Defendant(s))	(Revised 07/02/2003)

{1} To make the most economical and efficient use of the court’s time during trial, and to 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.

PRETRIAL PROCEDURES

{2} If a party fails to appear at any pretrial conference or hearing, the court may enter an adverse judgment – including default judgment wherever appropriate – against the party who fails to appear. The court may also impose other sanctions against the party and/or counsel. Local Rule I.E.6. of the Lake County Common Pleas Court, General Division (governing the court’s authority when a party fails to appear) is adopted as part of this order.

{3} If motions and other documents are not filed within the time limits set by this order, they will be deemed untimely and will not be considered. All motions or requests for relief must be accompanied by a proposed order or judgment entry. If a proposed order or judgment entry is not submitted, the court may deny the motion or request for relief.

{4} Requests to file untimely answers or untimely replies to pleadings must be accompanied by a stipulation from opposing counsel or by an affidavit or other evidence showing “excusable neglect.”

{5} Any motion to file an amended pleading must have a copy of the proposed amended pleading attached to it. The original amended pleading may be proffered with the motion and

filed *instanter* when the motion is granted. Alternatively, the proposed order granting the motion must require the amended pleading to be filed within seven days.

{6} Counsel for the proponent must inform the court of special matters, pleadings, motions, etc. (*e.g.* replevin, attachment, T.R.O., protective order). If immediate relief is requested, or if a hearing date falls within the fourteen-day response period of Local Rule III.D.3., counsel must notify this court's assignment commissioner. If pleadings or motions are filed after the pretrial, copies must be presented to this court's assignment commissioner.

{7} Pretrial dates and trial dates will not be affected by the filing of leaves to plead, discovery motions, dispositive motions, or additional pleadings. One thirty-day leave will be permitted for serving and filing the answer or for otherwise defending against the action. Additional leaves may be taken only if the court has approved. All leaves should be accompanied by a proposed order.

{8} Motions for default judgment are set for non-oral hearing, but the motion will not be granted without supporting evidence establishing the default and the amount damages.

{9} The parties must obey Local Rule III.A.1, limiting to ten pages the body or text of any document filed after the relevant pleadings have been filed (*i.e.*, the complaint, cross claim, counterclaim, or third party complaint, and answers or replies to those pleadings). The court will strictly enforce Civil Rule 11.

{10} After the case has been set for pretrial, leave to file a motion for summary judgment usually will not be granted.

{11} The court will not consider any motion to compel discovery unless the movant has complied with Local Rule V.D. of the Lake County Common Pleas Court, General Division.

{12} Counsel must provide a list of proposed witnesses to opposing counsel. The list must be provided on or before the date of the pretrial.

{13} Those communicating with the court by facsimile or electronically (*e.g.*, e-mail) should not assume that the communication reached the court. After sending a facsimile transmission, the court's receipt of the facsimile should be confirmed by contacting the court's staff by telephone. To verify receipt of an E-mail transmission, please include a request for reply in the e-mail.

{14} Attorneys may provide the court's assignment commissioner with their vacation schedules, preferably as far in advance of the vacations as possible, and any scheduling of court appearances will take the vacation schedules into consideration.

{15} 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.

**NOTICE OF HEARING ON MOTIONS FOR
DEFAULT JUDGMENT OR SUMMARY JUDGMENT**

{16} If a claimant files a motion for default judgment under Civil Rule 55, or if a party files a motion for summary judgment under Civil Rule 56, the court fixes the day for non-oral non-appearing hearing on the motion as twenty-one days after the day the motion was filed. Any brief in opposition and any affidavit or other evidentiary material in opposition shall be filed on or before the twenty-first day after the filing of the motion. The motion will be deemed submitted for consideration and ruling on the twenty-second day. No reply brief, reply affidavit, or evidentiary material in reply to the brief in opposition will be considered unless a request for leave to file such brief, affidavit or evidentiary material is filed *instanter* within five days after the filing of the brief, affidavit, or other evidentiary material in opposition to the motion. **This is the only written notice the parties will receive of the day fixed for the hearing.**

EXPERT WITNESSES

{17} In accordance with Civil Rule 16, each counsel shall exchange with all other counsel written reports of medical and expert witnesses who are expected to testify. The party with the burden of proof on a particular issue is required to submit the first expert reports on that issue. Thereafter, the responding party must submit opposing expert reports within four weeks, unless otherwise directed by the court. If good cause is shown, the court may grant the parties additional time within which to submit expert reports.

{18} A party may not call an expert witness to testify unless a written report has been procured from the witness and provided to opposing counsel. It is counsel's responsibility to take reasonable measures, including the procurement of supplemental reports, to insure that each report adequately sets forth the expert's opinion. However, unless good cause is shown, all

supplemental reports must be supplied no later than three weeks prior to the trial. The report of an expert must reflect his or her opinions as to each issue on which the expert will testify. An expert will not be permitted to testify or provide opinions on issues not raised in his or her report.

{19} All experts must submit reports. If a party is unable to obtain a written report from an expert, counsel for the party must demonstrate that a good faith effort was made to obtain the report and must advise the court and opposing counsel of the name and address of the expert, the subject of the expert's expertise, his or her qualifications, and a detailed summary of his or her anticipated testimony. If a good faith effort is not demonstrated, the court retains the power to exclude the expert from testifying. If the expert witness is a treating physician, and a report has not been obtained, the court may examine the produced hospital and/or office records of that physician's treatment and determine whether the records satisfy the requirements of a written report.

{20} If the court finds that good cause exists for the non-production of an expert's report, the court will assess costs of the discovery deposition of the non-complying expert against the party offering the testimony of the expert unless, following a motion, the court determines that ordering payment of the costs would result in manifest injustice. These costs may include the expert's fee, the court reporter's charges, and travel costs.

{21} If the court finds that good cause exists for the non-production of a report from a treating physician, the court will assess costs of the discovery deposition of the physician equally between the plaintiff and the party or parties seeking discovery of the expert. These costs may include the physician's fee, the court reporter's charges, and travel costs.

{22} A party may take a discovery deposition of their opponent's medical or expert witness only after the mutual exchange of reports has occurred (or after the court has determined that good cause exists for non-production of a report). If a party chooses not to hire an expert in opposition to an issue, that party will be permitted to take the discovery deposition of the proponent's expert. However, except where there is good cause shown for doing so, if a party takes the discovery deposition of the proponent's expert prior to the party's submission of a corresponding expert report, the taking of the deposition waives the party's right to call an expert at trial on the issues raised in the proponent's expert's report.

{23} For videotaped depositions, the presentation of each witness shall be limited to one hour per witness for each party. Unless good cause exists, all material in excess of one hour will be excluded. Within this time limit, each party may conduct one direct examination and one re-direct examination, one cross-examination and one re-cross only. Objections shall be brought to the court's attention at least two weeks before trial, and shall be accompanied by a transcript. The transcript shall include a list of objections in a format that will permit the court to rule on the objections quickly. Counsel must make all objections on the record during the original deposition. Objections must include the reasons for objection and citations of any relevant authority. Needless repetitious objections during a videotaped deposition may result in sanctions by the court. Parties will be responsible for editing their respective videotaped depositions to conform them to the court's ruling on the objections, and for the playback of their respective depositions at trial.

PRETRIAL CONFERENCES

{24} Designated trial counsel must appear at all pretrial conferences unless they are in trial elsewhere at the time of the pretrial conference. All attorneys must have their clients, agents, or representatives with complete settlement authority present in person unless specifically excused by the court. The court usually requires any excused person to be available by telephone for the duration of the entire pretrial conference.

{25} Continuance of a pretrial conference may be obtained by calling the court's assignment commissioner at (440) 350-2100.

{26} Dress for pretrial may be respectably casual; the court will not require normal courtroom attire for pretrial conferences.

{27} A case management conference may be scheduled at the request of any party. During the conference, the court will establish priorities and a schedule to guide the case to conclusion.

TRIAL PROCEDURES

{28} No motion to continue a trial date will be granted without the signature of the client, together with supporting affidavits or other appropriate documentation. 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.

Juror Questionnaires

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

{30} 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

{31} 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 seated.

Jury Selection Method

{32} 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, 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 three 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. After the challenges, the jury consists of the first nine remaining persons (including one alternate) in numerical order.

Alternate Selection

{33} Immediately prior to the jury retiring to deliberate, the alternate 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, and defense counsel selects one. The number on the card corresponds to the number of the juror who will serve as the alternate during deliberations. After giving the jury the final charge of jury instructions, the court will not discharge any alternate (as Civil Rule 47 provides). 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.

Rules on Voir Dire Questioning

{34} 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

{35} 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. Two weeks in advance of trial, the parties must submit 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. 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. 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 counsel during final arguments.

Juror Note Taking

{36} Jurors will be permitted to take notes during trial. 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.

Juror Questions

{37} 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

{38} Prior to opening statements by counsel, the jurors will each receive a three-ring notebook. The notebook will contain the preliminary instructions of the court, blank paper for taking notes and for juror questions, 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, secure them, 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, 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.

“Plain English”

{39} 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 “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.

Trial Motions and Objections

{40} 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. If the counsel wish to explain the basis for the motion or objection, or to argue against it, then counsel must request a sidebar discussion.

Exhibits

{41} 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 must also be provided to the judge's office. The plaintiff must mark exhibits using numbers, and the defendant must mark exhibits using letters. Prior to trial, the parties should not copy the court with trial exhibits, especially medical records.

Trial Briefs & Proposed Instructions

{42} No later than two weeks prior to the trial, the parties must file their trial briefs and any motions in limine. Proposed jury instructions and jury interrogatories also must be submitted no later than two weeks prior to trial. The jury instructions and interrogatories must be submitted on a 3-1/2 inch floppy disc or CD-ROM, or via e-mail to CommonPleasIV@lakecountyohio.org, in WordPerfect or Word format, together with a hard copy. Any videotaped depositions must be filed early enough to allow sufficient time for proper editing of the videotape.

Interim Commentary

{43} 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 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

{44} 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; 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 and Surveys

{45} 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 must not criticize or argue with jurors about their verdict. This court is participating in the pilot project of the Ohio Supreme Court's Jury Service Task Force; therefore, before leaving the courthouse, the jurors will complete juror surveys provided by the task force. Counsel must also complete attorney surveys provided by the task force and return them to the court within three days after the conclusion of the trial.

SETTLEMENT

{46} Cases that are settled should be brought to the court's attention immediately by calling (440) 350-2100, or by facsimile to (440) 350-2210, or by e-mail to CommonPleasIV@lakecountyohio.org. The judgment entry of settlement should be submitted to the court by the scheduled trial date and should dispose of all claims, cross claims, counterclaims, etcetera. If the entry cannot be provided by the scheduled trial date, the parties must fax confirmation of the settlement to (440) 350-2210, and must provide the entry as soon as practicable, but within 14 days. If, on the day before trial or the morning of trial, a case is settled or dismissed pursuant to Civil Rule 41(A), and as a result a jury is summoned, the party filing the dismissal must bear the cost of summoning the jury.

ARBITRATION

{47} Any case referred to arbitration should be abbreviated and presented in summary form, as far as practicable, so that the entire proceeding can be completed within two hours. If the parties believe the arbitration will require significantly more than two hours, the court should be notified at the time of referral or as soon as it becomes apparent that the arbitration will require that amount of time.

BANKRUPTCY

{48} If a party files a petition for bankruptcy in the federal court, counsel must file with the Clerk of Courts of Lake County a notice of the filing, indicating the bankruptcy case number and the date when the bankruptcy was filed. If it appears that the case cannot proceed without the party who filed the bankruptcy petition, then the common pleas court case will be stayed pursuant to 11 U.S.C.A. Sec. 362, subject to notification that a motion for relief from stay has been granted. Respective counsel must notify this court when the debtor is discharged, and in the interim, counsel are not absolved of their duty to continue appropriate case preparation.

IT IS SO ORDERED.

JUDGE EUGENE A. LUCCI

Attorney/Plaintiff(s)
Defendant(s)