

September, 2003

**JURY TRIAL PROCEDURES**  
**HONORABLE R. STANTON WETTICK, JR.**

TRIAL SCHEDULE

Trial begins promptly at 9:00 A.M. Testimony is presented from 9:00 A.M. to 10:40 A.M. There is a break from 10:40 A.M. to 11:00 A.M. Testimony is presented from 11:00 A.M. to 12:30 P.M. There is a lunch break from 12:30 P.M. to 1:00 P.M. (Counsel may keep lunch in the refrigerator in my Secretary's Office or may at the 10:40 break request my law clerk to obtain food from the First Floor Snack Bar that will be available for the 12:30 P.M. break.) Trial begins again promptly at 1:00 P.M. and testimony is presented until 2:30 P.M. The jury is dismissed at that time and I have a 2:30 P.M. meeting with counsel.

Unless I tell you otherwise, I try cases on Monday through Thursday. On Fridays, I serve as a Calendar Control Judge.

2:30 P.M. MEETING

At the 2:30 P.M. meeting, I meet with counsel to go over any issues that may arise during the next day of trial. Counsel must be prepared to stay until all matters are resolved. Any issues that may arise during the next day of trial must be raised at this time. From 9:00 A.M. until 2:30 P.M., I will not ask the jury to leave the Courtroom on account of evidentiary or other legal issues.

At the 2:30 P.M. meeting, any party who will be presenting evidence the next day must identify the witnesses who will be called and the evidence that will be presented. Offers of proof should be requested at that time.

### EXHIBITS

By the beginning of trial, counsel shall have prepared an exhibit book containing each exhibit that counsel plans to show to a witness, to introduce through a witness, or to otherwise introduce into evidence. (This does not include the portions of medical records and other voluminous records that will not be specifically referred to.) Copies of the exhibit book shall be given to every other attorney. Two additional copies will be given to me. (One of the two copies will be placed on the witness stand for the witnesses to use.) The inclusion of an exhibit in the exhibit book does not impose any obligation to introduce the exhibit and the failure to do so cannot be commented on by other counsel.

### OBJECTIONS DURING TRIAL

An attorney who raises an objection shall describe the objection in not more than four words within the hearing of the jury. I may rule at that time. If the attorney who disagrees with my ruling believes that I do not understand the issue or if the attorney wishes to place a sufficient explanation on the record to preserve the issue, he or she should approach the bench. This procedure is not intended to discourage attorneys from describing and placing their objections or their disagreements with my rulings on the record. Its sole purpose is to have arguments conducted without the jury hearing them.

### READING PORTIONS OF PLEADINGS, ANSWERS TO INTERROGATORIES, ANSWERS TO DEPOSITIONS, ETC. AS ADMISSIONS

An attorney who wishes to read admissions to a jury must present a list to other counsel that fully describes what will be read not later than the beginning of the 2:30 P.M. meeting on the day before the attorney intends to read these admissions.

#### DEPOSITIONS FOR USE AT TRIAL

A party using depositions at trial must have all objections resolved no later than the 2:30 P.M. meeting on the previous day. The attorney using the deposition shall furnish a copy of the transcript of the deposition to me not later than the time that the deposition is used at trial.

An attorney using a videotaped deposition is responsible for ensuring that the operator has the equipment in place at such time so as not to interfere with the trial schedule.

#### JURY INSTRUCTIONS

Please give me points for charge as soon as possible. If you know prior to trial that complicated legal issues are going to arise, please raise the issues immediately so that other counsel and I may begin to address these issues.

Ordinarily, I do not comment on the evidence in my instructions to the jury. Consequently, I will seldom use proposed instructions that involve a discussion of the evidence.

Where claims and defenses involve matters covered in the Suggested Standard Instructions, it is my practice to use only these Instructions unless counsel convinces me that the case being tried raises unusual issues requiring supplemental or modified instructions.

I usually use the following procedure in reviewing points for charge with counsel. First, before meeting with you, I will have reviewed your proposed points for charge and will have prepared the instructions that I tentatively plan to give to the jury. These instructions will have taken into consideration your proposed points. Second, I will read to you my tentative instructions

and I will ask you if there is anything in these instructions that should be deleted or modified. Third, I will ask you if there are any other Standard Instructions or portions of Standard Instructions that should be included. Fourth, I will go over your proposed points for charge. For points that I have not included in my tentative instructions, the burden is on you to convince me either (1) that these additional matters should be covered because they are outside the scope of any Standard Instruction or (2) that the case raises unusual issues requiring supplemental or modified instructions to matters covered through Standard Instructions.

If you have a proposed instruction that could also be covered in a Standard Instruction to which I have not referred, it is your responsibility to bring that Standard Instruction to my attention. Otherwise, my rejection of your proposed language might result in an unintended rejection of the Standard Instruction that you did not bring to my attention.

PRELIMINARY INSTRUCTIONS GIVEN BY  
TRIAL JUDGE AT THE BEGINNING OF THE TRIAL

In most cases, my opening instructions to the jury will include a preliminary discussion of the law that will govern the case. Usually, counsel will agree as to the matters that should be covered. See Attachment I.<sup>1</sup>

OPENING STATEMENTS

Prior to the pretrial conference, an attorney shall advise other counsel of any exhibits that the attorney will be using in the opening statement. Objections to the use of the exhibits should be immediately brought to my attention. This is not something that can be addressed at the first day of

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<sup>1</sup>Attachments are from *Management of Civil Jury Trials--Handbook for Pennsylvania Trial Judges* (2000) published by Pennsylvania Conference of State Trial Judges.

trial because the trial will begin at 9:00 A.M. Opening statements may not exceed forty-five (45) minutes unless I tell you otherwise.

#### RE-DIRECT EXAMINATION

The purposes of a re-direct examination are to clarify testimony and to seek additional information on matters originally raised in cross-examination. Re-direct examination is not intended to be a vehicle for a witness to cover matters that were previously addressed or to cover any matters that are being raised for the first time. I may request an offer of proof before a re-direct examination will occur.

#### ROLE OF THE TRIAL JUDGE

The trial judge is an active participant throughout the trial because the ultimate responsibility rests with the trial judge to provide the parties with a fair and efficient trial. The trial judge sets ground rules and intervenes to ensure that the case is tried in accordance with these ground rules in order to protect jurors, parties, witnesses, and lawyers. See the Comment to Pa.R.E. No. 611(a) which states that this Rule "places responsibility for the conduct of the trial squarely within the discretion of the trial judge."

Pa.R.E. No. 611(a) provides that the court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment and undue embarrassment. A major complaint of jurors is the time spent on repetitive questioning and on matters that have little to do with the major issues in the case. Consequently, a judge should intervene whenever the questioning seems to be repetitive or is

otherwise not moving the case forward and to prevent the trial from expanding into areas of marginal relevance.

## B. Discussion of Applicable Law

Traditionally, courts have not discussed any legal issues involved in the case in the preliminary jury instructions. The jury is advised that it will receive instructions concerning the law that will govern the case after the conclusion of the testimony and the closings of both parties.

Trial judges are abandoning this practice because in many instances, it is far easier for jurors to determine the significance of evidence that is being offered when they have received instructions concerning the legal questions that the jury will be answering. The writers of this Handbook recommend that in most cases the preliminary jury instructions give some direction to the jury as to the issues that it will be deciding. P.A.R.C.P. No. 223.1(c)(2) provides that the court may charge the jury at any time during the trial.

In certain instances, the instructions will be straight-forward. In an automobile case, you will advise the jury that it may award the damages, if any, that the plaintiff sustained from the automobile accident only if it finds that the defendant was negligent and that the defendant's negligence was a substantial factor in causing the damages that the plaintiff sustained. You will briefly discuss the terms "negligence" and "substantial factor" while advising the jury that you will cover these terms in greater detail at the conclusion of the evidence.

If there is more than one defendant, you will advise the jury that it can find in the plaintiff's favor against any of the defendants whose causal negligence caused the accident and that if it finds that more than one defendant was liable, the jury will determine the percentage of causal negligence attributable to each of the defendants.

The purpose of the opening discussion of the law is to give the jurors enough information to understand what the parties are fighting about. In most instances, you will not be giving a full description of the substantive law. In a complicated case, your instructions may take more than ten to fifteen minutes because you may have to give more information to the jury in order to frame the issues that it is deciding.

There is no requirement that your discussion of the law occur only during your introductory instructions and your instructions following the conclusion of the evidence. There may be instances where you want to discuss the legal issues at the time the evidence is being presented. For example, if there is a statute of limitations issue,

you may wait until just before an attorney begins to present evidence supporting this defense to describe the legal issue to the jury.

It is essential that you discuss with counsel any legal instructions that you will be giving to the jury before you give these instructions. In most instances, all lawyers favor a procedure in which the jury is advised by the judge at the beginning of the trial of the legal issues involved in the case. Otherwise, in many cases counsel must give this information to the jury in their opening statements; however, it does not have the same impact. Usually, counsel will agree upon the preliminary instructions that will be given to the jury concerning the law.

You should give preliminary instructions concerning the law to the jury even if counsel opposes the preliminary instructions on procedural grounds (i.e., objects to the giving of legal instructions prior to the submission of the evidence). However, if counsel objects to the content of your proposed instruction and if there is a reasonable possibility that the objecting attorney may be correct, do not give the instruction at this stage of the case. Unless you know that you are discussing a legal issue that will not go away, tailor your discussion of the law at this preliminary stage so that there will not be any objections.

In cases in which many of the facts are not disputed, it may make sense for you (with the consent of counsel) to advise the jury in your introductory instructions of the facts that are not disputed. This saves time by eliminating the need for the parties to introduce evidence covering facts over which there is no disagreement. For example, if the defendant corporation has admitted that the driver of the truck that was involved in the accident was an employee operating the truck within the scope and course of his employment, you will instruct the jury as follows in your introductory instructions:

As a matter of law, the defendant truck company is responsible for the conduct of the driver because he was working for the truck company at the time of the accident. This means that the plaintiff is entitled to recover against the truck company if you find that the driver was negligent and that this negligence caused the plaintiff's injuries.

HANDBOOK FOR PENNSYLVANIA TRIAL JUDGES

MANAGEMENT OF  
CIVIL JURY TRIALS

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First Edition

## I. MATTERS ARISING BEFORE THE INTRODUCTION OF EVIDENCE

### 1. Initial Trial Management Conference

#### A. Purpose

There are three purposes for the trial judge's initial meeting with counsel to discuss the trial of the case:

First, to the extent that the trial judge is not already familiar with the case, he or she looks to counsel to describe the case, to describe the trial that will occur, to describe any unusual legal issues, and to discuss settlement possibilities.

Second, the trial judge should identify any matters for which rulings must be made prior to the beginning of the trial.

Third, the trial judge should advise the attorneys of his or her practices and procedures.

#### B. Matters to Be Decided Prior to Trial

The following matters need to be decided prior to trial:

- (1) Whether the case will be bifurcated. See *Bifurcation—Same Jury* at pages 11–13 of this Handbook.
- (2) The order in which counsel will proceed and the role of counsel where there are multiple plaintiffs or defendants represented by different counsel. See *Multiple Plaintiffs/Multiple Defendants* at page 13–14 of this Handbook.
- (3) Whether note taking by the jurors will be permitted and, if so, the procedures. See *Note Taking by Jurors* at pages 14–17 of this Handbook.
- (4) Whether there are motions in limine that should be decided before the commencement of the trial. See *Motions in Limine* at pages 18–20 of this Handbook.
- (5) Whether there are *Fryc* motions that should be addressed prior to the commencement of the trial. See *Fryc Motions* at pages 20–24 of this Handbook.
- (6) When this meeting occurs before jury selection, whether there are any issues that must be addressed in connection with the selection of the jury. See *Jury Selection* at pages 27–29 of this Handbook.

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#### C. Practices and Procedures of the Trial Judge

You should also cover the following matters with counsel:

- (1) Discuss the applicable law that you will give at the beginning of the trial. See *Preliminary Instructions Given by*

*Trial Judge at the Beginning of the Trial* at pages 30-32 of this Handbook.

- (2) Identify any issues involving opening statements of trial counsel, including the use of exhibits and other visual aids and any time limitations. See *Opening Statements of Trial Counsel* at pages 32-34 of this Handbook.
- (3) Identify any problems concerning exhibits, including any issues concerning authenticity, simulations, videos, etc. See *Exhibits* at pages 35-37 of this Handbook.
- (4) Describe your procedures and practices concerning the use of depositions, including the manner in which the parties are to identify ahead of time disputes as to the admissibility of deposition testimony. See *Use of Depositions at Trial* at pages 37-40 of this Handbook.
- (5) Describe the procedure that you want counsel to use for making objections. See *Objections Made by Counsel* at pages 40-43 of this Handbook.
- (6) Advise counsel that pursuant to P.A.R.E. No. 611(a) you will be exercising reasonable control over the conduct of the trial so as to protect witnesses and avoid needless consumption of time. See *Introduction—Role of Trial Judge/Obligations to Jurors* at pages I-II of this Handbook and *Control by the Court Over the Questioning of Witnesses* at pages 43-48 of this Handbook.
- (7) Have counsel describe any anticipated points for charge that do not involve standard instructions for the type of case that is being tried. See *Part A of Final Instructions—Points for Charge* at pages 57-58 of this Handbook.

#### D. Trial Schedule

Cover with counsel the schedule that you will follow. There are two parts of a trial schedule:

- (1) The times at which evidence will be presented to the jury.
- (2) The times at which counsel and you will resolve legal and scheduling issues.

The trial judge has an obligation to the jurors to use the time when they are present for the presentation of evidence and to have a full day of testimony. Therefore, as soon as the jury leaves for the day, the trial judge will meet with counsel to discuss the testimony that will be presented the next day. Counsel will identify the witnesses who will testify on the following day, including testimony offered through depositions.

At this end-of-the-day meeting, the trial judge must determine that for the next day there will be a full day of testimony even if this will require taking witnesses out of order. See *Taking Witnesses Out of Order* at page 51 of this Handbook. Make it clear that you never want to send a jury home early because counsel incorrectly assumed that the testimony of the witnesses they arranged to be present would fill a full day.

Also at the initial case management meeting, counsel must be advised that you do not want to be meeting with counsel (either at sidebar or in chambers) to discuss significant legal disputes when the jury is present in the courthouse. Thus, at this end-of-the-day meeting, counsel are expected to identify any legal issues that will arise in connection with the testimony that will be presented the following day. It may take counsel some time to identify these issues, particularly where depositions are involved. See *Use of Depositions at Trial* at pages 37-40 of this Handbook. Consequently, if the attorneys anticipate any problems, they should meet outside the presence of the trial judge to resolve as many issues as possible and to identify the matters that the trial judge must resolve. This meeting, out of the presence of the trial judge, should occur before the attorneys leave the courthouse. Thereafter, if the trial judge is still available, the attorneys will report back to the trial judge if any rulings are needed. Otherwise, they should report back to the trial judge on the next morning at a time set by the trial judge which is earlier than the time the jury is scheduled to return.

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#### E. Written Practices and Procedures Issued by the Trial Judge

Some trial judges cover many of the matters that would otherwise be covered in discussions with counsel through a writing prepared by the trial judge that is furnished to counsel. The following are samples of portions of written Jury Trial Procedures used by members of the Committee which prepared this Handbook:

##### ~~I. JURY TRIAL PROCEDURES OF HONORABLE TRIAL SCHEDULE~~

~~Trial begins promptly at 9:00 A.M. Testimony is presented from 9:00 A.M. to 12:30 P.M. There is a lunch break from 12:30 P.M. to 1:30 P.M. Trial begins again at 1:30 P.M. and testimony is presented until 4:00 P.M. The jury is dismissed at that time and I have a 4:00 P.M. meeting with counsel.~~

<sup>2</sup> We are not necessarily recommending that you adopt the specific jury trial practices of these judges. These are examples of the topics you may wish to include in written jury trial procedures in the event that you choose to use written jury trial procedures.