GUIDELINES FOR THE CONDUCT OF TRIALS
(**For Trials before the Honorable Vaughn R Walker**)

These guidelines are provided to counsel to facilitate the fair and efficient conduct of trials in this court and should be accepted in that spirit.

1. **Pretrial**

Each party's pretrial statement must identify all witnesses the party expects to call and the exhibits intended to be offered. At least 48 hours beforehand, the party should advise all other parties of the order of call and the exhibits to be offered by each witness.

2. **Opening Statements**

An opening statement is simply an objective summary of what counsel expects the evidence to show. No argument or discussion of the law is permissible.

3. **Questioning of Witnesses**

a. Conduct the examination from the lecturn. Ask permission to approach the witness when necessary and return to the lectern as soon a practicable. Treat witnesses with courtesy and respect; do not become familiar.

b. Ask brief, direct and simply stated questions. Cover one point at a time. Leading questions may be used for background or routine matters. It is sometimes helpful to write out the questions in advance but do not read them at trial. Direct examination is not a deposition and should not be conducted like one. After establishing background, go directly to the point of the witness' testimony. Do not put a witness on to "tell a story."

c. Cross-examination similarly should consist of brief, simple and clearly stated questions. Again, it may be helpful to write out questions in advance; but do not read them. Cross-examination should not be a restatement of the direct examination and should not be used for discovery.

d. Only one lawyer for each party may examine any one witness. This includes any objections made during course of trial. In a jury trial, only one lawyer will be permitted to make the opening statement and closing argument unless the court has given prior approval to more than one lawyer doing so.

e. If there are multiple parties on a side, a lawyer for only one party may cover a subject matter; reiteration of the examination, whether direct or cross, will not be permitted.

f. Once a witness has been sworn, no lawyer should discuss the witness' testimony during breaks or recesses until the witness has been excused.

4. **Using Depositions**

a. The deposition of an adverse party may be used for any purpose. It is unnecessary to ask a witness if he "recalls" it or otherwise to lay a foundation. Simply identify the deposition and page and line numbers and read the relevant portion.

Opposing counsel may then immediately ask to read such additional testimony as is necessary to complete the context.

b. The deposition of a witness not a party may be used for impeachment or if the witness has been shown to be unavailable. For impeachment, allow the witness to read to himself the designated portion first, ask simply if he gave that testimony, and then read it. Opposing counsel may immediately read additional testimony necessary to complete the context.

c. A deposition may also be used to refresh a witness' recollection by showing it to him, or, just as any other document, as a basis for relevant questions.

d. In bench trials, do not offer depositions wholesale. Unless all of the testimony is important, copy the relevant pages only, stapled to extracts fom each deposition, and offer each as an exhibit.

e. NOTE: It is the responsibility of counsel anticipating use of a deposition at trial to check in advance of trial that it has been made available to the witness for signature and that the original is delivered to the court on the first day of trial.

5. **Objections**

a. To make an objection, rise, say "objection" and briefly state the legal ground (e.g. "hearsay," "privilege," "irrelevant").

b. Do not make a speech or argument, or summarize evidence, or suggest the answer to the witness.

c. Where an evidentiary problem is anticipated, bring it to the court's attention in advance to avoid interrupting the orderly process of a jury trial.

6. **Exhibits**

a. All exhibits must be marked before the trial starts, using the clerk's standard form of label. Copies must be provided to opposing counsel and the court before trial.

b. When offering an exhibit follow this procedure to the extent applicable (unless foundation has been stipulated):

Request permission to approach the witness;

Show the witness the document and say:

I show you [a letter] premarked Exhibit ___,
dated ___. Can you identify that document?

Identification having been made, make your offer
as follows:

I offer Exhibit ___.

NOTE: In some circumstances additional questions may be necessary to lay the foundation.

c. **It is the responsibility of counsel to see that all exhibits counsel wants included in the record are formally offered and ruled on, and that all of the court's copies of exhibits are in the hands of the clerk**. Take nothing for granted.

7. **Interrogatories and Requests for Admission**

Counsel wishing to place into the record an interrogatory answer or response to request for admission should prepare a copy of the particular interrogatory or request and accompanying response, mark it as an exhibit and offer it.

Pleadings and papers in the court file are not a part of the trial record unless offered as an exhibit and received into evidence.

8. **Use of Prepared Direct Testimony**

In bench trials when the direct testimony of witnesses has previously been submitted in narrative written statement form, the proponent of the witness must have the witness available for cross-examination unless corss-examination has been waived.

The following procedure should be followed:

When the witness is called to the stand, ask the witness to identify the statement, which should be premarked as an exhibit, as his testimony and to state that it is true and correct. Then offer the exhibit.

9. **Conduct of Trial**

a. The court expects counsel and the witnesses to be present and ready to proceed promptly at the appointed hour - normally starting at 8:30 a.m. the first day of trial. A witness on the stand when a recess is taken should be back on the stand when the recess ends.

b. Bench conferences should be minimized. Raise anticipated problems at the start or end of the trial day or during a recess.

c. Have a sufficient number of witnesses available in court to testify so that you will not run out. Running out of witnesses may be taken by the court as resting your case.

d. Trials normally are conducted Mondays through Fridays. Do not assume that the court will recess on any of those days unless prior arrangements have been made with the court.

e. Counsel are expected to cooperate with each other in the scheduling and production of witnesses. Witnesses may be taken out of order where necessary. Every effort should be made to avoid calling a witness twice (as an adverse witness and later as a party's witness).

10. **Jury Trial**

a. When trial is to a jury, counsel should present the case so that the jury can follow it. Witnesses should be instructed to speak clearly and in plain language. When documents play an important part, an overhead projector and screen should be used to display the exhibit while a witness testifies about it.

b. Jury instructions must be submitted at the pretrial conference but may be supplemented during the trial. Only those dealing with the particular issues in the case need be presented. Instructions are to be drafted specifically to take into account the facts and issues of the particular case, and in plain language; do not submit copies from form books. Do not submit argumentative or formula instructions.

c. Do not offer a stipulation in the presence of the jury unless agreement has previously been reached. Preferably such stipulations should

be in writing.

d. In final argument, do not express personal opinions, vouch for your client or ask jurors to place themselves in the position of a party, or to consider possible consequences of the litigation beyond the evidence presented.

e. Normally, the court will instruct the jury before closing argument. Accordingly, there will be no need to explain the law in the closing argument.

11. **General Decorum**

a. A trial is a rational and civilized inquiry to seek a just result. Counsel are expected to conduct themselves with dignity and decorum at all times. Disruptive tactics or appeals to prejudice are not acceptable.

b. Colloquy between counsel on the record is not permitted - all remarks are to be addressed to the court.

c. Vigorous advocacy does not preclude courtesy to opposing counsel and witnesses and respect for the court. Calling witnesses or parties by first names or the court "Judge" or "Sir" on the record is not appropriate.

d. Do not engage in activity at counsel table or move about the courtroom while opposing counsel is arguing or questioning witnesses, or in other ways cause distraction. Neither counsel nor client while at counsel table should indicate approval, disapproval or other reactions to any testimony or argument.

12. **Trial Schedule**

a. Trials are conducted Monday through Friday, 8:30 am until 4:30 pm save and except Tuesday & Thursday afternoon beginning at 2:00 pm due to law and motion matters. Counsel may wish to check with the courtroom deputy for any changes to this schedule.

Rev. 2/2001