

COURT TRIAL PROCEDURES FOR JURY TRIALS

Division III

The purpose of this list on non-exhaustive rules is to allow trials to be conducted efficiently with consideration jurors' time should not be wasted while issues are resolved by the Court and the parties. Since the Criminal Court divisions differ somewhat in what procedures are used in jury trials, please familiarize yourself with the following procedures used in Division III. Counsel must be prompt at all times.

Evidentiary Issues & Pre-Trial Procedures

1. Prior to jury selection, trial counsel is to provide the court with a written list of potential witnesses and a brief written statement of the facts agreed to by both parties. Parties are to notify the court of the approximate length of the trial as required in the Trial Date Certificate.
2. Any known evidentiary issues must be discussed prior to trial. **Any evidentiary issues requiring testimony** (including but not limited to suppress motions or motions made pursuant to T.R.E. 404(a), 404(b), 405, 412, 608(b), 609, or 616, etc.) **must be filed in accordance with the pre-trial order or Trial Date Certificate, but in no event less than 14 days prior to trial.**
3. Lengthy "Jencks" material such as audio and video recordings should be made available to opposing counsel prior to trial (Tenn. R. Crim. P. 26.2). Copies of transcripts, redacted and unredacted, should be made available to the Court for review prior to trial. If the parties cannot agree on redactions, the parties shall supply the Court with one copy of the transcript at issue with the defense's proposed redactions highlighted in one color (i.e., yellow), the State's proposed redactions in another color (i.e., blue), and the agreed upon redactions in a third color (i.e., green). **Any issues must be resolved no less than 10 days prior to trial.** (L.R. 10.03).
4. If counsel intends to use the audio video presenter, inform the Court prior to trial and alert the court officers in order for them to set up the technology. It is the responsibility of counsel to familiarize him/herself with the technology available via the courtroom audio video presenter cart.
5. Subpoenas: Counsel is responsible for providing to the Clerk, a name, valid address, and valid phone number for all witnesses. Do not rely on opposing counsel's request or the indictment.

Incarcerated Witnesses: Counsel requesting subpoenas for incarcerated witnesses are required to: (A) determine the facility where the witness is incarcerated and provide information (e.g., facility name and contact as well as witness TDOC number) to the Clerk for transport to trial; (B) determine the identity of the attorney who is representing or last represented the incarcerated witness and notify counsel of the need for the witness's testimony; and (C) notify the court officers of any issues, including security issues or if the witness is incompatible with other witnesses.

Note: TDOC requires transport notice approximately one week prior to the requested transport date. Plan accordingly. If the incarcerated witness is no longer represented by an attorney, counsel must timely notify the court in order for an attorney to be appointed for the witness, if necessary.

Voir Dire & Jury Procedures

6. If the defendant intends to waive the jury imposing the fine in the event of a conviction, complete the written waiver prior to the voir dire process.
7. During the voir dire process, address your questions only to the jurors seated in the jury box. Once you have addressed the first group in the box, only address the newly seated jurors who replace the excused jurors. You may use your preemptory challenges against any juror until your challenges are exhausted. If numbers are used for jurors instead of names, the Court will advise

of the procedure.

8. Do not repeat questions covered by the court during voir dire. Do not repeat questions previously asked by opposing counsel. Ask only questions that are related to a juror's qualification and *relevant* to the case on trial. Refrain from asking open-ended questions such as "how did you feel when you came today," "what do you think should be done to prevent crime," etc. Do not ask potential jurors the verdict rendered in other cases on which they have served. When possible, direct questions to the entire panel as a group rather than individually. Counsel may not engage in efforts to indoctrinate jurors or argue the case in any way while questioning the jurors.
9. Counsel admitting documentary evidence which he/she wants the jury to read shall provide a sufficient number of copies; a copy should be provided to the court and court reporter as well as for each individual juror. All electronic evidence must be formatted to be playable on the courthouse audiovisual equipment.

During Trial

10. For trial, use the podium next to the jury box. The microphone for the recorder is at that podium; it is essential to speak at the podium for there to be an accurate record. For voir dire, opening statements, and closing arguments, a podium will be placed in front of the jury box.
11. Opening statements should last no longer than 10 minutes per side for misdemeanor cases and 20 minutes per side for felony cases.
12. Counsel is not to refer to any witness or defendant by their first name except in limited circumstances where it has been pre-approved by the Court.
13. Counsel wishing to introduce a diagram or drawing with a witness shall prepare the diagram or drawing prior to trial or at a recess or break prior to the testimony.
14. If you plan to introduce evidence under T.R.E. 404, 405, 608, 609, or 616, obtain permission from the judge beforehand, out of the presence of the jury. Evidence requiring testimony must have been resolved prior to trial as set forth in Rule 2 above.
15. The reasons for objections and responses to objections should be made at the bench and out of the hearing of the jury. One word objections (i.e., "hearsay," "leading") or simple citation to the T.R.E. rule number are acceptable.
16. Bench conferences are limited to brief matters: Objecting counsel must state the objection, opposing counsel provides a response, and the court rules. Only one counsel per side will approach for bench conferences.
17. Closing arguments should last no longer than 15 minutes per side in misdemeanor cases; 30 minutes per side in felony cases. Time may be extended depending on the complexity of the case with permission of the Judge.