

Judge Steven E. Martin and Judge Tom Heekin

A Judge's view from the bench

1. Pre-Trial

- a. We are trying to move the cases as quickly as possible. Our first setting is likely before other judges set their cases.
- b. At the first case management conference we will try to set the matter for trial. Think about how long it will take to get the case ready for trial.
- c. Even if there is a Rule 12 motion, we will still set the matter for trial. Most Rule 12 motions are overruled in whole or in part. Even if granted, I may let the plaintiff amend the pleadings.
- d. Make your discovery requests as soon as possible.
- e. Bring any discovery disputes to my attention as soon as possible. I will take calls during depositions. If it is a simple matter on which you need direction, a phone call with all attorneys on the phone may be enough. Discovery, to some extent, depends on civility. I expect your discussions to be civil.
- f. On more involved matters or where you want to make a record, file a motion. I will set it for a hearing as soon as possible usually within 21 days. While a motion is pending I expect you will continue to work on discovery. The first question I will ask at the hearing will be for the movant to state what remains at issue. On a Motion to Compel, I will go through the disputed requests line by line if needed. The duty to respond to discovery requests is very broad. Admissibility at trial is a much more narrow analysis.
- g. Confidentiality Agreements: These are fine but you cannot reserve unto yourselves what will be filed under seal. By law that is a determination I have to make. A hearing on this issue is required.
- h. In Camera Inspections: If you are in a dispute and the issue is confidentiality or privilege, you can request that I review the documents in camera. After the review, I will make a ruling. I will then put the documents in the record under seal.
- i. Confidentiality Agreements apply only to pre-trial proceedings. Most cases settle so it is unfair to put confidential information in the public record. Trials are another matter. Our trials must be conducted in public and the information revealed in those trials is also public. Sometimes very sensitive material can be kept out of the public record but it is rare.
- j. When you file a motion, make sure you notify my courtroom and get me a hard copy of your motion. This also applies to any responsive pleadings. I work on the weekends and may do it where there is no internet so I need hard copies.
- k. I set all civil jury trials on Monday to increase the odds your case will not be bumped by a criminal case. If you need a continuance, please make the motion as soon as possible.
- l. If you have a jury trial, stop by the Jury Commission office and ask to watch the video we show the jurors. You should know what the jurors have seen before coming to the courtroom.
- m. Motions in Limine are advisory only. You will still need to preserve the issue for a possible appeal at trial.
- n. Presenting E-Discovery to the Court for Review. Be ready with a hard copy. Talk to the Court staff to see what format is preferred in that Courtroom. If you attach a disc to a pleading, try and make sure the disc is searchable for a specific document.

2. Trial

- a. Be prepared, know your case. Have a theme and stick to it.
- b. Have a consistent and easily understandable theory of your case. Rarely, if ever, tell a jury, or most judges for that matter, that your case is complicated. Try and be able to capture the essence of your case in 30 seconds or less.
- c. Exhibits: Use numbers and share them with opposing counsel before trial. The plaintiff goes first and gets to number exhibits. The defense should number exhibits not used by the plaintiff. The exhibits will be in the trial record once under one number. I will not admit plaintiff's exhibit 1 and defendant's exhibit 4 if they are the same thing. It will be plaintiff's 1. Most cases, even with thousands of pages or hundreds of exhibits, come down to 20 or 30 pages. Your presentation should make it as easy as possible for the jurors to see it. Keep in mind that jurors will tell you they cannot hear before they cannot see. Get what you want to show the jurors before them in a way they can see.
- d. Voir Dire: I let the attorneys conduct the voir dire. It is your case and I will let you try it.
- e. In Trial Motions: A lot of attorneys file motions in trial. Some of this is done to surprise the other side. If you are doing so, keep in mind you are also surprising the judge. The odds of a correct decision on your motion, if that in fact favors your position, increases with the time I have to consider it.
- f. Please submit jury instructions in advance. If you are going to deviate from the Ohio Jury Instructions (OJI) be ready with a case from the 1st Appellate District or the Ohio Supreme Court that permits or better yet requires such an instruction. Jury interrogatories and verdict forms are obviously very important. Please submit those as well.
- g. Trial Depositions: Talk to the videographer before you start. People are used to a standard of sound quality usually from TV. Beware of the shuffling of paper. Jurors complain about this. I will rule, before the deposition is played for the jury, on any objections made during the deposition.
- h. Experts: If you are challenging an expert or any witness, that motion should be made before trial. You will be allowed to voir dire the witness and/or submit prior testimony to build your record. Keep in mind most such challenges go to weight given to the testimony and not to the admissibility of the testimony.
- i. Opening Statements and Closing Arguments: I put no time limit on opening statements. There may be a time limit on closing arguments since most attorneys give at least a portion of their closing in opening. In opening statement, try not to oversell your case. The evidence is what the jurors will follow. Closing argument is a chance to tie up the evidence and put your case together for the jurors.
- j. Proffering Exhibits and Evidence: One thing trial attorneys miss is the chance to proffer exhibits and/or evidence that are excluded. For testimony it is a great chance to put something in the record. For exhibits, if I don't admit an exhibit, ask to have it sealed and placed in the record. If you do not proffer, it is not in the record. If it is not in the record, the Court of Appeals cannot review it.
- k. My job is to make the record so a proper decision can be made and review of that decision can be conducted.
- l. Be on Time. If you are going to be late please try and call.
- m. Be courteous with jurors. These are citizens responding to a call of civic duty. They want to do the right thing.

3. General

- a. Be Civil. Assume at some point I will read your emails with opposing counsel so watch what you say. When you come to the Court requesting relief or opposing something, if you have not been professional or have been abusive, it will not help your case.
- b. Do not argue with the Court or opposing counsel in front of the jury. Be civil with witnesses. It is not a good idea to argue with me in front of the jury.
- c. Be yourself. Successful trial lawyers come in all shapes and sizes. Jurors will see through a phony and it will not help your client.
- d. Jurors are now called upon to serve for two weeks. It used to be three weeks. If your case is going to be longer than two weeks, let the Court know so we can notify additional jurors.
- e. Jurors show up for orientation on Monday. It is then that they complete their questionnaires. Those questionnaires will be ready for you between 10 a.m. and 10:30 a.m. on Monday.
- f. Visiting Judges. I do not send civil cases to visiting judges without the consent of all counsel. I may on a criminal case but will allow you to be heard. Not all judges feel this way. We do have a list of visiting judges for the rest of the year.
- g. The Court of Appeals issues its decisions on Wednesday and Friday. The Ohio Supreme Court issues decisions Monday through Friday. Try and find some time to read these cases.
- h. Jurors like things to be made easy for them to understand. Keep this in mind when you are preparing this case.
- i. Technology: Assume that in the Hamilton County Common Pleas Court that we have no technology. Be prepared to bring your own to the Courtroom. What is effective is a large screen that the jury can easily see.
- j. There is no attorney-court staff privilege. If the Judge makes a decision with which you disagree, do not "confide" your disagreement with the court staff.
- k. If you are a new lawyer, go to Court. Get to know the courtroom staff and the employees of the Clerk of Courts. If there is a trial in progress, watch it for a while. See how experienced lawyers handle voir dire, witnesses, etc.
- l. Computers: I will not send a computer you bring back to the jury. I have a computer the County supplied over 10 years ago that has never had a file opened on it.
- m. Go to Court: There is a tendency with e-filing to sit in the office. File things yourself. Get to know the people in the Clerk's office and in the Courtroom. If you hear about a trial in progress, try and watch part of it.
- n. We have 15 general division Common Pleas Judges. 14 Municipal Court Judges. All of this is in addition to Drug Court, Probate Court, Juvenile Court and Domestic Relations Court not to mention Mental Health Court, Veteran's Court, housing docket, and the Commercial Docket. All of these are different and, apart from civility, we do not owe each other that much. We are all separately elected with different ways of doing things. We have wide discretion as to how we manage our dockets. Try and work with us. If a judge is late with a decision, stop by the Courtroom and gently ask when a decision might be coming out. Maybe follow that up with a short letter. It may be your case slipped through the cracks. It is also possible the judge does not know what to do. Be gentle but persistent.
- o. It is a privilege to be able to represent people in Court. People are counting on you to work through a legal system that, to the average citizen, can be an impossible maze. You have the ability to put your client in a position to achieve a fair outcome. It can be a

heavy responsibility on you but it is also a tremendous opportunity. We are all volunteers. No one is forcing us to do this.

4. Criminal Cases
 - a. My job is to get these issues resolved as quickly and fairly as possible.
 - b. I hold both sides to their discovery responsibilities. The biggest problem currently is the police not giving the prosecutor all of the evidence early in the case.
 - c. I schedule most motion hearings before the trial date so the parties know what is at issue and so a transcript can be prepared of any prior testimony.
5. If you want to bring a computer to the courtroom, that is fine. It will not go back to the jury however. The computer that can go back to the jury is the one the County purchased for us years ago. We have never opened a file on it. Bring a disc of what you believe will be evidence. The disc can be modified and can go back to the jury. If you are setting up technology for a trial, try and do it the week before trial to make sure it works. You work hard to get ready for trial, let your tech people have time to prepare as well.
6. For in camera inspections, please give me a hard copy. I frequently go through this material at my home and really do not want this on a disc.
7. Keep your case as simple as possible. Never tell a jury something is complex because some will believe they may not be able to handle that. Get your theme to where you can explain the case to someone who knows nothing about your case in 30 seconds or less.
8. Voir Dire: learn what your judge does and does not permit. Be yourself – the jurors will see right through a phony. We have outgoing personalities and shy people in the bar who are all successful attorneys.
9. I do not permit talking objections. I will give you the chance to place anything you like on the record at the next break in the trial.
10. If a ruling goes against you at trial, take it with grace. The jurors have enormous faith in the judge.
11. Motions for Summary Judgment – Rule 56
 - a. The first question I will ask and am required to ask is “Is the record complete for the purpose of hearing and deciding the motion?” If the answer is no I will then ask what needs to be done to make it complete.
 - b. I usually read the memo in opposition first. If it sets up a question of material fact then that is probably the end of the discussion on the motion.
 - c. Most Motions for Summary Judgment are denied. I follow precedent from The First Appellate District and the Ohio Supreme Court. Other courts in Ohio are not binding on me.
12. Voir Dire
 - a. I let the attorneys set forth a limited set of facts.
 - b. I usually do not permit the use of exhibits in voir dire.
 - c. Be careful in voir dire and in opening that you don’t oversell your case.
 - d. Most jurors will tell you they can’t hear before they tell you they can’t see. Get your exhibits as close to the jurors as possible during the trial.