

Protocol and Practice for Persons Appearing in the Court of Judge Daniel Martin

Welcome to Commercial Court. I hold attorneys to very high standards of professionalism and decorum. Remember, you are not just an advocate for your client – you are also an officer of the Court. Act accordingly.

General rules of practice

Live by the Golden Rule – treat others as you would have them treat you.

Be respectful.

Be professional.

Be prepared.

Be prompt. I will try very hard to start and end on time.

The Court's time is extremely limited. Brevity is not just a virtue, it's a necessity.

When possible, the Court will issue detailed rulings on motions. My general philosophy is that all parties benefit when you know exactly what I am thinking. However, be aware that due to time constraints, rulings in the majority of cases will be of a more summary nature.

Pre-Trial Practice and Management Issues (with acknowledgments to Judge Roger Brodman)

If you have a motion or request that you would like to have addressed immediately, please direct it to my judicial assistant, Irene Hendricks. E-filed documents are not instantly available to the divisions. Requests for expedited consideration should be used sparingly.

As a general rule, discovery and attorney's fees should be proportional to the importance of the issues and the damages involved.

Motions: Make sure the motion (not the memorandum of points and authorities) states exactly what relief you want. If you're doing it right, the Court ought to be able to cut and paste it into a judgment. A good example is: "Plaintiff moves for summary judgment that defendant is liable for \$50,000 plus interest at 5% per annum from January 1, 2000," rather than "Plaintiff moves for summary judgment that defendant is liable for breach of contract" (leaving me to hunt for an amount in the statement of facts).

I rarely take issue with extensions or other time accommodations. But, if the parties agree to extend filing deadlines (particularly on dispositive motions), please let the Division know so we can track the briefs.

Discovery Disputes/Judicial Intervention: I expect counsel to resolve most matters without the need for judicial intervention. Failing that, my preference is to try to resolve disputes informally where possible. Parties who find themselves at impasse (and again, these occasions should be infrequent) may call my judicial assistant to request a telephonic conference. We usually will require a brief (one paragraph) statement of the issue from each side so I can get a sense of the dispute. If we can't talk it through, I most likely will order briefing.

A letter to the opposing attorney threatening to file a discovery motion if he or she doesn't respond does not, without more, satisfy the personal consultation requirement of Rule 37(a)(1) (and, by incorporation, Rule 7.1(h)).

Injunctive Relief: I rarely grant TROs without notice. For orders to show cause, I generally treat the first hearing date as a short return hearing where I can determine the parties' positions, identify common ground, and set an appropriate hearing to resolve the remaining issues.

Trial Practice and Protocol

Trial Schedule: My trial days are typically Monday through Thursday, from 9:30 a.m. to 4:30 p.m. Lunch is usually 90 minutes, from noon to 1:30. Friday is law and motion day.

Jury Selection: I use a struck method of jury selection, meaning I voir dire the entire panel and then allow the attorneys to ask follow-up questions. Counsel are required to submit proposed questions in advance. If I have issues with them, I will raise those at the final trial management conference.

Make certain that you have submitted a stipulated short summary of the case in the joint pretrial statement so that I can read it to the jury at the beginning of jury selection.

I generally do not grant requests to use jury questionnaires.

Alternates: I tend to seat nine jurors (ten in longer trials), and encourage lawyers to allow the alternate juror(s) to deliberate.

Trial Practice and Procedure

I have an electronic courtroom which includes an Elmo, numerous screens, and ports allowing the use of laptop computers. I like technology, and encourage parties to take advantage of the Court's resources. If you have any doubt about your ability to get your computer to work with a minimum of delay, make an appointment to play with our system before you have to do it in front of a jury.

Time limitations: We'll have a discussion about time limitations before the trial starts. I feel fairly strongly that once we have told a jury the trial schedule, we should stick to it. In most cases, I will keep track of time and keep the parties posted as to how they're doing.

Exhibits: The minute entry from the trial setting conference will set a deadline for delivery of exhibits to my clerk. I'm a stickler about this – late exhibits may be subject to exclusion. Stipulations to exhibits are always appreciated. I like having a set of exhibits at the bench. It can be very difficult to follow the evidence if I can't see it.

Courtroom Etiquette

Counsel should feel free to sit or stand at counsel's table, or use the podium. I want the attorneys (and the parties) to be as comfortable as possible. One exception: I am very strict about approaching witnesses – always ask permission before doing so.

Objections should be short, such as Objection, relevance, or Objection, hearsay. Speaking objections are strongly discouraged.