Criminal Practice and Trial Procedure (parts I-O)

I. WITNESS LISTS

By the deadline established in the Scheduling Order, and to enable the Court to better estimate the length of trial, each party shall submit directly to Judge Behm's chambers a list of witnesses, by name and agency (if appropriate), whom it reasonably anticipates it will call to testify at trial. This list shall note the approximate amount of time needed for the examination of each witness. The list must be served on opposing counsel; proof of service must be attached. This list and proof of service are not to be electronically filed or otherwise submitted to the Clerk's Office.

J. JURY INSTRUCTIONS

The parties must meet and confer prior to trial to discuss jury instructions. By the deadline established in the Scheduling Order, the parties must submit directly to Judge Behm's chambers a single set of proposed, stipulated jury instructions. Counsel are responsible for submitting all instructions related to their specific claims or defenses, and special instructions relating to evidence.

All such instructions are to be submitted in typewritten form, double spaced, and on a USB drive compatible with Microsoft Word version 12.0; each instruction shall contain references to authority (e.g., "Devitt and Blackmar, Section 11.08"); and each instruction shall be on a separate page. In addition, each party must submit separately to Judge Behm's chambers all additional proposed instructions to which any other party objects. These should be submitted in the same form as proposed stipulated instructions. The parties must make a concerted, good faith effort to narrow the areas of dispute and to discuss each instruction with a view to reaching agreement as to an acceptable form. Disputes between the government and defense counsel regarding proposed jury instructions are initially settled at a hearing on the record.

The Court has its own standard introductory and concluding instructions, and counsel are directed to concentrate on elements of the offense, the defense(s), etc. In criminal cases, the Court will usually instruct the jury using the Sixth Circuit's pattern jury instructions when available. The jury is charged before final argument.

K. JURY SELECTION

The Court uses a "struck jury" system for jury selection. In most cases, the government is allowed 6 peremptory challenges and the defendant is allowed 10 peremptory challenges. The Court will select twelve regular and two alternate jurors. Alternate jurors are not told they are alternates; they are dismissed by random draw at the conclusion of the proofs.

The Court will conduct general *voir dire*, but counsel may conduct their own inquiries of prospective jurors. Contentious or questionable voir dire questions must be submitted to the Court in writing at least three days before the start of *voir dire*.

L. NOTE TAKING AND JUROR INVOLVEMENT

Jurors will be permitted to take notes during trial. The Court specifically instructs the jury in advance on this issue. Jurors who choose to take notes will be instructed that such notes are not themselves evidence but are merely aids to the juror's memory of the evidence presented at trial. The Court will consider, on a case-by-case basis, whether jurors will be permitted to

question witnesses, either directly or through submission of questions to be asked by the Court.

M. **MULTI-DEFENDANT OR MEGA TRIALS**

The Court does not have a general procedure for handling multi-defendant criminal "mega trials." For multi-defendant criminal trials, the Court encourages attorneys to work out procedure for peremptory challenges among themselves. In such trials, if counsel cannot agree among themselves, the Court will allocate peremptory challenges depending on the circumstances of the case.

N. **CONTINUANCES**

Continuances of trial dates or continuances during trial will not be granted because of unavailability of witnesses. Please notify the Court if court intervention is necessary to secure witness attendance. Otherwise, witnesses will be expected to be available when called.

O. **TRIAL BRIEFS ENCOURAGED**

The Court encourages, but does not require, the submission of a criminal trial brief. If a trial brief is submitted, it should, among other things, inform the Court about the party's proposed resolution of anticipated evidence problems.