



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: OPIOID LITIGATION

Civil Action No. 21-C-9000 DISTRIBUTOR

THIS DOCUMENT APPLIES TO ALL DISTRIBUTOR CASES
ORDER ESTABLISHING A TIMEKEEPING PROTOCOL FOR TRIAL

Pending before the Court is the parties' *Joint Motion for Entry of an Order Establishing a Timekeeping Protocol of Trial* (Transaction ID 67688842). Finding good cause shown, the Court **GRANTS** the parties' motion. To coordinate the allotment of time and procedure for timekeeping at trial, the Court **ORDERS** the schedule and procedure set forth below.

The Court has directed that Plaintiffs and Defendants collectively have 26 trial days (July 5, 2022, through August 9, 2022,) to try the Distributor cases, inclusive of opening statements and closing arguments. Based on the Court's practice, the parties understand that a court day will proceed from 8:30 AM to 4:30 PM with an hour-long lunch break and two 30-minute breaks — one in the morning and another in the afternoon. The Court has further directed that "[e]ach side shall have 72 hours to present their case, not including one day in total for opening statements, and one day in total for closing arguments." Pursuant to these directives, the parties have reached agreement on the following protocol to keep time during trial:

1. Purely logistical matters addressed at breaks or at the beginning or end of the day shall not be counted against any side. Such time will equally reduce both the Plaintiffs' and the Defendants' allotted time as set forth above.
2. The following aspects of trial will count against the speaking side's time allotment, with time starting when the Court allows the speaking party to proceed:
 - a. Live witness examinations;
 - b. Deposition designations, consistent with the procedures set forth in paragraphs 5, 6 & 7 below;

- c. Arguments on trial motions; and
 - d. Objections related to evidentiary matters.
3. For live proceedings, each side shall maintain their own calculations of the time spent by either side. The calculation will start when the examining attorney is allowed to proceed, with time counting against the examining side. In the event of an objection, time spent arguing the objection shall count against the speaker (*i.e.*, time spent arguing in favor of the objection shall count against the side making the objection, and time spent arguing against the objection shall count against the side opposing the objection). The calculation should not include periods when the Court is speaking, and the Court's time shall not count against any side. Each side shall use its best efforts and maintain its calculations in good faith in accordance with the procedures set forth in this paragraph.
4. At 7 PM of each trial day, the parties shall simultaneously exchange their calculations of (a) the time spent by Plaintiffs ("Plaintiffs' Time"), and (b) the time spent by Defendants ("Defendants' Time"). If the Plaintiffs' calculations and Defendants' calculations within a category are within 15 minutes of each other, the parties shall average their respective calculations, and that average shall constitute the official tally for that day. If the Plaintiffs' calculations and Defendants' calculations within a category are more than 15 minutes apart, the parties shall attempt to reach agreement, including by referencing the timestamps on the transcript (if any exist), by referencing the recording of court proceedings (if available), or by requesting that an official transcript be prepared, if necessary. If agreement cannot be reached, the parties will seek the Court's guidance.

5. For video deposition testimony, the proffering party shall use deposition designation software (*e.g.*, OnCue) to identify “run times” for the proffering party’s designations and the opposing party’s designations. The run time for the proffering party’s designations shall count against the proffering party. The run time for the opposing party’s designations (including all completeness and counter-designations) shall count against the opposing party. At its election, the opposing party may use its own deposition designation software to check the proffering party’s “run times.” If the opposing party’s estimates differ from the proffering party’s estimates by more than 5 minutes, the opposing party may request a meet-and-confer.
6. For deposition testimony by witnesses whose testimony was not videotaped, but is instead read out loud in Court, the procedures governing witness testimony laid out in Paragraph 3 will govern presentation of that deposition testimony in court. Designations will be counted against the party whose attorney is conducting the read-in questioning at that time.
7. If any prior testimony is entered into the trial record without being read or played, the “run time” shall be calculated by the proffering party and the opposing party and counted against each parties’ time in the same manner described in Paragraph 5, above.
8. Each morning, the parties shall jointly submit to the Court a chart that lists (a) the time spent by Plaintiffs and Defendants each day, (b) the total time spent by Plaintiffs and Defendants to date, and (c) the total time that Plaintiffs and Defendants each have remaining.

9. The parties may allocate time to opening statements and closing arguments as they see fit, except that the parties' time for opening statements will not exceed 3 hours for Plaintiffs and 1 hour for each Defendant and the parties' time for closing arguments will not exceed 3 hours for Plaintiffs (with no more than 45 minutes reserved for rebuttal) and 1 hour for each Defendant.

A copy of this Order has this day been electronically served on all counsel of record via File & Serve*Xpress*.

It is so **ORDERED**.

ENTERED: June 6, 2022.

/s/ Alan D. Moats
Lead Presiding Judge
Opioid Litigation

/s/ Derek C. Swope
Presiding Judge
Opioid Litigation