

*This information is provided to assist you in your self-represented court appearance. This does not contain any legal advice. This handout cannot cover everything you need to know on conducting a trial, but is aimed at giving you a clear understanding of the process and expectations/requirements. Even if not covered by this handout, you are expected to follow all rules and expectations just like the lawyers who appear before the Court.*

## **Self-Represented Defendant Guidelines**

### **Rules Relevant to the Trial**

You should be familiar with, and are expected to follow, the following rules during the trial:

- The Minnesota Rules of Civil Procedure
- The Minnesota Rules of General Practice
- The Minnesota Rules of Evidence

Of note, you are expected to know the process by which evidence is introduced at trial. The Court cannot help you to lay proper foundation or overcome specific objections at trial. The Court also cannot articulate legal reasons for any objection you raise. You are expected to provide sound legal reasoning to support any objection you raise.

### **If you call yourself as a witness:**

You have an absolute right to not answer any questions that might incriminate you in a criminal matter and you may assert your 5<sup>th</sup> Amendment right if such a question is asked. If you choose to testify on your own behalf, it is important you understand the difference between testifying and arguing. When you “testify,” you give factual evidence as a witness. You may provide your version of events. However, you may not present argument when testifying. An “argument” is an attempt to persuade. This includes specifically addressing another witness’s testimony.

### **Trial:**

#### Opening Statements

The Parties can make an “opening statement.” The Plaintiff always goes first, followed by the Defendant. This is a time for the Parties to both introduce themselves and to provide the Referee with an overview of what they believe the evidence will show. This is not the time to introduce evidence. This is not the time to testify. This is not the time to make legal arguments. It is simply to introduce yourself to the judge and to explain the big picture of your case to the judge.

## Plaintiff's Case-in-Chief

The Plaintiff presents its case first. The Plaintiff will call witnesses, who will be sworn in and questioned. The Party calling a witness is the first to question the witness. If you believe the Plaintiff is asking a legally inappropriate question, you may “object.” An objection is not proper simply because you do not like the answer or you believe the witness is wrong – that is the purpose of cross-examination (described in just a moment). A list of common objections (put together by Drake University):

### **COMMON TRIAL OBJECTIONS**

#### **B. OPENING STATEMENT**

1. Arguing the law
2. Discussing inadmissible facts
3. Misstatements of the law
4. Expressing personal belief on the merits

#### **C. WITNESS QUALIFICATIONS**

1. Competency to Testify (prior to swearing in witness)
2. Privilege
3. Non-qualified expert

#### **D. OBJECTIONS DURING DIRECT EXAMINATION**

1. Leading
2. Not relevant
3. Hearsay
4. Calls for Speculation
5. Calls for a narrative answer
6. Asked and answered
7. Cumulative
8. Prejudicial effect outweighs probative value
9. Assumes facts not in evidence
10. Lack of personal knowledge (no foundation)
11. Misstatement of the record (misquoting the witness)
12. No proper foundation (specify missing elements)

#### **E. OBJECTIONS DURING CROSS-EXAMINATION**

1. Beyond the scope of direct
2. Hearsay
3. Asked and answered
4. Assumes facts not in evidence
5. Compound question
6. Misstatement of the record (misquoting the witness)
7. Argumentative
8. Improper impeachment
9. No good faith basis for the question

#### **F. DOCUMENTS**

1. Identification
2. Authentication
3. Relevancy
4. Best Evidence
5. Hearsay
6. Privilege

#### **G. CLOSING ARGUMENT**

1. Improper argument – facts not in evidence
2. Improper argument - Misstatement of the facts
3. Improper argument - Misstatement of the law
4. Stating personal belief in the merits of the case
5. Asking jurors to place themselves in the party's position
6. Deals with improper subject matter – settlement discussions, insurance, right to remain silent, etc.
7. Unduly prejudicial/inflammatory

When the Plaintiff completes its “direct examination” of a witness, the Defendant is permitted to “cross-examine” the witness. Unlike on direct examination, Defendant is allowed to ask leading questions on cross-examination of a witness, but Defendant must observe the rules regarding questioning of witnesses. Questioning of a witness is not the time to argue your case; rather it is the time to bring up important facts you want the judge to know. The Plaintiff is allowed to question the witness, called “re-direct,” on issues raised during your cross-

examination. Defendant will then be allowed to “re-cross” the witness on issues raised by the Plaintiff’s re-direct. Neither the Plaintiff nor the Defendant should ask questions that have already been asked and answered.

The Plaintiff will continue to call witnesses, following the same process detailed above for each witness, until they “rest” (meaning they have no other evidence to introduce).

The Judge is allowed to limit the number of witnesses if the witnesses will present “cumulative evidence” (meaning the same information as other witnesses).

Once the Plaintiff rests, it is the Defendant’s opportunity to call witnesses.

#### Defendant’s Case-in-Chief

Defendants have no duty to call witnesses, introduce evidence, testify, or even ask questions of the witnesses called by the Plaintiff. If, however, Defendants want to call witnesses or testify, they would do so after the Plaintiff rests their case.

The Defendant’s case-in-chief proceeds in the same way as the Plaintiff’s case. The Defendant will call witnesses individually. The Defendant will question the witnesses during direct examination. The Plaintiff will be able to cross-examine those witnesses by asking them questions. The Defendant may then re-direct and the Plaintiff can re-cross.

When Defendant has called all of their witnesses, Defendant should indicate that the Defendant “rests.” This means Defendant is done and will present no more information. The Plaintiff can then ask to present any rebuttal evidence it may have.

#### Closing Argument:

After both sides rest, each side may make a closing argument to the judge. The Plaintiff always goes first, followed by the Defendant, with the Plaintiff then able to present a short rebuttal argument since the Plaintiff has the burden of proof. At this point, you can argue your case and make legal argument. You can reference and use exhibits that were introduced during the trial. The Plaintiff will be allowed a brief rebuttal argument after the Defendant completes its argument.