

INDIVIDUAL TRIAL RULES AND PROCEDURES
Jessica G. L. Clarke, United States District Judge

Chambers

United States District Court
Southern District of New York
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Courtroom

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1. Pretrial Procedures and Related Filings

For civil jury trials, refer to Sections 1(a)-(d) and 1(f). For civil non-jury trials, refer to Sections 1(a)-(b) and 1(e)-(f).

For criminal jury trials, refer to Sections 1(b)-(d) and 1(f). For criminal non-jury trials, refer to Sections 1(b) and 1(e)-(f). In criminal cases, the Court will enter an order scheduling a final pretrial conference and setting deadlines for pretrial submissions.

The parties shall provide a courtesy copy of all pretrial submissions to the Court.

- a. Joint Pretrial Order – Civil Cases Only.** Unless otherwise ordered by the Court, no later than 30 days after the date for the completion of all discovery or, in the event a dispositive motion is filed, no later than 30 days after the Court’s ruling on such motion, the parties shall file on ECF, as a “Joint Pretrial Statement,” a proposed joint pretrial order, which shall include the following:
 - i.** The full caption of the action;
 - ii.** The names, law firms, addresses, telephone numbers and email addresses of trial counsel;
 - iii.** A brief statement (by each party to the extent their positions differ) of the factual and legal basis for subject matter jurisdiction, including citations to statutes and relevant facts as to citizenship and jurisdictional amount;
 - iv.** A brief summary (by each party to the extent their positions differ) of the claims and defenses that remain to be tried, including citations to any relevant statute, and a brief summary of claims and defenses previously asserted that are not to be tried. The summaries shall not recite any evidentiary matter and shall not be argumentative;
 - v.** The number of trial days requested and whether the case is to be tried with or without a jury, without identifying which parties do or do not seek a jury trial;

- vi. A joint statement summarizing the nature of the case, that may be read to potential jurors during jury selection;
- vii. A list of people, places and institutions that are likely to be mentioned during the course of the trial, to be read to potential jurors during jury selection;
- viii. A statement of whether all parties have consented to trial by a magistrate judge, without identifying which parties do or do not consent;
- ix. Any stipulations or agreed statements of fact or law to which all parties consent. In a jury case, the parties should memorialize any such stipulations or agreed statements of fact or law in a standalone document that can be marked and admitted at trial;
- x. A list of all trial witnesses, indicating whether such witnesses will testify in person or by deposition, whether such witnesses will require an interpreter (and, if so, which party will pay the costs for the interpreter), a brief summary of the substance of each witness's testimony and the expected duration of direct and cross-examination for each witness. Absent leave of Court, a witness listed by both sides shall testify only once (with the defendant permitted to go beyond the scope of the direct on cross-examination) and counsel should confer with respect to scheduling;
- xi. A designation by each party of deposition testimony to be offered in its case-in-chief and any counter-designations and objections by any other party. The parties need not designate deposition testimony to be used for impeachment purposes only. In addition to a designation list, the parties shall provide the complete deposition transcripts with color-coded highlighting indicating the portions designated by each party and the objections listed in the margins. Any objections not made are waived;
- xii. A list by each party of exhibits to be offered in its case-in-chief, in accordance with Section 1(f)(i);
- xiii. A statement of each element of damages and, except for intangible damages (*e.g.*, pain and suffering, mental anguish or loss of consortium), the manner and method used to calculate any claimed damages and a breakdown of the elements of such claimed damages;
- xiv. Other requested relief; and
- xv. A statement of whether the parties consent to less than a unanimous verdict.

b. *In Limine* Motions.

Parties shall also email to the Court (ClarkeNYSDChambers@nysd.uscourts.gov) and opposing counsel (but not file on ECF):

ii. Affidavits. Copies of affidavits constituting the direct testimony of each trial witness, except for the direct testimony of an adverse party, a person whose attendance is compelled by subpoena or a person for whom the Court has agreed to hear direct testimony live at the trial. The affidavit should be treated as a direct substitute for the witness's live testimony; that is, counsel should be attentive to the Rules of Evidence (*e.g.*, hearsay and the like) and authenticate any exhibits that will be offered through that witness's testimony. Three business days after submission of such affidavits, counsel for each party shall submit a list of all affiants whom counsel intends to cross-examine at the trial. Only those witnesses who will be cross-examined need to appear at trial. The original signed affidavits should be brought to trial to be marked as exhibits, at which time any objections to particular paragraphs of an affidavit can be made.

iii. Deposition Excerpts. All deposition excerpts that will be offered as substantive evidence, as well as a one-page synopsis of those excerpts for each deposition. Each synopsis shall include page and line citations to the pertinent pages of the deposition transcripts.

f. Trial Exhibits and Demonstrative Aids. Unless otherwise ordered by the Court, at the time the Joint Pretrial Statement is filed, the parties shall also email to the Court (ClarkeNYSDChambers@nysd.uscourts.gov) and opposing counsel:

i. A Microsoft Excel document listing all exhibits sought to be admitted. The list shall contain six columns labeled as follows: (1) "Exhibit Number"; (2) "Description" (of the exhibit); (3) "Authenticity Objection"; (4) "Admissibility Objection"; (5) "Date Identified"; and (6) "Date Admitted." The parties shall complete the first four columns, but leave the fifth and sixth columns blank, to be filled in by the Court during trial. If a party objects to an exhibit, the objection should be noted in the third and/or fourth columns by indicating the Federal Rule of Evidence that is the basis for the objection and any other authority. Any objections not made shall be deemed waived and any exhibits not objected to shall be deemed admissible at trial. If any party believes that the Court should rule on such an objection in advance of trial, that party should include a notation to that effect (*e.g.*, "Advance Ruling Requested"). In general, the Court will rule on relevance and authenticity objections at the time of trial.

Parties shall also email to the Court (ClarkeNYSDChambers@nysd.uscourts.gov) and opposing counsel (but not file on ECF):

ii. An electronic copy of each exhibit sought to be admitted, and if a criminal case, Section 3500 material, with each filename corresponding to the relevant exhibit number (*e.g.*, "GX-1," "PX-1," "DX-1," etc.). Parties are

encouraged to use electronic copies of exhibits as much as possible. If submission of electronic copies would be an undue burden on a party, the party may seek leave of Court (by letter-motion filed on ECF) to submit prospective documentary exhibits in hard copy.

- iii. Where a hard copy exhibit is used, sufficient copies should be made, as appropriate, for witnesses, opposing counsel, jurors, the court reporter, any interpreters and the Court. If counsel intends to publish hard copies of documentary exhibits to the jury rather than using the Court's audio-visual system, a separate copy should be provided for each juror to avoid unnecessary delay.
- iv. Court time may not be used for marking exhibits. Exhibits shall be pre-marked, and if possible, pre-admitted in advance of the court session.

If the files are too large for submission by email, the parties shall email ClarkeNYSChambers@nysd.uscourts.gov requesting a link to upload these materials.

Demonstratives that will not be introduced into evidence need not be listed, but they must be shared with the Court and opposing counsel. Prior to the final pretrial conference, the parties shall confer in an effort to resolve any objections to the demonstrative aids. Any objections that are not resolved shall be identified in a letter filed at least two business days in advance of the final pretrial conference.

2. Trial Procedures

The following rules and procedures apply to jury trials in both civil and criminal cases.

a. Efficiency and Time Management.

- i. **Schedule.** Unless otherwise decided by the Court, trials will generally be conducted Monday through Thursday from 10:00 a.m. to 4:30 p.m. with breaks throughout the day.

When the jury is not seated, the parties may raise issues for rulings that may arise during the trial. In jury trials, in order to keep distractions during the trial to a minimum, counsel shall be present by 9:00 a.m. and available after 4:30 p.m. to discuss scheduling and any disputed matters that may arise.

- ii. **Time Limits.** In most civil cases, the Court will impose time limits on both sides at the final prehearing or pretrial conference. The parties should be prepared to address the issue of time limits at the final prehearing or pretrial conference.

- iii. **Sidebars.** Sidebars are strongly disfavored and will not be permitted if abused. Counsel are expected to anticipate any issues that might require argument and to raise those issues with the Court in advance of the time that the jury will be hearing the evidence, ideally in advance of the final pretrial conference.
- iv. **Conferring with opposing party.** A party shall first raise any issue with the opposing party before raising the issue with the Court, including anticipated evidentiary and legal issues that require argument.
- v. **Witness availability.** The parties are expected to present witnesses throughout the entire trial day. Unless good cause is shown, if a party does not have another witness available on a given day, that party will be deemed to have rested. Counsel shall notify the Court and other counsel in writing, at the earliest possible time, of any particular scheduling problems involving witnesses so that other arrangements can be made to fill the trial day.

b. Jury Selection

- i. The Court will conduct a *voir dire* of the number of panelists computed by combining the number of jurors to be selected and the number of peremptory challenges. After the *voir dire*, there will be a determination as to whether there are any challenges for cause. Each panelist removed for cause will be replaced, so that a full panel is present before any peremptory challenges are exercised.
- ii. Next, peremptory challenges are exercised against the panelists who compose the potential members of the regular jury. Peremptory challenges will be exercised simultaneously, with the parties each submitting a written list of panelists that they wish to excuse. Any overlap among those lists will not result in parties receiving additional challenges. The jurors will be selected starting with the unchallenged juror with the lowest number.
- iii. Finally, peremptory challenges are exercised against the panelists who comprise the potential alternate jurors. Again, peremptory challenges will be exercised simultaneously. In the event of an overlap in challenges, the jurors will be selected from among those with the lowest numbers.

c. Promoting Juror Understanding.

- i. **Jury Instructions.** All instructions to the jury will be in plain language that is as understandable as possible to non-lawyers.
 - 1. **Preliminary Instructions.** The Court will give preliminary instructions on the law at the beginning of the trial, before the parties' opening statements. The preliminary instructions will

explain the jury's role, trial procedures, the nature of evidence and its evaluation, basic relevant legal principles, including definitions of unfamiliar legal terms, the parties' claims and defenses, what the parties need to prove in order to sustain their claims and defenses, burden of proof and any pertinent instructions.

Preliminary instructions will facilitate better decision-making by jurors as well as a greater understanding of their duty in the decision-making process. Jurors' ability to recall relevant evidence and apply the law to the facts will improve if they understand in advance the context in which they will be required to evaluate or analyze the evidence presented during the trial.

2. **Supplemental Instructions.** The Court will give supplemental instructions during the course of the trial, as necessary, to assist the jury in understanding the facts and law.
3. **Final Instructions.** The Court will give final instructions on the law at the end of the presentation of evidence, before the parties' closing statements. The Court will communicate clearly to the jury that the instructions given at the end of the trial will control deliberations. Each juror will be provided with a written copy of the final instructions for use while the jury is being instructed and during deliberations.

ii. Other Tools to Promote Juror Understanding.

1. **Juror Note Taking.** Jurors will be permitted but not required to take notes during the trial. Jurors will be instructed that the notes are to aid their memory of the evidence and are not to substitute for their recollection of the evidence in the case.¹ The Court will provide each juror with a notebook or paper and pens. The notes will be collected and destroyed at the conclusion of the trial.
2. **Other.** The Court is open to other techniques to enhance juror comprehension.

iii. Juror Deliberations.

1. **Exhibits.** The Court ordinarily will provide all exhibits admitted into evidence to the jurors for use in the jury room during

¹ Sample jury instruction: "If you took notes during the course of the trial, you shall not show your notes to or discuss your notes with any other juror during your deliberations. Any notes you have taken are to be used solely to assist you. The fact that a particular juror has taken notes entitles that juror's views to no greater weight than those of any other juror. Finally, your notes are not to substitute for your recollection of the evidence in the case. If you have any doubt as to any testimony, you may request that the testimony be read back to you as I mentioned earlier."

deliberations. Immediately before the jury deliberates, the parties shall provide the court with digital copies of the admitted exhibits as set forth in Section 1(f) above.

2. **Juror questions.** When jurors submit a question during deliberations, the Court, in consultation with the parties, will supply a prompt, complete and responsive answer or will explain to the jurors why it cannot do so.
3. **Impasse.** The Court will endeavor to assist a jury that advises the Court that it has reached an impasse in its deliberations, including directing that further proceedings occur if appropriate.

3. Conduct During a Trial.

- a. Counsel shall address all remarks to the Court, not to opposing counsel.
- b. Only one attorney for each party shall examine, or cross-examine, each witness. The attorney stating objections, if any, during direct examination, shall be the attorney recognized for cross-examination. The attorney who conducts direct examination shall be the attorney who states any objections during cross-examination.
- c. In making an objection, counsel shall be brief and direct. (For example, “Objection, hearsay.”) In jury trials, counsel shall not argue the objection in the presence of the jury or argue with the ruling of the Court in the presence of the jury.
- d. Offers of, or requests for, a stipulation should be made privately, not within the hearing of the jury. In most instances, stipulations should be reduced to writing in a form that can be marked and admitted at trial.
- e. During jury trials, counsel shall not make any motion (*e.g.*, for a mistrial) in the presence of the jury. Such matters may be raised during a recess.
- f. Counsel should request permission before approaching the bench. Any document that counsel wishes to have the Court examine should be handed to the Courtroom Deputy.
- g. Counsel should avoid delay by having all exhibits counsel intends to use with a witness prepared and readily accessible when commencing the examination.
- h. Be respectful of opposing counsel, the litigants and the witness.

4. Policy on the Use of Electronic Devices

- a. **Electronic Devices in the Courtroom.** Attorneys’ use of personal electronic devices (including mobile phones) and general purpose computing devices (such

as laptops and tablets) within the Courthouse and its environs is governed by [Standing Order M10-468](#). When Court permission is required under the Standing Order, attorneys seeking to bring electronic devices to the Court should email a completed Model Court Order to ClarkeNYSDCChambers@nysd.uscourts.gov no later than five business days before the relevant trial or hearing.

- b. Wi-Fi in the Courtroom.** If Wi-Fi is requested, counsel shall check the appropriate box on the form. If approved and signed by Judge Clarke, a copy of the Order will be sent to the requesting attorney, who will receive a network name, username, password and instructions from the District Executive's Office on or before the first day of the scheduled proceeding. Wi-Fi access is limited to the approved attorney (who may not share their username or password with others) for the duration of the proceeding and for Courtroom 11B (unless Judge Clarke or another judicial officer grants permission for it to be used in another courtroom).
- c. Technology Walkthrough.** If a party wishes to use audio-visual equipment at a hearing or trial, it is that party's responsibility to ensure that any required approvals are obtained and that the necessary equipment is set up and working properly in advance of trial. The party should contact Sophia Tran, Courtroom Deputy, at ClarkeNYSDCChambers@nysd.uscourts.gov, sufficiently in advance of trial to make the necessary arrangements for a technology walkthrough and to test the equipment.