

INDIVIDUAL PRACTICES FOR HEARINGS AND TRIALS

Dale E. Ho, United States District Judge

Chambers

United States District Court
Southern District of New York
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New York, NY 10007
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Courtroom

Thurgood Marshall Courthouse
40 Foley Square, Courtroom 905

Courtroom Deputy

Nicole Morales

Unless otherwise ordered, these Individual Practices apply to hearings and trials in both civil and criminal cases before Judge Ho.

- 1. Schedule for Trials.** Once jury selection is complete, trials will generally be conducted Monday through Friday from 9:30 A.M. to 5:00 P.M., with an hour-long break for lunch around 12:00 P.M. and a fifteen-minute break once in the morning and once in the afternoon at any appropriate time. Judge Ho will confirm the trial schedule at or before the final pretrial conference.
- 2. Wi-Fi Access.** Attorneys may obtain authorization to use the Court's Wi-Fi system in Judge Ho's Courtroom during a hearing or trial by submitting an [Electronic Device and Wi-Fi Access Request Form](#), available on the Court's website. The completed form should be submitted as early as possible—and certainly no later than five (5) business days before the start of the trial or hearing. If approved and signed by Judge Ho, 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 his or her username or password with others) for the duration of the proceeding and for Courtroom 905 (unless Judge Ho or another judicial officer grants permission for it to be used in another courtroom). If an attorney wishes to test the Wi-Fi prior to the proceeding, that request must also be made to Chambers at least five (5) business days prior to the proceeding.
- 3. Audio-Visual Needs.** 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. A list of the technology already set up in Judge Ho's courtroom can be found in Attachment B. The party should contact the Courtroom Deputy, Nicole Morales, at (212) 805-6110 sufficiently in advance of trial to make the necessary arrangements for a technology walk-through and to test the equipment. To the extent that authorization is required to use electronic devices, a party must submit an [Electronic Device and Wi-Fi Access Request Form](#), which is available on the Court's website.

The completed Form should be submitted as early as possible — and certainly no later than five (5) business days before the start of the trial or hearing.

4. **Jury Selection.** Jurors will be selected by the struck-panel method, as described in Attachment A.
5. **Time Limits.** In most civil cases, the Court will impose time limits on both sides at the final prehearing or pretrial conference. The parties' opening statements (in civil jury trials) and examinations of witnesses will count against their time; lengthy colloquies before the jury will be split down the middle. The time limits do not apply to jury selection or to summations; the Court may impose separate time limits for summations. The parties should be prepared to address the issue of time limits at the final prehearing or pretrial conference.
6. **Hearing and Trial Practices.** Counsel shall abide by the following rules and practices with respect to witnesses, the handling of exhibits, and making objections:
 - A. Sidebars during jury trials are strongly disfavored. 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.
 - B. If counsel intends to use demonstrative aids (e.g., PowerPoint presentations) during their opening statement or during the examination of any witness, the aids should be furnished to opposing counsel in advance of their use and the parties should raise any disputes with the Court in advance.
 - C. Counsel shall ensure that each witness is present and ready to take the stand when that witness's turn to testify arrives. If a witness finishes his or her testimony, and the side calling that witness does not have another witness present and ready to testify, that side will be deemed to have rested, and the Court will proceed to the next phase of the hearing or trial.
 - D. If both sides intend to call a particular witness, the parties shall ensure that the witness does not need to be called twice. Where a defense witness is called by the plaintiff (or a rebuttal witness is called by a defendant), the Court will allow counsel to go beyond the scope of the direct examination on cross-examination to avoid the need for the witness to be recalled.
 - E. If counsel plan to use a deposition at a hearing or trial, for impeachment or any other purpose, a copy of the deposition should be provided to the Court in advance of the hearing or trial session during which the deposition is to be used.
 - F. Unless otherwise ordered by the Court, at the time the Joint Pretrial Statement is filed, the parties shall also email to the Court and opposing counsel 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. The parties should raise any objections to an exhibit, other than authenticity or foundation, before the opening of the session. 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. In general, the Court will rule on the admissibility of exhibits in advance of trial to the extent possible.

- G. Exhibits must be pre-marked (that is, with exhibit stickers or the like) and should generally be labeled by party and exhibit number (e.g., “GX-1,” “PX-1,” “DX-1,” etc.) rather than letter (e.g., “DX-AA”). Parties are encouraged to use electronic copies of exhibits as much as possible. Regardless, electronic copies of any document sought to be admitted (with each filename corresponding to the relevant exhibit number—e.g., “PX-1,” “DX-1,” etc.) should be provided to the Court in advance of the proceeding. 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.
- H. 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.
- I. Any exhibit offered in evidence should, at the time it is offered, be shown to opposing counsel unless it was provided, pre-marked, to counsel before the proceeding. At the end of the hearing or trial, counsel should make sure they have their exhibits. The Court is not responsible for them.
- J. Counsel should request permission before approaching the bench or the witness box, and any document that counsel wishes to have the Court examine should be handed to the Courtroom Deputy.
- K. If counsel intends to question a witness about a group of documents, he or she should avoid delay by having all the documents with him or her when commencing the examination. Where practicable, counsel should provide all the documents in the group to the witness (ideally in a binder) and conduct the examination from the podium to avoid the need to approach the witness separately for each document.
- L. **Counsel should not make speaking objections before the jury.** In making objections before the jury, counsel should state “objection” only and provide the

legal ground (e.g., “relevance” or “hearsay”) only if elaboration is requested by the Court.

- M.** Counsel should not make motions (e.g., a motion for a mistrial) in the presence of the jury. Such matters may be raised at the next recess.
- N.** 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.

7. Promoting Juror Understanding.

- A. Jury Instructions.** All instructions to the jury will be in plain language that is as understandable as possible to non-lawyers.

- a. 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.

- b. 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.
 - c. 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.

B. 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.

C. Juror Questions. In civil cases, jurors ordinarily will be permitted to submit written questions for witnesses. The Court will instruct the jury during the preliminary instructions and prior to the opening statements that they may submit clarifying questions in writing at the end of a witness's testimony, that the rules of evidence govern the questioning and that they should draw no conclusions or inferences if a question is not asked or is modified. Upon receipt of a written question, the Court will make the question part of the Court record. Outside the hearing of the jury, the Court will disclose the question to the parties, and hear objections and proposed modifications. If the Court determines that the question is permissible, the Court will pose the question to the witness.

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.

D. The Court is open to techniques to enhance juror comprehension including alternating the sequencing of experts, deposition summaries and other aids.

8. Conduct During a Hearing or Trial. Unless excused by the Court or incapable on account of disability, anyone at counsel table, including, as appropriate, any counsel or party, shall abide by the following rules and practices:

A. Stand when the jury enters or exits the courtroom.

B. Stand at the lectern while examining any witness; except that counsel may, with the Court's permission, approach the Courtroom Deputy's desk or the witness for purposes of handling or tendering exhibits.

C. Address all remarks to the Court, not to opposing counsel.

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."

- D. Be respectful of opposing counsel, the litigants, and witnesses.
 - E. Refer to all persons, including witnesses, other counsel, and parties by their surnames and not by their first or given names.
 - F. All witnesses shall wear civilian clothes – no uniforms or badges.
 - G. 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.
 - H. Commence cross-examination without preliminaries.
 - I. In examining a witness, counsel shall not repeat or echo the answer given by the witness.
 - J. Counsel should not face or otherwise appear to address him or herself to jurors when questioning a witness. In opening statements and in arguments to the jury, counsel shall not express personal knowledge or opinion concerning any matter in issue.
9. **Post-Hearing and Post-Trial Procedures.** Counsel are responsible for raising promptly any issue concerning the accuracy of transcripts certified by the Court Reporter to be used for purposes of appeal. Counsel perceiving an error that is material shall stipulate to the appropriate correction or, if agreement cannot be reached, shall proceed by motion on notice. Non-material defects in syntax, grammar, spelling, or punctuation should be ignored.

ATTACHMENT A

Procedures for Jury Selection

The Court will select jurors using the struck panel method as follows. The Court will conduct a voir dire of panelists computed by totaling: the number of jurors to be selected (8 in most civil cases and 12 in criminal cases); the number of alternates (none in civil cases and usually 2 in criminal cases); and the number of peremptory challenges. Thus, in a civil case with an 8-person jury and 3 peremptory challenges per side, the Court will voir dire 14 panelists. *See* Fed. R. Civ. P. 47, 48; 28 U.S.C. § 1870. In trials expected to last for substantially more than a week, the Court will consider increasing the number of jurors in a civil case and the number of alternates in a criminal case.

In a single-defendant criminal case in which the defendant has 10 and the Government 6 peremptory challenges, plus 1 each with respect to alternates, *see* Fed. R. Crim. P. 24, the Court will voir dire 32 panelists (12 jurors + 2 alternates + 10 peremptories for the defendant + 6 peremptories for the Government + 1 peremptory for the defendant for the alternates + 1 peremptory for the Government for the alternates).

The panelists will be voir dired (by the Court, not counsel) in the Courtroom. If issues are raised that are better discussed outside the presence of the entire panel (e.g., sensitive issues, requests to be excused, etc.), the Court will follow-up with the individual jurors either at sidebar or in the robing room. If a panelist is excused for cause, he or she will be replaced by another prospective juror from the pool and the new panelist will be voir dired. After the Court has voir dired all members of the panel, the Court will — at sidebar or in the robing room — give counsel an opportunity to propose follow up questions and entertain challenges for cause.

Once all challenges for cause have been heard and decided, the parties will then exercise their peremptory challenges (in the Courtroom) against the panelists who compose the potential members of the regular jury (in the ordinary criminal case, against the first 28 panelists) and, in criminal cases, the potential alternates (in a case where 2 alternates are to be selected, panelists 29 through 32). Peremptory challenges will be exercised simultaneously, with each party submitting a written list of the panelists it wishes to excuse. Any overlap among the lists of challenges will not result in parties receiving additional challenges. The jurors will be selected starting with the unchallenged juror with lowest number from the relevant pool (e.g., 1 through 28 for the regular jury and 29 through 32 for the alternates). For example, in an ordinary criminal case, if there was an overlap of 1 peremptory challenge with respect to the potential regular jurors (i.e., the first 28 panelists), the 15 challenged panelists would be excused and the first 12 of the remaining 13 would be seated as the jury. The 13th panelist, that is, the unchallenged panelist with the highest number, would also be excused.

ATTACHMENT B
Technology in 40 Foley Square, Courtroom 905

Judge Ho's Courtroom is equipped with the following equipment that can be used, with a computer or tablet, to present electronic evidence:

- **Counsel Tables:** Two video monitors, one evidence presentation selection panel, a source input for evidence presentation, and two microphones per table.
- **Presentation Lectern:** One document camera, one touch display monitor for annotation, and one microphone.
- **Witness Stand:** One touch-screen video monitor for evidence display and annotation, source input for evidence presentation, acoustic speaker, and one microphone.
- **Jury Box:** Video monitors and acoustic speakers for evidence presentation.
- **Gallery:** One large video monitor.

The system allows a user to share evidence through an **HDMI** or **VGA** connection provided by the Court. If a device does not have a HDMI or VGA connection, the user is responsible for bringing an appropriate adapter.

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 the Courtroom Deputy, Nicole Morales, at (212) 805-6110, sufficiently in advance of trial to make the necessary arrangements for a technology walkthrough and to test the equipment.