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# INDIVIDUAL RULES AND PRACTICES FOR HEARINGS AND TRIALS

**Jesse M. Furman, United States District Judge**


**Courtroom**
United States District Court
Southern District of New York
500 Pearl Street, Courtroom 24B
New York, NY 10007
Furman_NYSDChambers@nysd.uscourts.gov

**Courtroom Deputy**
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The following rules and procedures apply to hearings and trials in both civil and criminal cases before Judge Furman.

**A. Schedule for Trials.** Once jury selection is complete, trials will generally be conducted Monday through Friday from 9 a.m. to 2:30 or 3 p.m., with one short break from approximately 11:30 a.m. to noon. For jury trials, the first day of trial (that is, jury selection and any other proceedings) will generally be conducted from 9:30 to 5 p.m. Judge Furman will confirm the trial schedule at or before the final pretrial conference.

**B. Audio-Visual Needs.** If a party wishes to use audio-visual equipment at a hearing or trial, or at a final pretrial or pre-hearing conference, 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 Furman's Courtroom can be found in Attachment B. The party should email Alexandra Smallman, Courtroom Deputy, at the Chambers email address above sufficiently in advance of trial to make the necessary arrangements for a technology walk-through and equipment test (which will usually be done thirty minutes prior to the final pretrial or pre-hearing conference). 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 **three business days before** the final pretrial or pre-hearing conference.

**C. Wi-Fi Access.** Attorneys participating in a hearing or trial may obtain authorization to use the Court's WiFi system in Judge Furman's Courtroom during the proceeding. Counsel may request Wi-Fi access by email when submitting the Electronic Device and Wi-Fi Access Request Form referenced above — no later than **three business days before** the final pretrial or pre-hearing conference. If approved and signed by Judge Furman, 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. (Note that WiFi access is actually managed by the District Executive's Office, not Chambers, so any questions regarding WiFi access should be directed to the District Executive's Office.) 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 24B (unless Judge Furman 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 three business days prior to the proceeding.

**D. Submission of Large Electronic Files.** The Court has a file transfer protocol for the safe electronic transmission of large files. If a party needs to submit large files by email (as opposed to ECF), the party should email the Court (at Furman_NYSDChambers@nysd.uscourts.gov) requesting a link to be used for such transfer. The email should include the name and docket number of the case and the nature and size of the materials to be submitted electronically. In criminal cases, the Government may use USAfx.

**E. Exhibit Lists.** Per the Court's Individual Rules and Practices for Civil and Criminal Cases (available at https://nysd.uscourts.gov/hon-jesse-m-furman), the parties shall confer at the end of each trial day and, no later than the beginning of the next trial day, email to the Court an updated exhibit list indicating each exhibit that was identified and/or admitted during trial.

**F. Jury Selection.** Jurors will be selected by the struck panel method, as described in Attachment A.

**G. 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.

**H. Hearing and Trial Practices.** Counsel shall abide by the following rules and practices with respect to witnesses, the handling of exhibits, and making objections:

**1.** 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.

**2.** If counsel intends to use a demonstrative exhibit during his or her opening statement, he or she shall confer with opposing counsel and advise the Court in advance.

**3.** 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 proceeding.

**4.** If both sides intend to call a particular witness, the parties shall confer in an effort to 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.

**5.** 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.

**6.** In advance of each hearing or trial session, counsel for the party going forward at that session should show opposing counsel the exhibits he or she intends to introduce. The parties should raise any objections to an exhibit, other than authenticity or foundation, before the opening of the session. If possible, the Court will rule on the objection then, thereby eliminating the necessity for a colloquy or sidebar when the exhibit is offered.

**7.** 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 the files are too large for submission by email, see Paragraph D above.) 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.

**8.** 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 audiovisual system, a separate copy should be provided for each juror to avoid unnecessary delay.

**9.** Any exhibit offered in evidence should, at the time of 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 all of their exhibits. The Court is not responsible for them.

**10.** Counsel should request permission before approaching the bench; and any document that counsel wishes to have the Court examine should be handed to the Courtroom Deputy.

**11.** 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 so as to avoid the need to approach the witness separately for each document.

**12.** 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.

**13.** 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.

**14.** 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.

**I. 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:

**1.** Stand as Court is opened, recessed, or adjourned.

**2.** Stand when the jury enters or exits the courtroom.

**3.** Stand when addressing, or being addressed by, the Court.

**4.** 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.

**5.** Address all remarks to the Court, not to opposing counsel.

**6.** Be respectful of opposing counsel, the litigants, and witnesses.

**7.** Refer to all persons, including witnesses, other counsel, and parties by their surnames and not by their first or given names.

**8.** 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.

**9.** Commence cross-examination without preliminaries.

**10.** In examining a witness, counsel shall not repeat or echo the answer given by the witness.

**11.** Counsel should not face or otherwise appear to address him or herself to jurors when questioning a witness.

**12.** In opening statements and in arguments to the jury, counsel shall not express personal knowledge or opinion concerning any matter in issue.

**J. 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 a number 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 Courtroom 24B of the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY**

Judge Furman's Courtroom is equipped with the following equipment that can be used, with a computer, 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, 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** connection provided by the Court. **If a device does not have a HDMI connection, the user is responsible for bringing an appropriate adapter.**