

INDIVIDUAL RULES AND PRACTICES FOR TRIALS
Jesse M. Furman, United States District Judge

Chambers

United States District Court
Southern District of New York
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The following rules and procedures apply to both civil and criminal trials before Judge Furman.

- A. Schedule.** Trials will generally be conducted Monday through Friday from 9:00 a.m. to 2:30 p.m., with one short break from approximately 11:30 a.m. to noon.
- B. Jury Selection.** Jurors will be selected by the struck panel method, as described in Attachment A.
- C. Conduct of Counsel at Trial.** Unless excused by the Court or incapable on account of disability, all counsel (including, where the context applies, all persons at counsel table) 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, without seeking the Court's permission, approach the Clerk'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.
 9. Commence cross-examination without preliminaries.

- 10.** In examining a witness, counsel shall not repeat or echo the answer given by the witness.
- 11.** Request permission before approaching the bench; and any document counsel wish to have the Court examine should be handed to the Clerk.
- 12.** Exhibits must be pre-marked and sufficient copies should be made, as appropriate, for witnesses, opposing counsel, jurors, the court reporter, any interpreters, and the Courtroom Deputy.
- 13.** If counsel intends to publish documentary exhibits to the jury, a separate copy should be provided for each juror to avoid unnecessary delay.
- 14.** Any exhibit offered in evidence should, at the time of such offer, be shown to opposing counsel unless it was provided, pre-marked, to counsel before the proceeding. At the end of trial, counsel should make sure they have all of their exhibits. The Clerk is not responsible for them.
- 15.** 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 and conduct the examination from the podium so as to avoid the need to approach the witness multiple times.
- 16.** In making objections counsel should state only the legal grounds for the objection and should withhold all further comment or argument unless elaboration is requested by the Court.
- 17.** 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.
- 18.** In advance of each trial session, counsel for the party going forward at that session should show opposing counsel the exhibits he or she intends to introduce at the session. The opponent shall indicate those exhibits to which he or she has no objection, and the Court will admit them when offered at the session. Those exhibits to which there is an objection shall be presented to the Court for ruling before the opening of the session. If possible, the Court will rule on the objection then, thereby eliminating the necessity for a sidebar conference when the exhibit is offered.
- 19.** Offers of, or requests for, a stipulation should be made privately, not within the hearing of the jury.
- 20.** Counsel should not face or otherwise appear to address him or herself to jurors when questioning a witness.

21. Sidebars during jury trials are strongly disfavored. Counsel are expected to anticipate any problems 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.

22. Prior to trial, parties shall provide to the Court three copies of the witness list and a marked exhibit list. Parties shall provide a list of names and places that may come up at trial to the Court and to the Court Reporter.

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

D. 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* 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.

After the follow-up *voir dire*, the Court will entertain challenges for cause (at sidebar or in the robing room). If panelists are excused for cause, they will be replaced and the new panelists will be *voir dired*, following the procedures above.

Once all challenges for cause have been heard and decided, the Court will conduct the final *voir dire* (in the Courtroom), asking each panelist individual questions relating to county of residence, education, occupation, marital status, children, reading preferences, etc.

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). 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. For example, in an ordinary criminal case, if there was an overlap of 1 peremptory challenge, 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.

Finally, where applicable, the parties will exercise their peremptory challenges against the panelists who compose the potential alternate jurors (in the ordinary criminal case, against panelists 29 through 32). Again, peremptory challenges will be exercised simultaneously. In the event of an overlap in challenges, the jurors will be selected from those with the lowest numbers.