



**PRO SE HANDBOOK
CHAPTER 8: TRIAL
(ALL-IN-ONE DOCUMENT)**

FEDERAL BAR ASSOCIATION
ACCESS TO JUSTICE TASK FORCE

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"A HANDBOOK FOR PRO SE LITIGANTS"

E: TextBookDiscrimination@gmail.com

W: www.TextBookDiscrimination.com

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PRO SE HANDBOOK
FROM THE FEDERAL BAR ASSOCIATION

CHAPTER 8 TRIAL

AUTHOR: Federal Bar Association: Access to Justice Task Force

ITEMS 8.00 through 8.09



8.00 | INTRODUCTION

If a case has not settled or been dismissed following a motion for summary judgment, it is going to trial. You have to make pre-trial disclosures to the other party before trial, including expert witnesses and reports and witness and exhibit lists. Read Rule 26(a)(2) & (a)(3) for more detailed information. The following information is not meant to be all inclusive, and you should always consult the Federal Rules of Civil Procedure and the Local Rules to make sure you understand what the Court requires of the parties preparing for trial. You should also become familiar with the Federal Rules of Evidence, which govern the admission of evidence at trial.

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8.01 | FINAL PRETRIAL CONFERENCE

Prior to the actual trial, a pretrial conference is usually held between the judge and the parties (or their counsel) to determine (1) what exhibits and witnesses each side might use during the trial; (2) the approximate length of time that will be necessary for the trial and (3) the "ground rules" the Court will utilize before, during and after the trial.

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8.02 | MOTIONS IN LIMINE

Parties may argue *motions in limine* at the pretrial conference. These motions request that the Judge not allow certain facts to be admitted into evidence, such as insurance policies, criminal records, or other matters which are either not relevant to the particular case or which might unfairly influence the jury. Either party may file a *motion in limine*.

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8.03 | THE ROLE OF THE JUDGE AND JURY

If your case proceeds to trial, the parties will each get the opportunity to present their side of the case, and the Judge and jury (if the trial is a jury trial) are responsible for entering a verdict and judgment based on the evidence and arguments presented. It is the Judge's duty to see that only proper evidence and arguments are presented. In a jury trial, the Judge also instructs the jury, which will be called upon at the conclusion of the jury trial to make decisions regarding factual matters in dispute. A judgment will then be entered based on the verdict reached by the jury.

If the parties have not requested a trial by jury, the judge becomes the trier of both law and fact. At the end of the trial, the Judge enters "Findings of Fact" and "Conclusions of Law," sometimes in writing, based on the evidence and arguments presented. A judgment is then entered based on those findings of fact and conclusions of law.

A jury trial begins with the Judge choosing prospective jurors to be called for voir dire (examination). The Court will determine the number of jurors.

Peremptory Challenges:

Each party will be given a number of peremptory challenges which enable the party to reject (in most cases) prospective jurors without cause. This decision is based on subjective considerations of the party when he or she feels a prospective juror would be detrimental to his or her case.

Challenges for Cause:

The plaintiff or defendant may also challenge a prospective juror "for cause" when the prospective juror lacks a qualification required by law, is not impartial, is related to either of the parties, or will not accept the law as given to him or her by the Court.

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8.04 | OPENING STATEMENTS

After the jury is sworn in or "empaneled," each side may present an opening statement. The plaintiff has the burden of proving that he or she was wronged and suffered damages from that wrong and that the defendant caused those damages. The plaintiff is allowed to present the opening statement first. This may be followed by a statement by the defendant. The Court will determine the time to be allotted for opening and closing arguments.

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8.05 | TESTIMONY OF WITNESSES

After opening statements are given, testimony of witnesses and documents are presented to the jury or the Court. The plaintiff presents his or her case first. After the initial examination of a witness (also known as "direct examination"), cross-examination is conducted by the other side. After a party has cross-examined a witness, the opposing side has the opportunity to conduct "redirect" examination in order to re-question the witness on the points covered by the cross-examination.

If a witness testifies as to a fact, and a statement or document in the case file contradicts that testimony, the document can then be used to question the witness on the accuracy of the witness' statements. If the evidence shows that the testimony of the witness is false, the witness is considered "impeached" by the cross-examination.

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8.06 | MOTIONS DURING THE COURSE OF THE TRIAL

Motion for Judgment as a Matter of Law:

This motion is usually made by the defendant at the close of evidence presented by the plaintiff. It is based on the premise that the plaintiff has failed to prove his or her case. If this motion is granted, the trial is concluded in the movant's favor. If the Court denies the motion, the trial continues with presentation of the defendant's side.

Motion for Mistrial:

Either party can move for a mistrial if, for example, during the course of the trial certain matters which are not admissible (such as those determined to be inadmissible in a prior motion in limine) are presented by any witness, either purposely or unintentionally, in the presence of the jury. If the Judge grants the motion for mistrial, the trial is immediately ended and the jury is dismissed.

Objections:

During the examination of a witness, one side may "object" to the questioning or testimony of a witness, or presentation of evidence, if the litigant believes that the testimony or evidence about to be given should be excluded. If the objection is sustained by the Judge, that particular testimony or evidence is excluded. If the objection is overruled by the Judge, the testimony or evidence may be given despite the objection. Check the Federal Rules of Evidence to make sure you know the proper grounds for making an objection.

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8.07 | CLOSING ARGUMENTS

Closing arguments to the jury set out the facts that each side has presented and the reasons why each party believes the jury should find in favor of him or her. Time limits are sometimes set by the Court for closing arguments, and each side must adhere to the specified time.

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8.08 | CHARGE TO THE JURY

After each side presents testimony and evidence, the Judge delivers the "charge" to the jury, usually in the form of written instructions. Each side may present proposed written instructions to the Judge for consideration. After the Judge has considered all proposed instructions, the jury is given appropriate instructions which set forth the jury's responsibility to decide the facts in light of the applicable rules of law. The jury then returns a verdict in favor of either the plaintiff or the defendant and assesses damages to be awarded, if any.

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8.09 | JUDGMENT

Following the entry of the jury's verdict, judgment in favor of the prevailing party is entered by the Clerk. If costs are awarded to the prevailing party, it is necessary to prepare a "bill of costs" for the approval of the Court. A bill of costs sets forth those costs that were incurred in the suit. A prevailing party may serve a bill of costs within thirty (30) days after entry of a judgment. If attorney's fees are awarded, an application for attorney's fees must be made by motion filed no later than fourteen (14) days after entry of judgment.

See Fed. R. Civ. P. 54(d) (2) .

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APPENDIX



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CONTACT INFORMATION

E: TextBookDiscrimination@gmail.com

W: www.TextBookDiscrimination.com

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