



USNYWD'S PRO SE HANDBOOK
CHAPTER 8: TRIAL
[ALL-IN-ONE DOCUMENT]

Pro Se Handbook
Chapter 8
Author: US District Court, New York, Western District
{Last Updated: 12/1/2017}

E: TextBookDiscrimination@gmail.com
W: www.TextBookDiscrimination.com

visit TBD's [website](#) for the most up-to-date information

TABLE OF CONTENTS | CHAPTER 8 | TRIAL

ID	Item	Title	Page
H01	8.01	Intro - Trial	4
H02	8.02	Pretrial Procedures	5
H03	8.03	Function of Judge and Jury	6
H04	8.04	Opening Statements	8
H05	8.05	Direct and Cross Examination of Witnesses	9
H06	8.06	Federal Rules of Evidence	11
H07	8.07	Objections	12
H08	8.08	Closing Statements	13
H09	8.09	Jury Instructions	14
H10	8.10	Costs	15
-	n/a	Appendix	16



PRO SE HANDBOOK

US DISTRICT COURT, NEW YORK, WESTERN DISTRICT

CHAPTER: 8 TRIAL

AUTHOR: US DISTRICT COURT, NEW YORK, WESTERN DISTRICT

DATE: January 1, 2017

ITEMS: 8.01 through 8.10



8.01 | INTRO - TRIAL

If a case is not resolved by summary judgment, settlement or dismissal by the court, the case will proceed to trial. This is a civil action and, unlike a criminal trial, the burden on the plaintiff is to prove by a preponderance of the evidence that the events complained of happened. During the trial the plaintiff will attempt to prove the facts necessary to demonstrate that he/she is entitled to the relief sought in the complaint. The defendant will attempt to prove that he/she has not committed any wrong, or if he/she has committed a wrong, that there is an affirmative defense which limits or prevents plaintiff's recovery. Fundamentals of Trial Techniques by Thomas Mauet (published by Little, Brown and Company) is an excellent reference book.

*(US District Court, New York, Western District // Buffalo, NY 14202
Pro Se Litigation Guidelines)*



8.02 | PRETRIAL PROCEDURES

Once the discovery period has ended and discovery is completed, the judge to whom the case is assigned will conduct final pretrial activity in accordance with the pretrial instructions which the judge has mailed to the parties. Usually, pretrial activity will include a conference between the judge and the parties at which they discuss the issues which will be tried and the evidence that is to be used at trial. The judge usually will also require that a pretrial order be submitted by the parties in which the trial plans of the parties are set forth in writing. The purpose of these pretrial activities is to help the judge and the parties understand exactly what issues will be important at the trial, and to work out possible solutions to problems before the trial. The parties may wish to discuss settling their case during this final pretrial phase.

Finally, at the pretrial phase the judge may instruct the parties as to particular procedures which the judge will use at the trial itself. The parties may also be required to submit trial briefs, proposed jury instructions and copies of exhibits/documents they intend to use at trial. As with all other aspects of a lawsuit in federal court, it is important to obey the instructions of the judge at the pretrial phase and at the trial itself.

*(US District Court, New York, Western District // Buffalo, NY 14202
Pro Se Litigation Guidelines)*



8.03 | FUNCTION OF JUDGE AND JURY

Under Federal Rule of Civil Procedure 38, both the plaintiff and the defendant have the right to request a jury trial within a certain time period (generally until 10 days after service of the defendant's answer). Both a judge and a jury are present at a "jury trial." The jury determines the facts of the case after listening to the accounts of both parties and examining the evidence that the judge has determined is admissible. The role of the judge in a jury trial is to preside over the proceedings, keep order, determine what evidence is admissible (the evidence that the jury may legally consider), and to "instruct" the jury on the law to apply to the facts of the case. If both parties choose not to have a jury trial (or if there is no right to a jury trial for the type of case that is to be tried), then the parties will have a "bench trial" in which the judge determines the facts of the case and applies the law to it; no jury is present.

If you have a "jury trial," the people on the jury will be selected by the methods described in Local Rule of Civil Procedure 47.1. Jury selection, that is determining who is qualified to sit on the jury, is also known as "voir dire." Local Rule of Civil Procedure 47.1 provides in part:

(a) The jury in a civil case shall consist of no fewer than six and not more than twelve members. All verdicts shall be by unanimous vote of the jurors. (b) Challenges shall be permitted as provided in 28 U.S.C. §1870 and Fed. R. Civ. P. 47(b).... (c) Unless otherwise ordered, interrogation of prospective jurors on voir dire examination shall be conducted by the Court...

Peremptory challenges:

Each party will generally be given three peremptory challenges, which enables the parties to reject (in most cases) prospective jurors without cause. This decision is based on subjective considerations of the parties when they feel a prospective juror would be detrimental to their side of the case. Parties cannot use discriminatory reasons such as race to excuse a prospective juror.

Challenge for Cause:

The plaintiff or defendant may also challenge a prospective juror "for cause" when, e.g., 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/her by the Court.

*(US District Court, New York, Western District // Buffalo, NY 14202
Pro Se Litigation Guidelines)*



8.04 | OPENING STATEMENTS

The trial begins with the opening statements of the plaintiff (or his/her attorney) and the defendant(s) (or his/her attorney(s)). The purpose of an opening statement is to describe the issues in the case and the facts a party intends to prove in support of his/her claim. The plaintiff has the burden of proving that he/she was injured and suffered damages from such injury and that the defendant caused such damages. The plaintiff is allowed to present the opening statement first. This may be followed by a statement by the defendant.

*(US District Court, New York, Western District // Buffalo, NY 14202
Pro Se Litigation Guidelines)*



8.05 | DIRECT AND CROSS EXAMINATION OF WITNESSES

After the opening statements have been completed, the plaintiff presents his/her case by calling his/her witnesses and questioning them. The plaintiff presents his/her case first. When an attorney or pro se litigant questions his/her own witness (a witness he/she has called), it is called "direct examination."

Once the plaintiff has presented and questioned a witness, the defendant's attorney is entitled to question the plaintiff's witness about the matters that have been testified to on direct examination. Such questioning is called "cross-examination." On cross-examination, each party will attempt to challenge the testimony given by the other party's witnesses. If a witness testifies as to one fact, and a statement or document in the files contradicts such testimony, the document can then be used to question the witness on the accuracy of the witness's statements. If the evidence produced shows that the testimony of the witness is false or inaccurate, the witness is considered "impeached" by the cross-examination. If, after cross-examination has been completed, the plaintiff has additional questions raised by the cross-examination, he/she may ask them on "redirect examination." Following redirect, the defendant's attorney may ask additional questions of the same witness on "re-cross-examination." This procedure is repeated for all of the witnesses called by the plaintiff.

Once the plaintiff's last witness has testified, the plaintiff rests his/her case. At this point, the defendant may, but is not required to, make a motion for a "directed verdict." This means that the defendant will try to establish that the plaintiff has failed to prove one or more of the essential elements of his/her claim for relief and that therefore the defendant is entitled to judgment in his favor as a matter of law. If this motion is not granted, the defendant will present his/her case by calling and questioning defense witnesses. The plaintiff will have the opportunity to cross-examine the defendant's witnesses and further questioning of each defense witness will take place as described above.

After each side has presented its witnesses and evidence, the judge may allow the plaintiff to present some rebuttal testimony.

During the questioning of witnesses by the pro se litigant and the defense attorney, exhibits such as documents or other items may be



introduced and witnesses may be asked to answer questions about them.

*(US District Court, New York, Western District // Buffalo, NY 14202
Pro Se Litigation Guidelines)*



8.06 | FEDERAL RULES OF EVIDENCE

Certain rules have been established which must be followed in court in order to prohibit improper or inadmissible evidence from being admitted at trial. These rules are contained in the Federal Rules of Evidence ("Fed. R. Evid.") which are set forth in Title 28 of the US Code. You must refer to these rules to determine whether certain evidence is admissible. The rules of evidence are designed to ensure that the most reliable evidence is presented at the trial. Generally, all relevant evidence is admissible unless it is privileged or its potential for prejudice outweighs its usefulness in determining facts. For example, a court might not admit the fact that a defendant in a brutality case committed domestic violence. Such a fact might be relevant, but might so prejudice the jury against the defendant that the court might keep it out.

There are many rules of evidence, and many books have been written explaining them. An example of an evidentiary rule is the "hearsay" rule which prohibits certain unreliable testimony. (Fed. R. Evid. 801806.) Under the hearsay rule, a witness is generally not permitted to testify about anything that he/she does not have personal knowledge of. To illustrate, a witness may not testify that a friend told her that the friend saw the defendant beat up the plaintiff. That statement would be considered inadmissible because the witness in the example is only able to repeat what the friend said he saw. Because the friend is the person with personal knowledge of what happened, that friend should testify as to what he saw. The friend must be on the stand in order for the opposing party to be able to cross-examine him as to exactly what he saw. There are several exceptions to the hearsay rule found in the Federal Rules of Evidence. As noted above, this brief description of the hearsay rule is provided simply to illustrate one of the many rules of evidence. Before discovery begins and the trial of your case, you should carefully study the Federal Rules of Evidence and any specialized books on evidence which may be in the library.

*(US District Court, New York, Western District // Buffalo, NY 14202
Pro Se Litigation Guidelines)*



8.07 | OBJECTIONS

If you believe that the defense attorney is attempting to introduce improper evidence or is asking improper questions of a witness, you must object and state the reasons for the objection. Stating the basis for an objection is generally important in preserving that issue for appeal. The judge may either "overrule" the objection (disagree with the objection and tell the witness to answer the question) or "sustain" the objection (direct the witness not to answer). Whether or not evidence is admissible is a decision made solely by the trial judge. Often, in order to determine the admissibility of a certain disputed point of evidence, the judge will have a conference with the parties' attorneys (or the pro se party) to discuss why the particular evidence may or may not be admissible. This conference is referred to as a sidebar or a bench conference. It is conducted out of the hearing of the jury, so they will not be prejudiced. A record is made of the proceeding by the court reporter.

*(US District Court, New York, Western District // Buffalo, NY 14202
Pro Se Litigation Guidelines)*



8.08 | CLOSING STATEMENTS

After all the evidence has been presented, both the plaintiff and the defendant may make closing statements. During a closing, you should summarize the evidence presented, explain how the evidence is relevant to the issues in the case, and state why, based on all the evidence, the case should be decided in your favor.

*(US District Court, New York, Western District // Buffalo, NY 14202
Pro Se Litigation Guidelines)*



8.09 | JURY INSTRUCTIONS

As noted above, trials can be conducted before a jury and a judge, or before a judge alone in a bench trial. In a jury trial, after closing statements, the judge will instruct the jury as to the relevant law, explain how such law must be applied to the facts of the case, and give the jury the specific questions which the jury must decide. Jury instructions may also include applicable burdens of proof which must be met, and any other relevant information. Before trial, each party generally prepares suggested jury instructions for the judge's consideration. Many reference books are available which provide sample jury instructions, including Modern Federal Jury Instructions, Civil, published by Matthew Bender.

After the judge instructs the jury, the jury then "deliberates" (decides the case). The jury must evaluate the evidence and draw conclusions in reaching a verdict (decision). The jury verdict is announced in a decision announced by the Judge in open court. In a bench trial, the decision of the Judge may be announced in a written decision rather than in open court.

After either a jury or a bench trial, if a party believes the verdict is incorrect, he/she may appeal the decision or file a motion for new trial pursuant to Federal Rule of Civil Procedure 59.

*(US District Court, New York, Western District // Buffalo, NY 14202
Pro Se Litigation Guidelines)*



8.10 | COSTS

Within thirty (30) days after entry of a judgment, the prevailing party may serve and file a "bill of costs" requesting "taxation" of costs itemized thereon. Local Rule of Civil Procedure 54(a) and Federal Rules of Civil Procedure 54(d)(1).

*(US District Court, New York, Western District // Buffalo, NY 14202
Pro Se Litigation Guidelines)*



APPENDIX



COPYRIGHT NOTICE

TextBookDiscrimination.com is not the author of this handbook. Instead, TextBookDiscrimination.com merely re-printed and reformatted it for easier use.

ORIGINAL SOURCE

<u>#</u>	<u>Item</u>	<u>Link</u>
1	Original Source	NYWD.USCourts.gov

INTERACTIVE VERSION

<u>#</u>	<u>Item</u>	<u>Link</u>
1	Web	TextBookDiscrimination.com/Handbooks/ProSe/USNYWD/C08

SIMILAR RESOURCES

<u>#</u>	<u>Item</u>	<u>Link</u>
1	USFLMD	TextBookDiscrimination.com/Handbooks/ProSe/USFLMD/AllInOne

ADDITIONAL RESOURCES

<u>#</u>	<u>Item</u>	<u>Link</u>
1	Charges	TextBookDiscrimination.com/Reports/COD/
2	Recommended Orders	TextBookDiscrimination.com/Reports/RO/

CONTACT INFORMATION

E: TextBookDiscrimination@gmail.com

W: www.TextBookDiscrimination.com

Congratulations! You're now **booked up** on Chapter 8 from USNYWD's **Pro se Handbook!**

