

**JUDGE ESTHER SALAS'S
GENERAL PRETRIAL AND TRIAL PROCEDURES**

I. PRELIMINARY GENERAL MATTERS¹

A. Professionalism and Civility

Litigants should be polite, courteous, and otherwise civil to one another, as well as to all parties, witnesses, and Court personnel at all times. They should be punctual for all conferences, hearings, oral arguments, and trials. Judge Salas expects litigants to confer with and keep their clients up to date (1) with respect to substantive submissions to the Court, (2) in advance of Court appearances, and (3) as to material developments in the clients' cases.

All of the matters addressed in these Procedures apply to all litigants, including *pro se* litigants, in any matter pending before Judge Salas.

B. Correspondence with the Court

Before corresponding with the Court, litigants must consult the relevant rules for the Third Circuit, the District of New Jersey, this document, and the docket on the CM/ECF system. Only after doing so is it appropriate to contact the Court.

To the extent you wish to contact the Court on a routine scheduling matter (e.g., an extension for the submission of a brief), please do so with as much advance notice as possible, and *please do so in writing via CM/ECF so that all litigants are apprised of the request*. The Court will not accept oral requests for extensions over the phone or written requests via fax without a corresponding request via CM/ECF.

¹ To the extent that the rules for the Third Circuit or the District of New Jersey conflict with any of the preferences set forth in this document, the rules of the Third Circuit and the District of New Jersey control.

In general, litigants should bring a matter to the Judge's attention only after such matter has been discussed with opposing counsel and the parties made a reasonable effort to resolve the dispute.

Correspondence to advise the Court that a case has been settled or dismissed is also appropriate. Any written communication requesting action by the Court on any subject should include (1) a brief description of the situation requiring the Court's attention; (2) the position of the opposing party(ies) (i.e., consent or opposition); and (3) the specific relief sought.

All litigants should be sent a contemporaneous copy of all correspondence sent to the Court. All other communications with the Court should be made by the formal filing of pleadings, motions, applications, briefs, or legal memoranda.

In general, and unless otherwise directed by the Court, all discovery-related correspondence, as well as any correspondence related to non-dispositive motions, should be addressed to the Magistrate Judge assigned to the case. All correspondence related to dispositive motions, trials, and related oral arguments should be addressed to Judge Salas.

C. Telephone Correspondence with the Court

When litigants call Chambers, they should let the Court know (1) their name(s); (2) the case name and action number on which they are calling; (3) the party(ies) they represent; and (4) their question. Further information is not required unless requested by the Court. Please review the docket before contacting the Court, as litigants' questions can often be answered by reviewing the docket.

D. Communication with Law Clerks

Judge Salas permits limited communications with her law clerks. Unless directed otherwise by the Court, litigants should never contact law clerks for advice on substantive or procedural matters other than of a rudimentary nature (such as to confirm the Court's administrative policies and procedures or to alert the Court of some actual emergency that cannot be timely handled by conventional correspondence or formal filings). Communications with the Court about scheduling matters should be directed to Judge Salas's Courtroom Deputy. Communications from litigants purporting to justify litigants' conduct because "Your Honor's law clerk [or Deputy] said . . ." are highly disfavored and are never appropriate as an explanation of litigants' strategic or tactical choices.

E. Telephone Conferences

Telephone conferences with all litigants may be scheduled at the Court's discretion. Litigants will be notified of the date and time for the telephone conference. It will be the responsibility of litigants for the moving or initiating party to arrange the telephone conference and to contact Judge Salas's Chambers after all litigants are present on the call, unless otherwise advised by the Court. Litigants are reminded to be especially careful to avoid being discourteous during telephone conferences by failing to listen to other speakers, failing to identify themselves prior to each statement, failing to speak loudly or slowly enough to be heard, etc. In that regard, litigants should be mindful that cell phones typically do not perform well for multi-party conference calls. Failure to

observe basic telephone courtesy will result in the Court's refusal to use telephone conferences in matters involving the offending participants.

When litigants contact Chambers for a conference call, litigants should recognize that the individuals who answer the phone are asking for names and spelling for a reason. The Courtroom Deputy or law clerks are recording the names for purposes of organizing the call and streamlining discussion. Therefore, please speak slowly and spell your name so that the Judge knows who is participating during the call. Again, in cases involving numerous parties, litigants should remember to identify themselves during the call so that Judge Salas knows who is talking.

F. Oral Arguments and Evidentiary Hearings

Judge Salas does not set aside specific days or times for oral argument, motions, or evidentiary hearings. Hearings and arguments are scheduled on an ad hoc basis as warranted. The Court endeavors to provide litigants with appropriate advance notice of scheduled hearings, arguments, and conferences – and expects litigants to refrain from last minute (i.e., less than forty-eight hours) requests to cancel, postpone, or reschedule such matters in the absence of actual emergencies.

G. *Pro Hac Vice* Admissions

Please refer to Local Civil Rule 101.1(c).

II. CIVIL CASES

A. Pretrial Procedures and Final Pretrial Conference with Magistrate Judge

Generally, the Magistrate Judge assigned to the case schedules an initial pretrial conference pursuant to Local Civil Rule 16. These conferences are held after the filing of

the defendant's answer or a dispositive motion. The Magistrate Judge assigned to the case determines associated procedures. At the close of discovery, the Magistrate Judge will hold a final pretrial conference. Prior to that conference, the Magistrate Judge will provide the litigants with a proposed form of final pretrial order.

B. Following Final Pretrial Conference with Magistrate Judge

Judge Salas may hold a telephone conference with litigants to set a date for a settlement conference. Where settlement is not possible, Judge Salas will set dates for pre-trial submissions. Generally, dates for trial briefs and *in limine* motions are set for forty-five days before the trial date.

C. Settlement Conference

Absent leave of Court, trial counsel and clients with full settlement authority must attend all settlement conferences in person.

D. Chambers Copy of Motions

Judge Salas requires strict compliance with the length limitations and format requirements for briefs set forth in Local Civil Rule 7.2. Courtesy copies of motions need NOT be submitted to the Court, unless otherwise advised by the Court.

E. Motions

i. General

Except as permitted by Local Rule 12.1, no formal motions may be filed without leave of Court.

ii. Motions to Seal

The Magistrate Judge resolves motions to seal.

iii. Continuances and Extensions

Litigants should expect the Court to maintain the dates contained in the Scheduling Order, unless there is good cause to justify a change.

Generally, Judge Salas will grant a short (i.e., two weeks or fewer) continuance or extension that will not affect discovery dates, motion-decision dates, hearing dates, or trial dates, if requested with the agreement of all litigants. Any other request for a continuance or extension should set forth in detail the basis for the request and whether the request is agreed to or opposed by the other litigant(s). A request for an extension or continuance of longer than two weeks regarding the trial date, a discovery cutoff date, or the deadline for filing dispositive motions must be made sufficiently prior to the due date to allow time for the Court to consider it and should set forth compelling reason(s) for the relief sought. An unopposed request may be made by letter to the Court and should include the reasons for the request. All such letters – as with *all* correspondence with the Court – should be filed electronically via CM/ECF.

iv. General Motion Practice

Except as set forth here, motion practice will be conducted in accordance with Local Civil Rule 7.1.

Every factual assertion considered by the submitting litigant to be important to that litigant's position in a motion, opposition, or brief must be supported by citation or other specific reference to the record. Legal and record citations must include pin cites.

v. Oral Argument on Motions

The Court will schedule oral argument if it determines that oral argument will be helpful in deciding a matter. The parties will be advised of the date and time of the oral argument via CM/ECF.

vi. Reply and Sur-Reply Briefs

Replies are generally permitted pursuant to Local Civil Rule 7.1(d). However, according to Local Civil Rule 7.1(d)(3), no reply papers shall be filed concerning motions for Cross-Motion under Local Civil Rule 7.1(h); Reconsideration under Local Civil Rule 7.1(i); Case Management under Local Civil Rule 16.1(g)(2); and Discovery under Local Civil Rule 37.1(b)(3), unless the Court permits otherwise.

Sur-replies are not permitted without leave of Court. Indeed, sur-replies are strongly discouraged, unless it is apparent on the face of the submission that such additional briefing is necessary to rebut an issue or point of law not discussed in the initial briefs. Sur-replies may be filed and served within seven days of service of the brief to which the sur-reply responds, unless otherwise directed by the Court. Sur-replies should not contain a repeat recitation of the facts of the case and, without leave of Court for good cause shown, must not exceed fifteen pages.

F. Summary Judgment Motions

Local Civil Rule 56.1 requires:

On motions for summary judgment, the movant shall furnish a statement which sets forth material facts as to which there does not exist a genuine issue, in separately numbered paragraphs citing to the affidavits and other documents submitted in support of the motion. A motion for summary

judgment unaccompanied by a statement of material facts not in dispute *shall* be dismissed.

D.N.J. Local Civ. R. 56.1(a) (emphasis added). Additionally, the Court will not consider any assertion of a fact that is not supported by a citation to the record.

A litigant opposing summary judgment must state in similar paragraph form whether that litigant agrees or disagrees that the fact(s) as stated by the moving litigant are undisputed. If a litigant contends that a fact is in dispute, citation must be made to record evidence that supports the disputing litigant's view of that particular fact. Failure to address the moving party's factual contentions in this manner will lead to the Court's consideration of the moving party's factual assertion(s) as undisputed.

G. Motions Seeking Emergent Relief

Judge Salas will promptly hold a hearing for any request for a temporary restraining order ("TRO") assigned to her. She will typically hold a pre-hearing conference to discuss the emergent issue(s), to set an expedited briefing schedule, and to set a hearing date. Expedited discovery may also be ordered at the pre-hearing conference.

Submission of proposed findings of fact and conclusions of law for TRO and injunction hearings will be required. The time for submission of these items will be set at the pre-hearing conference.

H. Pretrial Combined Submissions (In Hard Copy and Microsoft Word Format)

i. Exhibit Lists and Bench Books

Please submit to the Court—in hard copy and in Word Format—a consolidated/combined joint exhibit list to minimize the duplication of the exhibits. The document should comprise a chart separated into three columns: column 1 should list the exhibit number; column 2 should contain the opponent's objection (a very short statement containing the relevant rule and/or concept); and column 3 should contain the proponent's rationale for admissibility (e.g., the relevance rationale or on-point hearsay exception).

Litigants must submit one hard copy and one CD of the bench book of trial exhibits, unless otherwise advised by the Court. If litigants change exhibit tabs or add new exhibits during the course of the trial, they must provide an updated copy that will be left in the courtroom at 4:30 p.m.

ii. Combined Neutral Statement of Facts

Litigants should submit a short proposed statement of the case for the Court to read during jury selection as part of the Court's initial statements. Any disagreements by the litigants should be submitted in column format—the left column should contain the plaintiff's (or the prosecution's) proposals and the right column should contain the defendant's proposals.

iii. Proposed Preliminary Jury Instructions, Final Jury Instructions, and Verdict Sheet

Instead of separate submissions from the litigants, Judge Salas requires one combined submission, identifying any areas of disagreement. Where the litigants are unable to agree, the submission should be split into two columns as described above.

Each proposed instruction should be double-spaced and include citations to specific authority using footnotes. Proposed instructions without citations to specific legal authority will not be considered. Cases and model jury instructions that are cited should be accurately quoted and must include a pinpoint citation.

If a model jury instruction is submitted, the submitting litigant shall state whether the proposed jury instruction is unchanged or modified. If a litigant modifies a model jury instruction, additions should be underlined and deletions placed in brackets.

Judge Salas strongly prefers jury instructions that track the relevant model. She disfavors jury instructions containing case-specific facts or contentions. Because Judge Salas usually charges the jury *before* closing arguments, and because she disfavors the inclusion of facts or contentions in the jury charge, litigants are encouraged to include facts and contentions in their summations.

iv. *Voir Dire* Questions

Ordinarily, Judge Salas will conduct *voir dire*. Instead of separate submissions from the litigants, Judge Salas requires one combined submission, identifying any questions in dispute. The Court will provide an example of *voir dire* questions that were used during

a recent trial. Litigants should adopt a similar format in crafting the proposed *voir dire* question for their case.

v. Prepared Script for Counsel’s Review

Judge Salas will provide a prepared script she will read at *voir dire*. The script will be available for counsel to review prior to *voir dire* selection.

I. Pretrial Meeting

Prior to jury selection, Judge Salas will hold an in-person housekeeping meeting with litigants. The agenda will include, in part, marking exhibits and previewing objections, discussing the *voir dire*, and discussing jury instructions.

J. Trial Procedure

i. Scheduling

The trial day typically will be from 9:30 a.m. until 4:30 p.m., so that the early morning and late afternoon periods can be used for addressing matters outside the presence of the jury.

ii. Cases Involving Out-of-Town Parties or Witnesses

Absent a showing of exceptional circumstances, Judge Salas schedules the trial of cases involving out-of-town litigants, parties, or witnesses the same as all other cases, leaving the scheduling of witnesses to litigants.

iii. Conflicts of Litigants

Litigants should notify the Court and opposing counsel immediately upon learning of any unavoidable and compelling professional or personal conflicts affecting the trial schedule. Once a trial date has been set, the Court expects that obligation to take

precedence over other matters (except serious, unanticipated personal or professional emergencies).

iv. Notetaking by Jurors

Judge Salas does not permit jurors to take notes. Moreover, although the court reporter will be transcribing the testimony, litigants should not assume that jurors will be able to review transcripts during deliberations.

v. Juror Questions to Witnesses

Judge Salas does not permit jurors to submit questions to the Court to be posed to a witness.

vi. Trial Briefs

Generally, Judge Salas requires the submission of trial briefs no later than forty-five days before trial.

vii. *In Limine* Motions

When possible, submission dates for *in limine* motions are set during the initial telephone conference with Judge Salas following the Magistrate Judge's final pretrial conference. Typically, *in limine* motions are due forty-five days before trial.

viii. Peremptory Challenges

Judge Salas prefers that counsel stand and announce their peremptory challenges, and Judge Salas will typically permit only one pass by a party without forfeiture.

ix. Opening Statements and Summations

Judge Salas normally attempts to obtain the agreement of litigants regarding time limits on opening statements and closing arguments. However, in most cases, twenty-to-

thirty minutes should be adequate for an opening statement, and thirty-to-forty-five minutes should be adequate for summation.

x. Examination of Witnesses

The examination of witnesses during hearings or trials should be conducted from the lectern or from counsels' table. Speakers always should rise to address the Court unless specifically instructed otherwise. In addition, speakers will direct all comments to the Court or to the witness under examination and not to other litigants or to the jury. To the extent possible, the Court should be alerted to issues that will need to be ruled upon during the day at the start of the day's proceedings, or during recess out of the jury's presence.

xi. Approaching the Witness

If a litigant wishes to approach the witness, the litigant should ask for permission to do so. If a litigant needs to approach one witness many times, a single request for permission will suffice.

xii. Examination of Witnesses or Argument by More Than One Attorney

Judge Salas will permit more than one attorney for a party to examine different witnesses or to argue different points of law before the Court, but only one attorney per party may examine the same witness. Although Judge Salas permits different attorneys to give the opening and summation, the opening attorney must provide the full opening and the closing attorney must provide the full summation.

The attorney conducting direct or cross examination shall be the only litigant speaking at sidebar conference.

xiii. Objections and Sidebars

If a litigant wishes to make an objection, he or she should stand, state the objection, and simply state the basis for the objection (such as “hearsay” or “relevance”). The Court disfavors speaking objections. If a litigant believes a more extensive conference is required, then the litigant should request a sidebar conference. The Court usually will grant the request so long as such circumstances are not abused. Litigants are encouraged to bring any evidentiary questions to the Court’s attention outside the presence of the jury, preferably before or after the day’s proceedings.

xiv. Witness and Jury

Litigants have the responsibility to advise witnesses that no witness may talk to the jury at any time during the pendency of the case. For example, if the witness has stepped down from the witness stand to testify as to an exhibit, the witness should not have any private conversation whatsoever with any juror. The witness may, of course, direct his or her answers to the jury’s direction, so long as the witness is still answering a litigant’s questions.

xv. Trial Equipment

Equipment and the smooth presentation of exhibits in video or other electronic form is the responsibility of litigants. Back-up plans in the event of equipment failure should be available. Litigants are required to ensure that they are fully familiar with the equipment *before* appearing in Court to ensure smooth proceedings. Litigants who wish

to use the Court's equipment or to set up the courtroom and test their technology should contact Judge Salas's Courtroom Deputy at least one week prior to the start of trial.

xvi. Documents and Exhibits

Any and all documents to be provided to the Court or viewed by the jury should first be handed to the Courtroom Deputy.

xvii. Offering Exhibits into Evidence

Unless the litigants have an agreement as to the admissibility of a proposed exhibit, a witness may not testify as to its content until it has been admitted into evidence.

xviii. "Directed Verdict" Motions

Motions for judgment as a matter of law in jury trials and motions for an involuntary dismissal in non-jury trials should be in writing, if possible. Oral argument on such motions is ordinarily permitted.

xix. Proposed Findings of Fact and Conclusions of Law

The Court will set a timeframe for submitting proposed findings of fact and conclusions of law in non-jury cases depending on the complexity of the matter. The Court will generally require litigants to submit a joint submission of proposed findings of fact in column format. In each column, litigants must (1) provide consecutively numbered paragraphs with headings and subheadings to indicate issues and sub-issues; (2) indicate which facts are agreed upon; and (3) include specific reference to testimonial or documentary evidence in support of the proposals.

xx. Unavailability of Witnesses

If a witness is unavailable at the time of trial as defined in Federal Rule of Civil Procedure 32(a)(3), the Court expects oral or videotaped depositions to be used at trial for any witness whose testimony a litigant believes essential to the presentation of that litigant's case, whether the witness is a party, a non-party, or an expert. The unavailability of such witness will not be a ground to delay the commencement or progress of trial.

xxi. Lay Witness Opinion

Any litigant expecting to offer opinion testimony from lay witnesses pursuant to Federal Rule of Evidence 701 with respect to issues of liability or damages shall, at the time required for submission of expert reports, serve the opposing litigants with the same information and/or documents required with respect to such expert witnesses.

K. Jury Deliberations

i. Timing of Jury Charge

In most cases, Judge Salas will charge the jury *before* closing arguments, providing the jurors with an opportunity to learn the law before hearing summations that match the facts and contentions to the law.

ii. Written Jury Instructions

In most cases, Judge Salas will provide jurors with copies of the instructions.

iii. Exhibits in the Jury Room

Unless good cause is shown, Judge Salas will permit all exhibits containing substantive or real evidence to be available to the jury for deliberation. Litigants should confer with each other as to which exhibits should go into the jury room. Before

deliberation, litigants should confirm with the Courtroom Deputy which exhibits (including demonstratives) and which versions of exhibits will go into the jury room.

iv. Handling Jury Requests to Read Back Testimony or Replay Tapes

At the jury's request, if the transcript is available, Judge Salas will permit a copy of the sanitized transcript to go into the jury room, but only with the consent of the litigants.

v. Availability of Litigants During Jury Deliberation

Unless excused by the Court, litigants should either remain in or be less than ten minutes away from the courthouse during jury deliberations.

vi. Polling the Jury

Judge Salas will poll the jury upon request.

vii. Meeting with the Jury

Judge Salas may meet with jurors after a verdict but counsel and parties are prohibited from doing so.

III. CRIMINAL CASES

In general, policies and procedures for criminal cases are the same as those set forth above for civil cases.

A. Oral Argument and Motions

If requested, Judge Salas generally will permit oral argument on a substantive motion in a criminal case.

B. Indictments and Informations

Generally, Judge Salas permits the jury to have a copy of the redacted indictment. During deliberation, any question regarding redactions should be made to the Courtroom Deputy.

C. Sentencing Materials

i. Timing

Unless otherwise ordered by the Court, a party moving for a variance, downward departure, or submission in mitigation of a sentence (a "Moving Submission") is instructed to directly serve the Court, in accordance with the procedures set forth in subsection (ii) below, no fewer than ten business days prior to the sentencing date. The responsive party's submission (a "Responsive Submission") to any related motions shall be submitted and served, in accordance with the procedures set forth in subsection (ii) below, no fewer than five business days prior to the sentencing date.

ii. Submissions

All sentencing submissions, along with all supporting exhibits and correspondence (collectively, the "Sentencing Materials"), shall be submitted directly to the Court. The submitting party must also furnish copies to all Counsel of Record and the United States Probation Department. Although the submitting party is not required to file its submission on the Court's CM/ECF system, the submitting party is required to simultaneously file a notice via CM/ECF (a "Submission Notice") by way of a letter until September 1, 2017 and, thereafter, using the form prescribed by the Clerk of the Court.

Any interested member of the public or press who wishes to obtain a copy of the Sentencing Materials (a “Requestor”) must make a Request for Disclosure on a form prescribed by the Clerk of the Court within forty-eight hours of receiving the Submission Notice. A Request for Disclosure made after forty-eight hours of receiving the Submission Notice may or may not be considered by the Court prior to the sentencing hearing. A Requestor or the Requestor’s attorney is encouraged to contact Judge Salas’s Chambers to confirm that the Request for Disclosure has been received by the Court.

Upon a Request for Disclosure, Counsel of Record is required to meet and confer to determine what non-public information should be redacted from the Sentencing Materials in accordance with subsection (iii) below. All proposed redactions to the Sentencing Materials shall be made prior to disclosure regardless of whether the parties to the underlying criminal matter agree on all the redactions. Redacted Sentencing Materials shall be electronically filed via CM/ECF within forty-eight hours after the Request for Disclosure is filed on the docket.

A member of the public or the press who wishes to have access to portions of the redacted sections of the Sentencing Materials shall advise the Court, via a written submission on the docket (or if unrepresented by counsel, via e-mail to the Courtroom Deputy and all Counsel of Record) that it seeks access to the redacted information within the Sentencing Materials. Such written submission must identify the name of the requesting party, the name of counsel for the requesting party (if any), the specific portions of the sentencing memoranda sought to be disclosed, and any legal arguments supporting disclosure (not to exceed to five pages). Within two days of such written

submission, the parties must electronically file a response (not to exceed five pages). Thereafter, Judge Salas will either conduct a conference, enter an appropriate briefing schedule, or rule summarily.

iii. Presumptively Non-Public Information

When letters are attached to a sentencing memorandum, those letters should be grouped together as attachments to a single document. Any letters sent directly to the Court and not attached as an exhibit to a sentencing memorandum will be presumptively deemed confidential, unless and until ruled otherwise by Judge Salas.

Counsel of Record during the meet and confer process should take great care to redact Presumptively Non-Public Information prior to e-filing on CM/ECF. Presumptively Non-Public Information includes the following: references to the Presentence Report ("PSR"); names of victims, witnesses, and other individuals whose identity and roles were not previously disclosed; information regarding cooperation by the defendant and others that was not previously disclosed; sensitive personal information concerning the defendant and others, including but not limited to medical or psychological reports and data; personal identifying information such as addresses, social security numbers, account numbers, and dates of birth; and information obtained during the course of a Grand Jury or law enforcement investigation that was not previously disclosed. All redactions should be sufficient to ensure that the content of the redacted information is not apparent from the context of the surrounding text.

D. Probation Reports

Judge Salas will not ordinarily permit the defendant or counsel for either party to review the Probation Department's recommendations regarding sentencing.

E. Continuances

Defense counsel will be expected to consult with their client and submit to the Court their client's position on any request for a continuance. The defendant's written agreement to the request must be submitted to the Court at the time of the defense motion and must arrive at least ten business days before sentencing.

IV. MISCELLANEOUS MATTERS

A. Electronic Devices in the Courtroom

Please note that all cell phones, cameras, and other electronic devices are prohibited in this courtroom. If a cell phone or other electronic device goes off during a Courtroom proceeding, the Courtroom Deputy may confiscate the device.

B. Transcripts of All Proceedings

It is a litigant's obligation to make all necessary arrangements with Judge Salas's Court Reporter for securing a transcript of the proceedings.

C. Conflicts with These Procedures

As already noted, if conflicts arise between these Procedures and the rules for the Third Circuit or the District of New Jersey, please follow the rules of the Third Circuit or District of New Jersey.

Parties are advised that this document governs proceedings in this Court, unless otherwise directed by Judge Salas. If other conflicts arise or if a deviation is appropriate,

the Court is willing to entertain a prompt and reasonable request to depart from these Procedures.

D. Additional Remarks and Questions for the Court

It is this Court's priority to provide prompt and efficient adjudication of justice. The Court looks forward to working with litigants to achieve this important goal, and hopes these Procedures aid litigants in that process.

If litigants have a specific question on a matter not addressed above, litigants are encouraged to contact Judge Salas's Chambers.