

**JULIEN XAVIER NEALS
UNITED STATES DISTRICT JUDGE**

RULES AND PROCEDURES

Chambers

United States District Court
District of New Jersey
MLK Jr. Federal Bldg. & U.S. Courthouse
50 Walnut Street
Newark, NJ 07102
(973) 645-6042
Courtroom: MLK 5D

Courtroom Deputy

Kimberly Darling
(973) 645-4732

Unless otherwise ordered, the following rules and procedures apply to all matters before this Court:

I. COMMUNICATIONS WITH CHAMBERS

- A. **Telephone Calls.** Telephone calls to Chambers are permitted only in urgent situations requiring immediate attention.
- B. **Docketing, Scheduling, or Calendar Matters.** Please contact Courtroom Deputy Kimberly Darling at (973) 645-4732 for docketing, scheduling, or calendar matters.
- C. **Letters.** All communications with Chambers shall be by letter electronically filed via CM/ECF. No hard copies or courtesy copies of letters shall be delivered to the Court. *Pro se* parties are exempt from this requirement.
- D. **Fax and Email.** Chambers does not accept fax or email.

II. SUBMISSIONS

- A. **Electronic Submissions.** All parties, with the exception of *pro se* litigants, shall file all documents, in both civil and criminal matters, electronically via CM/ECF. All papers electronically filed shall be submitted in a text-searchable PDF format to the extent possible.
- B. **Pro Se Filings.** Parties appearing *pro se* must file all documents, applications, and motions directly with the Clerk's Office, not Judge Neals.
- C. **Proposed Orders.** If any relief is being sought, a proposed order must accompany the CM/ECF filing.
- D. **Confidential Information.** Any documents filed under seal shall comply with Local Civil Rule 5.1.

E. **Courtesy Copies.** By request of the Court only.

III. RICO CASES

In all matters in which the complaint contains a RICO claim, pursuant to 18 U.S.C. §§ 1961-1968, the plaintiff(s) must file a RICO Case Statement within thirty (30) days of filing the complaint, in accordance with Appendix O of the Local Rules & Appendices found [here](#).

IV. CIVIL MOTION PRACTICE

A. **Pre-Motion Conference.** In an effort to resolve cases expeditiously, before bringing a motion to dismiss, motion for a more definite statement, motion to remand, motion for change of venue, or motion for judgment on the pleadings, a party must submit a letter, not to exceed three (3) single-spaced pages, requesting a pre-motion conference. The letter must set the basis for the anticipated motion and include citations to relevant authority. Within seven (7) days after receipt of this letter, all adversaries must submit a written response, not to exceed three (3) single-spaced pages. No party may submit a reply letter unless directed by the Court. Affidavits and exhibits are not permitted unless directed by the Court. However, a proffer by the attorney of the contents of any such affidavit(s) and/or exhibit(s) shall suffice.

The Court will attempt to resolve the dispute(s) at a pre-motion conference (in person or via telephone/videoconference) to the extent possible. If the dispute cannot be resolved at the pre-motion conference (or if the Court determines that a conference would not be helpful), the moving party may proceed with filing its motion. This procedure does not constitute seeking leave of court or preclude a party from filing any of the above motions pursuant to Local Civil Rule 12.1. Rather, the Court uses this procedure to advance the case efficiently, preserve judicial resources, and minimize litigation costs to the parties. In addition, compliance with this procedure shall not be deemed a waiver of any parties' defenses as to lack of personal jurisdiction, improper venue, insufficient process, or insufficient service of process.

A party's submission of a pre-motion letter will toll that party's time to file its motion (or answer) through (i) the date of the pre-motion conference or (ii) the Court's decision not to conduct such a conference. If the Court determines that a pre-motion conference would not be helpful and instructs a party to file its proposed motion without a conference, that party shall have an additional seven (7) days to file after its Fed. R. Civ. P. 12(a) deadline, unless additional time is stipulated or the Court so orders.

This letter exchange does not apply to bankruptcy appeals, social security appeals, cases seeking transfers based on Multidistrict Litigation (MDL) orders, or cases in which either side is appearing *pro se*.

1. Motions to Dismiss - The filing of a motion to dismiss after a Pre-Motion Conference will not automatically preclude a Rule 16 Pretrial Conference prior to the disposition of the motion, particularly if based on the relief sought the resolution of the motion

will not resolve all pending claims and the rights of all parties. In this instance, the Magistrate Judge will determine whether to hold the Pretrial Conference in consultation with Judge Neals' Chambers. Should the Pretrial Conference occur while the motion is pending, the Magistrate Judge may explore (or revisit) the following issues:

- i. When appropriate, phasing the pretrial process (including discovery) so that any critical or case-dispositive issues are resolved first;
- ii. Explore ways of limiting dismissal motions and whether it may be better to address the issues by summary judgment than by pleading challenges;
- iii. Address any pending motions to dismiss and determine whether the plaintiff intends to file an amended complaint that might moot the need to resolve a pending motion;
- iv. Possible stipulation to facts that are not genuinely contested.

B. Summary Judgment Motions.

1. Leave of Court Required - Parties may only file a Motion for Summary Judgment with leave of Court.
2. Motion Formatting Requirements - Judge Neals requires compliance with the page limitations and format requirements for briefs set forth in Local Civil Rule 7.2. Motions for summary judgment must be accompanied by a statement of material fact. Each fact must include a citation to the record evidence with a pin cite that supports that fact. Facts without citation to record evidence may be disregarded by the Court.

If a summary judgment motion is opposed, the opposing party shall set forth, in a single document, each paragraph of the moving party's statement of material facts. Directly below each paragraph, the opposing party shall denote whether that fact is disputed or undisputed. If the fact is disputed, the opposing party must include a citation to record evidence with a pin-cite that supports the dispute. Any explanation must include a citation to record evidence with a pin cite. Opposing parties may include additional facts in supplemental paragraphs after responding to each of the movant's statements of material fact. However, responsive statements of material fact without citation and pin cite to record evidence may be disregarded.

3. Patent Cases - The Court does not permit filing summary judgment motions in ANDA patent cases. A party may, however, submit a letter to the Court, not to exceed three (3) single-spaced pages, seeking a waiver of this rule if the party believes that a summary judgment motion would assist the Court in expeditiously resolving the case and would resolve more than mere tangential issues. The letter must set the basis for the proposed motion for summary judgment, with citations to relevant authority and the issue(s) expected to be resolved by the motion. Within five (5) business days after receipt of

this letter, all adversaries must submit a written response, not to exceed three (3) single-spaced pages. No party may submit a reply letter unless directed by the Court.

- C. **Motions For Default Judgment.** All motions for default judgment under Federal Rule of Civil Procedure 55(b)(2) shall include a brief that addresses each of the elements necessary to support the entry of a final judgment by default.

V. MOTION DAYS/ORAL ARGUMENT

- A. **Oral Argument.** The only purpose of a motion's return date or "motion day" is to determine the briefing schedule for that motion. The Court generally will not hear oral argument on the return date. Rather, if the Court decides to hear oral argument on any issue, it will advise the parties of the argument date and time via CM/ECF.
- B. **Requests For Adjournments/Extensions.** Requests for adjournments or extensions of time, other than those pursuant to Local Civil Rule 7.1(d)(5), must comport with Local Civil Rule 6.1 and include: (1) the date or dates sought to be extended; (2) the number of previous requests for extensions and the Court's rulings; (3) the basis for the current request; and (4) whether the adversary consents and, if not, the reasons given by the adversary for refusing to consent. If the requested extension affects any other scheduled dates, the request must list the proposed change for all other dates/deadlines.
- C. **Division of Time for Oral Argument.** If multiple counsel will be arguing on each side shall or the parties intend to introduce live witness testimony, two (2) days before the scheduled appearance, counsel shall file a joint letter in CM/ECF with the parties' proposed (a) order of presentation for each party or issue and (b) division of the allotted argument time for each counsel and party.
- D. **Junior Attorneys.** Requests for oral argument to allow a junior attorney (i.e., under five (5) years of experience) to present argument will be liberally granted subject to calendar availability. The Court will permit a supervising attorney to assist the junior attorney at the argument.

VI. COURTROOM TECHNOLOGY

If the parties intend to use electronic demonstrative evidence or need to set up/test technology in the courtroom, they must notify Judge Neals's Courtroom Deputy at least two (2) weeks before their scheduled appearance. Litigants are encouraged to visit the [Courtroom Technology](#) section of the District's website to become familiar with the various audio/visual and automated evidence presentation equipment available in the courthouse.

VII. TRIAL PRACTICES

- A. **Pre-Trial Briefs or Proposed Findings of Fact and Conclusions of Law and *In Limine* Motions.** Once the Joint Final Pretrial Order has been filed, each party shall submit its pre-trial brief or its proposed findings of fact and conclusions of law, and any *in limine* motions

at least four (4) weeks before the start of trial. Any responsive papers shall be submitted at least three (3) weeks before the start of trial. Exceptions to this rule must be granted by the Court. Failure to adhere to this rule may result in an adjournment of the trial with imposition of attorneys' fees and costs to the offending party(ies).

- B. **“Housekeeping” Conference.** Judge Neals will hold an in-person Housekeeping Conference with the parties before the start of jury selection. The conference will allow the Court and the parties to review exhibits, preview objections, discuss *voir dire* and proposed jury charges.
- C. **Pre-trial Submissions.** Four (4) weeks before trial, the parties shall submit in hard copy form and an electronic version, preferably in Word, via email to Judge Neals's law clerk the following pre-trial submissions:
1. Combined Exhibit List - To minimize the duplication of exhibits, the parties shall prepare and submit a combined list of trial exhibits in numerical order, including a brief description of the exhibit, a blank column for when it will be offered into evidence, a blank column for when it may be received into evidence, and a blank column for any limitations on its use. The parties shall only send courtesy copies of trial exhibits if the Court requests them.
 2. Witness List - Each party shall submit a separate witness list for its case-in-chief witnesses providing the address (city and state only) for all such witnesses.
 3. Jury Charges - Counsel for all parties must confer with each other before trial and submit joint requests to charge. Each proposed charge shall include citations to the applicable authority using footnotes. Any additional or contested proposed charges that the parties could not agree upon should be submitted by the propounding party to the Court at the same time. Judge Neals will generally charge the jury after counsel make their closing arguments. Judge Neals provides jurors with a written copy of the jury charge. Counsel are to delineate in their submissions charges they wish to be given before trial, including a joint preliminary statement of the case, and charges they wish to be given at the close of trial. Exceptions to this rule must be granted by the Court.
 4. Juror Questionnaire - Counsel for all parties must confer with each other and submit a joint jury questionnaire. Any additional proposed questions that could not be agreed upon should be submitted by the propounding party to the Court at the same time.
 5. Verdict Sheet - Counsel for all parties must confer with each other before trial and submit a joint verdict sheet. If counsel cannot agree on a joint verdict sheet, counsel shall separately submit proposed verdict sheets in the same manner.
 6. Juror Questionnaire - Counsel for all parties must confer with each other and submit a joint jury questionnaire. Any additional proposed questions that could not be agreed upon should be submitted by the propounding party to the Court at the same time.

D. Jury Selection.

1. Juror Voir Dire - At trial, prospective jurors will complete the juror questionnaire. Judge Neals will ask any follow-up questions at sidebar. Exceptions to this rule must be granted by the Court.
2. Challenges for Cause and Peremptory Challenges – Challenges for cause and any *Batson* challenges will be heard at sidebar. Peremptory challenges are exercised in turn, with each side exercising one round of challenge(s) at a time. Judge Neals will typically permit only one pass by a party without forfeiture. In the event there are two passes in succession, the process ends. A pass is otherwise considered a forfeited peremptory challenge.

E. Trial Procedures.

1. Opening Statements and Summations - Judge Neals typically attempts to obtain the agreement of litigants regarding time limits on opening statements and closing arguments. However, thirty (30) to sixty (60) minutes should be adequate for an opening statement and summation in most non-complex cases.
2. Exhibits - Parties must consult with each other and with the Courtroom Deputy at the end of each trial date and compare notes as to which exhibits are in evidence and any limitations thereon. If there are any differences, parties should bring them promptly to the Court's attention.

In a jury trial, before the case goes to the jury, parties must confer with the Courtroom Deputy to ensure the exhibits going to the jury room are all in evidence and in good order. Parties shall provide a revised list of all exhibits in evidence (and no others) stating the exhibit number and a brief, non-argumentative description (e.g., letter from A to B, dated August 17, 2021). This list may go into the jury room to help the jury sort through exhibits. Parties may follow a similar procedure in a bench trial to help the Court sort through exhibits.

Unless the Court instructs otherwise, counsel shall retain custody of trial exhibits until closings. Judge Neals does not send weapons, narcotics, currency, and similar items into the jury room. If jurors wish to see such an exhibit during deliberations, they are permitted to do so in the emptied courtroom with only a Deputy Marshal present. The prosecuting attorney and/or investigating agency is generally required to maintain custody of exhibits such as weapons, narcotics, or currency during trial.

3. Juror Note Taking - Judge Neals usually allows jurors to take notes.

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

VIII. CRIMINAL CASES

In general, Judge Neals's preferences and procedures for criminal cases are the same as those set forth above for civil cases.

- A. **Oral Argument.** Judge Neals generally will permit oral argument on a substantive motion in a criminal case if requested.
- B. **Sentencing Memoranda.** All Sentencing Memoranda, along with all supporting exhibits and correspondence (collectively, the "Sentencing Materials"), shall be submitted directly to the Court via email (njdnef_neals@njd.uscourts.gov). The submitting party is also expected to furnish copies to all Counsel of Record and the United States Probation Department. Although the submitting party is not required to file its memorandum on the Court's CM/ECF system, it must file a notice via CM/ECF (a "Submission Notice") on the form prescribed by the Clerk of the Court.

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 no fewer than ten (10) business days before the sentencing date. The responsive party's submission (a "Responsive Submission") to any related motions shall be submitted and served no fewer than five (5) business days before the sentencing date.

IX. USE OF ELECTRONIC DEVICES

- A. Photography, use of audio or video recording devices, and use of broadcasting, online posting or streaming, or televising devices are strictly prohibited in the courtroom and areas immediately adjacent to it.
- B. Electronic devices having a primary function of wireless communication, including but not limited to cell phones, laptops, and tablets, are permitted in the courtroom but must be silenced and may not be used to transmit, record, or broadcast audio or visual feeds, updates or messages in any form.
- C. Any person violating the rules regarding electronic devices will have their devices confiscated and risk being removed from the courtroom or courthouse at the discretion of the court, U.S. Marshals Service, and/or Court Security Officers.
- D. Additional information relating to media coverage and use/possession of electronic equipment is provided through Local Civil Rules 401.1 and 501.1.