

HON. ANTHONY J. BATTAGLIA
UNITED STATES DISTRICT JUDGE
CRIMINAL CASE CHAMBERS RULES AND TRIAL PROCEDURES

Courtroom Deputy Lindsey Fincher: (619) 557-6423

Courtroom 4A

All matters before Judge Battaglia will be conducted in accordance with the following practices. Except as otherwise provided herein, or as specifically ordered by the Court, all parties are expected to comply strictly with the Local Rules of the Southern District of California and the Federal Rules of Criminal Procedure.

I. BAIL MATTERS

Bail matters are typically referred to the Magistrate Judges of this Court for handling. Parties seeking bail hearings after guilty plea are to contact Judge Battaglia's courtroom deputy for scheduling.

II. CALENDAR

Criminal matters are heard on Mondays, unless otherwise scheduled by the Court. A party seeking a continuance of a hearing must notify Judge Battaglia's Courtroom Deputy at the earliest possible time.

The Courtroom Deputy may administratively continue a matter where all parties agree, if the case has not been continued twice before, and in no event longer than 30 days from the currently scheduled date. A Notice and Acknowledgment of the next Court date must be filed by all out of custody defendants within 7 days of granting the continuance.

Except as provided above, the Court prefers that continuance requests be made by joint motion prior to the scheduled date, and **NOT** at the time of the hearing. The Joint Motion must state a reason or the circumstances establishing good cause for the continuance. Defendants who are not in custody must sign off on the Joint Motion and acknowledge and accept the next proposed court date. Please be advised that continuance requests made less than **3 court days** prior to a hearing may not result in the hearing being taken off calendar and continued to a new date.

III. COURTESY COPIES

Unless otherwise ordered by the Court, for any document which exceeds **20** pages in length (including attachments and exhibits), the filing party must deliver a courtesy copy directly to chambers within 24 hours after filing. Please be advised that expeditious delivery is particularly important when a party has filed a lengthy sentencing document less than **5 court days** prior the scheduled sentencing hearing.

IV. PRETRIAL MOTIONS

Magistrate judges will schedule the motion hearing/trial setting on the Monday calendar.

Applications for an order shortening time are disfavored, however, must be supported by a non-conclusory affidavit signed by counsel setting forth facts establishing specific good cause.

Joint Motions to continue must state a reason or the circumstances establishing good cause for the continuance. Defendants who are not in custody must sign off on the Joint Motion, acknowledge it, and accept the next court date. Please be advised that continuance requests made less than **3 court days** prior to a hearing may not result in the hearing being taken off calendar and continued to a new date.

Criminal motions requiring a predicate factual finding must be supported by declaration(s). See CrimLR 47.1.g.1. The Court need not grant an evidentiary hearing where either party fails to properly support its motion or opposition.

V. REQUESTS FOR PROBATION REPORT SUPPORTING DOCUMENTS

Where counsel wish access to documents in the possession of the United States Probation Office in connection with sentencing, they must confer with the probation officer to determine what documents are in fact available and whether the probation officer has any objection to their disclosure. Where no objection exists, counsel must then file an application for a court order authorizing the probation officer to release the documents. Merely filing objections to the probation officer's report indicating a lack of the records or requesting disclosure of the records will not, in and of itself, require the Court to take any action in this regard.

VI. SENTENCING AND SENTENCING SUMMARY CHARTS

All counsel must adhere strictly to Criminal Local Rule 32.1(a)(5) through (10), which provide the following filing deadlines prior to a scheduled sentencing hearing: objections to the PSR, **14 days** prior; motions for departures, other than 5k1.1, **14 days** prior; motions for 5k1.1 departures, **7 days** prior; sentencing summary charts, **7 days** prior; and, addenda addressing objections, **7 days** prior. In addition, documents and letters must be submitted **7 days** prior. Failure to meet these deadlines will result in a continuance of the sentencing hearing, unless counsel is prepared to waive consideration of the late submissions.

VII. SEEKING LEAVE TO FILE DOCUMENTS UNDER SEAL

There are often psychiatric reports or other sensitive information related to sentencing or motions where counsel seek to file the matters under seal. Given that sealed documents are literally kept in a safe in the Clerk's Office, the Court seeks to limit sealing orders to just the sensitive material. Therefore, counsel are ordered to proceed as follows:

1. There is a presumptive right of public access to court records based upon common law and first amendment grounds.¹ Even where a public right of access exists, such access may be denied by the Court in order to protect sensitive personal or confidential information. The Court may seal documents to protect sensitive information, however, the documents to be filed under seal will be limited by the Court to only those documents, or portions thereof, necessary to protect such sensitive information. Therefore, it is suggested that sensitive material be submitted in a separate document.
2. The Court recommends that parties seeking to seal documents that will be filed in conjunction with sentencing documents, noticed motions, or in opposition or reply to noticed motions, do so before filing the respective documents. The original motion to seal and the documents to be sealed should be submitted to chambers for review prior to filing them. This will allow the Court to consider the merits of the motion to seal, and if the motion is denied, allow the parties an opportunity to decide whether to include the documents in the subsequent sentencing document, motion, opposition, or reply. If a party files a motion to seal in conjunction with a noticed motion, and the Court thereafter denies the motion to seal, the documents will immediately be publically filed on CM/ECF.
3. Any motion to seal must set forth: (1) a description of the particular documents or part of the document(s) the party seeks to seal; (2) the correct legal standard and an analysis of why the standard has been satisfied with

¹ See, *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006). The legal standard in our circuit is, if a court decides to seal judicial documents and records in either a civil or criminal case, is that it must identify the compelling interest and articulate the factual basis for its finding "without relying on hypothesis or conjecture." *Id.* at 1179. There's a strong presumption in favor of public access to judicial records and against sealing. *Id.* See also, *Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 597 (1978); *Globe Newspaper Co. v. Superior Court for Norfolk County*, 457 U.S. 596, 603 (1982); *Phillips ex rel. Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1212 (9th Cir. 2002).

- respect to the particular document(s); (3) affidavits or declarations in support of the motion; and (4) the documents to be sealed.
4. Any member of the public may challenge the sealing of any particular document. *See Citizens First Nat'l Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943, 944-45 (7th Cir. 1999).

VIII. TRIAL PROCEDURES

- A. **Trial Schedule**: In general, criminal trials are scheduled from 8:30 a.m. to 4:30 p.m., Tuesdays through Fridays. The Court will notify the parties of deviations from this schedule, and when possible will attempt to accommodate jurors, witnesses, and counsel, should conflicts arise. There will be morning and afternoon breaks of fifteen minutes each.
- B. **Motions in Limine**: These Motions will be heard **10 days** before the trial date unless otherwise set by the Court. Motions are due **7 days before** the hearing, with any opposition due **3 days before** the hearing, unless otherwise set by the Court. No reply memorandum are to be filed.
- C. **Trial Briefs**: The parties may file trial briefs **7 days** prior to the date of trial. The parties should consult CrimLR 23.1 regarding proper form and content.
- D. **Voir Dire**: Counsel may file proposed *voir dire* questions no later than **7 days before** the date of trial.

The Court will conduct the initial *voir dire*. The Court will generally permit follow-up *voir dire* conducted by the attorneys. Ten (10) minutes per side will generally be allowed on routine cases. Attorney conducted *voir dire* should be supplemental and not duplicative of the Court's questions. The limited attorney *voir dire* should be directed to follow up on answers to the questions asked by the judge, and should be calculated to discover bias or prejudice with regard to circumstances of a particular case. No attempts to use the questioning to precondition the jury to a parties case will be allowed.

- E. **Proposed Jury Instructions**: The parties must file proposed jury instructions and verdict forms **7 days** prior to the date of trial, unless otherwise ordered by the Court *and email a copy in Word to efile_battaglia@casd.uscourts.gov*. Counsel must meet and confer and submit a joint set of agreed jury instructions. Counsel must also submit a separate set of any instructions they

propose to which there is an objection. The Court prefers to use the Model Jury Instructions for the Ninth Circuit whenever possible. The parties should consult CrimLR 30.1 regarding proper form and content.

- F. Witness and Exhibit Lists:** The parties must file witness and exhibit lists **7 days** prior to the date of the trial, unless otherwise ordered by the Court.
- G. Side Bar Conferences:** The Court prefers no side bar conferences during the trial. If there is an issue to discuss outside the presence of the jury, whenever possible, it will be taken up on a recess. In the meantime, move on with your examination.
- H. Use of the Well/Examining and Approaching Witnesses:** Counsel may freely use the well for opening statement, witness examination, or closing argument and may approach the witness without asking permission, unless the court finds counsel's conduct abusive to the witness, the jury, their opponent or the Court. You need to ensure that you can be heard. Lapel microphones are available upon request.
- I. Publishing Exhibits:** Exhibits may not be passed among the jury during trial. If counsel wish the entire panel to examine a particular exhibit prior to deliberations, they should either provide blowups or
- J. All audio and video exhibits to be entered into evidence will be submitted on a thumb drive. Discs will no longer be accepted.**

IX. USE OF ELECTRONIC EQUIPMENT IN THE COURTROOM

The Court now has new audio/visual equipment for counsels' use. In brief, the podium is wired to connect with counsel's computers, laptops and tablets. There is now an Elmo in place and the jury box is equipped with digital monitors. Counsel should contact the CRD for details and instructions and with questions regarding the use of equipment not provided for by the Court.

X. GUILTY PLEAS

In the normal course, all guilty pleas are referred to the magistrate judges. If a case is already on the Court's calendar and time permits, the Court may take the plea at that time, but only where counsel have cleared the taking of the plea with the courtroom deputy in advance of the hearing date.

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