

HONORABLE ANTHONY J. BATTAGLIA
U.S. DISTRICT JUDGE
CIVIL CASE PROCEDURES

October 1, 2017

Please Note: The Court provides this information for general guidance to counsel. However, the Court may vary these procedures as appropriate in any case.

I. Communications With Chambers

- A. Letters or emails.** Letters or emails to chambers are prohibited unless specifically requested by the Court. If letters or emails are requested, copies of the same must be simultaneously delivered to all counsel. Copies of correspondence between counsel may *not* be sent to the Court unless specifically requested by the Court.
- B. Faxes.** Faxes to chambers are prohibited unless specifically requested by the Court. If faxes are requested, copies of the document(s) must be simultaneously delivered to all counsel.
- C. Telephone Calls.** *Telephone calls to chambers are permitted only for matters such as scheduling and calendaring. Procedural questions should be directed to the Clerk's Office after first consulting the Local Rules and CM/ECF Policies and Procedural Manual.* Court personnel are prohibited from giving legal advice or discussing the merits of a case. When calling chambers, be prepared to identify your case as odd or even based on the last digit of the case number so your call can be directed to the appropriate law clerk. Only counsel with knowledge of the case may contact chambers. Chambers staff may be reached at 619-557-3446.
- D. Document submissions.** Please refer to the Local Rules for a complete list of deadlines and compliance requirements. The Electronic Case Filing Administrative Policies & Procedures Manual can be found on the Court's website. Parties must provide the Court with a courtesy copy of any document exceeding twenty (20) pages in length, including exhibits and other attachments. Courtesy copies must be brought to the Clerk's Office to be placed in Judge Battaglia's box. Failure to submit courtesy copies may result in a continuance of

the hearing.

II. Noticed Motions

- A. **Hearing Dates.** Counsel must obtain all hearing dates from the appropriate law clerk before filing any motion. Motion papers **MUST** be filed and served *the same day* of obtaining a motion hearing date from chambers. A briefing schedule will be issued once a motion has been filed. ***Objections relating to the motion should be set forth in the parties opposition or reply. No separate statement of objections will be allowed.*** The parties must obtain leave of Court by filing an *ex parte* request before filing any sur-replies.
- B. **Oral argument.** Although the Court often decides motions based on the papers submitted by the parties, it is the Court's policy to schedule oral argument for dispositive motions or when all counsel request oral argument. If oral argument is not necessary, the Court will electronically inform the parties via CM/ECF, or the law clerk assigned to the case will contact the parties. The Court tries to inform the parties whether oral argument will be required at least a week before the scheduled hearing date.

The Court views argument as an opportunity to have counsel answer questions on the facts and law that remain despite the briefing. Typically, the hearing will begin with the Court expressing its tentative ruling or areas where questions remain. Counsel need not prepare for, or expect to, restate the arguments from the briefs or elaborate on the facts in general. Lengthy presentations are discouraged, and supplemental authority must be submitted 7 days in advance of the hearing, with notice to all other counsel or unrepresented parties.

For lawyers with less than 5 years admission to the bar, the Court will hold argument on civil motions where: (1) the motion will be argued by attorneys with less than 5 years of admission to the bar for at least two opposing sides; or (2) where the motion will be argued by an attorney with less than 5 years of admission to the bar on one side and

the opposing attorney, notwithstanding their time admitted to the bar, also requests oral argument. Counsel must meet and confer on this issue and advise the Court of their request for oral argument no less than 7 days before the hearing by written pleading.

- C. Continuances.** Parties requesting a continuance of any conference, scheduled motion, hearing date, deadline, briefing schedule, or any other procedural change, must meet and confer prior to contacting the Court. If the parties reach an agreement, they must e-file a joint motion with a detailed declaration explaining the reasons for the requested continuance or extension of time. The parties must also e-mail a proposed order in Word format to efile_battaglia@casd.uscourts.gov. The proposed order must set forth the current date scheduled and the new date proposed. Please refer to the Case Filing Administrative Policies and Procedures Manual located on the Court's website with regard to CM/ECF filings. If the parties are unable to reach an agreement, the requesting party must file an *ex parte* motion satisfying the applicable legal standard, with a particular focus on the diligence of the party seeking delay and any prejudice that may result therefrom. In addition, the *ex parte* motion must state: (1) the original date; (2) the number of previous continuances and requests that have been made; (3) whether previous requests were granted or denied; and (4) opposing counsel's position with regard to their opposition.
- D. Proposed Orders.** Proposed orders must be submitted simultaneously with the filing of all joint motions or *ex parte* motions. The proposed order should be emailed to efile_battaglia@casd.uscourts.gov in Word. Counsel are not required to submit proposed orders on motions requiring legal analysis, i.e., motions for summary judgment, 12(b) motions, etc.
- E. Sur-Replies.** Sur-replies must *not* be filed unless leave of Court has been granted.

F. Separate Statements of Fact. Separate Statements of Fact must *not* be filed unless leave of Court has been granted pursuant to CivLR 7.1.f.1.

G. Motions for Reconsideration.

The following procedures apply to all reconsideration motions:

1. Counsel must seek reconsideration within the timing limitation of CivLR 7.1.i.1;
2. Movant must file the motion for reconsideration as an *ex parte* application;
3. The motion for reconsideration must be no more than ten (10) pages in length and may not include attachments or exhibits;
4. The motion for reconsideration will specifically address the federal standard applicable to motions for reconsideration, and will not reallege arguments previously considered and ruled upon by the Court;
5. The Court will set dates for a hearing and filing of opposition briefs if the Court finds they are warranted following an initial review of the merits of the motion; and
6. All dates and deadlines in the case will remain as set and discovery and other proceedings will go forward until otherwise ordered by the Court.

III. Ex Parte Proceedings

1. Appropriate *ex parte* motions may be made at any time after first contacting the law clerk, but must ultimately be filed electronically on CM/ECF. Before filing any *ex parte* motion,

counsel must contact the opposing party to meet and confer regarding the subject of the *ex parte* motion. All *ex parte* motions will be accompanied by a declaration from counsel documenting; (1) efforts to contact opposing counsel; (2) counsel's meet and confer efforts; and (3) opposing counsel's position regarding the *ex parte* motion. Any *ex parte* motion filed with the Court must be served on opposing counsel via facsimile, electronic mail with return receipt requested, or overnight mail.

2. After service of the *ex parte* motion, opposing counsel will ordinarily be given until 5:00 p.m. on the next business day to respond. If more time is needed, opposing counsel must call the law clerk to modify the schedule. *Ex parte* motions that are not opposed, will be considered unopposed and *may* be granted on that ground. After receipt, moving and opposing *ex parte* papers will be reviewed and a decision will be made without a hearing. If the Court requires a hearing, the parties will be contacted to set a date and time.

IV. Seeking Leave to File Documents Under Seal

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

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).

confidential information.² 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.

2. The Court recommends that parties seeking to seal documents that will be filed in conjunction with noticed motions, or in opposition or reply to noticed motions, do so before filing the respective documents. 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 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 respect to the particular document(s); and (3) affidavits or declarations in support of the motion.

² Although courts may be more likely to order the protection of the information listed in Rule 26(c)(7) of the Federal Rules of Civil Procedure, courts have consistently prevented disclosure of many types of information, such as letters protected under attorney-client privilege which revealed the weaknesses in a party's position and was inadvertently sent to the opposing side, *see KL Group v. Case, Kay, and Lynch*, 829 F.2d 909, 917-19 (9th Cir. 1987); medical and psychiatric records confidential under state law, *see Pearson v. Miller*, 211 F.3d 57, 62-64 (3d Cir. 2000); and federal and grand jury secrecy provisions, *see Krause v. Rhodes*, 671 F.2d 212, 216 (6th Cir. 1982). Most significantly, courts have granted protective orders to protect confidential settlement agreements. *See Hasbrouck v. BankAmerica Housing Serv.*, 187 F.R.D. 453, 455 (N.D.N.Y. 1999); *Kalinauskas v. Wong*, 151 F.R.D. 363, 365-67 (D. Nev. 1993).

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).

V. Temporary Restraining Orders

All motions for temporary restraining orders must be briefed. While temporary restraining orders may be heard *ex parte*, the Court will do so only in extraordinary circumstances. The Court's strong preference is for the opposing party to be served and afforded a reasonable opportunity to file an opposition. In appropriate cases, the Court may issue a limited restraining order to preserve evidence pending further briefing.

VI. Trial Procedures

A. Trial Schedule: In general, civil 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.

1. Motions in Limine will typically be heard in advance of the first day of trial. Each side is allowed a maximum of five (5) motions in limine. Each motion must be limited to a single subject. Each motion and each opposition are limited to five (5) pages in length. Attachments are also limited to a maximum of five (5) pages for any motion or opposition;
2. Prior to filing motions in limine, counsel must meet and confer and discuss their intended motions, in attempt to resolve issues without court intervention, as appropriate;

3. Counsel must confirm their good faith attempt to resolve the issues through the meet and confer process in their motion papers;
 4. Motions in limine must be limited in scope to evidentiary issues where attempts to “unring the bell” would be unduly prejudicial or futile. Motions for judgment on the pleadings, summary judgment or summary adjudication, *Daubert*, leave to amend or bifurcation are not proper in limine motions; and
 5. The Court will grant motions to exclude witnesses under Evidence Rule 615, to allow electronic equipment, and to shackle inmate civil litigants on oral motion at or before trial. These motions do not count against counsels’ five (5) in limine motion limit.
- C. Trial Briefs:** The parties may file trial briefs **7 days** prior to the date of trial. Trial briefs are limited to twenty five (25) pages. Attachments or exhibits may not be appended.
- D. Voir Dire:** If counsel wish to expand the scope of the judge’s initial voir dire, they 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 Criminal Local Rule 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 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. Witness examination must be done from the podium. You need to ensure, in all instances, 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, use the overhead projector to project the exhibit or display a digital image.

VII. 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. A VGA or HDMI connector is required for your devices. There is now a Document Camera (Elmo) in place, with an annotation feature, and a Blu Ray player. Finally, and the jury box is equipped with digital monitors, as are counsel tables and a gallery monitor. Counsel should contact the CRD for details and instructions and to schedule a preview of the equipment. Counsel should contact the CRD with any questions regarding the use of any other equipment not provided for by the Court.