Federal Bar Association
San Diego Chapter

presents:

THE 19TH ANNUAL JUDITH N. KEEP FEDERAL CIVIL PRACTICE SEMINAR

September 20, 2023 | Westin Gaslamp Quarter | 1:00 p.m. – 6:00 p.m.

Practicing Before the New District Judges

Hon. Robert S. Huie, U.S. District Judge

Hon. Andrew G. Schopler, U.S. District Judge

Hon. James E. Simmons, Jr., U.S. District Judge

— Practicing Before the New District Judges —

Hon. Robert S. Huie

The Honorable Robert S. Huie received his Bachelor of Arts from Calvin College and his Juris Doctor from Yale Law School. He clerked for Judge José A. Cabranes at the United States Court of Appeals for the Second Circuit, followed by several years in private practice. From 2008-2020 he served as an Assistant United States Attorney in the criminal division of the Southern District of California where he was Deputy Chief of the Office's Major Frauds and Public Corruption Section. In 2020, Judge Huie returned to private practice at Jones Day. He was confirmed as a District Judge and received his judicial commission in June 2022.

Hon. Andrew G. Schopler

The Honorable Andrew G. Schopler received his Bachelor of Arts from Dartmouth College and his Juris Doctor from Harvard Law School. He gained experience in private practice and as a public defender in North Carolina. From 2004-2016 Judge Schopler was an Assistant United States Attorney in the United States Attorney's Office for the Southern District of California. Judge Schopler served as a US Magistrate Judge for the Southern District of California from September 2016 to March 2023. He was confirmed as a District Judge and received his judicial commission in March 2023. He has served in the U.S. Army National Guard since 2014.

Hon. James E. Simmons, Jr.

The Honorable James E. Simmons received his Bachelor of Arts from the University of California, Berkeley in 2001 and a Juris Doctor from Golden Gate University School of Law in 2004. Immediately following law school Judge Simmons served as a Deputy City Attorney in the San Diego City Attorney’s office. From 2006-2017, he was a trial attorney at the San Diego District Attorney’s Office. In November 2017 he was appointed to the San Diego County Superior Court. Judge Simmons was confirmed as a District Judge and received his judicial commission in March 2023.

Honorable Robert S. Huie
United States District Judge
Civil Pretrial and Trial Procedures

For questions regarding filing and/or docketing, contact:

- **the Clerk's Office at (619) 557-5600,**
- **the CM/ECF Helpline at (866) 233-7983, and/or**
- **the CASD CM/ECF Helpdesk at ecfhelp@casd.uscourts.gov.**

For criminal matters, contact Loraine Odierno (Courtroom Deputy) at (619) 695-5870.

For civil matters, contact Judge Huie's law clerks in chambers at (619) 557-5405.

For transcript requests, contact Tricia Rosate (Court Reporter) at tricia_rosate@casd.uscourts.gov.

Unless otherwise ordered by the Court, counsel and pro se litigants are expected to follow the Federal Rules of Civil Procedure, the Civil Local Rules for the Southern District of California (the "Civil Local Rules"), the Electronic Case Filing Administrative Policies and Procedures Manual (the "ECF Manual"), and any other applicable rules. The Civil Local Rules and the ECF Manual are available on this District's website at https://www.casd.uscourts.gov/rules/localrules.aspx. Failure to comply with the applicable Orders and rules, including the ECF Manual, may result in the Court striking non-compliant documents from the record pursuant to ECF Manual Section 2(a) and/or imposing sanctions pursuant to Civil Local Rule 83.1.

I. Communications with Chambers

A. Letters, faxes, or emails. Letters, faxes, and emails to chambers are prohibited, unless specifically requested by the Court. If letters, faxes, or emails are requested, copies of the same shall be simultaneously delivered to all counsel. Copies of correspondence between counsel must not be sent to the Court unless requested.

B. Telephone Calls. *Parties seeking a motion date for a noticed motion should refer to Section III below*. In light of the Court's procedure for setting motion dates, telephone calls to Chambers are rarely necessary. Such calls may only be made by counsel with knowledge of the case. Calls from secretaries, legal assistants, paralegals, or parties represented by counsel are prohibited. Counsel should not call Chambers with procedural questions or to inquire whether any action has been taken with regard to a previously-submitted filing. The Court does not provide time estimates for its written rulings. Court personnel are prohibited from giving legal advice or discussing the merits of a case. When calling chambers, be prepared to identify your matter by case name and case number so your call can be directed to the appropriate law clerk. If your call is not answered, you may leave a voicemail, including your name, contact information, case number, and a detailed message.

C. 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 within 24 hours after filing a file-stamped courtesy copy to the Clerk's Office to be placed in Judge Huie's box. If a filing has more than three exhibits, the exhibits must be tabbed and listed in a table of exhibits.

II. Discovery

Counsel must contact the magistrate judge's chambers directly for all matters pertaining to discovery. Any objection to a discovery ruling of the magistrate judge must be filed as a motion pursuant to Civil Local Rule 7.1.

III. Noticed Motions

A. Conference of Counsel Prior to Filing Noticed Motions. Any party contemplating the filing of any noticed motion before this Court must first contact opposing counsel to discuss thoroughly the substance of the contemplated motion and any potential resolution. The conference must take place at least ***seven (7) days*** prior to the filing of the motion. If the parties are unable to reach a resolution that eliminates the need to file the anticipated motion, counsel for the moving party must include in the motion papers a statement to the following effect: "This motion is made following the conference of counsel that took place on [date]."

The only exceptions to this meet-and-confer requirement are: (1) in cases where the plaintiff is appearing pro se and is not an attorney; (2) for applications for temporary restraining orders or preliminary injunctions; and (3) motions and cross-motions for summary judgment. *Ex parte* applications, which have separate requirements below, and joint motions are exempt from this rule as they are not noticed motions.

B. Motion Dates. Parties filing a noticed motion must set the hearing date to be ***thirty-five (35) days*** from the motion's filing date.[1] Parties should not contact chambers for a motion hearing date.[2] Opposition and reply briefs are due based on the noticed date. The hearing date on a motion does not indicate a date when appearances are necessary; rather, it sets the briefing schedule for the motion pursuant to the applicable local rules. Consequently, the filing party should not specify a hearing time on its motion, and must include the following language in the caption of the motion: PER CHAMBERS RULES, NO ORAL ARGUMENT UNLESS SEPARATELY ORDERED BY THE COURT. If the Court decides to hear oral argument, the Court will issue an order setting the date and time for oral argument.

C. Proposed Orders. Any proposed orders must be submitted simultaneously with all motions. In accordance with Section 2(h) of the ECF Manual, proposed orders must not contain the name and law firm information of the filing party, and must not contain the word "proposed" in the caption. Counsel must email proposed orders in Word format to

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[1] For example, if the motion is filed on June 2, 2022, the motion date should be July 7, 2022.

[2] This rule supersedes the requirement of Civil Local Rule 7.1(b) that a motion date must be obtained from chambers.

efile_Huie@casd.uscourts.gov, and include the case number and case name in the subject line of the email. Proposed orders or other documents requiring the judge's signature must not be filed on the docket.

D. Briefing. If multiple parties are moving for substantially the same relief or opposing a motion seeking substantially the same relief against them, they must make every effort to coordinate the timing of the filing of their motions, and to coordinate and consolidate the briefing to avoid duplication in briefing.

E. Surreplies and Notices of Supplemental Authority. Surreplies and notices of supplemental authority may not be filed unless leave of court has been granted. The only exception to this requirement is if there is a change in binding intervening law that is directly on point issued after the filing. Under these circumstances, parties may file a notice of supplemental authority that includes the case citation and a copy of the order or opinion. Counsel may not include any argument in the notice.

F. Motions and Cross-Motions for Summary Judgment. Separate Statements of Fact may not be filed unless leave of Court has been granted. Rather, the parties must meet and confer to arrive at a joint statement of undisputed material facts, which must be filed no later than the reply brief.

To the extent possible, the parties must coordinate the filings of a motion and cross-motion for summary judgment so that a consolidated briefing schedule may be applied. No later than ***fifteen (15) days*** before the deadline for filing dispositive motions, all parties on the same side of the case (i.e., all defendants or all plaintiffs), must meet and confer about whether they intend to file a motion for summary judgment, and if so, the bases for that motion.

G. Exhibits/Unreported Cases. All exhibits submitted in support of motions should be excerpted to include only relevant material. All exhibits must be clearly labeled, dated, tabbed, and indexed. Copies of documents already contained on the electronic docket should not be included as exhibits. Such documents should be cited in the text of the motion as [Doc. No. ___ at ___] referencing the docket number of the document cited and using the ECF-generated page number for pinpoint cites. For cases not assigned to a reporter for publication, Westlaw or Lexis citations should be given, if available. Citations to cases not available in Westlaw or Lexis should be accompanied by copies of the cases cited.

H. List of Terms/Names. For technical motions (especially in patent cases), one week prior to the motion hearing, the parties must send an email to chambers (but do not file) with a list of pertinent technical terms and/or proper names, the purpose of which is to assist the court reporter in the transcription of the hearing.

I. Amended Pleadings. Any amended pleading—not just those accompanying a motion for leave to amend—must be accompanied by a redline showing how the amended pleading differs from the operative pleading. *Pro se* plaintiffs who are incarcerated are excused from this requirement.

IV. *Ex parte* Motions

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 must be accompanied by a declaration from the movant documenting (1) efforts to contact opposing counsel, (2) counsel's good faith efforts, in person or by telephone, to meet and confer to resolve differences with opposing counsel, and (3) opposing counsel's general position regarding the *ex parte* motion. Any *ex parte* motion filed with the Court must be served on opposing counsel via email, fax, or overnight mail. *Ex parte* motions that are not opposed within ***two (2) Court days*** 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 decides to hear oral argument, the Court will issue an order setting the date and time for oral argument.

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. Joint Motions/Stipulations

Pursuant to Section 2(f)(4) of the ECF Manual, all stipulations must be filed as joint motions. Joint motions must be signed by the Court to have legal effect.

VII. 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 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_huie@casd.uscourts.gov. The proposed order must set forth the current date scheduled and the new date proposed.

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. Such a motion should be filed at least ***two (2) days*** prior to the event or deadline that the moving party seeks to continue.

VIII. Protective Orders and Requests to File Under Seal

There is a presumptive right of public access to court records based upon common law and First Amendment grounds.[3] As such, motions to file documents under seal are strongly discouraged. The fact that both sides agree to seal a document or that a stipulated protective order was issued is insufficient cause for sealing. 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.

Any document submitted for filing under seal (including motions, responses, declarations, exhibits, etc.) must be accompanied by a motion authorizing such filing. The motion to seal will be a public entry on the docket and will be available to the public, in accordance with Section 2(j) of the ECF Manual.

The motion to seal must provide the Court with a specific description of the particular documents or categories of documents to be protected, including, for each document subject to the motion, whether the moving party seeks to seal the document in full or in part (i.e., with redactions). The motion to seal must be accompanied by declaration(s) from individual(s) with knowledge of the content of the documents demonstrating a compelling reason or good cause to protect those documents from disclosure. The standard for filing documents under seal will be strictly applied.

After filing a motion to seal, the moving party must immediately file the proposed sealed documents in CM/ECF using the "Sealed Lodged Proposed Document" in accordance with Section 2(j) of the ECF Manual. If the moving party seeks to seal the document in full, the document should be lodged in full, without redactions. If the moving party seeks to seal only portions of the document by using redactions, the document should be lodged with the alleged confidential or privileged information highlighted in yellow for the Court's consideration.

The party requesting a sealing order must also file a "public" version of the document(s) it seeks to file under seal. For each document the moving party seeks to seal, the party may redact only that information that is deemed confidential or privileged. If the moving party has sought an order to seal the document in full, the party should file a slip sheet making clear for the Court that the document is subject to the motion to seal. If the moving party has sought an order to seal only portions of the document, the party should file the document with the alleged confidential or privileged information redacted.

Parties often seek to seal a document only because another party designated the document as sensitive under a protective order, including with a "confidential" or "attorneys' eyes only" designation. In these circumstances, the moving party must first meet and confer with the designating party to determine whether the designating party maintains that any portion of the document must be filed under seal. If so, the moving party must file a motion to seal. In addition, the designating party must file a response to the sealing motion within ***seven (7) days*** that satisfies

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[3] *See Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978); *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016).

the sealing standard described above. If no response is filed, the Court may order that the document be filed in the public record.

IX. Settlement

If the parties settle a case, counsel must immediately notify this Court and the magistrate judge of the settlement. Unless a notice of dismissal is filed under Federal Rule of Civil Procedure 41(a)(1), for which a court order is not required, the parties must file a joint motion to dismiss and email the proposed order to this Court within ***twenty-eight (28) days*** of the settlement.

X. Pretrial Conference

Pursuant to Civil Local Rule 16.1(f)(6), the Court requires that the parties lodge by email to chambers a proposed pretrial order at least ***seven (7) days*** before the pretrial conference. The proposed pretrial order must strictly comply with the requirements set forth in Civil Local Rule 16.1(f)(6)(c). All parties are required to cooperate in completing the proposed pretrial order.

The parties must file proposed jury instructions and verdict forms with their joint pretrial conference order, and email a copy in Word to efile_huie@casd.uscourts.gov. Counsel must meet and confer and submit a joint set of agreed jury instructions, and also submit a separate set of any instructions they propose to which there is an objection.

XI. Motions *in limine*

Prior to filing motions *in limine*, counsel must meet and confer and discuss their intended motions in an attempt to resolve issues without court intervention, as appropriate. Counsel must confirm their good faith attempt to resolve the issues through the meet and confer process in their motion papers.

Motions *in limine* must be limited in scope to evidentiary issues. Motions for judgment on the pleadings, for summary judgment or summary adjudication, under *Daubert*, for leave to amend, or for bifurcation are not proper *in limine* motions.

Each side is limited to a maximum of five (5) motions *in limine*. Each motion *in limine* must be filed separately on the docket. Each motion *in limine* and each opposition shall not exceed ten (10) pages in length. Attachments to any motion *in limine* or opposition shall also be limited to ten (10) pages in length. No replies shall be filed unless directed by the Court.

If the case involves multiple plaintiffs or multiple defendants, only one brief per motion *in limine* per side will be accepted. Unless the parties obtain leave of Court to exceed the limitations contained herein prior to filing, multiple filings and filings that exceed the page limitations will be stricken.

XII. Trial

A. Jury Selection. Unless authorized by the Court, parties should not submit jury questionnaires. The courtroom deputy will provide counsel with a list of the jury panel in random order before *voir dire*. The courtroom deputy will seat all prospective jurors (22 prospective jurors will generally be summoned for civil cases). The Court will conduct the initial jury *voir dire*. In appropriate cases, the Court may permit follow-up *voir dire* by the attorneys.

Counsel will exercise peremptory challenges using the blind strike method, whereby the parties simultaneously exercise their challenges. After each side has exercised its peremptory challenges, the first eight persons not challenged peremptorily or successfully challenged for cause will constitute the jury. All remaining prospective jurors will be excused at that time unless alternates are selected.

B. Trial Exhibits. In preparing trial exhibits, the parties should contact the Clerk's Office for exhibit stickers. Parties may provide their own exhibit stickers as long as the stickers include the exhibit number and case number. Civil trials must only use numbers for identifying exhibits and not letters, unless otherwise ordered by the Court.

For both bench trial and jury trials, the parties must submit one (1) courtesy copy of the trial exhibits at least ***three (3) days*** before trial is set to begin. Counsel should contact the Court's courtroom deputy to arrange a time to deliver the courtesy copies. The parties must also submit the trial exhibits in an electronic-media format (e.g., CD, DVD, or USB flash drive) at least ***three (3) days*** before trial is set to begin.

The parties must also exchange their Final Exhibit and Witness Lists ***seven (7) days*** before trial, and email a copy of their Final Exhibit and Witness Lists to chambers.

C. Trial Schedule. Trial generally proceeds from 9:00 a.m. to 4:30 p.m., Monday through Thursday, unless the Court schedules otherwise. Jury deliberations also generally proceed from 9:00 a.m. to 4:30 p.m., unless the Court schedules otherwise.

D. Trial Procedures. In civil trials, it is the practice of the Court to set a reasonable time limit for the entire trial. The time limit set by the Court includes opening statements, arguments, testimony, closing arguments, and any other matters that occur over the course of the trial, excluding jury selection. The Court will keep track of time limits and, upon request, the courtroom deputy will inform the parties of the time spent and remaining for trial. The time limit is subject to exception for good cause shown.

Counsel and witnesses are expected to be present for trial except in case of an emergency. Lawyers must make every effort to have their witnesses available on the day they are to testify. The Court attempts to accommodate witnesses' schedules and may permit counsel to call them out of sequence if warranted. Counsel must anticipate any such possibility and discuss it with opposing counsel and the Court. Counsel must promptly alert the Court to any scheduling problems involving witnesses.

Counsel should not enter the well, except during *voir dire*, opening statements and closing argument. Counsel should conduct all examination of witnesses from the podium, seek permission

from the Court before approaching a witness, and keep any visit to the witness stand brief, e.g., by quickly orienting the witness with an exhibit and returning to the podium. When objecting, counsel should state only the legal ground for the objection, e.g., "objection, hearsay." Speaking objections are not permitted, unless the Court requests further information from counsel. When a party has more than one lawyer, only one lawyer may conduct the examination of a given witness.

Revised 7/13/2022

U.S. DISTRICT JUDGE ANDREW G. SCHOPLER
Chambers Rules—Civil

GENERAL RULES

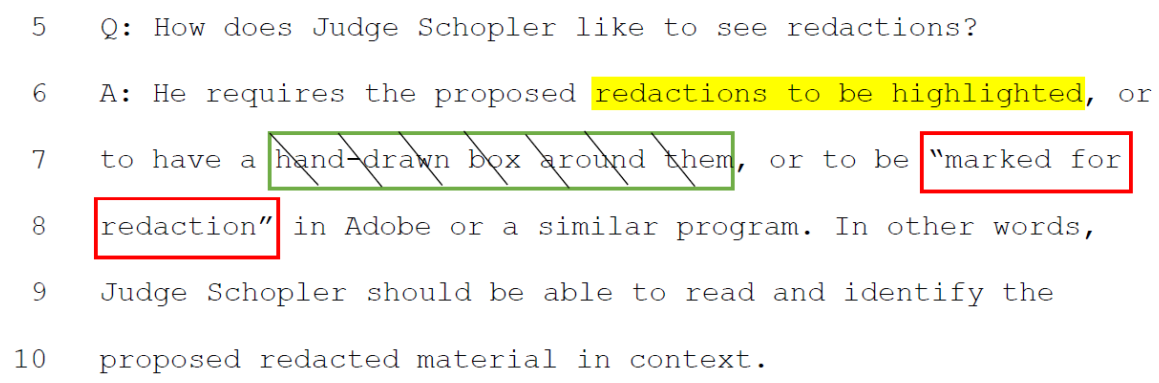
1. **Contact Information**: For any questions, contact the appropriate person below.

   - Transcripts.....james_pence-aviles@casd.uscourts.gov (Court Reporter)
   - Docketing, CM/ECF .....(619) 557-5600 (Clerk's Office)
     .....(866) 233-7983 (CM/ECF Helpline)
     .....ecfhelp@casd.uscourts.gov (CM/ECF Helpdesk)
   - Trial/hearing procedure....lilliana_cervantes@casd.uscourts.gov (Courtroom Deputy)
   - Other civil matters.....(619) 557-6480 (Chambers Phone)
     .....efile_schopler@casd.uscourts.gov (Chambers Email)

2. **Courtesy Copies**: If a lodged or filed document is 20 pages or longer, counting attachments, counsel must deliver a courtesy paper copy to chambers. Double-sided printing is encouraged. If a pleading has more than three exhibits, the exhibits must be tabbed.

3. **Motions to Seal**: If a motion to seal seeks to redact portions of materials from the public record, the provisionally sealed version of those materials must be marked for redaction in accordance with Chambers Rule 4 (Redactions).

4. **Redactions**: A party relying on a transcript or an audio/visual exhibit for court must provide the transcript or exhibit to the other side sufficiently before the relevant court appearance to allow the parties to meet and confer on any possible redactions or portions to be shown or heard. After that meet-and-confer process, if any disputes remain, a party seeking a court ruling on any transcript disputes must mark the proposed redactions using these or similar methods:



5. **Interpreters and Translations**: It is the sole responsibility of the party presenting foreign-language testimony to arrange for an interpreter. Any foreign-language exhibits must be accompanied by a translation and either: (a) a stipulation that the parties agree to the translation; or (b) a declaration that the exhibit was translated by a court-approved translator.

6. **Electronic, Audio, and Video Equipment**: At least seven calendar days before the relevant court appearance, a party who wishes to use any electronic or audio/visual equipment in court must prepare and lodge a proposed order seeking leave to do so. The proposed order must itemize all equipment along with the proposed dates for use in court. When approved equipment is brought into the courthouse, the order must be presented to security personnel.

PRETRIAL RULES

7. **Settlement and Dismissal**

   a. **Notification**: If a case settles, the parties must immediately notify this court and the assigned Magistrate Judge.

   b. **Motions to Dismiss After Settlement**: If a motion to dismiss includes a provision that the court will retain jurisdiction, it will generally be denied. A joint motion to dismiss that contains such a provision will only be granted if: (i) it is accompanied by a fully executed Consent to Exercise of Jurisdiction by a United States Magistrate Judge covering all disputes arising out of the settlement agreement; and (ii) the joint motion and proposed order include this provision: "The Magistrate Judge shall retain jurisdiction over all disputes between and among the parties arising out of the settlement agreement, including but not limited to the interpretation and enforcement of that agreement's terms."

8. **Summary Judgment**

   a. **Statement of Undisputed Facts**: All summary-judgment motions (and cross-motions) must be accompanied by a separate statement setting forth plainly and concisely all material facts that the moving party contends are undisputed. Each such fact must be followed by a reference to the supporting evidence.

   b. **Response to Statement of Undisputed Facts**: Any opposition to a summary-judgment motion (or cross-motion) must include a separate statement that responds to each fact in the Statement of Undisputed Facts, specifying whether the opposing party agrees or disagrees that those facts are undisputed. Each such fact that the opposing party contends is disputed must be followed by a reference to the supporting evidence. The statement must also set forth any other material facts that the opposing party contends are disputed.

   c. **No Arguments in Statement or Response**: The separate statements described above must not include any legal arguments. Legal arguments may be made in the memorandum of points and authorities accompanying the summary-judgment motion or the opposition.

9. Motions in Limine

a. Meet-and-Confer Requirement: Before moving in limine, the parties must meet and confer face-to-face to resolve the issues—that is, in person or by videoconference. Telephone or email communications will not satisfy this requirement.

b. Certificate of Compliance: Any motions in limine must include a certification or declaration documenting that this meet-and-confer requirement has been satisfied.

c. Redactions and Excerpts: If a party wishes for a transcript or exhibit to be redacted or excerpted for trial, that issue must be discussed during the meet-and-confer process. After meeting and conferring, if the parties cannot agree on a proposed redaction to a transcript or exhibit—or on the portions to be shown or heard—the proponent of the transcript or exhibit must seek court resolution of the issue in its motions in limine.

d. Exhibits in Opening Statement: After meeting and conferring, if the parties cannot agree on the use of an exhibit in opening statement, its proponent must seek permission to do so in a motion in limine.

TRIAL RULES

10. Time Limits: The Court will set a reasonable time limit on each side in all trials. The time limit will begin during opening statements, and will include all statements, arguments, testimony, and any other matters during trial. Upon request, the courtroom deputy will inform the parties of the time remaining.

11. Jury Selection

a. Voir Dire: On the first trial day, prospective jurors will complete a worksheet, answering questions determined by the Court and parties beforehand. Before jury selection begins, these worksheets will be provided to the parties. Unless otherwise ordered, Judge Schopler alone will conduct any further juror examinations. *See* CivLR 47.1.

b. Challenges to Jurors

(1) *For-Cause Challenges*: After voir dire of the entire panel, counsel may make any challenges for cause at sidebar. If such a challenge is sustained, the challenged juror will remain seated and be dismissed after the peremptory challenges are completed.

(2) *Peremptory Challenges*: The parties must submit their peremptory strikes simultaneously in writing, in double-blind fashion.

12. Arguments and Witness Examinations: During opening statements and closing arguments, attorneys may enter and use the well of the courtroom. All witnesses will be questioned from the podium. Without seeking the court's leave, attorneys may approach a witness to provide

exhibits or documents, but any visit to the witness stand must be brief and must only be for the purpose of quickly orienting the witness to an exhibit or document.

13. **Objections**: Speaking objections are prohibited. Unless the court invites further explanation, counsel will limit all objections to their legal basis, such as, "Objection, hearsay."

14. **Sidebars**: Sidebar conferences are strongly discouraged. Counsel should instead proactively address anticipated evidentiary issues at the final pretrial conference, in motions in limine, or in the morning before the jury arrives, during breaks, or after the jury is released for the day.

TRIAL SCHEDULE

In general, trials are scheduled from 9:00 a.m. to 4:30 p.m. daily, from Tuesday to Friday each week.

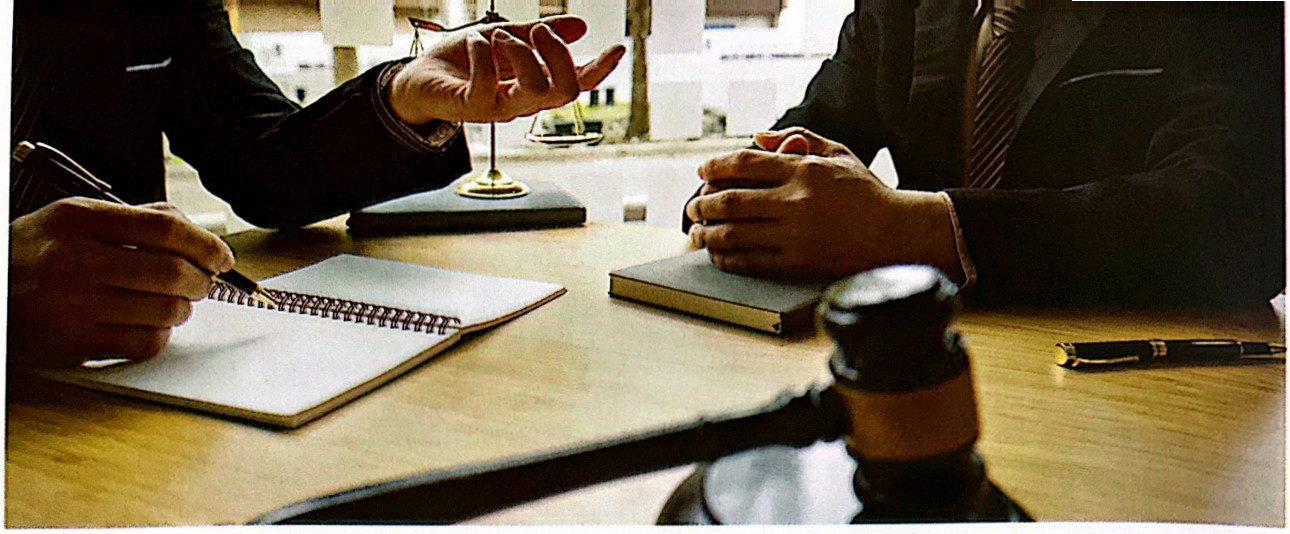


PHOTO CREDIT: @iStockphoto.com/ArLawKa AungTun

Litigating in Federal District Court? Understand Your Audience

By Monica Goff, Esquire, and Judge Rebecca Rutherford

From behind a closed door comes a loud knock, followed by a booming: "All rise." A door opens and a judge walks out, followed by a young lawyer. The judge takes the bench, and the young lawyer takes a seat within arm's reach of the judge. The proceeding commences. The lawyer may adjust the audiovisual equipment or pass exhibits to the judge. When the attorneys conclude their presentations and the matter is submitted, the judge and the lawyer retire behind the door.

In due course, the judge will issue a decision on the matter presented. To some, the judicial decision-making process conducted behind the chambers' door is a mystery. Lawyers may agonize while they wait for the decision. They wonder if there was anything they could have done differently that would have improved their chances for success.

This article attempts to provide some insight on the judicial decision-making process and offers some tips for litigating in federal district court—from the perspective of the young lawyer seated at the judge's elbow: the judicial law clerk. Of course, this represents only the experience of one federal law clerk in consultation with one federal magistrate judge; we do not presume to speak for other judges or law clerks, whose experiences may differ a little—or a lot—from our experiences.

What is a judicial law clerk?

A judicial law clerk is a member of the judge's chambers staff; a judge may have up to four law clerk positions in chambers. The law clerks are lawyers—often recently graduated from law school or within their first few years of practice. The position is prestigious, and the application process is competitive. These lawyers typically graduated from a respected law school at the top of their class, were on their school's law review or another journal, and were active in moot court or mock trial. They often postponed lucrative employment offers with private firms to work for the judge.

Most law clerks are hired for a specific term—usually one or two years—and most terms begin in August.

A judge may also employ a "career law clerk" as part of the judge's chambers staff. These clerks are more experienced lawyers, have often been in practice for a while, and have worked with the judge for several years. Career clerks possess institutional knowledge about the court and often help guide the term clerks through their clerkships. Unlike term clerkships, the career clerk position does not expire.

What does a law clerk do?

Law clerks' responsibilities may include managing civil docket in assigned cases; researching legal issues and drafting memoranda, opinions, and orders; preparing civil and criminal jury charges; and attending and assisting in scheduling conferences, pretrial conferences, hearings, and trials. However, duties also include more mundane tasks, such as editing and proofreading the judge's orders and other work products; verifying citations;

maintaining the judge's motion, hearing, and trial calendar; answering telephones, mail, and email; maintaining the chambers library; and serving as courtroom crier.

Let's take a closer look at some of the work that might occupy their time. Federal trial judges have hundreds or thousands of assigned cases on their dockets and do not have time to read, research, and write an order for every motion filed in every case. Accordingly, judges often assign their law clerks case management responsibilities.

Initially, the clerk's office randomly assigns a case to a judge, and the judge then assigns the case to a specific law clerk. Once the assignments are made, law clerks become responsible for managing their cases.

The law clerks may monitor the docket in their assigned cases, looking—often on a daily basis—for new motions filed. They would then present easy-to-handle unopposed or joint motions to the judge for prompt disposition. Clerks may track disputed substantive motions. And when those motions are full-briefed and ripe for determination, the clerks might be the first person in the judge's chamber to read the briefs and review the exhibits.

The clerks may also evaluate cases cited and conduct additional research. Clerks can spend a large portion of their time researching the case law to ensure their judge is making the right decision in accordance with the precedential case law. If the motion requires a hearing, law clerks might prepare the judge for the hearing by gathering the pertinent briefing, cases, and exhibits; outlining the key issues from the briefing; and identifying questions or issues that need to be resolved through oral argument. Clerks may draft a memorandum to the judge recommending a proposed outcome or prepare a first draft of an opinion. The opinion-drafting process often takes several rounds of edits.

It may also be a clerk's responsibility—assisted by the judge and other permanent chambers staff—to make sure all motions are ruled on timely. Clerks need to be able to manage the different deadlines for the docket.

Some motions either need to be decided or researched prior to certain hearing or trial dates. Before a summary judgment hearing, for example, the judge needs to be briefed on the facts of the case, the parties' arguments, and the relevant authority. That means, law clerks may be tasked with going through the full process of analyzing and researching the motion. Before trial, dispositive motions, expert motions, and evidentiary motions need rulings.

The law clerk may also need to keep track of the "CJRA list" or "six-month list" deadlines. The Civil Justice Reform Act of 1990 (CJRA) requires that the director of the Administrative Office of the United States prepare a report that shows all motions, bench trials, bankruptcy appeals, and social security appeals pending for more than six months with no ruling. See 28 U.S.C. § 476. The report is publicly available across the country, and no judge likes to be identified with a large number of stale motions.

In addition to the accountability provided by the CJRA list, many judges use this report as a stopgap to ensure their court is running efficiently. This is especially helpful with judges' dockets being busier than ever; law clerks work tirelessly to keep chambers moving.

If the case survives motion practice, law clerks may help prepare the judge for trial. Clerks may review the parties' proposed jury charges, the cited cases or pattern jury instructions; conduct independent research; and prepare the first draft of the court's charge for the judge to review. It may also be clerks who research issues that come up during trial and provide recommendations to the judge. In most instances, only one law clerk works with the judge during a trial.

The law clerk may attend trial with the judge and catalogue exhibits as they are entered into evidence. After the jury retires, the law clerk continues to assist the judge with legal research on issues that arise during the course of trial and may prepare the initial draft of the jury charge.

Using law clerks allows judges to stay knowledgeable on issues before the court and be in control of the decisions in their cases.

How can attorneys use this information?

Most practitioners think the first person to read their briefing will be the judge—but in most cases, it will be a law clerk. This should frame the way attorneys approach their arguments in multiple ways.

First, learning the term schedule and the way clerks prioritize motions can play a key factor in a lawyer's presentation of a case. Avoid the temptation to use shortcuts that state or imply "the court is well aware of the facts of this case" or "the facts are laid out in the previous motion." It may be a new law clerk reading the motion and this is the clerk's introduction to the case. Counsel will want to seize the

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opportunity to summarize the pertinent facts and frame the important issues for the pending motion and the case at large. Otherwise, the new clerk is likely to gain knowledge of the case from opposing counsel's view of the facts. Remember that the law clerk working in chambers on the date the motion is filed may not be working in chambers on the date the judge issues the decision.

Second, remember that this is a young lawyer reading the brief. Young lawyers who just finished working for their school's law reviews are keener to pick up on proofreading mistakes or citations that are not properly formatted according to The Bluebook. They may even circle mistakes or edit while they are reading. That is not to suggest that a motion will lose because of little mistakes, but it distracts the clerk from the substance of the legal arguments. It can also suggest that time and effort was not given to the motion and might color the clerk's view on the lawyer's confidence or commitment to the argument.

Try to recall your first few years of law practice and the fears and insecurities you had. Keep in mind law clerks have those same fears and insecurities, but they are working in positions where they are making regular recommendations to a federal judge.

Attorneys are in a position to give law clerks confidence that the attorney's position should prevail. Here are a few ways: First, the brief should spell out clearly how the party wins. Help the law clerk who may lack experience in a particular area of substantive law connect the dots. Starting with the background section, highlight the relevant facts plainly. Clerks don't have a lot of time to digest a lengthy brief, but they do want to understand what the case is about. They need to understand the necessary facts before they dive into the argument section. And, they need to be able to verify those facts with pinpoint citations to the relevant pleadings or evidence.

Next, lay out the proper legal standard. Research and cite prior decisions from the presiding judge for the proper legal standard. If the attorney cites the same cases the law clerk finds in independent research, the law clerk will have confidence in the soundness of the argument. This is particularly important when the attorney is asking the court to do something more unique than grant a motion to dismiss. If a party is seeking a particular remedy, identify the basis for the court to grant the remedy. For example, if a party is seeking a specific sanction, then in the legal standard identify the rule, statute, or other law that gives the court the authority to grant that sanction. While many attorneys think this section is a throw-away portion of the brief, this legal standard can be a great place to arm the law clerk with confidence that the requested relief is permissible before reading any arguments.

Then, when it comes to the argument section, do not skip steps. Attorneys sometimes assume there are obvious or self-explanatory points within their argument that can be skipped—don't. To the law clerk who just graduated law school, nothing in the law is obvious or self-explanatory. Provide rules and cases to support the arguments; show where courts have engaged in the same analysis and arrived at the same conclusion. Stay focused on the substance of the argument and strive to set aside any pettiness between the parties or counsel. Law clerks are laser-focused on getting the law correct and making an appropriate recommendation to the judge; they will only be disappointed and distracted by belittling ad hominem comments from counsel. Such comments unnecessarily lengthen the brief and detract from counsels' goal of providing the legal reasoning why their client should win. Now, if bad faith is at issue, stick to the necessary facts. No more.

Finally, identify the exact remedy sought—and state the requested relief early and often. For example, if the party seeks answers to certain interrogatories within the next 10 days or dismissal of certain claims with prejudice, ask for that relief. And include that request in the introduction, as well as the conclusion. Similarly, submit a precisely drafted proposed order. Avoid the temptation to submit a terse boilerplate order with no place for the court's signature. Even if it seems the court rarely enters the proposed order, proposed orders are required for a reason. And, as with the other suggestions, the more often law clerks receive complete and correct information, the more likely they will be to pass that on directly to the judge.

Hopefully, this information gives you some insight into the judicial decision-making process from the perspective of the law clerk. Happy briefing! ◆

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