

Chambers Civil Rules

The Honorable Thomas J. Whelan United States District Court, Southern District of California

These rules will help civil litigants appearing before Judge Whelan. They answer many commonly asked questions and explain procedures that are specific to Judge Whelan's chambers. In most cases, these rules are designed to help litigants clarify the issues and limit the scope of disputes before seeking the Court's assistance. The latest copy of these rules is available on the Court's web site (<https://www.casd.uscourts.gov/Judges>). If you are ready to file your civil motion within three (3) court days, see Chambers Civil Rules 3, 7, 10 (below). **Please do not call Chambers for a civil hearing date.**

Counsel for plaintiff, or plaintiff, if appearing on his or her own behalf, is responsible for promptly serving notice of the requirements contained herein upon defendant or defendant's counsel. If the action came to the Court via noticed removal, the removing defendant must promptly serve notice of these requirements on all other parties.

1. **Local Rules**

Except as otherwise provided herein or as specifically order by the Court, all parties are expected to strictly comply with this District's Local Rules, available on the court's web site (<https://www.casd.uscourts.gov/rules/local-rules.aspx>).

2. **Discovery**

Pursuant to Civil Local Rules 26.1(e) and 72.1(b), discovery matters are handled by the assigned Magistrate Judge. All documents relating to discovery shall contain the words "DISCOVERY MATTER" in their caption to ensure proper routing. Hearings for discovery motions shall be scheduled by the assigned Magistrate Judge's law clerks or in compliance with the Magistrate Judge's Chambers Rules.

3. **Motions**

- a. **Hearing Dates.** Please do not call Chambers for a hearing date. Before filing a motion, Counsel or the filing party shall select the hearing date by choosing a **Monday that is between 28 days and 45 days** from the motion's actual filing date. The selected hearing date may fall on a federal holiday, but the selected hearing date may not cause any responsive briefing

to fall on a federal holiday. If the Court determines there is any conflict or problem with the selected hearing date, the Court will enter an order amending it. In that event, the briefing schedule on the motion will be adjusted accordingly or as specified in that order.

The notice of motion and motion shall state the selected hearing date in the caption. This is the date used by the Court and all parties for determining the briefing schedule. Below the selected hearing date in the caption, counsel or the filing party shall include the following header: **NO ORAL ARGUMENT PER LOCAL RULE UNLESS FURTHER ORDERED BY THE COURT.**

- b. **Oral Argument.** The Court generally decides motions based on the papers submitted by the parties. In the caption of its notice of motion and motion, the moving party shall include the following: **NO ORAL ARGUMENT PER LOCAL RULE UNLESS FURTHER ORDERED BY THE COURT.** If the Court decides that oral argument will assist it in deciding a given motion, counsel will be notified at least three (3) court days before the scheduled hearing date.
- c. **Points and Authorities.** In their memoranda of points and authorities, the parties shall state all legal and factual bases for their respective positions. Moving parties shall raise all factual and legal bases for the motion in the opening brief. Factual matters or legal arguments raised by a party for the first time in the reply brief, unless directly in response to the opposition, may not be considered.
- d. **Statement of Non-Opposition, Failure to Oppose.** A party that determines that it will not oppose a given motion shall file a statement of non-opposition no later than 14 days before the hearing date. **An opposing party's failure to file a memorandum of points and authorities in opposition to any motion will be construed as consent to the granting of the motion.**
- e. **Courtesy Copies.** Courtesy copies of filings exceeding twenty (20) pages shall be delivered directly to chambers. Unless expressly required by the Court, courtesy copies must be identical to the electronically filed documents, and if the document has more than three (3) exhibits, the exhibits must be tabbed.

- f. **Citations to unpublished cases.** Parties are encouraged to use the Westlaw citation number when citing to unpublished or not-yet published opinions or orders. Lexis citation numbers may also be used. If an unpublished opinion's citation number is not available through Westlaw or Lexis, then the citing party shall attach a full copy of the unpublished case.
- g. **Motions to Amend the Pleadings.** Before filing any motions to amend the pleadings, counsel shall meet and confer in good faith regarding the proposed amendment. To facilitate this process, the party seeking to amend its pleading shall provide opposing counsel with a copy of the proposed amended pleading along with an explanation of the reasons for the amendment. If counsel are unable to reach agreement regarding the proposed amendment, counsel filing the motion to amend shall attach a declaration to the motion documenting counsels' meet and confer efforts.
- h. **Motions for Summary Judgment.** Ten (10) days before the hearing date, the parties shall meet and confer to arrive at a joint statement of disputed and undisputed facts, which shall be filed no later than the reply brief. The Court will not consider any separate statements of disputed or undisputed facts.

4. **Temporary Restraining Orders**

All motions for a temporary restraining order or preliminary injunction shall 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. The Court will generally give notice of hearing by email or telephone.

5. **Administrative Requests, Ex Parte Applications**

Do not call Chambers before filing an ex parte application. Before filing an ex parte application, counsel shall make every attempt to contact the opposing party to meet and confer regarding the subject of the ex parte application. All ex parte applications shall be accompanied by a declaration from counsel, or the filing party, documenting (1) efforts to contact opposing counsel, (2) counsel's meet and confer efforts, and (3) opposing counsel's position regarding the ex parte application. Any ex parte application filed with the Court shall be served on the opposing counsel via facsimile, electronic mail or overnight mail. Ex parte applications that are not opposed

within two (2) court days will be considered unopposed and may be granted on that ground.

6. **Continuances**

Parties requesting a continuance of any conference, hearing, deadline, briefing schedule, or other procedural changes shall meet and confer prior to contacting the Court. If the parties reach an agreement, no hearing date is required and the parties shall file a joint motion, including a declaration that details the reason(s) for the requested continuance or extension of time. They shall also submit a proposed Order as set forth in Chambers Civil Rule 7.

Except in extraordinary circumstances, joint motions to amend a briefing schedule or a motion hearing date must be filed no later than three (3) court days before the affected date. If the parties are unable to reach an agreement, the party requesting the continuance shall file an ex parte application satisfying the applicable legal standard, with a particular focus on the diligence of the party seeking delay and any prejudice that may result. In addition, the ex parte application shall state (1) the original date, (2) the number of previous continuance requests and (3) whether previous requests were granted or denied.

7. **Proposed Orders**

- a. **Submission.** Proposed orders must be submitted to chambers simultaneously with the filing of all joint motions or ex parte requests. The proposed order should be submitted in Word format by email, with the case number and case name in the subject line of the email, to efile_whelan@casd.uscourts.gov.
- b. **Format.** The word “proposed” in brackets (e.g., “[PROPOSED] ORDER GRANTING EX PARTE APPLICATION TO. . .”) must appear on the document. This Chambers Rule, mandating the addition of “[PROPOSED],” supersedes Section 2(h) of the ECF Manual. Additionally, all extraneous information shall be removed from the headers, footers, and margins (e.g., contact information and any attorney or firm information, including firm logos).

8. **Motions in Limine**

- a. **Meet and Confer Obligation.** Before filing any motions in limine, parties are required to meet and confer to resolve their dispute. If the parties are

unable to resolve their differences, counsel filing the motion in limine shall attach a declaration documenting the parties meet and confer efforts and the reason for their failure. Parties are encouraged to be selective with their motions in limine and not to file mundane or unnecessary motions.

- b. **Deadline.** Motions in limine must be filed and served no later than four (4) weeks before trial, and any opposition must be filed no later than two (2) weeks before trial. Reply briefs should not be filed.

9. **Jury Instructions**

The parties are required to meet and discuss proposed jury instructions. If the parties are unable to reach an agreement, they may submit to the Court each party's proposal for the instruction(s) upon which they cannot agree.

10. **Communication with the Court**

Consistent with Local Rule 83.9, counsel and parties shall refrain from writing letters or placing telephone calls to the Court, sending the Court copies of letters addressed to others, or otherwise causing or encouraging ex parte communications with the Court. Any party or attorney who causes or encourages such unauthorized ex parte communications, or who provides the Court's contact information with the knowledge that it shall be used for unauthorized ex parte communications, may be sanctioned. **Absent extraordinary circumstances, counsel shall personally initiate any authorized communications with the Court or chambers staff, rather than rely on a representative (e.g., a secretary or paralegal).**

11. **Pre-Trial Conferences and Letter Briefs**

- a. **Submission and Deadline.** In addition to the Proposed Pretrial Order, the parties shall separately submit informal letter briefs, not exceeding two (2) single-spaced pages, to Judge Whelan's chambers (and not filed in the Clerk's Office). The letter briefs must be submitted no later than **3:00 p.m. on the Wednesday before the pretrial conference.** The informal letter briefs shall also be served on opposing counsel. The informal letter briefs and Proposed Pretrial Order **shall be submitted to chambers in Word format** by emailing to efile_whelan@casd.uscourts.gov.
- b. **Content of Letter Briefs.** The letter brief shall not exceed two single-spaced pages and shall be served on opposing counsel. The letter brief should be relatively informal and straightforward. It should outline a short, concise, and objective factual summary of the party's case in chief, the

number of hours/days each party intends to use at trial, the approximate number of witnesses, whether certain witnesses will be coming in from out of town, the number of testifying expert witnesses, whether any unique demonstrative exhibits may be presented, the number of proposed motions in limine that may be filed, precisely when the parties would be prepared to submit their in limine papers (and whether the parties have met and conferred with respect to the in limine issues), the issue of proposed jury instructions and when the parties intend to submit them before trial, any voir dire issues, either party's preference as to what date(s) the trial should begin and any other pertinent information that either party may deem useful to assist the Court in the execution of the Pretrial Conference and in setting the matter for trial.

12. **Settlement and Dismissal**

If a case settles, the parties must immediately notify this Court and the assigned Magistrate Judge. Any joint motion for dismissal including a provision that the Court will retain jurisdiction will be rejected, unless it is accompanied by a consent to United States Magistrate Judge jurisdiction over all disputes arising out of the settlement agreement, including interpretation and enforcement of the settlement agreement, **signed by all parties and their counsel**. The executed consent form shall not be filed, but instead must be e-mailed to: efile_Whelan@casd.uscourts.gov
For the parties' convenience, a Consent to Exercise of Jurisdiction by a United States Magistrate Judge and Order of Reference (labeled "Whelan Consent Form") is available on Judge Whelan's chambers web page, <https://www.casd.uscourts.gov/Judges>.