

HONORABLE BENJAMIN J. CHEEKS
U.S. DISTRICT JUDGE
CRIMINAL CASE PROCEDURES
(Last Updated January 2025)

Courtroom Deputy
Tisha Weisbeck
(619) 557-6038

Edward J. Schwartz Courthouse
Courtroom 3A
(619) 446-3972

All matters before Judge Cheeks 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.

All proposed orders and other documents submitted to the Court should be emailed to efile_cheeks@casd.uscourts.gov in Microsoft Word format. Documents submitted in Word Perfect will be rejected by the Court.

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. Telephone Calls:** For docketing, scheduling, and calendaring matters, call Courtroom Deputy Tisha Weisbeck at (619) 557-6038 or email her at Tisha_Weisbeck@casd.uscourts.gov. For matters other than docketing, scheduling, or calendaring, call chambers at (619) 446-3972 and address your inquiries to the Law Clerks.

II. BAIL MATTERS

Bail matters are typically referred to the magistrate judges of this Court for handling unless: (1) a case is set for trial, (2) a guilty plea has been accepted, or (3) Judge Cheeks originally set the bond conditions. In these instances, a proposed order should be sent to Judge Cheeks' efile for review and processing. A hearing will be set, if needed. Any Motion to Modify Bail

must include the consent or position of the U.S. Attorney's Office, the sureties, and the assigned Pretrial Services Officer.

III. CALENDAR

Criminal matters are heard on Mondays, beginning at 9:30 a.m. and 2:00 p.m. unless otherwise scheduled by the Court. A party seeking a continuance of a hearing must notify Judge Cheeks' Courtroom Deputy at the earliest possible time.

All continuance requests require a joint or unopposed motion to continue. The Courtroom Deputy may administratively continue sentencing matters where all parties agree, if the case has not been continued twice before, and in no event longer than sixty (60) days from the originally scheduled date. 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.

All joint motions to continue must include: (1) the reason(s) for the circumstances establishing good cause for the continuance; (2) defendants who are not in custody must sign off on the Joint Motion and acknowledge and accept the next proposed court date in writing; (3) in cases where the Speedy Trial Clock is active, all joint motions must address any time that should be excluded under the Speedy Trial Act in the joint motion AND proposed order. All proposed orders should be emailed to Judge Cheeks' efile. No continuance will be granted where the parties have failed to fully comply with Local Rule 16.1. *See* Section IV, below.

Please be advised that all continuance requests must be made no less than **three (3) court days** prior to a hearing; otherwise, the request will be denied, and the hearing will not be taken off calendar or continued to a new date. By way of example, a motion to continue a hearing set for Monday must be filed by 5:00 p.m. on the preceding Wednesday.

IV. COMPLIANCE WITH LOCAL RULE 16.1

Not later than fourteen (14) calendar days after the arraignment on an Indictment or Information, the attorney for the defendant(s) and the attorney for the government must confer and attempt to agree on a timetable and

procedures for the pretrial disclosure of materials set forth in Federal Rule of Criminal Procedure 16.

Not later than seven (7) calendar days prior to the first motion hearing, the parties must inform the Court in writing of the agreed upon timetable for the production of discovery, including the Alien Registration File, video footage, car/vehicle inspection, DEA drug reports, cell phone extraction data, and/or ESI where applicable, as well as the proposed timing for disclosure of expert witnesses under Rule 16, and any areas of disagreement.

V. MOTIONS

- A. **Briefing Schedule:** All parties shall adhere strictly to Criminal Local Rule 47.1, which provides that all motions must be filed no later than **fourteen (14) days** prior to the date for which the motion is noticed unless the Court, by order and for good cause, shortens that time. Motions to shorten time are disfavored due to the difficulty that untimely filing creates for the opposing party to prepare and file a response, and for the Court to review the parties' submissions and prepare for hearing.
- B. **Reply Briefs and Other Supplemental Documents:** There is no provision for reply briefs in Local Rule 47.1, and the briefing schedule set forth by the rule does not accommodate the filing of any supplemental documents prior to a scheduled motion hearing. If a party wishes to file a reply brief or other supplemental documents in support of, or in opposition to, a pending motion, the party must seek leave of court to do so. Leave will not be granted absent good cause, and no supplemental filings will be accepted less than **seven (7) days** prior to the scheduled motion hearing.

VI. EX PARTE REQUESTS

Counsel shall submit an accompanying declaration on **ALL** motions and *ex parte* applications, including request for extraordinary relief. The motion/application and accompanying declaration must be non-conclusory and must plainly set forth (in detail) the specific reasons for the request.

ECF Manual § 2(i) permits all *ex parte* documents for which no notice is to be provided to opposing parties to be filed in paper format under seal. If a party chooses to file an *ex parte* document in paper format, then the filing party must also provide a digital courtesy copy sent to the Court's e-file email address at efile_checks@casd.uscourts.gov.

VII. PRETRIAL MOTIONS

Magistrate judges will schedule the motion hearing/trial setting on the Monday calendar. All motions, except motions *in limine* and those pertaining to sentencing matters, must be filed at least **fourteen (14) calendar days** before the hearing date. Opposition briefs must be filed at least **seven (7) calendar days** before the hearing date. 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: (1) a reason for the circumstances establishing good cause for the continuance; and (2) defendants who are not in custody must acknowledge the next court date in writing.

Please be advised that all continuance requests must be made no less than **three (3) court days** prior to a hearing; otherwise, the request will be denied, and the hearing will not be taken off calendar or continued to a new date. By way of example, a motion to continue a hearing set for Monday must be filed by 5 p.m. on the preceding Wednesday. **In addition, a Local Rule 16.1 report of counsel, the agreed upon timetable for the production of discovery, including the Alien Registration File, video footage, car/vehicle inspection, DEA drug reports, cell phone extraction data, and/or ESI where applicable, as well as the proposed timing for disclosure of expert witnesses under Rule 16, and any areas of disagreement must be on file.**

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.

VIII. REQUESTS FOR PROBATION REPORT SUPPORTING DOCUMENTS

Where counsel wish to access 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.

IX. SENTENCING AND SENTENCING SUMMARY CHARTS

The Court expects defense counsel, in any felony matter, to read, explain, and provide their client with a copy of the Mandatory and Standard Conditions of Supervised Release prior to sentencing.

All counsel must adhere strictly to Criminal Local Rule 32.1(a)(5)–(10), which provide the following filing deadlines prior to a scheduled sentencing hearing:

1. Objections to the PSR: **14 days** prior
2. Motions for departures, other than 5k1.1: **14 days** prior
3. Motions for 5k1.1 departures: **7 days** prior
4. Sentencing summary charts: **7 days** prior
5. Addenda addressing objections: **7 days** prior
6. Supporting documents: **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. Judge Cheeks reviews all sentencing documents prior to the hearing and will allow each party to supplement their filings on the record, as needed. No party shall submit more than ten sentencing letters without leave of Court.

Where the parties waive a presentence report, except those where the charge is illegal entry, Government counsel must file a sentencing memorandum detailing: (1) the circumstances of the offense(s), and (2) any recommendations for supervised release.

Immediate Sentencing: Upon request, the Court will proceed with immediate sentencing in certain immigration cases if it has sufficient information in the record to perform a meaningful exercise of sentencing authority. Such dispositions are encouraged.

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. The Court seeks to limit sealing orders to only the sensitive material. Therefore, counsel are ordered to proceed as follows:

- A. 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.
- B. 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 the Clerks' Office prior to filing them. The Clerk's Office will forward the documents to chambers for review. This will allow the Court to consider the merits of the motion to seal, and if the motion is denied, allow the

¹ 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).

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 publicly filed on CM/ECF.

- C. 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); (3) affidavits or declarations in support of the motion; and (4) the documents to be sealed. The motion must state the date of the next scheduled hearing in the case.

VIII. COURTESY COPIES

Unless otherwise ordered by the Court, for any document which exceeds twenty (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 in an untimely manner.

If a filing is particularly voluminous, parties may provide their courtesy copies in electronic-media format (e.g., USB flash drive). All documents should be scanned using Optical Character Recognition (“OCR”), if possible.

All parties who file a document under seal MUST also submit a digital courtesy copy of the filing to this Court’s e-file email address at efile_cheeks@casd.uscourts.gov.

IX. TRIAL PROCEDURES

- A. **Trial Schedule:** In general, criminal trials are scheduled from 9:30 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. The lunch break will be at least one hour.

- B. Motions in Limine:** These Motions will be heard **fourteen (14) days** before the trial date unless otherwise set by the Court. Motions are due **fourteen (14) days before** the hearing, with any opposition due **7 days before** the hearing, unless otherwise set by the Court. No reply memorandum are to be filed.
- C. Trial Briefs:** Trial briefs are due **the same date as Motions in Limine are to be filed.** The parties should consult CrimLR 23.1 regarding proper form and content.
- D. Demonstratives:** Any party who intends to use a demonstrative such as a PowerPoint presentation, poster boards, etc., during opening statements must disclose their intention to the opposing party on or before the Thursday prior to trial. The parties must meet and confer prior to the first day of trial in order to resolve any objections or other issues. Counsel should contact Judge Cheeks' Courtroom Deputy in order to make any necessary technological or logistical arrangements in advance of trial.
- E. Voir Dire:** Counsel may file proposed *voir dire* questions no later than **seven (7) days before** the date of trial. The Courtroom Deputy will provide counsel with a numerical list of the jury panel ("strike sheet") at the start of *voir dire*. 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 party's case will be allowed.

After the Court and counsel have *voir dired* the panel, counsel may exercise challenges for cause outside the presence of the prospective jurors. The exercise of peremptory challenges will follow. Counsel will exercise their respective challenges by alternating peremptory challenges orally outside the presence of the prospective jurors.

- F. **Proposed Jury Instructions:** The parties must file proposed jury instructions and verdict forms **seven (7) days** prior to the date of trial, unless otherwise ordered by the Court **and email a copy in Word format to efile_cheeks@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.
- G. **Witness and Exhibit Lists:** The parties must file witness and exhibit lists **seven (7) days** prior to the date of the trial, unless otherwise ordered by the Court. All witnesses must be present at the start of trial or readily available to take the stand. It is not acceptable for a jury to wait while counsel attempts to locate a witness. It is also counsel's responsibility to instruct witnesses and parties not to discuss their testimony or discuss the case outside of court in the presence of any jurors or in any location where the jurors may overhear.
- H. **Side Bar Conferences:** The Court prefers no side bar conferences during trial. If there is an issue to discuss, it will be taken up on a recess outside the presence of the jury. In the meantime, move on with your examination.
- I. **Use of the Well/Examining and Approaching Witnesses:** Counsel may freely use the well for opening statement or closing argument. Witness examination must be conducted from the podium or counsel table. Counsel will not approach the witness without asking permission. You need to ensure that you can be heard at all times. Lapel microphones must be used.

The Court reserves the right to limit re-cross and/or re-direct. Notify the Court if an interpreter is needed. It is counsel's responsibility to make arrangements with the Interpreter Services Department at (619) 557-5172. The Court Reporter will not transcribe any videos or audio tapes. Consequently, the parties must provide a stipulated transcript of videos or audio tapes.

- J. Publishing Exhibits:** Exhibits may not be passed among the jury during trial. If counsel wish the entire panel to examine an exhibit prior to deliberations, they should present the exhibit on the Court's Elmo/electronic equipment.

Before publishing an exhibit to the jury, counsel must move for admission of the exhibit or allow the Court to inquire whether the opposing side has any objection to publication. When referring to an exhibit, counsel should refer to its exhibit number whenever possible to keep a complete record.

If an exhibit is being used and counsel's view is obstructed, counsel may relocate for better viewing without requesting permission from the Court. Pursuant to Local Criminal Rule 1.1(e) and Local Rule 79.1, all exhibits will be returned at the end of trial to the party who produced them.

- K. Objections:** When objecting, 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 and that lawyer alone may make objections concerning that witness.

- L. All audio and video exhibits to be entered into evidence will be submitted to the jury on a thumb drive. Discs will no longer be accepted.** All counsel will be responsible for creating the thumb drives. Counsel will need to create two thumb drives; one of which will include all marked and admitted exhibits that will be preserved for the record and the second will be a thumb drive containing only admitted exhibits which will be given to the jury for their review. Counsel must create a table of contents and mutually agree upon the contents of each thumb drive. The Court disfavors binders and all evidence should be presented electronically, when possible.

X. USE OF ELECTRONIC EQUIPMENT IN THE COURTROOM

The Court has audio/visual equipment for counsels' use. In brief, the podium and counsel tables are wired to connect with counsel's computers, laptops and tablets. There is 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.

XI. NOTICE TO COURT OF DISPOSITION

Any time a case is calendared for motions and counsel for either side knows that a disposition is to take place, counsel has a duty to call the Courtroom Deputy Clerk at (619) 557-6038 at the earliest available time to inform the Court of the disposition.

XII. MOTIONS TO MODIFY OR TERMINATE SUPERVISED RELEASE

Motions and Joint Motions to Modify or Terminate supervised release conditions or the term, must include a statement regarding the positions of the United States Attorney's Office and the United States Probation Officer supervising the defendant.