

Honorable James E. Simmons Jr.
United States District Judge
Criminal Chambers Rules

For questions regarding filing or docketing, contact:

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

For criminal matters, contact:

- Emily Blase, Courtroom Deputy at Emily_Blase@casd.uscourts.gov

For civil hearing dates only, contact:

- Judge Simmons’ law clerks in chambers at (619) 557-7666

For transcripts requests, contact:

- Amanda LeGore, Court Reporter at Amanda_LeGore@casd.uscourts.gov

Unless otherwise specified by the Court, counsel and *pro se* litigants are expected to follow the Federal Rules of Criminal Procedure, the Criminal Local Rules for the Southern District of California (the “Criminal Local Rules”), the Electronic Case Filing Administrative Policies and Procedures Manual (the “ECF Manual”), and any other applicable rules. The Criminal Local Rules and the ECF Manual are available on the District Court’s website at <https://www.casd.uscourts.gov/rules/local-rules.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 Criminal Local Rule 57.1.

I. Court Calendar

Criminal matters will generally be heard on Fridays at 9:00 a.m., unless otherwise scheduled by the Court.

II. Communications with Chambers

A. Letters, Faxes, or Emails

Letters, faxes, or emails to chambers or chambers staff are prohibited unless required by Local Rule or specifically requested by the Court. If requested by the Court, letters, faxes, or emails shall copy simultaneously all counsel and unrepresented parties. Copies of correspondence between counsel must not be sent to the Court unless requested by the Court.

B. Telephone Calls

For docketing, scheduling, and calendaring matters, contact Courtroom Deputy Emily Blase by email. Court personnel are prohibited from giving legal advice or discussing the timing or merits of a case.

C. Requests for Continuances

Continuance requests must be docketed as a motion in CM/ECF, *no later than two days before the hearing by 12:00 PM*. When all parties stipulate to the continuance, the request should be docketed as a joint motion. If a joint motion is untimely filed, counsel will appear in person to request a continuance at the scheduled hearing. These motions should include: the original hearing date, the requested date for continuance (obtained from the courtroom deputy before filing), the grounds for continuance, and whether continuances of the same hearing have been requested in the past. If applicable, the joint motion should include a request for exclusion of time under the Speedy Trial Act, 18 U.S.C. § 3161, and include specific legal and factual bases for the exclusion. Counsel's stipulation to exclusion, on its own, is insufficient to support the exclusion of time. A notice of acknowledgment of the next court date must be filed by all out of custody defendants within seven days of granting the continuance.

D. Proposed Orders

Proposed orders must be submitted simultaneously with all motions. Proposed orders should include "[PROPOSED]" in the caption. Counsel must email proposed orders in Word (.doc) format to efile_simmons@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.

III. Motions

A. Scheduling a Hearing Date

The magistrate judge will set the initial hearing date for pretrial motions. Any changes to that date or any other hearing date for motions shall be obtained from the courtroom deputy. *See* Criminal Local Rule 47.1(a). Motions are generally heard on the Court's Friday calendar.

B. Courtesy Copies

Courtesy copies of filings that exceed 20 pages in length, including attachments and exhibits, shall be submitted in accordance with Section 2(e) of the ECF Manual via United States Postal Service mail, courier, or delivery to the Clerk's Office. The courtesy copy shall contain the CM/ECF document header on the top of each page. The Court prefers courtesy copies to be printed double-sided. If a filing has more than three (3) exhibits, the exhibits must be tabbed and listed in a table of exhibits.

C. Sealed Motions and Protective Orders

The public enjoys a presumptive right of public access to court records based upon the First Amendment and common law; therefore, motions to file documents under seal are strongly discouraged. The fact that both sides agree to seal a document is insufficient cause for sealing.

For all requests to seal, counsel must lodge the documents via email to the Courtroom Deputy or hand-deliver the documents to the Clerk of Court on the Fourth Floor of the James M. Carter & Judith N. Keep U.S. Courthouse. The lodged documents must include: (1) the motion to seal; (2) the proposed sealed documents; and (3) a proposed order in compliance with these Rules. Motions to seal and motions for protective orders should not be hand-delivered to chambers.

IV. Dispositions and Sentencings

A. Dispositions

Generally, Rule 11 guilty pleas may be taken by the magistrate judge on a report and recommendation. The Court encourages pleas before the magistrate judge assigned to the case. Rule 11 guilty pleas may also be taken by the district judge if it is not possible to schedule a hearing with the magistrate prior to the pretrial motion hearing. Parties wishing to have a guilty plea taken by the district judge must contact the courtroom deputy in advance of the scheduled pretrial motion hearing.

B. 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 email the Courtroom Deputy at the earliest available time to inform the Court of the disposition.

C. Immediate Sentencing

Upon request, the Court will proceed with immediate sentencing in certain immigration cases if it has adequate information in the record to perform a meaningful exercise of sentencing authority.

V. Trial Procedures

A. Trial Schedule

Trial generally proceeds from 9:00 a.m. to 4:00 p.m., Monday through Thursday, unless the Court schedules otherwise. There will be a **one-hour** break over the noon hour and two **15-minute** breaks, one in the morning, and one in the afternoon. Jury deliberations also generally proceed from 9:00 a.m. to 4:00 p.m., including Fridays, unless the Court schedules otherwise.

B. Motions *in Limine*

The Court will generally schedule a hearing date for motions *in limine* in advance of trial. Motions *in limine* are due **three weeks** before the hearing, with any responses due **two weeks** before the hearing. Unless specifically granted by the Court, replies to responses to the motions *in limine* are not permitted.

C. Jury Instructions

The parties must file proposed jury instructions **fourteen (14)** days prior to the date of trial, unless otherwise ordered by the Court **and email a copy in Word to efile_simmons@casd.uscourts.gov**. Counsel must meet and confer and submit a joint set of agreed instructions. Counsel must also submit a separate set of any instructions they propose to which there is an objection. The parties should clearly identify the disputed portions.

The Court prefers to use the Ninth Circuit Model Jury Instructions whenever possible. The Court will consider other proposed jury instructions, but counsel must cite the authority supporting proposed instructions. Any modification to a standard instruction must be identified by specifying the modification to the original instruction and the authority supporting the modification.

Before the case is submitted to the jury, the Court will provide each party with the jury instructions the Court intends to use. It is each party's responsibility to carefully review the instructions and make suggestions to the Court if modifications appear necessary.

D. Trial Briefs

Pursuant to Criminal Local Rule 23.1, the parties may, no later than **five (5)** court days before the date of trial, serve and file briefs on all significant disputed issues of law, including foreseeable procedural and evidentiary issues with citation of relevant statutes, ordinances, rules, cases and other authorities.

E. Proposed *Voir Dire* Questions, Verdict Forms

Counsel may serve and file proposed *voir dire* questions and verdict forms on the day set for motions *in limine*.

F. Jury Selection

On the day set for jury selection, the courtroom deputy will provide counsel with a numerical list of the prospective jurors ("strike sheet") at the start of *voir dire*. The Court will conduct the initial jury *voir dire*. The Court will generally permit follow-up *voir dire* conducted by the attorneys. The time allowed per side will be decided based on the complexity of the case. Attorney-conducted *voir dire* should be supplemental and not duplicative of the Court's questions. No attempts to use the questioning to precondition the jury to a party's case will be allowed.

After the Court and counsel complete *voir dire* of 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 using the "blind strike" method. That is, each side will exercise their peremptory challenges simultaneously and confidentially by marking those jurors they wish to excuse on the provided strike sheet. The Courtroom Deputy Clerk ("CRD") will collect the parties' strike sheets and, after reconciling those sheets, allow the parties to view the opposing counsel's challenges and the Court will hear any *Batson* challenges. The CRD will then inform the parties of the first twelve (12) remaining (non-challenged) jurors. The parties will also be informed of the four (4) eligible alternate jurors. The strike sheets will be returned to the parties, who will then use the blind strike method to exercise their one additional peremptory challenge with respect to the four (4) eligible alternate jurors. The CRD will again collect the strike sheets and, after reconciling those sheets, announce to the parties who the two alternate jurors will be.

G. Presentation of Evidence

The following rules apply:

Do not enter the well, except during *voir dire*, opening statement, and closing argument. Conduct all examinations of witnesses from the podium. Feel free to approach witnesses during examination, but first seek permission from the Court. After seeking permission the first time, you do not need to seek permission again for the remainder of that witnesses' examination. Please keep your visit to the witness stand brief, *e.g.*, by quickly orienting a witness with an exhibit and returning to the podium.

Where 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.

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.

H. Bench Conferences

Sidebar conferences are disfavored. If counsel desires to speak to the Court outside the jury’s presence, counsel may request to do so at the start of a recess or at the end of the day. Requests for sidebar conference will only be granted if the matter cannot wait until the next recess.

I. Exhibits

Government counsel must provide a list of exhibits and give two (2) courtesy copies to the courtroom deputy on the first day of trial. All exhibits must be pre-marked on the first day of trial. Exhibit stickers may be obtained from the Clerk of the Court or from the courtroom deputy in advance of trial.

Before publishing an exhibit to the jury, counsel must either 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 Criminal Local Rule 1.1(e) and Civil Local Rule 79.1, all exhibits will be returned to the party who produced them at the end of trial.