

**HONORABLE BENJAMIN J. CHEEKS**  
**U.S. DISTRICT JUDGE**  
**CIVIL CASE PROCEDURES**  
*(Last Updated February 2025)*

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Courtroom Deputy Tisha Weisbeck: (619) 557-6038  
Chambers: (619) 446-3972

Courtroom 3A  
Schwartz Courthouse

**Please Note:** The Court provides this information for general guidance to counsel. However, the Court may vary these procedures as appropriate in any case. All matters before Judge Cheeks shall be conducted in accordance with the following practices. Except as otherwise provided herein, or as specifically ordered by the Court, all practitioners are expected to comply strictly with the Local Rules of the Southern District of California and the Federal Rules of Civil Procedures.

**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:** *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 of record 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. Chambers staff may be reached at (619) 446-3972.

## 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. MOTION PRACTICE GENERALLY

- A. **Hearing Dates**: Parties filing a noticed motion must set the hearing date to be *thirty-five (35) days* from the motion's filing date.<sup>1</sup> Parties should not contact chambers for a motion hearing date. Opposition and reply briefs are due based on the noticed date.<sup>2</sup> 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: NO ORAL ARGUMENT UNLESS 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.
- B. **Oral Argument**: The Court generally decides motions based on the papers submitted by the parties. However, 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 seven (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 file a joint motion

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<sup>1</sup> For example, if the motion is filed on June 2, 2022, the motion date should be July 7, 2022.

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

on the docket 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\\_cheeks@casd.uscourts.gov](mailto:efile_cheeks@casd.uscourts.gov). The proposed order must set forth the current date scheduled, and the new date proposed. Additionally, do not include any watermarks or firm insignia on proposed orders. 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 regarding the *ex parte* motion

- D. Proposed Orders:** Proposed orders must be submitted simultaneously with the filing of all joint motions or *ex parte* motions. As stated above, **do not include any watermarks or firm insignia on proposed orders.** The proposed order should be emailed to [efile\\_cheeks@casd.uscourts.gov](mailto:efile_cheeks@casd.uscourts.gov) in Word format. 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 are *not* allowed unless leave of Court has been granted.
- F. Failure to Oppose:** An opposing party's failure to file an opposition to any motion may be construed as consent to the granting of the motion pursuant to Civil Local Rule 7.1(f)(3)(c).
- G. Exhibits:** The parties must avoid duplication of exhibits as much as possible. All exhibits submitted in support of motions should be excerpted to include only relevant material. All exhibits must be clearly labeled, dated, and indexed.

**H. Motions for Reconsideration:**

The following procedures apply to all reconsideration motions:

1. Counsel must seek reconsideration within the timing limitation of Civil Local Rule 7.1(i)(2);
2. Movant must file the motion for reconsideration as a noticed motion;
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 federal standard applicable to motions for reconsideration and the requirements outlined in Civil Local Rule 7.1(i)(1), 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.

**I. Daubert Motions:** Motions addressing the qualifications or testimony of a proposed expert must be brought by the dispositive motion hearing cut-off. They will not be entertained as motions *in limine*.

#### IV. MOTIONS FOR SUMMARY JUDGMENT

- A. All motions for summary judgment must be accompanied by a separate statement of undisputed material facts.

The separate statement should be prepared in a table format, with each undisputed material fact individually enumerated and supported by citations to evidence in the record. If the moving party fails to submit a separate statement of undisputed material facts with the moving papers, the Court will issue a discrepancy order rejecting the motion for summary judgment to discrepant for failing to comply with this Chambers requirement. This may require the moving party to obtain a new hearing date.

- B. Any opposition to a summary judgment motion must include a response to the moving party's separate statement of undisputed material facts.

Any evidentiary and procedural objections to the motion for summary judgment must be filed contemporaneously with the opposition brief. Similarly, the moving party must file any evidentiary and procedural objections to the opposition brief contemporaneously with its reply brief. If filed as a separate document, evidentiary and procedural objections may not exceed five (5) pages in length.

#### V. Ex Parte Proceedings:

- A. Appropriate *ex parte* motions may be made at any time after first contacting chambers, 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.

- B. 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 chambers 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.

## VI. SEEKING LEAVE TO FILE DOCUMENTS UNDER SEAL

- A. There is a presumptive right of public access to court records based upon common law and first amendment grounds. 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.
- B. 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 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); and (3) affidavits or declarations in support of the motion.

## **VII. 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.

## **VIII. JOINT MOTIONS/STIPULATION**

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.

## **IX. SETTLEMENT AND DISMISSAL**

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 a proposed order to this Court within twenty-eight days of settlement.

## **X. PRO SE PRISONER CASES**

In cases involving *pro se* prisoners as litigants, the Court expects defense counsel and the government entity with which a defendant is associated to cooperate in facilitating the prisoner's telephonic appearances or personal appearances for any scheduled conference, hearing, or trial. This responsibility includes preparing any writs of *habeas corpus as testificandum* for the incarcerated *pro se* plaintiff and any of his or her incarcerated witnesses, as authorized by the Court.

## **XI. TELEPHONIC APPEARANCES**

Telephonic appearances will be permitted ***only*** in emergency circumstances upon court approval. If a party needs to appear telephonically before this Court, he or she must contact chambers immediately upon learning of the

emergency and leave a voicemail. Upon reviewing the voicemail, the Court will contact the party. Until the Court grants permission for telephonic appearance, the party needing to appear telephonically must arrange to have a colleague appear on his or her behalf.

## **XII. TRIAL PROCEDURES**

**A. Pretrial Conference:** Pursuant to Civil Local Rule 16.1(f)(6), the Court requires that the parties lodge by email to chambers (efile\_cheeks@casd.uscourts.gov) a joint proposed pretrial order at least **fourteen (14) 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.

For all pretrial dates, parties must refer to the scheduling order issued in their respective case, which is issued by the assigned magistrate judge. Dates in the scheduling order are subject to change by court order.

**B. Trial Schedule:** In general, civil 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, along with a lunch break of one hour.

**C. Motions in Limine:**

1. Motions *in limine* will typically be heard in advance of the first day of trial, on a date set by the Court. 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. Motions for judgment on the pleadings, summary judgment or summary adjudication, *Daubert*, and leave to amend or for bifurcation are not proper *in limine* motions.

**D. Trial Briefs:** The parties may file trial briefs **seven (7) days** prior to the date of trial. Trial briefs are limited to twenty-five (25) pages. Attachments or exhibits may not be appended.

**E. 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 **seven (7) days before** the date of trial, unless otherwise ordered by the Court.

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.

**F. Proposed Jury Instructions:** The parties must file proposed jury instructions and verdict forms with their joint pretrial conference order, 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 Criminal Local Rule 30.1 regarding proper form and content.

- G. Witness and Exhibit Lists:** Parties must file witness and exhibit lists **seven (7) days** prior to trial date, unless otherwise ordered by the Court.
- H. 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.
- 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 done from the podium. You need to ensure, in all instances, that you can be heard. Lapel microphones are available upon request.
- J. Presentation of Evidence:** Please abide by the following rules:
1. Do not enter the well, except during *voir dire*, opening statement and closing argument.
  2. Conduct all examination of witnesses from the podium.
  3. Feel free to approach witnesses during examination, but first seek permission from the Court.
  4. Please keep your visit to the witness stand brief, *e.g.*, by quickly orienting the witness with an exhibit and returning to the podium.
  5. 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.
  6. When objecting, state only the legal ground for the objection, *e.g.*, “Objection, hearsay.”

7. Speaking objections are not permitted, unless the Court requests further information from counsel.
  8. Refrain from talking to each other in the presence of the jury. If clarification on a matter is needed, please seek clarification from the Court and not directly from counsel.
  9. Do not vouch for evidence, *e.g.*, “I believe....”
  10. Refrain from facial expressions, nodding or other conduct that projects an opinion, favorable or unfavorable, concerning testimony of a witness, argument by counsel, or a ruling by the Court.
  11. Do not address or refer to witnesses or parties by first name alone, except for witnesses under age 18. Use appropriate titles, *e.g.*, Mr., Ms., Mrs., Agent, Officer, Doctor, etc.
- K. 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.
- L. Practice and Procedures:** In advance of trial, Judge Cheeks’ law clerk and/or courtroom deputy will provide counsel with handouts regarding the method used for jury selection, *voir dire*, and other relevant courtroom procedures.
- M. Use of Electronic Equipment in the Courtroom:** The Court has audio/visual equipment for counsel’s 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 a Document Camera (Elmo) in place, with an annotation feature, and a Blu Ray player. Finally, 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 by the Court.