

**Honorable Jinsook Ohta
United States District Judge
Criminal Chambers Rules
Motions, Pretrial, and Trial Procedures**

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 or courtroom technology matters, contact Steven Yaptangco, Courtroom Deputy, at 619-557-7486.

For trial or hearing transcript requests, contact Cristine Gerongco, Court Reporter, at cristine@crgrealtimereporting.net or 619-786-6537.

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. Failure to comply with the applicable Orders and rules may result in the Court striking non-compliant documents from the record, imposing sanctions under Criminal Local Rule 57.1, or both.

I. Communications with Chambers

A. Letters or Emails. Letters 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 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 Steven Yaptangco at 619-557-7486 or by email at steven_yaptangco@casd.uscourts.gov. Court personnel are prohibited from giving legal advice or discussing the timing or merits of a case.

C. Requests for Continuances. If counsel stipulate to a continuance, a joint motion should be filed on the CM/ECF docket, and a proposed order should be emailed to efile_ohta@casd.uscourts.gov. See Criminal Chambers Rule I.D. Joint motions to continue must be filed ***before 9:00 a.m. on the Wednesday morning prior to*** the scheduled hearing. If a joint motion is untimely filed, counsel will appear in person to request a continuance at the scheduled hearing. The joint motion should include the original hearing date, the requested date for continuance (obtained from the courtroom deputy before filing), the grounds for continuance, and the number of prior continuances that have been granted. 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.

D. Proposed Orders. Proposed orders must be submitted simultaneously with all motions. Proposed orders should contain the word “[PROPOSED]” in brackets in the caption. This Chambers Rule mandating the addition of the word “[PROPOSED]” supersedes Section 2(h) of the ECF Manual. Counsel must email proposed orders in Word (.doc) format to efile_ohta@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.

II. Motions

A. 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.

Counsel lodging with the Court a motion to seal and documents to be sealed shall hand-deliver, to the Clerk of Court on the Fourth Floor of the James M. Carter & Judith N. Keep U.S. Courthouse, (1) the motion to seal, (2) the proposed sealed documents, and (3) a proposed order in compliance with these Rules. In the case of an emergent motion to seal, counsel will contact the courtroom deputy for instructions about alternate delivery. As a general rule, motions to seal and motions for protective order should not be hand-delivered to chambers.

B. Notice to Court of Disposition. Any time a case is calendared for motions hearing and counsel for either party knows that a disposition is to take place, counsel has a duty to call the courtroom deputy at the earliest available time to inform the Court of the disposition.

III. 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 proceedings before the district judge may occur at the pretrial motion hearing or as soon as scheduled by contacting the courtroom deputy in advance.

B. Immediate Sentencing. The Court prefers that a presentence report be prepared in every case for sentencing. Upon stipulation filed by both parties and joint request made by motion on the docket or by request to the courtroom deputy, the Court may proceed with immediate sentencing in certain immigration cases if it has adequate information in the record to perform a meaningful exercise of sentencing authority.

C. Sentencing. A party seeking a continuance of a sentencing hearing must notify the courtroom deputy at the earliest possible time, *but no later than noon on the Thursday prior* to the following week’s sentencing date. Counsel shall file a sentencing summary chart at a minimum, and may also file a sentencing memorandum, *no later than seven days before* the

sentencing hearing as required in Criminal Local Rule 32.1(a)(9). Holidays are excluded when calculating time. No party shall submit more than five sentencing letters without leave of Court. **Late filings are unacceptable.** All counsel are hereby advised that the filing dates set forth in Criminal Local Rule 32.1 are critical. Absent a showing of good cause, any late filings by counsel may result in a continuance, at minimum. Please be advised that the Court will keep track of such occurrences, and any counsel that repeatedly fails to abide by the timing requirements set forth in Criminal Local Rule 32.1 will be subject to **possible fine or other punitive action** by the Court pursuant to Criminal Local Rule 57.1.

IV. Pre-Trial and Trial Procedures

A. Discovery Cutoff and Expert Disclosure Deadlines. Unless otherwise ordered by the Court, all discovery, including reciprocal discovery and expert discovery, must be completed three weeks before trial. Unless jointly stipulated otherwise, any evidence not disclosed by that date will be excluded.

The parties will meet and confer to agree upon Fed. R. Crim. P. Rule 16 expert disclosure dates with the understanding that discovery obligations on both sides must be completed by the discovery cutoff. Unless otherwise jointly stipulated, the first exchange of expert disclosure will take place **five weeks** before trial and any exchange of rebuttal experts will take place **three weeks** before trial. If earlier deadlines are required due to the complexity of the case or other reasons, the party seeking to use expert testimony in its trial will have the burden of initiating the meet and confer and either making sure that an agreement is reached or raising the matter with the Court.

B. Motions *in limine*. The Court will generally schedule a hearing date for motions *in limine* in advance of trial. Unless otherwise ordered, motions *in limine* are due **two weeks** before the hearing, with any opposition due **one week** before the hearing. No replies are permitted unless requested by the Court. Each side is limited to **five** 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. Counsel must confirm their good faith attempt to resolve the issues in a declaration that includes (1) the date of the meet and confer; (2) counsel's good faith efforts, in person or by telephone, to resolve differences with opposing counsel; and (3) the positions taken by opposing counsel such that resolution was not possible. The parties may memorialize any issues that they have resolved through meet and confer in a stipulation or in a separate filing.

In their motions *in limine*, parties should only raise **specific and ripe** disputes that require resolution by the Court prior to trial because the parties have not been able to reach an agreement. Parties should not file motions *in limine* to deal with scenarios "if," "in case," or "to the extent" the other side engages in certain conduct or seeks the admission of certain evidence. Instead, the parties should meet and confer and ascertain whether the other side intends to take a certain position, try to resolve that issue, and only raise the issue if the parties cannot agree. Failure to meet and confer in good faith before bringing motions *in limine*—for example when a party brings a motion *in limine* challenging a certain course of action and the other side states in its opposition

that it is not planning to engage in that course of action—will result in the Court issuing an order to show cause for why sanctions should not be issued against the moving party.

C. Jury Instructions. Jury instructions shall be submitted to the Court *two weeks before* trial in the following format:

1. The parties are required to *jointly* submit one set of agreed upon instructions. To this end, the parties must meet and confer on their proposed jury instructions, and thereafter submit to the Court one complete set of proposed instructions consisting of 1) preliminary jury instructions; 2) during trial jury instructions; and 3) final jury instructions. All instruction headings must identify whether the instruction is jointly proposed or, if disputed, the party proposing the instruction. For example, if the parties agree on a Duty of the Jury instruction, the parties shall submit one instruction titled “Jointly Proposed Instruction No. 1 (Duty of the Jury).” However, if the parties cannot agree on, for example, a Circumstantial Evidence instruction, the parties shall each create their own version of the instruction, and the versions of the instruction will be titled “Defendant’s Proposed Jury Instruction No. 13 (Circumstantial Evidence)” or “Government’s Proposed Jury Instruction No. 13 (Circumstantial Evidence).” Requirements for disputed instructions are discussed in more detail in Section 4 below. The Court prefers that parties utilize pattern instructions such as the Ninth Circuit Model Instructions or California Criminal Jury Instructions whenever possible.

2. All instructions, disputed or jointly proposed, should identify the source material of the instruction beneath the instruction’s heading. For example, if the parties submit a jointly proposed Duty of the Jury instruction, immediately below that heading would be “Ninth Circuit Model Instruction 1.3.”

3. For all jointly proposed instructions, please indicate any stipulated modifications to the Ninth Circuit Model Instructions and California Criminal Jury Instructions using redline and strikethroughs in red.

4. For all disputed instructions, the parties will prepare their respective proposed instruction and submit both proposals in the *one set* submitted to the Court. The text of the disputed instructions shall be color-coded as follows

- a. Model Instruction Text: black ink
- b. Stipulated Modifications to Model Instructions: red ink
- c. Government’s Proposed Edits or Additions: blue ink
- d. Defendant’s Proposed Edits or Additions: green ink

5. For each disputed instruction, the parties must provide the Court the factual or legal basis for each party’s position.

6. As discussed above, if the parties propose different versions of the same instruction, each version of the disputed instruction shall comply with the color coding above. For example, the Government’s version of a Circumstantial Evidence instruction will be titled “Government’s Proposed Jury Instruction No. 13 (Circumstantial Evidence)” and the disputed text will be in blue

ink, and Defendant's version of the instruction will be titled "Defendant's Proposed Jury Instruction No. 13 (Circumstantial Evidence)" with edits in green ink. These competing versions of the same instruction should be placed one after another in the one set of proposed instructions submitted to the Court.

7. The proposed instructions should be ordered and submitted, to the best of the parties' ability, in the order in which the Court will give them at trial.

8. The parties shall jointly email one complete set of proposed instructions that includes both the jointly proposed and disputed instructions for the 1) preliminary jury instructions; 2) during trial jury instructions; and 3) final jury instructions to efile_ohta@casd.uscourts.gov by the deadline set by the Court.

9. 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 two weeks* before the date of trial, serve and file briefs on all significant disputed issues of law, including foreseeable procedural and evidentiary issues.

E. Proposed *Voir Dire* Questions, Verdict Forms and Government's Witness List. Counsel must serve and file any proposed *voir dire* questions, proposed verdict forms, and the government's list of witnesses *no later than two weeks* before the date of trial.

F. Jury Selection. The courtroom deputy will provide counsel with a numerical list of the jury panel at the start of *voir dire*, along with a seating chart. The Court will conduct the initial jury *voir dire*. On a case-by-case basis, the Court may permit follow-up *voir dire* by the attorneys.

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 follows. Counsel will exercise alternating peremptory challenges outside the presence of the prospective jurors.

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. 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 it 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.

J. Trial Schedule. Generally, trials are scheduled Monday to Thursday, from 9:00 a.m. to 4:00 p.m. on the first day and from 8:30 to 3:30 p.m. on each subsequent day. The Court will notify the parties of deviations from this schedule.