

HON. ANTHONY J. BATTAGLIA
UNITED STATES DISTRICT JUDGE
CRIMINAL CASE CHAMBERS RULES AND TRIAL PROCEDURES

Courtroom Deputy: Lindsey Fincher: (619) 557-6423

Courtroom 4A

All matters before Judge Battaglia 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_Battaglia@casd.uscourts.gov in Microsoft Word or Adobe PDF format. Documents submitted in Word Perfect will be rejected by the Court.

I. 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, 3) Judge Battaglia originally set the bond conditions or 4) the request includes international travel. In these instances, a proposed order is to be sent to Judge Battaglia's efile inbox 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. Attorneys Office, the sureties and the assigned Pretrial Services Officer.

II. CALENDAR

Criminal matters are heard on Mondays, unless otherwise scheduled by the Court. A party seeking a continuance of a hearing must notify Judge Battaglia's Courtroom Deputy at the earliest possible time.

Prior to a defendant entering into a plea agreement or other type of case resolution, 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 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: a) the reason(s) for the circumstances

establishing good cause for the continuance; b) defendants who are not in custody must sign off on the Joint Motion and acknowledge and accept the next proposed court date in writing; c) 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 Battaglia's efile inbox. 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 **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 5pm on the preceding Tuesday.

As a senior District Judge, Judge Battaglia will not be available on Fridays. All matters submitted on Friday will be considered the following Monday after the calendar matters for the day are addressed.

III. COMPLIANCE WITH LOCAL RULE 16.1

Not later than fourteen 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 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, body-port-or remote cam video, 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.

IV. 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: a) a reason for the circumstances establishing good cause for the continuance; b) defendants who are not in custody must sign off on the joint motion, acknowledge it, and accept the next court date in writing. Please be advised that all continuance requests must be made no less than **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 5pm on the preceding Tuesday. **In addition, a Local Rule 16.1 report of counsel, the agreed upon timetable for the production of discovery, including the Alien Registration File, body-port-or remote cam video, 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.

V. REQUESTS FOR PROBATION REPORT SUPPORTING DOCUMENTS

Where counsel wish access to 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.

VI. 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) through (10), which provide the following filing deadlines prior to a scheduled sentencing hearing: objections to the PSR, **14 days** prior; motions for departures, other than 5k1.1, **14 days** prior; motions for 5k1.1 departures, **7 days** prior; sentencing summary charts, **7 days** prior; and, addenda addressing objections, **7 days** prior. In addition, documents and letters must be submitted **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 Battaglia reviews all sentencing documents prior to the hearing and will allow each party up to 10 minutes to supplement their filings on the record, as needed.

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 just 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 chambers for review prior to filing them. 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 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.
- D. Any member of the public may challenge the sealing of any particular document. *See Citizens First Nat'l Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943, 944-45 (7th Cir. 1999).

¹ *See, Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006). The legal standard in our circuit is, if a court decides to seal judicial documents and records in either a civil or criminal case, is that it must identify the compelling interest and articulate the factual basis for its finding "without relying on hypothesis or conjecture." *Id.* at 1179. There's a strong presumption in favor of public access to judicial records and against sealing. *Id.* *See also, Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 597 (1978); *Globe Newspaper Co. v. Superior Court for Norfolk County*, 457 U.S. 596, 603 (1982); *Phillips ex rel. Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1212 (9th Cir. 2002).

VIII. TRIAL PROCEDURES

- A. **Trial Schedule**: In general, criminal trials are scheduled from 8:30 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 one hour and fifteen minutes.
- B. **Motions in Limine**: These Motions will be heard **14 days** before the trial date unless otherwise set by the Court. Motions are due **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. **Voir Dire**: Counsel may file proposed *voir dire* questions no later than **7 days before** the date of trial. 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 parties case will be allowed.

- E. **Proposed Jury Instructions:** The parties must file proposed jury instructions and verdict forms **7 days** prior to the date of trial, unless otherwise ordered by the Court *and email a copy in Word to efile_battaglia@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.
- F. **Witness and Exhibit Lists:** The parties must file witness and exhibit lists **7 days** prior to the date of the trial, unless otherwise ordered by the Court.
- G. **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.
- H. **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. Permission is rarely granted as there is a doc cam that can be utilized to show the witness a document, photograph, or other item. You need to ensure that you can be heard at all times. Lapel microphones must be used.
- I. **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 present the exhibit on the Court's Elmo or electronic equipment.
- J. **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 does not use binders and all evidence should be presented electronically, when possible.

IX. 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.

X. GUILTY PLEAS

In the normal course, all guilty pleas are referred to the magistrate judges. If a case is already on the Court's calendar and time permits, the Court may take the plea at that time, but only where counsel have cleared the taking of the plea with the courtroom deputy in advance of the hearing.

Presentence Reports are ordered in all cases. Any request to vary from this requirement must be made by written motion and include a statement as to the likely guideline range for sentencing. This information must include the adjusted guideline range after acceptance and any agreed upon departures and the Criminal History Category. Finally, a statement regarding whether defendant has any mental health or addiction history.

XI. 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.

XII. WAIVER OF PRE-SENTENCE AND/OR CRIMINAL HISTORY REPORTS

Judge Battaglia requires a pre-sentence report be ordered for all felony matters unless the Court agrees to waive the report. If the parties wish to waive the PSR and/or CHR, the parties will need to file a joint motion with the following information: a) charges to which the defendant entered (or will enter) a guilty plea; b) type of sentencing agreed to in the plea agreement; c) whether the request is for a CHR or RAP sheet; d) defendant's criminal history score/category; e) sentencing guidelines; f) parties' recommendations for sentencing; any additional information the parties wish the Court to consider.

If applicable, the Government must concurrently file an updated RAP sheet with a DETAILED summary of defendant's immigration history, including deportation dates, voluntary returns, or other encounters with immigration authorities.