

HONORABLE CYNTHIA A. BASHANT
UNITED STATES DISTRICT JUDGE
CRIMINAL PRETRIAL & TRIAL PROCEDURES

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Revised: 05/24/2016

The Court provides this information to counsel and parties for general guidance. Counsel must still strictly adhere to all Court Orders and the Court may vary these procedures as appropriate in any case. Counsel and parties are expected to follow the Federal Rules of Criminal Procedure, the Local Rules for the Southern District of California (“Criminal Local Rules”), the Electronic Case Filing Administrative Policies and Procedures Manual (“ECF Manual”), and any other applicable rules. The Criminal Local Rules and the ECF Manual are available on this district’s website: www.casd.uscourts.gov. Failure to comply with the applicable orders and rules, including the ECF Manual, may result in the Court striking non-complying documents from the record pursuant to ECF Manual Section 2(a) and imposing sanctions pursuant to Criminal Local Rule 57.1.

1. Court Calendar

Criminal matters are generally heard on Mondays at 9:00 a.m. and 2:00 p.m. unless otherwise scheduled by the Court.

2. Pretrial Motions

Magistrate Judges will schedule the motion hearing / trial setting on the Monday calendar four weeks from the initial appearance before the Magistrate Judge. All motions, except motions *in limine* and those pertaining to sentencing matters shall be filed at least **fourteen (14) calendar days** before the hearing date. Opposition briefs shall be filed at least **seven (7) calendar days** before the hearing date.

Applications for an Order Shortening Time are disfavored and must be supported by a non-conclusory affidavit signed by counsel setting forth facts establishing specific good cause.

Criminal motions requiring a predicate factual finding shall be supported by declaration(s). *See* Crim. L.R. 47.1(g)(1). The Court need not grant an evidentiary hearing where either party fails to properly support its motion or opposition.

3. Courtesy Copies

ECF Manual § 2(e) requires parties to deliver courtesy copies of criminal-case filings exceeding 20 pages in length including attachments and exhibits. The Court prefers courtesy copies to be printed double-sided, but will accept single-sided. If a filing has more than three (3) exhibits, the exhibits must be tabbed. Parties shall *not* provide courtesy copies for filings that do not exceed 20 pages in length.

If a filing is particularly voluminous, parties may provide their courtesy copies in electronic-media format (e.g., CD, DVD, or 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_bashant@casd.uscourts.gov.

4. Filing Documents Under Seal

There is a presumptive right of public access to court records based upon common law and first amendment grounds.¹ As such, motions to file documents under seal are strongly discouraged.

Parties seeking a sealing order must provide the Court with: (1) a specific description of particular documents or categories of documents they need to protect; and (2) declarations showing a compelling reason or good cause to protect those documents from disclosure. The standard for filing documents under seal will be strictly applied.

¹ *See Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 597 (1978); *Phillips ex rel. Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1212 (9th Cir. 2002).

Motions to file documents under seal generally should be filed electronically. ECF Manual § 2(p) provides a list of exceptions to the electronic-filing requirement, including, but not limited to, criminal complaints, plea agreements, and letters to the sentencing judge recommending downward departure under USSG § 5K1.1. **If a party chooses to file a document under seal, the filing party must submit a digital courtesy copy of the filing to this Court's e-file email address at efile_bashant@casd.uscourts.gov.**

5. Disposition Hearings

Rule 11 guilty pleas may be entered before a Magistrate Judge unless the parties anticipate immediate sentencing. Counsel shall contact the courtroom deputy for the Magistrate Judge assigned to the case or the Duty Magistrate Judge to schedule the disposition. *See* Crim. L.R. 11.2.

Counsel must promptly notify the Court of any disposition reached. Failure to advise the Court of any disposition at least **two (2) calendar days** before trial could result in counsel being assessed the costs of the jury.

6. 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_bashant@casd.uscourts.gov.

7. Proposed Orders

Parties should submit all proposed orders to the Chamber's e-mail address in WordPerfect or Word format to efile_bashant@casd.uscourts.gov. Joint motions to continue hearings are exempt and do not require proposed orders.

8. Emergency Requests

All parties shall alert Chambers if the nature of a filing requires the Court's immediate attention. Because the Court generally does not answer telephone calls, it is vital that parties or counsel leave a voicemail including the caller's name, contact information, case number, and detailed message. Upon reviewing the voicemail, the Court may return the phone call if necessary.

9. Sentencing

Sentencing procedures are set forth in Criminal Local Rule 32.1. If the parties request, the Court may elect to proceed with immediate sentencing in immigration cases, but only where the Court has sufficient information in the record to perform the meaningful exercise of sentencing authority.

A party seeking a continuance of a sentencing hearing must notify the courtroom deputy at the earliest possible time, **but in no event later than noon on the Thursday** prior to the following week's sentencing date.

Counsel shall file a sentencing summary chart and/or sentencing memorandum **no later than seven (7) days before** the sentencing hearing required in Criminal Local Rule 32.1(a)(9). Holidays are excluded when calculating time.

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 Rule 32.1 will be subject to **possible fine or other punitive action** by the Court pursuant to Criminal Local Rule 57.1.

10. Trial Procedures

A. Timeliness

All counsel are expected to be on time for trial. It is counsel's responsibility to synchronize the time with the Court's clock and get the courtroom deputy's phone number. When a jury is waiting, an appearance in another court is an unacceptable excuse for tardiness. If a jury is present, the Court will promptly call the case at the scheduled time.

B. Motions *In Limine*

Motions are due **fourteen (14) days before** the hearing, with any opposition due **seven (7) days before** the hearing, unless otherwise set by the Court.

C. Trial Briefs

The parties may submit trial briefs no later than **five (5) court days before** the date of trial concerning all significant disputed issues of law, including any and all foreseeable procedural and evidentiary issues with citation of relevant statutes, ordinances, rules, cases and other authorities. *See* Crim. L.R. 23.1.

D. *Voir Dire* / Verdict Forms

Counsel may file proposed *voir dire* questions and verdict forms no later than **three (3) court days before** the date of trial.

The Court will conduct the initial *voir dire*. On a case by case basis, the Court may permit follow-up *voir dire* conducted by the attorneys. If *voir dire* is permitted, ten (10) minutes per side will generally be allowed on routine cases.

E. Jury Selection

Unless authorized by the Court, parties should not submit jury questionnaires. The courtroom deputy will provide counsel with a list of the jury panel in random order before *voir dire*.

The courtroom deputy will seat all prospective jurors (42 prospective jurors will generally be summoned for criminal cases). The Court will conduct the initial jury *voir dire*. In appropriate cases, the Court may permit follow-up *voir dire* by the attorneys.

After *voir dire* of the entire panel has been completed, the panel may be excused or counsel may make any challenges for cause at side bar. If a challenge for cause is sustained, the excluded panelist shall remain in his or her seat for the time being.

Counsel will exercise peremptory challenges using the “Double Blind Method,” whereby the parties simultaneously exercise their challenges.

After each side has exercised its peremptory challenges, the first twelve (12) persons not challenged peremptorily or successfully challenged for cause shall constitute the jury. The Court will then proceed to select one or two alternate jurors. Remaining prospective jurors will be excused.

F. Proposed Jury Instructions

The parties are encouraged to submit proposed jury instructions to the Court no later than the **first day of trial**, unless otherwise ordered by the Court. Supplemental instructions must be filed as soon as the need for the instruction becomes apparent.

The Court prefers to use the Model Jury Instructions for the Ninth Circuit whenever possible. However, the Court will accept other proposed jury instruction(s) as the need arises, but counsel must cite the authority supporting the proposed instruction(s). Any proposed instruction from statutory authority or the Ninth Circuit Model Instructions must state specifically the modification 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 seem necessary.

G. Witnesses

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 jurors may overhear.

H. Presentation of Evidence

Please do not enter the well, except during *voir dire*, opening statements and closing argument. When addressing the jury, do not come any closer than the edge of the Court Reporter’s desk. Conduct all examination of witnesses

from the lectern and please seek permission from the Court before approaching any witness. Also, please keep your visit to the witness stand brief. For example, quickly orient the witness with an exhibit and return to the lectern.

The Court reserves the right to limit re-cross and / or re-direct.

The Court disfavors sidebars.

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 the video or audio tape.

I. Objections

When objecting state only the legal ground for the objection, i.e., "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.

J. Exhibit Lists

Government counsel must provide a list of exhibits and witnesses, and give **3 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 in advance of trial, or exhibits may be marked electronically with the case number and exhibit numbers.

K. Trial Schedule

In general, criminal trials are scheduled from 9:00 a.m. to 4:30 p.m., beginning on Tuesdays (civil trials may be more flexible). Jury deliberations proceed from 9:00 a.m. to 4:30 p.m. 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.