

**HONORABLE CATHY ANN BENCIVENGO
U.S. DISTRICT JUDGE
CIVIL CASE PROCEDURES**

Chambers

United States District Court
Southern District of California
221 West Broadway, Suite 4165
San Diego, CA 92101
Tel: (619) 557-7688
Courtroom: 4C

Courtroom Deputy

Lori Hernandez
(619) 557-6901

Court Reporter

Mauralee Ramirez
ordertranscript@gmail.com

Unless otherwise ordered, matters before Judge Bencivengo shall be conducted in accordance with the rules stated below. These rules do not alter the requirements of this Court's Civil Local Rules or the Federal Rules of Civil Procedure.

I. Communications With Chambers

A. **Letters, faxes or emails:** Letters, faxes or emails to Chambers are prohibited unless specifically requested by the Court. If letters, faxes or emails are requested, copies of the same must be simultaneously delivered to all counsel and, absent prior approval by Chambers, must not exceed three pages in length, using twelve point font. Correspondence with the Court must state the manner in which it was served on all other counsel (e.g., "By Hand," "By Express Mail"). Copies of correspondence between counsel must **not** be sent to the Court unless specifically requested by the Court.

B. **Telephone Calls:** Telephone calls to Chambers are permitted only for matters such as scheduling and calendaring and may **only** be made by **counsel** with knowledge of the case. Parties should not call Chambers with procedural questions. Calls to Chambers should not be made 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 case by case name and case number so your call can be directed to the appropriate law clerk. Call Chambers at 619-557-7688 and address your inquiries to the appropriate law clerk for your case.

C. **Courtesy Copies:** Courtesy copies of filings that collectively exceed 20 pages in length shall be submitted to the Clerk's office by the second business day subsequent to the filing date, and the copies submitted must contain the ECF-generated header on each page. Courtesy copies shall be provided in cases where multiple filings in a single court day together exceed 20 pages in length. For voluminous filings, the Court prefers the documents to be tabbed and placed in 3-ring binders. Proofs of service need not be provided. If the original filing contained font, illustrations, charts, photographs or the like in color, the courtesy copies shall contain color copies as well.

For documents filed or lodged under seal, only the full, unredacted versions of those documents shall be provided in the Court's courtesy copy.

Please consult the Electronic Case Filing Administrative Policies and Procedures Manual for further information regarding the courtesy copy requirement.

II. Noticed Motions

A. **Motion Dates:** Pursuant to Civil Local Rule 7.1(b), all motion dates must be obtained by calling chambers. Moving papers must be filed and served **the same day** of obtaining a motion date from Chambers. [All objections filed pursuant to Fed.Civ.Pro.R. 72(a) must have a motion date.]

B. **Oral Argument:** The Court typically does not entertain oral argument on civil motions. Unless otherwise instructed by the Court, parties filing motions with the Court shall include the following language on the caption page of the notice of motion, directly under the motion date: "PER CHAMBERS, NO ORAL ARGUMENT UNLESS ORDERED BY THE COURT." Any party may request oral argument by filing a separate request that explains why oral argument would be helpful to the Court. If the Court grants a request for oral argument or *sua sponte* decides to hear oral argument, the Court will issue an order setting forth a subsequent date and time for oral argument.

C. **Proposed orders:** Proposed orders shall only be submitted on non-dispositive, procedural motions in accordance with Section 2(h) of the Electronic Case Filing Administrative Policies and Procedures Manual. Counsel should email proposed orders in Word format directly to efile_bencivengo@casd.uscourts.gov.

D. **Sur-Replies:** Sur-replies shall **not** be filed unless leave of court has been granted in advance.

E. **Summary Judgment Motions:** Notwithstanding Civ.Local Rule 7.1.f.1, Separate Statements of Fact shall **NOT** be filed.

F. **Exhibits/Unreported Cases:** All exhibits submitted in support of motions should be excerpted to include only relevant material. All exhibits must be clearly labeled, dated, tabbed, and indexed. Copies of documents already contained on the electronic docket shall

not be included as exhibits. Such documents should be cited in the text of the motion as [Doc. No. ____] referencing the docket number of the document cited. For cases not assigned to a reporter for publication, WESTLAW citations should be given, if available. Citations to cases not available in WESTLAW or LEXIS/NEXIS should be accompanied by copies of the cases cited.

G. **List of Terms/Names:** For technical motions (especially in patent cases), one week prior to the motion hearing, the parties are requested to email to chambers (not to be filed) a list of pertinent technical terms and/or proper names, the purpose of which is to assist the court reporter in the transcription of the hearing.

III. Telephonic Appearances

A. Policy Governing Telephonic Appearances

Telephonic appearances are allowed only if specifically approved or requested by the Court. All requests by parties to appear telephonically shall be made by filing a document entitled “Ex Parte Application for Telephonic Appearance,” setting forth good cause for the request to appear telephonically. The ex parte application shall be filed at least one week prior to the hearing.

All telephonic appearances must be made through **CourtCall**, an independent conference call company, pursuant to the procedures set forth below. If an individual schedules a telephonic appearance and then fails to respond to the call of a matter on calendar, the Court may pass the matter or may treat the failure to respond as a failure to appear. Scheduling simultaneous telephonic appearances in multiple courts does not excuse a failure to appear. Individuals making use of the conference call service are cautioned that they do so at their own risk. Hearings generally will not be rescheduled due to missed connections.

B. Arranging a Telephonic Appearance

Once approval is given by the Court, telephonic appearances may be arranged by calling **CourtCall at (866) 582-6878** not later than **12:00 noon** the court day prior to the hearing date. This deadline for coordinating the telephonic appearance with CourtCall does not alter the Court’s requirement set forth above that ex parte applications to the Court for a telephonic appearance shall be made no later than one week before a scheduled hearing.

C. Procedure for Telephonic Appearance

CourtCall will provide counsel with written confirmation of a telephonic appearance, and give counsel a number to call to make the telephonic appearance. **It is counsel’s responsibility to dial into the call not later than 10 minutes prior to the scheduled hearing. CourtCall does not place a call to counsel.**

The initial charge per participant for a CourtCall appearance is \$30 for the first 45 minutes you are connected. For each additional 15 minute increment the charge is \$7.00. If you do not timely call and connect with the CourtCall operator, you will be billed for the call and the hearing may proceed in your absence.

Telephonic appearances are connected directly with the courtroom's public address system and electronic recording equipment so that a normal record is produced. To ensure the quality of the record, the use of cellular phones, speaker phones, public telephone booths, or phones in other public places is prohibited except in the most extreme emergencies. Participants should be able to hear all parties without difficulty or echo.

At the time of your hearing, you may initially be in the listening mode in which case you will be able to hear the case before yours just as if you were in the courtroom. After your call is connected to the courtroom, the Judge will call the case, request appearances, and direct the manner in which the hearing proceeds. Each time you speak, you should identify yourself for the record. The court's teleconferencing system allows more than one speaker to be heard, so the Judge can interrupt a speaker to ask a question or redirect the discussion. When the Judge informs the participants that the hearing is completed, you may disconnect and the next case will be called.

Telephonic appearances by multiple participants are only possible when there is compliance with every procedural requirement. Sanctions may be imposed when there is any deviation from the required procedures or the Court determines that a person's conduct makes telephonic appearances inappropriate. Sanctions may include dropping a matter from calendar, continuing the hearing, proceeding in the absence of an unavailable participant, a monetary sanction, and/or a permanent prohibition against a person appearing telephonically.

IV. Ex Parte Motions

Before filing any *ex parte* motion, counsel shall contact the opposing party to meet and confer regarding the subject of the *ex parte* motion. All *ex parte* motions shall be accompanied by a declaration from the movant documenting (1) efforts to contact opposing counsel, (2) counsel's good faith, in person or by telephone meet and confer efforts to resolve differences with opposing counsel, and (3) opposing counsel's general position regarding the *ex parte* motion. Any *ex parte* motion filed with the Court shall be served on opposing counsel via facsimile, electronic mail with return receipt requested, or overnight mail. *Ex parte* motions that are not opposed within **two Court days** shall be considered unopposed and may be granted on that ground.

V. Temporary Restraining Orders

All motions for temporary restraining orders shall be briefed. While temporary restraining orders may be heard in true *ex parte* fashion (i.e. without notice to an opposing party), 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.

UPDATED 11/18/15