

**HONORABLE CYNTHIA BASHANT
UNITED STATES DISTRICT JUDGE
STANDING ORDER FOR CIVIL CASES**

Chambers

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Unless otherwise ordered by the Court, counsel and *pro se* litigants are expected to follow the Federal Rules of Civil Procedure, the Local Rules for the Southern District of California (“Civil Local Rules”), the Electronic Case Filing Administrative Policies and Procedures Manual (“ECF Manual”), and any other applicable rules. The Civil 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 Civil Local Rule 83.1.

1. Communications with Chambers

Parties seeking a hearing date must refer to the procedure for doing so below. The Court will generally not answer telephone calls; however, parties or counsel may leave a voicemail—including their name, contact information, case number, and detailed message. Upon reviewing the voicemail, the Court may return the phone call if necessary.

Court personnel are prohibited from interpreting orders, discussing the merits of a case, or giving legal advice, including advice on procedural matters. Court personnel also will *not* speculate as to when an order will be issued for a particular motion or *ex parte* application. Letters, faxes, and emails are prohibited unless otherwise authorized by the Court.

2. **General Filing Requirements**

The parties must comply with all of the formatting requirements in Civil Local Rule 5.1 unless otherwise ordered by the Court. That includes this district’s requirement that printed text be no smaller than 14-point standard font (e.g., Times New Roman). *See* Civil L.R. 5.1(a). In addition to the requirements set forth in the Civil Local Rules, the parties must scan any documents, including exhibits, to be filed on the docket using Optical Character Recognition (“OCR”). The OCR requirement only applies to parties with electronic-case-filing privileges.

The Court’s e-file email account must only be used to lodge or submit proposed orders, required trial documents, or other documents requested by the Court. It is not to be used for communication purposes (e.g., asking questions).

All dates and schedules are subject to change by court order.

3. **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.

4. **Motion Practice**

A. **Conference of Counsel Prior to Filing Noticed Motions**

Any party contemplating the filing of any noticed motion before this Court must first contact opposing counsel to discuss thoroughly—preferably in person—the substance of the contemplated motion and any potential resolution. The conference must take place at least **seven (7) days** prior to the filing of the motion. If the parties are unable to reach a resolution that eliminates the need to file the anticipated motion, counsel for the moving party must include in the notice of motion a statement to the following effect: “This motion is made following the conference of counsel that took place on [date].”

The only exceptions to this meet-and-confer requirement are: (1) in cases where the plaintiff is appearing *pro se* and is not an attorney; (2) for applications for temporary restraining orders or preliminary injunctions; and (3) motions and cross-motions for summary judgment. *Ex parte* applications,

which have separate requirements below, and joint motions are exempt from this rule as they are not noticed motions.

B. Hearing Dates

Parties filing a noticed motion may choose any **Monday** between **thirty (30) and sixty (60) days** from the motion’s filing date.¹ If the preferred Monday is a federal holiday, then the filing party may select the following Tuesday as the hearing date for the motion. Parties intending to file a motion may *not* contact chambers for a hearing date. This rule *only* supersedes Civil Local Rule 7.1(b).

Parties *must* also include the following language in the caption of their motions directly underneath the hearing date, unless notified otherwise by the Court: **“NO ORAL ARGUMENT UNLESS REQUESTED BY THE COURT.”** The Court may resolve motions on the papers submitted and without oral argument in accordance with Civil Local Rule 7.1(d)(1). Consequently, the hearing date does not indicate a date when appearances are necessary; rather, it sets the briefing schedule for the motion. As such, the filing party must *not* indicate a **hearing time** on its motion. The schedule for filing briefs must be in accordance with Civil Local Rule 7.1(e), unless ordered otherwise by the Court.

Parties must contact the assigned magistrate judge’s chambers for hearing and scheduling dates needed for cases referred—either by operation of local rule or by order—to the magistrate judge. *See* Civil L.R. 72.3.

Motions that do not comply with the requirements set forth above will be stricken from the docket.

C. Oral Argument

If the Court decides to hear oral argument, it will issue an order, normally two weeks in advance, setting the matter for oral argument.

¹ For example, if a party files its motion on April 1, 2015, then it may select any Monday as the hearing date between May 1, 2015 and May 31, 2015.

If the parties wish to request oral argument, they may do so by filing an *ex parte* application, which must include specific language detailing why their written papers are insufficient.

All cell phones and audible pagers brought into the courtroom must be turned to silent. A violation may be deemed a contempt of court.

For motions with numerous references to technical terminology (e.g., in patent cases), one week prior to the motion hearing, the parties must 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.

D. Proposed Orders

Any proposed orders must be submitted in Word or WordPerfect format simultaneously with all motions. In accordance with Section 2(h) of the ECF Manual, proposed orders must not contain the name and law firm information of the filing party, and must not contain the word “proposed” in the caption. Counsel must email proposed orders to opposing counsel and to **efile_bashant@casd.uscourts.gov**, and include the case name, case number, and docket number in the subject line of the email. The case number in the subject line must be in the following format, including hyphens: 15-cv-270-BAS.

Proposed orders or other documents requiring the judge’s signature must not be filed on the docket.

E. Briefing

When the same party is noticing multiple motions for the same hearing date, the motions must be briefed together in one memorandum of points and authorities.

If multiple parties are moving for substantially the same relief, they must make every effort to obtain the same hearing date for their motions.

If multiple parties are moving for substantially the same relief or opposing a motion seeking substantially the same relief sought against them, and noticed for the same hearing date, counsel must make every effort to coordinate and

consolidate the briefing or use the notice of joinder procedure to avoid duplication in briefing. If the briefing is not coordinated or consolidated, counsel for each party must file a declaration concurrently with the briefing describing the efforts and explaining why they were not successful.

F. Sur-Replies and Notices of Supplemental Authority

Sur-replies and notices of supplemental authority may not be filed unless leave of court has been granted. The parties must obtain leave of court by filing an *ex parte* request before filing any sur-replies or notices of supplemental authority.

The only exception to this requirement is if there is a change in binding intervening law that is directly on point issued *after* the filing. Under these circumstances, parties may file a notice of supplemental authority that includes a copy of the order or opinion and any case-identifying information. Counsel may not include any argument in the notice.

G. Motions and Cross-Motions for Summary Judgment

If upon being served with a summary-judgment motion an opposing party determines that it intends to file a cross-motion, that party must file an *ex parte* application requesting a consolidated briefing schedule well in advance of the due date for the opposition to the first-filed summary-judgment motion. The Court requires no duplication of briefing and exhibits.

Consistent with Civil Local Rule 7.1(f)(1), Separate Statements of Fact may not be filed unless leave of Court has been granted. Any separate statements of disputed or undisputed facts will be rejected unless leave of Court has been granted.

No later than ten (10) days before the hearing date, the parties must meet and confer in person or by telephone to arrive at a joint statement of undisputed material facts, which must be filed no later than the reply brief.

H. 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, tabbed, and indexed.

I. Courtesy Copies

Courtesy copies of filings that exceed 75 pages in length, including attachments and exhibits, must be submitted in accordance with Section 2(e) of the ECF Manual via United States Postal Service mail, courier, or delivery to the Clerk's Office. The courtesy copy must contain the CM/ECF document header on the top of each page. 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 need *not* provide courtesy copies for filings that do not exceed 75 pages in length.

If a filing is particularly voluminous (over 75 pages in length), parties may provide their courtesy copies in electronic-media format (e.g., CD, DVD, or USB flash drive) in lieu of paper copies. All documents should be scanned using Optical Character Recognition ("OCR"), if possible.

J. 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).

5. Seeking Leave to File Documents Under Seal

There is a presumptive right of public access to court records based upon common law and first amendment grounds.² As such, motions to file documents under seal are strongly discouraged. 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.³ The Court may seal documents to protect sensitive information,

² 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).

³ Although courts may be more likely to order the protection of the information listed in Rule 26(c)(7) of the Federal Rules of Civil Procedure, courts have consistently prevented disclosure of many types of information, such as letters protected under attorney-client privilege which revealed the weaknesses in a party's position and was inadvertently sent to the opposing side, *see KL Group v. Case, Kay, and Lynch*, 829 F.2d 909, 917-19 (9th Cir. 1987); medical and psychiatric records confidential under state law, *see Pearson v. Miller*, 211 F.3d 57, 62-64 (3d Cir. 2000); and federal and grand jury secrecy provisions, *see Krause v. Rhodes*, 671 F.2d 212, 216 (6th Cir. 1982). Most significantly, courts have granted protective orders to protect confidential settlement agreements. *See Hasbrouck v. BankAmerica Housing Serv.*, 187 F.R.D. 453, 455 (N.D.N.Y. 1999); *Kalinauskas v. Wong*, 151 F.R.D. 363, 365-67 (D. Nev.1993).

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.

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.

Where good cause is shown for a protective order, the court must balance the potential harm to the moving party's interests against the public's right to access the court files. Any protective order must be narrowly drawn to reflect that balance. 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). **The fact that both side agree to seal or that a protective order was issued at the onset of the case alone is insufficient cause for sealing.**

E-filings of motions to seal and sealed documents must comply with ECF Manual Section 2(j). For additional information, see:
http://www.casd.uscourts.gov/CMECF/pdf/Civil_Sealed_Manual.pdf.

6. Ex Parte Applications

Before filing any *ex parte* application, counsel must contact the opposing party to meet and confer regarding the subject of the *ex parte* application. All *ex parte* applications must comply with Civil Local Rule 83.3(h). The declaration required by Civil Local Rule 83.3(h) must document the following: (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* application. Any *ex parte* application filed with the Court must be served on opposing counsel via facsimile, electronic mail with return receipt requested, or overnight mail.

Ex parte applications that are not opposed within **two Court days** must be considered unopposed and may be granted on that ground. The opposing party must immediately notify chambers that they intend to oppose the *ex parte* application.

Replies to any opposition will not be considered unless otherwise ordered by the Court.

7. Joint Motions / Stipulations

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.

8. Settlement and Dismissal

If the parties settle a case, counsel must immediately notify this Court and the magistrate judge of the settlement. If the magistrate judge does not set a deadline for the filing of a “Joint Motion to Dismiss,” the parties must file the “Joint Motion to Dismiss” and email a proposed order to this Court within twenty-eight (28) days of the settlement.

9. Temporary Restraining Orders

All motions for temporary restraining orders must 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.

10. 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 ad testificandum* for the incarcerated *pro se* plaintiff and any of his or her incarcerated witnesses, as authorized by the Court.

11. Pretrial Conference

Pursuant to Civil Local Rule 16.1(f)(6), the Court requires that the parties lodge by email to Chambers a 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—including the motion *in limine* briefing and hearing, final pretrial conference, and other relevant deadlines—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.

12. 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. The party needing to appear telephonically must, nonetheless, arrange to have a colleague appear on his or her behalf.

13. Trial Practice

A. Electronic Equipment for the Courtroom

The Court provides the following audio/visual equipment: (1) monitors; (2) an overhead projector; and (3) computer connections. Counsel should make his or her own arrangements for their respective needs. Counsel should contact the Court’s courtroom deputy to arrange a time to allow counsel to review and set up equipment for trial.

Counsel will need an order to bring any laptops, tablets, or other electronic equipment into the courthouse. An order must be obtained by filing an *ex parte* application with this Court. *Ex parte* applications seeking an order permitting electronic equipment are exempt from the meet-and-confer and declaration requirements under Civil Local Rule 83.3(h) stated above.

B. 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 (22 prospective jurors will generally be summoned for civil cases). The Court will conduct the initial jury *voir dire*. In appropriate cases, the Court may permit follow-up *voir dire* by the attorneys.

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 eight persons not challenged peremptorily or successfully challenged for cause will constitute the jury. All remaining prospective jurors will be excused at that time.

C. Trial Exhibits

In preparing trial exhibits, the parties are directed to contact the Clerk’s Office for exhibit stickers. Parties may create their own exhibit stickers as long as the stickers include the exhibit number and case number. Civil trials must only use numbers for identifying exhibits and not letters, unless otherwise ordered by the Court.

For a bench trial, the parties must submit a copy of the trial exhibits to chambers in an electronic-media format (e.g., CD, DVD, or USB flash drive) one (1) day before trial is set to begin.

For a jury trial, the parties are responsible for bringing their trial exhibits to court on the day of trial. If the parties wish to deliver their trial exhibits before trial begins, they may do so upon making delivery arrangements when they contact the courtroom deputy in accordance with Section 13(A) to bring in any electronic equipment. If the parties choose to submit a courtesy copy of their trial exhibits for the Court, it must be submitted in electronic-media format (e.g., CD, DVD, or USB flash drive), especially if the exhibits are voluminous; courtesy paper copies will not be accepted.

The parties must also exchange their Final Exhibit and Witness Lists seven (7) days before trial. They must also email a copy of their Final Exhibit and Witness Lists to chambers.

D. Trial Procedures

Trial generally proceeds from 9:00 a.m. to 4:30 p.m., Tuesday through Friday, unless the Court schedules otherwise. Jury deliberations also generally proceed from 9:00 a.m. to 4:30 p.m., unless the Court schedules otherwise.

In civil trials, it is the practice of the Court to set a reasonable time limit for the entire trial. The time limit set by the Court includes opening statements, arguments, testimony, closing arguments, and any other matters that occur over the course of the trial, excluding jury selection. The Court will keep track of time limits and, upon request, the courtroom deputy will inform the parties of the time spent and remaining for trial. The time limit is subject to exception for good cause shown.

Counsel and witnesses are expected to be present for trial except in case of an emergency. Lawyers must make every effort to have their witnesses available on the day they are to testify. The Court attempts to accommodate witnesses' schedules and may permit counsel to call them out of sequence if warranted. Counsel must anticipate any such possibility and discuss it with opposing counsel and the Court. Counsel must promptly alert the Court to any scheduling problems involving witnesses.

Do not enter the well, except during *voir dire*, opening statements and closing argument. Conduct all examination of witnesses from the podium. Seek permission from the Court before approaching a witness. Keep your visit to the witness stand brief, i.e., by quickly orienting the witness with an exhibit and returning to the podium. 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.

E. Bench Trial

Fourteen (14) days before trial, counsel must serve and file proposed Findings of Fact and Conclusions of Law and an electronic copy of the proposed Findings of Fact and Conclusions of Law must be emailed to **efile_bashant@casd.uscourts.gov** in Wordperfect or Word format.

14. Hearing / Trial Transcripts

The court reporter should *only* be contacted to order hearing or trial transcripts, or to ask transcript-related questions (e.g., inquiring about pricing). The court reporter should not be contacted for any other reason. To contact the court reporter, please visit her website at www.danapeabody.com.

15. Courtesy

Be courteous and respectful at all times, in all settings. Counsel may expect such from the Court, and the Court expects such from counsel. Please be familiar with and abide by Civil Local Rule 83.4.