

**HONORABLE CATHY ANN BENCIVENGO  
U.S. DISTRICT JUDGE  
CRIMINAL CHAMBERS' RULES**

Courtroom Deputy  
Lori Hernandez  
(619) 557-6901

Courtroom 2

All matters before Judge Bencivengo shall 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.

**COMMUNICATIONS WITH CHAMBERS**

- A. Letters: Letters to chambers are prohibited, unless specifically requested by the Court. If letters are requested, copies of the same shall be simultaneously delivered to all counsel. Copies of correspondence between counsel shall not be sent to the Court.
- B. Faxes: Faxes to chambers are prohibited, unless specifically requested by the Court. If faxes are requested, copies of the same shall be simultaneously faxed or delivered to all counsel. Copies of correspondence between counsel shall not be sent to the Court.
- C. Telephone Calls: Please direct questions regarding criminal matters to our Courtroom Deputy, Lori Hernandez, at (619) 557-6901.
- D. Requests for Continuances: All requests for continuances should be made as soon as counsel become aware of the need for a continuance by contacting the Courtroom Deputy. Initial requests for continuances can be made telephonically to the Courtroom Deputy. For any subsequent requests, if counsel both agree to the requested continuance, a joint motion should be filed and a proposed order should be emailed no later than 48 hours before the scheduled appearance. The joint motion and order should include the original date, the requested date for continuance, and the grounds for continuance.

**MOTIONS**

- A. Scheduling a Hearing Date: The magistrate judge will set a date for pretrial motions. Any changes to that date or any other hearing date for motions shall be obtained from the Courtroom Deputy. Criminal Local Rule 47.1(a). Motions generally are heard on the Court's Friday calendar at 11:00 a.m.
- B. Filing of Motion Papers and Courtesy Copies: The original of all motions, including exhibits, on behalf of any defendant or any moving party, except the United States, shall be accompanied with two conformed copies and filed with the

clerk at least 14 days before the date for which the motion is noticed unless the Court, for good cause and by order only, shortens such time. Criminal Local Rule 47.1(b).

- C. Notice to Court of Disposition: Any time a case is calendared for motions and counsel for either side 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.

### **DISPOSITIONS AND SENTENCINGS**

- A. Dispositions: Rule 11 guilty pleas may be taken by the magistrate judges on a report and recommendation. Because the magistrate judge may have a more flexible schedule, 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 date or as scheduled by obtaining a date from the Courtroom Deputy.
- B. Immediate Sentencing: Upon request, the Court will proceed with immediate sentencing in certain immigration cases if it has sufficient information in the record to perform a meaningful exercise of sentencing authority. Such dispositions are encouraged.
- C. Sentencing Summary Charts: All counsel shall adhere strictly to Criminal Local Rule 32.1(a)(9), which provides that completed sentencing summary charts must be filed no later than seven (7) days prior to a scheduled sentencing hearing.

### **TRIAL PROCEDURES**

- A. Motions in Limine: At the pretrial motions date, the Court generally will schedule a hearing date for motions in limine at 11:00 a.m. on the Friday before the Monday trial call. Motions in limine are due two weeks before the hearing, with any opposition due one week before the hearing.
- B. Jury Instructions: The parties should each submit proposed jury instructions to the Court five (5) court days before trial, unless otherwise ordered by the Court. Supplemental instructions must be filed and served as soon as the need for them becomes apparent. If counsel requests the model Ninth Circuit jury instructions, counsel may list the number of the instruction and edition without citing the text.

The Court prefers to use the Ninth Circuit Criminal Jury Instructions whenever possible. The Court will accept other proposed jury instructions but counsel must cite the authority supporting the proposed instructions. Any proposed modification of an instruction from statutory authority or the Ninth Circuit Models 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 appear necessary.

- C. Trial Briefs: Pursuant to Criminal Local Rule 23.1, the parties may, no later than five court days before the date of trial, serve and file briefs on all significant disputed issues of law, including foreseeable procedural and evidentiary issues.
- D. Proposed Voir Dire Questions and Verdict Forms: Counsel may serve and file proposed voir dire questions and forms of verdict on the day set for motions in limine.
- E. 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. Jurors assigned seat numbers one through thirty-two will be questioned.

The number of jurors questioned (thirty-two) is calculated as follows: the number of jurors to be selected (twelve), the number of alternates to be selected (generally two), and the number of peremptory challenges (generally eighteen). Thus, in a single defendant case in which the defendant has ten and Government six peremptory challenges, plus one challenge each with respect to alternates, voir dire will result in thirty-two panelists.

The Court will conduct the initial jury voir dire. On a case by case basis, the Court may permit follow-up voir dire conducted by the attorneys. If voir dire by counsel is permitted, ten minutes per side on non-complex cases generally will be allowed.

After the Court and counsel have voir dired the panel, counsel may exercise challenges for cause outside the presence of the prospective jurors. If any challenges for cause are sustained, the removed panelists usually will be replaced by inserting new panelists from the venire so that a full panel exists before any peremptory challenges are exercised. The new panelists will be voir dired in accordance with the above.

The exercise of peremptory challenges will follow. Counsel will exercise alternating challenges—outside the presence of the prospective jurors—by calling out the jurors' numbers they wish to excuse. The process will be repeated until all peremptory challenges are exhausted.

In a single defendant case, the Government may exercise one challenge, followed by the defendant's exercise of two challenges for four rounds, then each side may exercise one challenge for two rounds, making a total of six and ten. These challenges may be exercised only as to panelists one through twenty-eight, that is, not as to the panelists from whom the alternates will be chosen.

Note that a party may waive its right to challenge but may **not** reserve. Thus, if counsel passes one time, he or she may not exercise any more peremptory challenges. Also note that challenges may be made to any of the panelists regardless of where that panelist appears in the array (except as to the prospective alternate jurors, that is, jurors twenty-nine through thirty-two). When each side has exhausted its peremptory challenges, the first twelve unchallenged persons shall constitute the jury.

After the twelve-person jury is selected, each side has one additional peremptory challenge which is exercisable only with respect to panelists twenty-nine through thirty-two, that is, the prospective alternates. Generally, two alternates are selected from the remaining unchallenged panelists. These final two challenges will occur after the peremptory challenges as to the initial twelve jurors have been exercised.

F. Presentation of Evidence: Please abide by the following rules:

- Do not enter the well, except during voir dire, opening statement and closing argument.
- Conduct all examination 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.
- Refrain from talking to each other in the presence of the jury. If clarification on a matter is needed, please seek clarification from the Court and not directly from counsel.

G. Bench Conferences: Sidebar conferences are disfavored. If counsel desire to speak to the Court outside the jury’s presence, counsel may request to do so at the start of the recess or at the end of the day. Requests to see the Court outside the presence of the jury when the Court is about to begin the day of trial or reconvene following a recess generally will not be granted. These matters usually can wait for the next recess.

- H. Witness and Exhibit Lists: The parties shall file witness and exhibit lists five (5) court days prior to the date of the trial, unless otherwise ordered by the Court. 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 the trial.

Before publishing an exhibit to the jury, counsel either must 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 in order to keep a complete record.

If a demonstrative exhibit is being used and counsel's view is obstructed, counsel may relocate for better viewing without requesting permission from the Court. Pursuant to Local Criminal Rule 1.1(e) and Local Civil Rule 79.1, all exhibits will be returned to the party who produced them at the conclusion of the trial.

- I. Trial Schedule: Generally, trials are scheduled from 9:00 a.m. to 4:30 p.m., beginning on Mondays. Trials do not proceed on Friday unless a jury is deliberating. 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 will attempt to accommodate jurors, witnesses and counsel, if conflicts arise.

### **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.