

**HONORABLE GONZALO P. CURIEL
UNITED STATES DISTRICT JUDGE
CIVIL PRETRIAL & TRIAL PROCEDURES**

Criminal matters contact:

Courtroom Deputy Kimmi Ridgeway: (619) 557-5539

Civil matters contact:

Judge Curiel's Law Clerks in chambers: (619) 557-7667

Transcript requests contact:

Court Reporter: Chari Bowery (858)-822-8828

Location: Schwartz Courthouse - Courtroom 2D

These rules will help civil litigants appearing before Judge Curiel. 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, the Electronic Case Filing Administrative Policies and Procedures Manual, and any other applicable rules. The Local Rules and the Electronic Case Filing Administrative Policies and Procedures Manual are available on the Court's website: <http://www.casd.uscourts.gov>.

COMMUNICATION WITH CHAMBERS

Telephone calls to chambers are permitted only for scheduling or calendaring motion hearings or as otherwise authorized by the Court. Court personnel are prohibited from interpreting orders, discussing the merits of a case, or giving legal advice, including advice on procedural matters. Letters, faxes, and emails are prohibited unless otherwise authorized by the Court.

DISCOVERY

Counsel shall 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.

PROPOSED ORDERS

Proposed orders shall be submitted in Word or WordPerfect format simultaneously with all motions, except motions that are fully noticed and set for hearing at least 28 days beyond the date of filing. In accordance with Section 2(h) of the Electronic Case Filing Administrative Policies and Procedures Manual, proposed orders shall not contain the name and law firm information of the filing party and shall not contain the word “proposed” in the caption. Counsel shall email proposed orders to opposing counsel and to the following address: efile_curiel@casd.uscourts.gov, and include the docket number and case name in the subject line of the email.

JOINT MOTIONS/STIPULATIONS

Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, all stipulations must be filed as joint motions. Joint motions must be signed by the Court to have legal effect.

EX PARTE MOTIONS

The Court may rule upon *ex parte* motions without requiring a response from the opposing party. If a party intends to oppose the *ex parte* motion, the party must immediately file a notice stating that the party intends to oppose the *ex parte* motion and providing the date upon which the opposition will be filed.

PRETRIAL MOTION PRACTICE

HEARING DATES

Motion hearing dates are set on **Fridays at 1:30 p.m.**

Pursuant to Civil Local Rule 7.1(b), all dates for motion hearings must be obtained by calling the law clerk before filing any motion. Motion papers **MUST** be filed and served *the same day* of obtaining a motion hearing date from chambers. A briefing schedule will be issued once a motion has been filed. The parties must obtain leave of Court by filing an *ex parte* request before filing any sur-replies.

The Court strongly encourages litigants to be mindful of opportunities for young lawyers to conduct hearings before the Court, particularly for motions where

the young lawyer drafted or contributed significantly to the underlying motion or response. Frequently, the Court will issue a written order and vacate the hearing unless oral argument appears to be necessary. If a written request for oral argument is made in the moving, opposition or reply briefs stating that an attorney with less than five years of experience after becoming a member of the California bar will argue the oral argument, then such a representation will weigh in favor of holding a hearing.

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).

MOTIONS FOR SUMMARY JUDGMENT

All motions for summary judgment shall be accompanied by a separate statement setting forth **plainly and concisely** all material facts that the moving party contends are undisputed. Each of the material fact shall be followed by a reference to the supporting evidence. The parties should avoid using the separate statements as a means of presenting or repeating legal arguments that are or should be made in the memorandum of points and authorities in support of the motion for summary judgment. Separate statements are merely used as an aid to assist the Court in pinpointing the material facts and not to assert additional arguments. The failure to comply with this requirement of a separate statement may in the court's discretion constitute a sufficient ground for denying the motion.

Any opposition to a summary judgment motion shall include a response to the separate statement that responds to each of the material facts contended by the moving party to be undisputed, indicating if the opposing party agrees or disagrees that those facts are undisputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. The statement shall also set forth **plainly and concisely** any other material facts the opposing party contends are disputed. The parties should avoid using the separate statements as a means of presenting or repeating legal arguments that are or should be made in the memorandum of points and authorities in opposition to the motion for summary judgment. Failure to comply with this requirement of a separate

statement may in the court's discretion constitute a sufficient ground for granting the motion.

The separate statement must be in a two-column format with the moving party providing in numerical sequence the undisputed material facts in the first column followed by the evidence citation that establishes those undisputed facts. In opposition, the opposing party shall indicate in the second column whether the fact is "disputed" or "undisputed." If disputed, the opposing party must state in the second column, directly opposite the fact in dispute, the reasons for the dispute and cite the evidence that supports the position that the fact is controverted.

Absent leave of court, separate statements shall be limited to 15 pages and must comply with the font requirements of Civil Local Rule 5.1.

COURTESY COPIES

Courtesy copies of filings that exceed 20 pages in length, including attachments and exhibits, shall be submitted in accordance with Section 2(e) of the Electronic Case Filing Administrative Policies and Procedures via United States Postal Service mail, courier, or delivery to the Clerk's Office. The courtesy copy shall 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.

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.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.² The Court may seal documents to protect sensitive

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

2 Although courts may be more likely to order the protection of the information listed in Rule 26(c) 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

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.

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) affidavits showing good cause to protect those documents from disclosure. 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).

PRETRIAL CONFERENCE

Pursuant to Civil Local Rule 16.1(f)(6), the Court requires that the parties email to Chambers a proposed pretrial order in Word or WordPerfect format at least seven (7) days before the pretrial conference. The proposed pretrial order must include all elements set out in Civil Local Rule 16.1(f)(6)(c) and any other issues relevant to the trial. The requirement to file a Memoranda of Contentions of Law and Fact, pursuant to Civil Local Rule 16.1(f)(2)(a), is waived. All parties are required to cooperate in completing the proposed pretrial order.

The Court will set a trial date during the pretrial conference. The Court will also schedule a motion in limine hearing date during the pretrial conference. All motions in limine are due two weeks before the motion in limine hearing date. All responses are due seven (7) days before the motion in limine hearing date. Unless otherwise ordered by the Court, the joint proposed jury instructions, trial briefs, proposed verdict form, *voir dire* questions, statement of the case, and exhibit binders are to be placed in a trial notebook, and are also due seven (7) days before the motion in limine hearing date. The proposed jury instructions, proposed verdict form, and statement of the case shall also be emailed to the Court in Word format.

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).

TRIAL PRACTICE

ELECTRONIC EQUIPMENT FOR THE COURTROOM

The Court now has new audio/visual equipment for counsels' use. The courtroom has individual monitors at counsels' tables, the lectern, the witness box, and the jury box as well as a large 55" gallery monitor for public viewing. A document camera and a DVD/Blue Ray player are now available for use and can be connected to counsels' computers, laptops and tablets. HDMI and VGA video inputs are available at the lectern, witness box and counsels' tables.

Counsel are required to bring their own computers, laptops, tablets, HDMI or VGA adapters and wireless cards, if necessary. Counsel should contact the CRD for details and instructions and with questions regarding the use of equipment not provided for by the Court.

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 (20 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.

After *voir dire* of the entire panel has been completed, 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, depending on the estimated length of the trial, the first seven to nine persons not challenged

peremptorily or successfully challenged for cause shall constitute the jury. All remaining prospective jurors will be excused at that time.

TRIAL PROCEDURES

Trial generally proceeds from 9:00 a.m. to 5:00 p.m., Monday through Thursday, unless the Court schedules otherwise. Jury deliberations generally proceed from 9:00 a.m. to 5:00 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.

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, e.g., by quickly orienting the witness with an exhibit and returning to the podium. 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. 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.

BENCH TRIAL

Seven (7) days before trial, counsel will submit proposed Findings of Fact and Conclusions of Law by hard copy and an electronic copy of the proposed Findings of Fact and Conclusions of Law shall be emailed to efile_curriel@casd.uscourts.gov in Word format.

SETTLEMENT

If the parties settle a case, counsel shall file a “Notice of Settlement” and immediately inform 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 shall file the “Joint Motion to Dismiss” and email a proposed order to this Court within twenty-eight (28) days of the settlement.