

## **Civil Pretrial & Trial Procedures of Judge Dana M. Sabraw**

Unless otherwise ordered, matters before Judge Sabraw shall be conducted in accordance with the following practices:

### **1. 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. Pleadings that are filed with the Clerk's Office may be faxed to chambers, provided that copies are simultaneously faxed or delivered to all counsel. Do not follow with a hard copy. The chambers fax number is 619-702-9942.

**C. Telephone Calls.** Telephone calls to chambers are permitted only for matters such as docketing, scheduling or calendaring. Court personnel are prohibited from giving legal advice or discussing the merits of a case. Call chambers at 619-557-6262, and address your inquiries to the Law Clerks.

**2. Temporary Restraining Orders/Preliminary Injunctions.** Temporary restraining orders and preliminary injunctions will issue pursuant to Rule 65 of the Federal Rules of Civil Procedure. While temporary restraining orders may be heard *ex parte*, the Court may in its discretion order service on the opposing party before proceeding. Alternatively, a limited temporary restraining order may issue to preserve the status quo pending further briefing. The Court generally will provide telephonic notice of the date and time of any hearing.

**3. Early Neutral Evaluation Conference.** Pursuant to Civil Local Rule 16.1.c, within 45 days of the filing of an answer, counsel and the parties shall appear before the magistrate judge supervising discovery for an early neutral evaluation ("ENE") conference. If a Rule 12(b) motion is filed instead of an answer, and the motion is granted with leave to amend, the Court may in its discretion order the parties to an ENE conference before an answer is filed and while briefing on the amended complaint is pending. *See* Fed.R.Civ.P. 16(b).

The appearance at the ENE conference shall be made with authority to discuss and enter into settlement, and if no settlement is reached, to set pretrial and trial dates. The parties should consult with the magistrate judge to determine if any special procedures exist for conducting the ENE conference.

If no settlement is reached at the ENE conference, a case management conference ("CMC") will be held within 30 days after the ENE conference. In the discretion of the magistrate judge, the CMC may be held at the ENE conference.

**4. Case Management Conference and Trial Setting.** Prior to the CMC all counsel shall discuss discovery issues and endeavor to resolve any disputes. Procedures for the CMC are set forth in Civil Local Rule 16.1.d. A case management order will issue following the CMC and after consultation with the magistrate judge. The order will set forth a discovery schedule and cut-off dates, including, if applicable, expert witness disclosure and discovery dates, a pretrial motions cut-off date, a pretrial conference date, and a trial date. The pretrial motions cut-off date is the last date on which motions may be filed. Motion hearings are generally scheduled at least 28 days from the time the motion is filed. Please be mindful of these rules when calling to reserve a hearing date. In certain non-patent cases, the magistrate judge shall determine at the CMC whether the case is to be deemed complex. For non-complex and complex cases, the following procedures will apply:

**A. Non-Complex Cases.**

Pretrial dates generally will be set in accordance with the following schedule: (1) ENE conference within 45 days after filing of an answer (or in the Court's discretion within 45 days after an Order granting Rule 12(b) motion with leave to amend); (2) CMC within 30 days after ENE conference; (3) discovery cut-off within seven months after CMC; (4) pretrial motion cut-off within four weeks after discovery cut-off; (5) pretrial conference within four months after motion cut-off, and (6) trial date within six weeks after pretrial conference.

Trial dates, in accordance with Civil Local Rule 16.5.c, will be set within 18 months of the filing of the complaint. Specifically, trial dates will be set within: (1) 12 months of the filing of the complaint in cases involving social security, enforcement of judgments, forfeiture, and prisoner petitions challenging conditions of confinement; (2) 15 months of the filing of the complaint in FTCA cases; and (3) 18 months of the filing of the complaint in all other cases not deemed to be complex. A trial date may be set by the magistrate judge beyond the dates specified above for good cause shown.

**B. Complex and Class Action Cases.**

**(1). Non-Class Action Complex Cases.** In non-class action complex cases, a trial date will be set within 24 months of the CMC, in the absence of good cause shown for a later date. All other pretrial dates will be adjusted in accordance with the trial date.

**(2). Class Action Cases.** At the conclusion of the ENE, the magistrate judge will discuss with the parties class certification, discovery regarding class certification, the appointment of class counsel if that matter has not already been addressed, any contemplated pre-certification motions for summary judgment, and related issues. Thereafter, the magistrate judge will issue either at the ENE or CMC a schedule for the class certification motion, or, if appropriate, a schedule for a pre-certification dispositive motion. A trial date also will be set. The trial date will be set within 24 months of the CMC, in the absence of good cause shown for a later date.

In cases not involving a pre-certification dispositive motion, a discovery and briefing schedule for class certification will be set. Generally, the class certification motion will be heard

within 90 days of the CMC, and discovery regarding the motion will not be parsed between “class” and “merits” discovery, provided, however, that the magistrate judge may in his or her discretion set other dates or discovery provisions that are tailored to the needs of the case.

In cases where a pre-certification dispositive motion is deemed to be appropriate, the magistrate judge will set a discovery and briefing schedule in consultation with the parties. Such motions generally will be heard within 90 days of the CMC, in the absence of good cause shown for a later date.

### **C. Patent Cases.**

If no settlement is reached at the ENE Conference, the Court will schedule the Initial Case Management Conference. In certain patent cases, the CMC will be held before this Court rather than the magistrate judge. In that event, counsel shall follow the procedures set forth in Civil Local Rule 16.1.d and Patent Local Rules 2.1.a and 2.1.b. Counsel shall also be prepared to discuss ways to streamline the case in preparation for discovery, claim construction, motion practice and trial. Pretrial and trial dates will be set in accordance with the Patent Local Rules.

**5. Discovery Disputes.** With the exception of certain patent cases, all motions to compel discovery are referred to the magistrate judge assigned to the case. Motions pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure will not be heard unless the parties previously have met and conferred concerning all disputed issues. Civ. L.R. 26.1.a. The parties should consult the magistrate judge assigned to the case for any special procedures regarding discovery issues.

In those patent cases in which this Court holds the CMC, this Court will also handle all discovery motions according to the following procedures:

A. In the event of a discovery dispute, lead counsel shall meet in person in an effort to resolve the dispute.

B. If counsel are unable to resolve the dispute, they shall file a short letter brief (no more than two pages) setting out their respective positions and arguments. Thereafter, the Court will issue a ruling on the dispute.

### **6. Motions.**

**A. Rule 12(b) Motions: Informal Conference.** Any party desiring to file a Rule 12(b) motion shall first attempt to resolve the matter informally. If no informal resolution is achieved, the moving party shall contact the Court’s Law Clerk to obtain a date for a telephonic in-chambers conference, and arrange for the opposing party to appear at that time. The moving party shall, no later than two days before the conference, e-mail to chambers and serve on the opposing party an informal statement explaining why such motion is warranted. No statement is required of the opposing party. The time prescribed by the Federal Rules of Civil Procedure for the moving party’s first responsive pleading shall be tolled until after the conference. At the conclusion of the

conference, the parties may stipulate to allow the filing of an amended complaint, or, in the absence of a stipulation, the moving party shall be permitted to file and serve a Rule 12(b) motion within a reasonable period of time, to be set at the conference.

**B. Motions Generally: Scheduling a Hearing Date.** Pursuant to Civil Local Rule 7.1.b, all dates for motion hearings must be obtained by calling the Law Clerk. Briefing schedules are set forth in the Local Rules. There are no additional filing deadlines, unless the Court sets a specific briefing schedule in the case. A hearing date will not be reserved unless the motion is filed on the date on which the Law Clerk is contacted to schedule the hearing date. Motion hearing dates generally are set within 30 to 60 days from the date the motion is filed, depending upon the nature and complexity of the motion.

**C. Oral Argument.** At the Court's discretion, motions will be decided on the papers and without oral argument, in accordance with Civil Local Rule 7.1.d.1. If the motion is to be decided without oral argument, counsel will be notified by order of the Court canceling oral argument at least five days before the scheduled hearing date. In the absence of such an order, oral argument will proceed on the assigned hearing date. The Court generally reserves oral argument for matters that are either procedurally significant or dispositive, and may issue a tentative ruling before the hearing date. Oral argument will occur on the Court's Friday Calendar at 1:30 p.m. Telephonic argument is permitted in the Court's discretion, provided arrangements are made in advance of the hearing. Civ. L.R. 7.1.d.3.

**D. Courtesy Copies.** Courtesy copies of pleadings, marked as such, shall be submitted to chambers, as soon as practicable after filing.

**E. Proposed Orders.** In accordance with Section 2(h) of the Electronic Case Filing Administrative Policies and Procedures Manual, counsel shall e-mail proposed orders on motions directly to the Judge's official e-mail address, which is [efile\\_sabraw@casd.uscourts.gov](mailto:efile_sabraw@casd.uscourts.gov). Proposed orders should be submitted simultaneously with the motion.

## **7. Pretrial Conference.**

**A. Matters Covered.** Pursuant to Civil Local Rule 16.1.f.6, the Court requires the plaintiff to lodge a pretrial order no less than seven days before the pretrial conference. The pretrial order must include all matters set out in Civil Local Rule 16.1.f.6.c and any other issues relevant to the trial. Counsel shall be prepared to discuss scheduling, time limits, jury selection (if applicable), settlement, consent to magistrate judge jurisdiction for trial, and all other issues related to trial. Pretrial conferences are held on the Court's Friday Calendar at 10:30 a.m.

**B. Motions in Limine and Other Exchange Dates.** A briefing schedule for motions in limine will be set at the pretrial conference, along with dates by which to file a final list of witnesses and exhibits, and – in jury cases – proposed voir dire questions, jury instructions, verdict forms, and a joint statement of the case to be read to the jury. The Court also will set reasonable time limits for the trial in consultation with counsel at the pretrial conference.

## 8. Trial Procedures.

**A. Motions in Limine.** Generally, motions in limine will be heard one to two weeks before trial. Such motions must be filed and served two weeks before the scheduled hearing date, with oppositions due one week before the hearing. No reply briefs are permitted.

**B. Jury Instructions.** Jury instructions shall be submitted to the Court one week before trial in the following format:

(1). The parties are required **jointly** to submit one set of agreed upon instructions. To this end, the parties shall meet and confer, and thereafter submit to the Court one complete set of agreed upon instructions. The Court prefers to use standard pattern instructions, such as the Ninth Circuit Model Jury Instructions, Civil, the California Civil Jury Instructions (CACI), or other pattern instructions from other states, if applicable.

(2). If the parties cannot agree upon one complete set of instructions, they are required to submit one set of instructions to which they have agreed, and two sets (one for each party) of supplemental instructions to which they have not agreed.

(3). The joint instructions and supplemental instructions must be presented to the Court one week before trial, along with any objections to the supplemental instructions. All objections to supplemental instructions shall be in writing, set forth the challenged jury instruction in its entirety, identify the objectionable language, and contain citation to authority explaining why the instruction is improper. Where applicable, the objecting party shall submit an alternative instruction.

(4). The parties are required to submit the proposed joint set of instructions and proposed supplemental instructions in the following format:

(a). Two copies of each instruction should be provided.

(b). The first copy should indicate the number of the proposed instruction, the instruction, and the authority supporting the instruction.

(c). The second copy should contain **only** the proposed instructions on plain paper, that is, not on pleading paper. No other marks or writings should be present. This copy also should be presented electronically in WordPerfect format (any version).

(5). All instructions should be short, concise, and neutral statements of law.

(6). Any modification to a standard instruction must be identified by specifying the modification to the original instruction and the authority supporting the modification.

**C. Trial Briefs.** Pursuant to Civil Local Rule 16.1.f.9, the parties shall, no later than 7 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/Jury Questionnaire and Verdict Forms.** The parties shall submit proposed voir dire questions and verdict forms one week before trial. The Court also will consider a jury questionnaire if requested at the pretrial conference, and approved by the Court.

**E. Jury Selection.** The following is a description of the struck panel method by which the jury will be selected. There are many variations on this basic technique, so it is important that counsel understand what procedure will be followed. The procedure may require counsel to take more careful notes and to observe more panelists than under some traditional jury box selection methods.

The Courtroom Deputy Clerk will provide counsel with a numerical list of the jury panel at the beginning of voir dire, along with a seating chart. Jurors assigned seat numbers one through fourteen will be questioned.

The number of jurors questioned (fourteen) is calculated as follows: the number of jurors to be selected (generally eight) plus the number of peremptory challenges (generally six or three per side). Thus, voir dire will be conducted from fourteen panelists for the usual eight-person jury. If there is to be a ten-person jury, two additional panelists will be added.

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 counsel. If voir dire is permitted, fifteen 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. If any challenges for cause are sustained, the removed panelists 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 – generally 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.

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 where that panelist appears in the array.

When each side has exhausted its peremptory challenges, the first eight (or ten) persons constitute the jury.

**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 the 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.

Do not vouch for evidence, *e.g.*, “I believe....”

Refrain from facial expressions, nodding or other conduct that projects an opinion, favorable or unfavorable, concerning testimony of a witness, argument by counsel, or a ruling by the Court.

Do not address or refer to witnesses or parties by first name alone, except for young witnesses under age 18. Use appropriate titles, *e.g.*, Mr., Ms., Mrs., Agent, Officer, Doctor, etc.

**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 await the next recess.

**H. Exhibits.** Each counsel should submit a list of exhibits to the Courtroom Deputy Clerk 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 Courtroom Deputy Clerk or the intake window of the Clerk’s Office, in advance of trial. Plaintiffs should mark their exhibits numerically and defendants by alphabetic letters. Civ. L.R. 16.1.f.2.c.

Counsel must show each other all exhibits, except for those intended to impeach witnesses which may be shown at sidebar and cleared by the Court immediately before the exhibit is intended to be used. When referring to an exhibit, counsel should refer to its exhibit number whenever possible to ensure a complete and accurate record.

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.

Exhibits generally will be admitted at the close of all evidence.

Pursuant to Local Civil Rule 79.1, all exhibits will be returned to the moving party at the conclusion of the trial.

## **I. Trial Schedule.**

**(1). Trial Days.** Generally, trials are scheduled from 9:00 a.m. to 4:30 p.m., beginning on Mondays. Trials do not proceed on Friday unless the 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.

**(2). Time Limits.** It is the practice of the Court to set a reasonable time limit for the entire trial. This time limit reflects the estimates of counsel but is based on the Court's independent assessment of the time necessary to complete the trial. Such a time limit is all-inclusive, and includes jury selection, opening statements, presentation of evidence, closing argument, and sidebar and jury instruction conferences. Time limits are subject to exception for good cause shown. The Courtroom Deputy Clerk will keep track of time and inform the parties periodically of the remaining time, generally at the end of each trial day.

**(3). Witness Coordination.** The Court attempts to accommodate witnesses' schedules and may permit counsel to call witnesses out of sequence if warranted by the circumstances. Counsel must anticipate any such possibility and discuss it with opposing counsel and the Court at the earliest possible time. At the end of each trial day, counsel will be invited to disclose the next day's witnesses to ensure orderly presentation of witnesses and adequate preparation for cross-examination.

**9. 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.