

Chamber's Rules

The Honorable Thomas J. Whelan

United States District Court, Southern District of California

These rules will help civil litigants appearing before Judge Whelan. They answer many commonly received questions and explain procedures that are specific to Judge Whelan's chambers. In most cases, these rules are designed to help litigants clarify the issues and limit the scope of disputes before seeking the Court's assistance. The latest copy of these rules is available on the court's web site (<http://www.casd.uscourts.gov>). To reach Judge Whelan's Judicial Assistant or one of his law clerks, call (619) 557-6625.

Counsel for plaintiff, or plaintiff, if appearing on his or her own behalf, is responsible for promptly serving notice of the requirements contained herein upon defendant or defendant's counsel. If the action came to the Court via noticed removal, this burden falls on the removing defendant.

1. Local Rules

- a. Except as otherwise provided herein or as specifically order by the Court, all parties are expected to strictly comply with this District's Local Rules.

2. Discovery

- a. Pursuant to Civil Local Rules 26.1(e) and 72.1(b), discovery matters are handled by the assigned Magistrate Judge. All documents relating to discovery shall contain the words "DISCOVERY MATTER" in their caption to ensure proper routing. Hearings for discovery motions shall be scheduled by the assigned Magistrate Judge's law clerks.

3. Motions

- a. **Hearing Dates.** Counsel shall obtain all hearing dates from the Court's law clerks before filing moving papers. Any hearing dates for motions to be heard before Judge Whelan scheduled by the Magistrate Judge assigned to

the case shall be cleared with Judge Whelan's law clerks before the parties file their moving papers.

- b. **Oral Argument.** The Court generally decides motions based on the papers submitted by the parties. In the caption of its notice of motion and motion, the moving party shall include the following: **NO ORAL ARGUMENT PURSUANT TO LOCAL RULE.** If the Court decides that oral argument will assist it in deciding a given motion, counsel will be notified telephonically three court days before the scheduled hearing date.
- c. **Points and Authorities.** In their memoranda of points and authorities, the parties shall state all legal and factual bases for their respective positions. Moving parties shall raise all factual and legal bases for the motion in the opening brief. Factual matters or legal arguments raised by a party for the first time in their reply brief, unless directly in response to the opposition, may not be considered.
- d. **Statement of Non-Opposition, Failure to Oppose.** A party that determines that it will not oppose a given motion shall file a statement of non-opposition no later than 14 days before the hearing date. An opposing party's failure to file a memorandum of points and authorities in opposition to any motion will be construed as consent to the granting of the motion.
- e. **Courtesy Copies.** Courtesy copies of filings exceeding 20 pages shall be delivered directly to chambers. Unless expressly required by the Court, courtesy copies must be identical to the electronically filed documents, and if the document has more than 3 exhibits, the exhibits must be tabbed.
- f. **Citations to unpublished cases.** Parties are encouraged to use the Westlaw case number when citing to unpublished or not-yet published cases.
- g. **Motions to Amend the Pleadings.** Before filing any motions to amend the pleadings, counsel shall meet and confer in good faith regarding the proposed amendment. To facilitate this process, the party seeking to amend their pleading shall provide opposing counsel with a copy of the proposed amended pleading along with an explanation of the reasons for the amendment. If counsel are unable to reach agreement regarding the proposed amendment, counsel filing the motion to amend shall attach a declaration to the motion documenting counsels' meet and confer efforts.

- h. **Summary-Judgment Motions.** Ten days before the hearing date, the parties shall meet and confer to arrive at a joint statement of disputed and undisputed facts, which shall be filed no later than the reply brief. The Court will not consider any separate statements of disputed or undisputed facts.

4. Temporary Restraining Orders

- a. All motions for a temporary restraining order shall be briefed. While temporary restraining orders may be heard ex parte, 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. The Court will generally give notice of hearing by telephone.

5. Administrative Requests, Ex Parte Applications

- a. Before filing an ex parte application, counsel shall make every attempt to contact the opposing party to meet and confer regarding the subject of the ex parte application. All ex parte applications shall be accompanied by a declaration from counsel documenting (1) efforts to contact opposing counsel, (2) counsel's meet and confer efforts and (3) opposing counsel's position regarding the ex parte application. Any ex parte application filed with the Court shall be served on the opposing counsel via facsimile, electronic mail or overnight mail. Ex parte applications that are not opposed within two Court days will be considered unopposed and may be granted on that ground.

6. Continuances

- a. Parties requesting a continuance of any conference, hearing, deadline, briefing schedule, or other procedural changes, shall meet and confer prior to contacting the Court. If the parties reach an agreement, they shall e-file a joint motion, along with a declaration detailing the reason for the requested continuance or extension of time. They shall also submit a proposed Order

as set forth in Chambers Rule VII. Except in extraordinary circumstances, joint motions to amend a briefing schedule or a motion hearing date must be filed no later than three court days before the affected date. If the parties are unable to reach an agreement, the party requesting the continuance shall file an ex parte application satisfying the applicable legal standard, with a particular focus on the diligence of the party seeking delay and any prejudice that may result therefrom. In addition, the ex parte application shall state (1) the original date, (2) the number of previous continuance requests and (3) whether previous requests were granted or denied.

7. Proposed Orders

- a. **Submission.** Proposed orders must be submitted to Chambers simultaneously with the filing of all joint motions or ex parte requests. The proposed order should be submitted in Word format through email to: efile_whelan@casd.uscourts.gov.
- b. **Format.** The word “proposed” in brackets (e.g. “[PROPOSED] ORDER GRANTING EX PARTE APPLICATION TO. . .”) must appear on the document. Additionally, all extraneous information shall be removed from the headers, footers, and margins such as the attorney or firm information, including firm logos.

8. Motions in Limine

- a. **Meet and Confer Obligation.** Before filing any motions in limine, parties are required to meet and confer in an attempt to resolve their dispute. If the parties are unable to resolve their differences, counsel filing the motion in limine shall attach a declaration documenting the parties meet and confer efforts and the reason for their failure. Parties are encouraged to be selective with their motions in limine and not to file mundane or unnecessary motions.
- b. **Deadline.** Motions in Limine must be filed and served no later than four weeks before trial and any opposition must be filed no later than two weeks before trial. Reply papers should not be filed.

9. **Jury Instructions**

- a. The parties are required to meet and discuss proposed jury instructions. If the parties are unable to reach an agreement, they may submit those instructions upon which they cannot agree to the Court.

10. **Communication with the Court**

- a. Consistent with Local Rule 83.9, counsel and parties shall refrain from writing letters or placing telephone calls to the Court or sending the Court copies of letters addressed to others, or otherwise causing or encouraging ex parte communications with the Court. Any party or attorney who causes or encourages such unauthorized ex parte communications, or who provides the Court's contact information with the knowledge that it shall be used for unauthorized ex parte communications, may be sanctioned. **Absent extraordinary circumstances, counsel shall personally initiate any authorized communications with the Court or chambers staff, rather than rely on a representative (e.g., a secretary or paralegal).**

11. **Pre-Trial Conferences/Letter Briefs**

- a. **Submission/Deadline.** In addition to the Proposed Pretrial Order, the parties shall separately submit informal letter briefs, not exceeding two single spaced pages, to Judge Whelan's chambers (and not filed in the Clerk's Office) no later than **3:00 p.m. on the Wednesday before the pretrial conference**. The informal letter briefs shall also be served on opposing counsel. The informal letter briefs and Proposed Pretrial Order **shall be submitted to Chambers in Word format** by emailing to the following: efile_whelan@casd.uscourts.gov.
- b. **Letter Briefs.** The letter brief shall not exceed two single spaced pages, and shall be served on opposing counsel. The letter brief should be relatively informal and straightforward. It should outline a short, concise and objective factual summary of the party's case in chief, the number of hours/days each party intends to expend at trial, the approximate number of witnesses, whether certain witnesses will be coming in from out of town, the number of testifying expert witnesses, whether any unique demonstrative

exhibits may be presented, the number of proposed motions in limine that may be filed, precisely when the parties would be prepared to submit their in limine papers (and whether the parties have met and conferred with respect to the in limine issues), the issue of proposed jury instructions and when the parties intend to submit them before trial, any voir dire issues, either party's preference as to what date(s) the trial should begin and any other pertinent information that either party may deem useful to assist the Court in the execution of the Pretrial Conference and in setting the matter for trial.

12. Settlement and Dismissal

- a. If a case settles, the parties must immediately notify this Court and the assigned Magistrate Judge. Any joint motion for dismissal that includes a provision that the court will retain jurisdiction will be rejected unless it is accompanied by a consent to United States Magistrate Judge jurisdiction over all disputes arising out of the settlement agreement, including interpretation and enforcement of the settlement agreement, **signed by all parties and their counsel**. Attached to these Chamber's Rules for the parties' convenience is a Consent to Exercise of Jurisdiction by a United States Magistrate Judge and Order of Reference.