# HONORABLE ANTHONY J. BATTAGLIA
## U.S. MAGISTRATE JUDGE
## CIVIL CASE PROCEDURES

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**Please Note**: The Court provides this information for general guidance to counsel. However, the Court may vary these procedures as appropriate in any case.

**Communications With Chambers**

**A.** Letters or e:mails. Letters or e:mails to chambers are prohibited unless specifically requested by the Court. If letters or e:mails are requested, copies of the same must be simultaneously delivered to all counsel. Copies of correspondence between counsel must 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 must shall be simultaneously delivered to all counsel.

**C.** Telephone Calls. Telephone calls to chambers are permitted only for matters such as scheduling and calendaring. Court personnel are prohibited from giving legal advice or discussing the merits of a case. Call the chambers at 619-557-3446 and address your inquiries to the law clerk.

**Early Neutral Evaluation Conference or Other Settlement Conferences**

Absent extraordinary circumstances, a request to continue a Settlement Conference will not be considered unless submitted in a motion to continue the date no less than fourteen (14) days prior to the scheduled conference. Counsel seeking the continuance must confer with opposing counsel prior to submitting the motion.

If the case is settled in its entirety before the scheduled date of the conference, counsel must file a Notice of Settlement twenty-four (24) hours before the scheduled conference.

**Discovery Disputes**

Any motion to compel discovery or a motion for protective order relative to discovery will be filed no later than 30 days after the production of a response for which a dispute arises; or within 30 days of the due date where there has been a failure to respond to discovery. Counsel must comply with Local Civil Rule 26.1 before any such motion will be accepted for filing.

Counsel are ordered to meet and confer with regard to all issues to ensure expedient resolution. If counsel are located in the same district, the meet and confer must be in person. If counsel are located in different districts, then telephone or video conference may be used. In no event, will meet and confer letters, facsimiles or e:mails be satisfactory as compliance with this requirement.

If impasse remains after the meet and confer process has been exhausted, all counsel necessary for disposition of the dispute will call the Court's law clerk jointly to set a plan for resolution.

**Ex Parte Proceedings**

Appropriate *ex parte* applications may be made at any time after first contacting the law clerk, but must ultimately be filed electronically on ECF and include a description of the dispute, the relief sought, and accompanied by a separate affidavit indicating reasonable and appropriate notice to the opposition.

After service of the *ex parte* application, opposing counsel will ordinarily be given until 5:00 p.m. on the next business day to respond. If more time is needed, opposing counsel must call the law clerk to modify the schedule. After receipt, moving and opposing *ex parte* papers will be reviewed and a decision will be made without a hearing. If the Court requires a hearing, the parties will be contacted to set a date and time.

**Stipulated Protective Order Provisions for Filing Documents under Seal**

All Stipulated Protective Orders submitted to the Court need to provide the following provision:

> Nothing will be accepted for filing under seal with the Court without separate prior order by the judge before whom the hearing or proceeding will take place. Such order must be sought by ex parte application by the affected party with appropriate notice to opposing counsel.

One recurring problem in dealing with protective orders is a dispute arising at the end of the case over the complete return of the confidential documents and any copies made. To avoid the dispute, or help the court address the situation, a helpful provision for the order would be as follows:

> "The party receiving Confidential or Confidential for Attorneys only material will handle copies of said material as follows:
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> (a) Any copies of the confidential material or portion thereof must be recorded in a copy log;
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> (b) Each such copy must be identified in the copy log by:
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> (I) a copy number;
>
> (ii) the date the copy was made; and
>
> (iii) the person to whom the copy was provided;
>
> (c) Each such copy will be physically marked with the document number and copy number.
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> The copy log will be provided to the producing party upon the return and/or at the time of destruction of the confidential materials pursuant to the Stipulated Protective Order."

**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 denied by the court in order to protect sensitive personal or confidential information.[2] The court may seal documents to protect sensitive 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).

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[1] *See Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 597 (1978); *Globe Newspaper Co. v. Superior Court for Norfolk County*, 457 U.S. 596, 603 (1982); *Phillips ex rel. Estates of Byrd v. General 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)(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).