

**HONORABLE MICHAEL S. BERG
U.S. MAGISTRATE JUDGE
CIVIL CHAMBERS RULES**

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

First and foremost, the Court does not expect, but rather demands civility from the parties. As part of its Chambers Rules, the Court adopts the “Ethics, Professionalism and Civility Guidelines” enacted by the Association of Business Trial Lawyers and the San Diego County Bar Association. Parties appearing before this Court must be aware of and adhere to these guidelines. The guidelines may be found here: [Guidelines](#).

I. Communications with Chambers. Chambers staff includes two law clerks and one courtroom deputy. The law clerks handle inquiries on civil matters while the courtroom deputy handles inquiries on criminal matters. The courtroom deputy also handles all orders for hearing transcripts. For civil matters, contact the law clerks in chambers at (619) 557-6632. For criminal matters or for ordering transcripts, call (619) 557-6695.

A. Letters, faxes, or e-mails. Letters, faxes, or e-mails to chambers are prohibited unless specifically requested by the Court.

B. 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. **Only counsel with knowledge of the case** may contact chambers.

C. Lodging documents. When an order directs you to “lodge” a document with chambers, you should either send it via e-mail to efile_berg@casd.uscourts.gov, or deliver the document to Judge Berg’s chambers, 221 West Broadway, Suite 2160, San Diego, CA 92101. Proposed orders must be lodged in **Word format**.

D. Courtesy Copies. Courtesy copies of filings **exceeding 20 pages** must be submitted directly to chambers, 221 West Broadway, Suite 2160, San Diego, CA 92101. Unless expressly required by the Court, courtesy copies must be identical to the electronically-filed documents. The pages of each pleading must be firmly bound and must be 2-hole punched at the top. If a pleading or settlement brief has exhibits, the exhibits must be tabbed.

II. Early Neutral Evaluation (“ENE”) Conference and Other Settlement Conferences. All named parties, party representatives, including claims adjusters for insured defendants, as well as the principal attorney(s) responsible for the litigation, must be present **in person** and legally and factually prepared to discuss and resolve the case at the ENE or any other settlement conference. **Please see the order scheduling the conference for more information.** The Court

will **not** grant requests to excuse a required party from personally appearing absent extraordinary circumstances. Distance of travel alone does **not** constitute an “extraordinary circumstance.”

III. Joint Discovery Plans. The parties are required to file a Joint Discovery Plan at least **seven (7) calendar days** before the scheduled Case Management Conference. The Joint Discovery Plan must be one document and must explicitly cover the parties’ views and proposals for each item identified in Fed. R. Civ. P. 26(f)(3). Agreements made in the Joint Discovery Plan will be treated as binding stipulations that are effectively incorporated into the Court’s Scheduling Order, unless otherwise modified by the Court.

IV. Discovery Disputes. (Fed. R. Civ. P. 26–37, 45; Civ. LR 26.1)

A. Meet and Confer Requirement. Counsel are to promptly meet and confer regarding all disputed issues, pursuant to the requirements of Civil Local Rule 26.1.a.

B. Disputes During Depositions. If the dispute arises during a deposition regarding an issue of privilege, enforcement of a court ordered limitation on evidence, or pursuant to Fed. R. Civ. P. 30(d), counsel should suspend the deposition and immediately meet and confer. If the dispute is not resolved after meeting and conferring, counsel may call Judge Berg’s chambers for an immediate ruling on the dispute. If Judge Berg is available, he will either rule on the dispute or give counsel further instructions on how to proceed. If Judge Berg is unavailable, counsel must mark the deposition at the point of the dispute and continue with the deposition. If counsel have not resolved their disputes through the meet and confer process, the Court may require the parties to file a joint motion as provided below.

C. Disputes over Written Discovery Requests. If the dispute concerns written discovery requests (e.g. interrogatories, requests for production) and a party will be moving to compel or moving for a protective order, the parties shall submit a “Joint Motion for Determination of Discovery Dispute.” Counsel need not contact chambers in advance of filing a joint motion. The Court will not provide a hearing date in advance of reviewing the briefs.

D. Timing of Discovery Motions. If counsel have not resolved their disputes through the meet and confer process, counsel shall, within **thirty (30) days** of the date upon which the event giving rise to the dispute occurred, file a joint statement entitled “Joint Motion for Determination of Discovery Dispute” with the Court. For oral discovery, the event giving rise to the dispute is the completion of the transcript of the relevant portion of the deposition. For written discovery, the event giving rise to the discovery dispute is the date of service of the response, **not** the date on which counsel reach an impasse in meet and confer efforts. If a party fails to provide a discovery response, the event giving rise to the discovery dispute is the date response was due.

E. Contents of the Joint Motion. The “Joint Motion for Determination of Discovery Dispute” must include the following:

1. The Interrogatory, Request for Admission, Request for Production, or deposition question in dispute;
2. The verbatim response to the request or question by the responding party;
3. A statement by the propounding party as to why a further response should be compelled; and
4. A precise statement by the responding party as to the basis for all objections and/or claims of privilege.
5. The joint motion shall be accompanied by: (a) a declaration of compliance with the meet and confer requirement; and (b) points and authorities (not to exceed five (5) pages per side).
6. **The joint motion shall not be accompanied by copies of correspondence or electronic mail between counsel** unless it is evidence of an agreement alleged to have been breached.

F. Opportunity to Participate. A party seeking to bring a discovery dispute before the Court must provide the opposing party a reasonable opportunity to contribute to the joint motion. An *ex parte* motion or application to compel is only appropriate under circumstances where the opposing party refuses to participate in contributing to a joint motion after a reasonable opportunity has been provided, or if the motion to compel is directed to a non-party. This Court considers a **minimum of five (5) business days** prior to the anticipated filing date of the joint motion to be a reasonable time period for a party to participate meaningfully in the preparation of a joint motion. This means that the party initiating a joint motion to resolve a discovery dispute must provide opposing counsel with a complete draft of the joint motion and any exhibits or supporting declarations **at least five (5) business days** prior to the anticipated filing date. *Ex parte* motions or applications to compel discovery that do not contain a declaration stating the opposing party has been given a meaningful opportunity to participate in a joint motion will be rejected by the Court.

G. Discovery Disputes and Non-Parties. If a motion to compel discovery is directed at a non-party, the Court prefers that the joint motion procedure be employed. The Court understands, however, that in some circumstances involving third-party discovery practice, the motion may have to be filed *ex parte*. The Court will then set a briefing schedule.

H. Hearings on Discovery Motions. Following the filing of the joint motion, the Court will either issue an order or will hold a telephonic or in-person discovery conference.

V. **Continuances.** Whether made by joint motion or *ex parte* application, any request to continue an ENE, MSC, or scheduling order deadline shall be made in writing no less than **seven (7) calendar days** before the affected date. The request shall include:

- A. The original deadline or date;
- B. The number of previous requests for continuance;
- C. A showing of good cause for the request;
- D. Whether the request is opposed and why;
- E. Whether the requested continuance will affect other case management dates; and
- F. A declaration from counsel of record detailing the steps taken to comply with the dates and deadlines set in the order, and the specific reasons why the deadlines cannot be met.

VI. **Stipulated Protective Orders.**

- A. When filing a stipulated protective order, a proposed stipulated protective order must be e-mailed to efile_berg@casd.uscourts.gov. The proposed protective order must contain the following language:

“No document may be filed under seal, except pursuant to a court order that authorizes the sealing of the particular document, or portion of the document. A sealing order may issue only upon a showing that the information is privileged or protectable under the law. **The request must be narrowly tailored to seek sealing only of the confidential or privileged material.**”

To file a document under seal, the parties must comply with the procedures explained in Section 2.j of the Electronic Case Filing Administrative Policies and Procedures Manual for the United States District Court for the Southern District of California and Civil Local Rule 79.2. In addition, a party must file a redacted version of any document that it seeks to file under seal. The document must be titled to show that it corresponds to an item filed under seal, e.g., ‘Redacted Copy of Sealed Declaration of John Smith in Support of Motion for Summary Judgment.’ The party should file the redacted document(s) simultaneously with a joint motion or *ex parte* application requesting that the confidential portions of the document(s) be filed under seal and setting forth good cause for the request.”

- B. The stipulated protective order must contain a provision regarding the disposition of confidential or sealed documents and information after the case is closed.

VII. **Ex Parte Proceedings.** The Court does not have regular *ex parte* days or hours. As outlined above, the Court prefers that discovery disputes and requests for protective orders or continuances be submitted as joint motions. For Judge Berg’s rules regarding *ex parte* motions

addressing discovery disputes, please see section IV.F of these rules. All other *ex parte* motions must comply with Civ. LR 83.3(g). Further, declaration(s) in support of the *ex parte* motion must describe meet and confer efforts made to resolve the dispute without the Court's intervention. After service of the *ex parte* motion, opposing counsel will ordinarily be given until 5:00 p.m. on the next business day to respond or contact the assigned law clerk to request additional time. The Court will either issue an order on the written submissions, or set a date and time for a hearing.