

HONORABLE DANIEL E. BUTCHER
UNITED STATES MAGISTRATE JUDGE
CIVIL CHAMBERS RULES

Updated July 10, 2020

NOTE: These rules apply to all cases, unless otherwise ordered. All parties must comply with the Civil Local Rules for the Southern District of California (“Local Rules”) and the Electronic Case Filing Administrative Policies and Procedures Manual (“ECF Manual”), which are available on the Court’s website.

I. CIVILITY AND PROFESSIONALISM

The Court places a high premium on civility and professionalism in all matters, including those that occur outside the presence of the Court. All counsel and unrepresented parties must read and familiarize themselves with Local Rule 2.1 (Professionalism).

II. COMMUNICATING WITH CHAMBERS

Chambers’ staff includes two law clerks and one courtroom deputy. The law clerks handle inquiries on civil matters, and the courtroom deputy handles inquiries on criminal matters. The telephone number for the law clerks is (619) 446-3704. The telephone number for the courtroom deputy is (619) 446-3576.

Telephone calls to Chambers are permitted only for administrative matters such as scheduling and calendaring, and to bring discovery disputes to the Court’s attention pursuant to Section VI of these Rules. 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.

Letters, faxes, and emails to Chambers are prohibited, except as set forth in these Rules or otherwise requested by the Court.

For technical questions relating to the Case Management/Electronic Case Filing system (“CM/ECF”), please contact the CM/ECF Help Desk at (866) 233-7983. In addition, there is detailed guidance on CM/ECF on the Court’s website.

III. EARLY NEUTRAL EVALUATION AND CASE MANAGEMENT CONFERENCES

Pursuant to Local Rule 16.1(c), the Court will hold an Early Neutral Evaluation Conference (“ENE”) within 45 days of the filing of an answer. Requests to continue an ENE are strongly disfavored and will only be granted upon a strong showing of good cause.

The ENE is informal, off-the record, and all communications made during the ENE are confidential. It is an opportunity for the parties to educate Judge Butcher and each other about their claims and defenses. The ENE also provides a meaningful settlement opportunity before costs and fees become significant impediments to resolving the dispute.

Counsel and the parties must come prepared to engage in a detailed discussion of the merits of their respective cases and engage in good faith settlement discussions. Counsel attending the ENE are expected to have a command of the facts and applicable law.

A. Early Neutral Evaluation Statements

No later than seven (7) calendar days before the ENE, each party must lodge a “Confidential Early Neutral Evaluation Statement” by email to efile_butcher@casd.uscourts.gov. Unless pre-approved by the Court, the ENE Statement must not exceed seven (7) pages. Parties may attach significant materials pertaining to their claim(s) or defense(s) as exhibits. Parties attaching exhibits are encouraged to highlight the relevant portions.

ENE Statements must include all matters listed in the Court’s Order Setting the Early Neutral Evaluation and Case Management Conference.

B. Case Management Conference

Unless otherwise ordered, the Court will conduct the Case Management Conference (“CMC”) required by Fed. R. Civ. P. 16 immediately following the ENE if the case does not settle.

At least seven (7) days prior to the scheduled ENE/CMC, the parties must file a Joint Discovery Plan on CM/ECF. The Joint Discovery Plan must include: (1) the parties’ positions and proposals for each item identified in Fed. R. Civ. P. 26(f)(3); and (2) all other matters requested in the Court’s Order Setting the Early Neutral Evaluation and Case Management Conference.

C. Persons Required to Attend

Unless otherwise ordered by the Court, the following are required to attend the ENE/CMC with full settlement authority:

1. Counsel with primary responsibility for handling the case;
2. All individual parties, and, for corporate and organizational parties, a representative who has authority over the litigation;¹ and

¹ Government entities are excused from this requirement provided that an attorney attends who has: (1) primary responsibility for handling the case; and (2) authority to negotiate and recommend settlement offers to the official(s) having ultimate settlement authority.

3. Adjusters for all insured defendants and counter-defendants.

IV. SETTLEMENT CONFERENCES

Pursuant to Local Rule 16.3, the Court will hold a Mandatory Settlement Conference (“MSC”) at or near the conclusion of fact discovery and may hold additional MSCs as needed. The Court will also entertain a request to hold a voluntary settlement conference upon the request of any party.

The ENE attendance requirements apply to settlement conferences.

Each party must lodge a Confidential Settlement Brief at least seven (7) days before the settlement conference. The Confidential Settlement Brief may not exceed ten (10) pages, excluding exhibits (if exhibits are attached, parties are encouraged to highlight the relevant portions). All Confidential Settlement Briefs must include the following:

(1) the party’s position on liability and damages supported by relevant facts, a discussion of the significant facts established during discovery, and legal analysis with citations to controlling legal authority. The parties are also encouraged to attach a chronology setting forth a timeline of the events at issue. If submitted, the chronology should be in a chart or column format with the column headings “DATE” and “EVENT.” The chronology is not counted against the page limits;

(2) **for plaintiffs**, a specific and current settlement demand addressing all relief sought and an itemization of the damages sought, and, **for defendants**, a specific and current offer and the bases for that offer. (Note: a general statement that a party will “negotiate in good faith,” “offer a nominal cash sum,” or “be prepared to make a demand or offer at the conference” is not a specific demand or offer. If a specific offer or demand cannot be made at the MSC or settlement conference, state the reasons why and explain what additional information is required to make a settlement demand or offer.);

(3) a brief description of any previous settlement negotiations or mediations; and

(4) the names of attorney(s) and non-attorney(s) who will attend the conference, including the name(s) and title(s)/position(s) of the party/party representative(s).

V. NOTIFICATION OF CASE RESOLUTION

If the parties reach a settlement outside the presence of the Court, counsel must promptly call Chambers to advise of the settlement and file a Notice of Settlement on the CM/ECF system.

VI. DISCOVERY DISPUTES (Fed. R. Civ. P. 26–37, 45; CivLR 26.1)

A. Meet and Confer Requirement. Before bringing any dispute to the Court, lead counsel (or attorneys with full authority to make decisions on the matter in dispute) must promptly meet and confer “concerning all disputed issues” pursuant to Local Rule 26.1.a. Letters, facsimiles or emails do not satisfy this requirement.²

B. Disputes During Depositions. If a discovery dispute arises during a deposition, the parties must suspend the deposition and immediately meet and confer. If the dispute is not resolved after meeting and conferring, the parties may call Chambers for an immediate ruling on the dispute. If Judge Butcher is available, he will either rule on the dispute or give instructions on how to proceed. If Judge Butcher is not available, the parties must mark the deposition at the point of the dispute and continue with the deposition. Upon completion of the deposition, the parties must once again meet and confer and, if the dispute is still not resolved, follow the procedures set out in sections C, D, and E below.

C. Disputes Over Written Discovery Requests. For disputes over written discovery, the parties must jointly call Chambers and speak to the law clerk assigned to the case. Counsel will be asked to explain without argument: (1) the details of the dispute; (2) the parties’ respective positions; (3) what meet and confer efforts have taken place; and (4) what relief is requested. Following that call, the law clerk will either schedule a telephonic discovery conference with Judge Butcher or direct the parties to file a Joint Motion for Determination of Discovery Dispute, pursuant to section D below.

D. Joint Motions for Determination of Discovery Dispute. A “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 moving party, with applicable authorities cited, explaining what relief the moving party seeks and why the Court should grant it; and
4. A statement by the responding party, with applicable authorities cited, explaining why the Court should not grant the requested relief.
5. The parties must present all disputes involving common issues of fact and law as one issue.

² If counsel are unable to safely satisfy Local Rule 26.1.a.’s in-person meet and confer requirement due to the COVID-19 pandemic, counsel must meet and confer by videoconference.

The parties' statements described in Nos. 3, 4, and 5 above must not exceed two pages per party, per issue in dispute.

The parties may not attach correspondence between counsel unless it evidences an agreement alleged to have been breached.

E. Timing. The parties must initiate the procedure described in sections B and C above within **thirty (30) days** of the date of the event giving rise to the dispute. For depositions, the event giving rise to the dispute is the completion of the relevant portion of the transcript. For written discovery, the event giving rise to the dispute is the date the response was served. If a party fails to respond, the event giving rise to the discovery dispute is the date response was due. The Court may extend the time limitation upon a showing of good cause.

F. Disputes Concerning Electronically Stored Information. Before bringing any dispute over electronically stored information, the parties must consult and comply with the Checklist for Rule 26(f) Meet and Confer Regarding Electronically Stored Information, found at <https://www.casd.uscourts.gov/judges/butcher/docs/Electronically%20Stored%20Information%20Checklist.pdf>.

G. Discovery Disputes Involving Third Parties. If a discovery dispute involves a third party subpoena, and compliance is required in the Southern District of California pursuant to Fed. R. Civ. P. 45(c), the procedures described in sections A through E above apply if the third party is represented. If the third party is not represented, the party bringing the dispute may file an appropriate motion within the time set out in section E above.

VII. REQUESTS TO CONTINUE

A. Early Neutral Evaluation and Settlement Conferences. Parties may request the continuance of an ENE or settlement conference by placing a joint call to Chambers. The request must be made as soon as counsel is aware of the circumstances that warrant rescheduling the conference. When requesting a continuance of the ENE, the parties must remember that Civil Local Rule 16.1.c.1. requires that the ENE take place within 45 days of the filing of the first answer.

B. Scheduling Order Dates & Deadlines. Parties may make a request to continue a Scheduling Order deadline through a Joint Motion for Continuance. The parties must file the Joint Motion in accordance with Civil Local Rule 7.2 no less than seven (7) days before the affected date.

The Joint Motion must include the following information:

1. The original deadline(s) or date(s);
2. The number of previous requests for continuance;
3. A showing of good cause for the request;

4. If the request is opposed, a description of the parties' meet and confer efforts and a statement by the opposing party explaining the basis for its opposition;
5. Whether the requested continuance will affect other case management dates; and,
6. If the reason for the requested continuance is to engage in private mediation, the date of the mediation.

The filing of a Joint Motion for Continuance does NOT permit the parties to disregard the current deadlines. Unless and until the Court grants the Joint Motion, the parties must continue to comply with all deadlines in the Scheduling Order.

Requests to amend the Scheduling Order that necessitate an extension of the final pre-trial conference and/or trial date are strongly disfavored and require a showing of exceptional circumstances.

C. Deadline to Contact the Court re Discovery Disputes. The parties may initiate a request to extend the 30-day deadline to contact Chambers about a discovery dispute by placing a joint call to Chambers.

VIII. PRIVILEGE LOGS

Unless the parties' Joint Discovery Plan or a Court order provides otherwise, a party withholding documents based upon a claimed protection or privilege must produce a privilege log that contains sufficient information to allow the requesting party to understand and evaluate the basis for withholding the documents. The privilege log must include the following information:

1. Date of the document;
2. Bates number range of the document;
3. Author;
4. Primary addressee (and the relationship of that person(s) to the client and/or author of the document);
5. Secondary addressee(s) (and the relationship of that person(s) to the client and/or author of the document);
6. Type of document (e.g., internal memo, letter with enclosures, draft affidavit, etc.);
7. Client (i.e., party asserting privilege);
8. Attorney(s) involved, and party represented;
9. Subject matter of document or privileged communication;

10. Basis for withholding the document or communication (e.g., work product, attorney client privilege, or some other asserted privilege or protection); and

11. Identification and description of any attachments.

IX. PROTECTIVE ORDERS

If a protective order is requested, the parties must file a Joint Motion on the CM/ECF system and lodge the proposed protective order by email to [efile butcher@casd.uscourts.gov](mailto:efile_butcher@casd.uscourts.gov).

The proposed protective order must contain a provision regarding the disposition of confidential or sealed documents and information upon conclusion of the case.

The proposed protective order must also contain the following provisions:

1. At any stage of the proceedings, any party may object to a designation of materials as confidential information. The objecting party must notify the designating party, in writing, of the materials objected to and the ground(s) for the objection. Thereafter, lead counsel (or attorneys with full authority to make decisions and bind the client without later seeking approval from a supervising attorney) must promptly meet and confer, pursuant to Local Rule 26.1.a. If the dispute is not resolved within seven (7) days of receipt the objections, and after counsel have thoroughly and completely met and conferred, the parties must place a joint call to the assigned magistrate judge's chambers to explain the dispute and the parties' respective positions. The materials at issue must be treated as confidential until the Court has ruled on the objection or the matter has been otherwise resolved.

2. No party may file any document under seal, except pursuant to a court order that authorizes the filing of the document, or portion of the document, under seal. A sealing order will issue only upon a showing that the information is privileged or protectable under the law. The party seeking to file under seal must limit its sealing request to the specific portion of the document that contains the confidential or privileged material.

3. The Court may modify the protective order in the interest of justice or for public policy reasons.

X. EX PARTE PROCEEDINGS

As described above, the parties must submit most requests for relief as a Joint Motion. *Ex parte* motions are appropriate only in exigent circumstances, or when opposing counsel is not reachable or refuses to participate in the preparation of a Joint Motion.

The Court does not have regular *ex parte* hours. A party seeking *ex parte* relief must file a motion on the CM/ECF system that includes: (1) a short description of the dispute and the relief sought; (2) a declaration describing efforts to meet and confer with the opposing party; and (3) a proof of service if the opposing party is not registered on the CM/ECF system.

The Court will ordinarily give the opposing party until 5:00 p.m. the next business day to respond. If more time is required, the opposing party must contact the Court's law clerk at (619) 446-3704. Unless otherwise ordered, the Court will issue a decision without a hearing.

XI. MISCELLANEOUS MATTERS

A. Lodging Documents. When these Chambers Rules direct a party to "lodge" a document, email the document to efile_butcher@casd.uscourts.gov, and do not file the document on the CM/ECF system.

B. Criminal Matters. Parties should direct all questions and scheduling requests regarding criminal matters to Judge Butcher's courtroom deputy at (619) 446-3576.

C. Filing Documents Under Seal. The party seeking to file a document under seal must comply with Local Rule 79.2 and Section 2.j. of the ECF Manual. Instructions on how to file a motion to file documents under seal in CM/ECF can be found at <https://www.casd.uscourts.gov/assets/pdf/cmecf/How%20to%20File%20Civil%20Sealed%20Documents.pdf>

D. Technical Questions Relating to CM/ECF. Guidance regarding CM/ECF is available in the ECF Manual found at <https://www.casd.uscourts.gov/assets/pdf/cmecf/Electronic%20Case%20Filing%20Procedures%20Manual.pdf> and the User's Manual for Electronic Case Filing found at <https://www.casd.uscourts.gov/assets/pdf/cmecf/Users%20Manual%20for%20Electronic%20Case%20Filing.pdf>. Parties may also direct technical questions to the CM/ECF Help Desk at (866) 233-7983.

E. Transcripts. Transcript orders for proceedings before Judge Butcher must be electronically filed. Instructions, including how to determine page estimates, a blank transcript order form, and where to find the page rates can be found at <https://www.casd.uscourts.gov/attorney/transcript-order.aspx>.