

HONORABLE KAREN S. CRAWFORD
U.S. MAGISTRATE JUDGE
CHAMBERS' RULES
CIVIL PRETRIAL PROCEDURES
Updated: 10/24/2019

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

I. General Decorum

The Court expects all counsel to represent their clients in a civil, professional and ethical manner, and to be courteous and respectful at all times, in all settings. Counsel may also expect the Court to treat litigants and their counsel with the highest level of respect and professionalism. Please be familiar with and abide by Civil Local Rule 83.4.

II. Local Rules

Except as otherwise provided herein or as specifically ordered by the Court, all parties are expected to strictly comply with the Local Rules for the United States District Court for the Southern District of California.

III. Communications 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) 446-3964. The telephone number for the courtroom deputy is (619) 557-2923.

If you have a technical question relating to CM/ECF, please contact the CM/ECF Help Desk at (866)233-7983. In addition, there is detailed information about CM/ECF available on the Court's website.

A. Letters, faxes, or emails

Letters, faxes or emails to chambers are prohibited, except as set forth in these guidelines.

B. Lodging Documents

When an Order directs you to "lodge" documents with chambers (usually, your ENE brief

or your MSC statement), if the total number of pages including exhibits is twenty (20) pages or less, you may lodge the document via email at efile_crawford@casd.uscourts.gov. If the submission exceeds twenty pages the document must be delivered directly to chambers (e.g., via an attorney courier service).

C. Telephone Calls

Except for scheduled telephonic conferences, and as provided herein, telephone calls to chambers are permitted only for procedural matters, such as scheduling a conference with the Court. The Court's law clerks are not permitted to give legal advice, discuss the merits of a case, or discuss how or when the Court will rule on disputed matters. Law clerks will not discuss procedural issues with anyone other than counsel for the parties.

IV. Early Neutral Evaluation ("ENE") and Case Management Conferences ("CMC")

The Court will issue a Notice and Order for Early Neutral Evaluation Conference and Case Management Conference containing all requirements for the ENE/CMC. Please read this Order carefully. The Order will require, among other things, the parties to meet and confer, file a Joint Discovery Plan, serve initial disclosures, lodge ENE statements, and attend the ENE/CMC conference.

The ENE is a multi-purpose conference. The conference is informal, off-the record, and confidential. It is an opportunity for the parties to educate Judge Crawford and each other regarding their claims and defenses. The ENE also provides an opportunity to have meaningful settlement discussions before costs and fees become significant factors or impediments to resolving the dispute. The ENE typically is not scheduled until Answers have been filed for all significant defendants.

Unless otherwise ordered, the Court conducts the CMC required by Fed. R. Civ. P. 16 immediately following the ENE, if no settlement has been reached. A candid discussion with Judge Crawford allows her to fashion an appropriate Scheduling Order for the case and to consider how best to approach discovery. After the CMC, the Court will issue a Scheduling Order Regulating Discovery and Other Pre-trial Proceedings ("Scheduling Order").

A. Required Attendance

Pursuant to Local Rule 16.1(c), all parties (including those indemnified by others), claims adjusters for insured defendants, the principal attorney(s) responsible for the litigation, and non-lawyer representatives with full and unlimited authority to negotiate and enter into a binding settlement must be present and legally and factually prepared to discuss and resolve the case at the ENE.

"Full and unlimited authority" means that the individuals attending the ENE must be

authorized to fully explore settlement options and to agree at that time to any settlement terms acceptable to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d 648 (7th Cir. 1989). The person needs to have "unfettered discretion and authority" to change the settlement position of a party. *Pitman v. Brinker Int'l, Inc.*, 216 F.R.D. 481, 485-486 (D. Ariz. 2003). One of the purposes of requiring a person with unlimited settlement authority to attend the conference is that the person's view of the case may be altered during a face-to-face conference. *Id.* at 486. A limited or sum certain authority is not adequate. *Nick v. Morgan's Foods, Inc.*, 270 F.3d 590, 595-597 (8th Cir. 2001).

In the case of a legal entity (e.g. a corporation, LLC, partnership or trust), an authorized representative of the entity (who is not retained outside counsel must be present and must have discretionary authority to commit the company to pay an amount up to the amount of the plaintiff's prayer (excluding punitive damage prayers). The purpose of this requirement is to have representatives present who can settle the case during the course of the conference without consulting a superior.

A government entity is excused from this requirement so long as the government attorney who attends the ENE conference or settlement conference has (1) primary responsibility for handling the case; and (2) authority to negotiate and recommend settlement offers to the government official(s) having ultimate settlement authority.

The Court will not grant requests to excuse a required party from personally appearing absent *exceptional circumstances*. Travel distance alone does not constitute an *exceptional circumstance*. If counsel believes there are *exceptional circumstances* to request that a required party be excused from personally appearing, they must confer with opposing counsel prior to making the request. Such requests may then be made by filing a Joint Motion or, where opposing counsel is unavailable, an *ex parte* request outlining the *exceptional circumstances* for the request. Any request to excuse a required party from personally appearing must be filed on the docket as a Joint Motion or *ex parte* request at least **ten (10) days** before the scheduled ENE.

If any of required representatives for the parties fail to appear at the ENE/CMC, the Court will issue an Order to Show Cause to determine whether sanctions will be imposed.

B. Confidential Statements

Unless otherwise ordered, no later than **seven (7) days** before the ENE, the parties shall lodge confidential statements ***of five pages or less*** directly with the chambers of Magistrate Judge Crawford at efile_crawford@casd.uscourts.gov. Exhibits to ENE statements are not required or recommended. Any ENE statement that exceeds 20 pages, including exhibits, must be hand delivered directly to Judge Crawford's chambers.

All confidential ENE statements must include (1) a brief description of the case and the claims asserted; (2) the party's position on liability and damages with controlling legal authority; (3) a specific and current demand for settlement addressing all relief or remedies sought, as well

as the specific basis for each type of relief (if a specific demand for settlement cannot be made at the time the settlement statement is submitted, state the reasons why and explain when the party will be in a position to state a settlement demand); and, (4) a brief description of any previous settlement negotiations or mediation efforts. A general statement that a party will “negotiate in good faith,” “offer a nominal cash sum,” or “be prepared to make an offer at the conference” is not a specific demand or offer. The statement shall also list all attorney and non-attorney conference attendees for that side, including the name(s) and title(s)/position(s) of the party/party representative(s) who will attend and have settlement authority at the conference.

C. Joint Discovery Plans

Unless otherwise directed, the parties are required to file on CM/ECF a Joint Discovery Plan **seven (7) days** before the scheduled ENE/CMC. The Joint Discovery Plan must include the parties’ views and proposals for each item identified in Fed. R. Civ. P. 26(f)(3), and specifically address:

1. Whether any parties remain to be served or named in the action. In other words, list any anticipated additional parties that should be named, when the additional parties can or will be added, and by whom they are wanted;
2. Whether the required Rule 26(a) initial disclosures have been made by all parties. If not, describe what arrangements have been made to complete the disclosures and when initial disclosures will be completed;
3. Whether there is limited discovery that may enable each party to make a reasonable settlement evaluation, such as the deposition of plaintiff, defendant, or key witnesses, and the exchange of a few pertinent documents;
4. Whether counsel anticipate serving interrogatories exceeding the number permitted by Fed.R.Civ.P. 33 and, if so, why such discovery is needed, and whether counsel will stipulate to the excess number;
5. What issues in the case will necessitate expert evidence;
6. Whether counsel believe there are threshold legal issues that may need to be resolved by summary judgment or partial summary judgment;
7. Whether a protective order is contemplated to cover the exchange of confidential information and, if so, the date by which the proposed order will be submitted to the Court; and
8. A representation by counsel that they have reviewed the Checklist for Rule 26(f) Meet and Confer Regarding Electronically Stored Information (“ESI”), which can be found at on the Court’s website (under the tab earmarking Judge Crawford’s

Chambers Rules) and have met and conferred fully regarding the preservation and discovery of ESI. Any anticipated issues regarding ESI should be discussed between counsel and raised in the Joint Discovery Plan for discussion during the CMC.

V. Voluntary & Mandatory Settlement Conferences

The Scheduling Order will include a date for a Mandatory Settlement Conference (“MSC”). The MSC is typically set on a date near the completion of expert discovery and before the deadline for the filing of dispositive motions, however, the parties may request the MSC be held earlier.

Additionally, the Court is available to conduct a Voluntary Settlement Conference (“VSC”) at any point in the litigation. A request for a VSC can be made by one or more parties by speaking with a law clerk.

The attendance and briefing requirements for the ENE, set forth in Section III. A & B, above, also apply to MSCs and VSCs.

VI. Requests to Continue an ENE, MSC, or VSC, or to Amend the Scheduling Order

The Court prefers any request to continue an ENE, MSC, VSC, or Scheduling Order deadline be made by Joint Motion, even if the parties are not in agreement, no less than **seven (7) days** before the affected date. Before filing a Joint Motion for Continuance counsel must engage in a meaningful “meet and confer” conference.

A Joint Motion for a Continuance shall be in the form required by Civil Local Rule 7.2 except that it is not necessary for the parties to submit a proposed order. A Joint Motion for Continuance shall state:

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. Whether counsel met and conferred;
5. Whether the request is opposed and why;
6. Whether the requested continuance will affect other case management dates; and,
7. If the request for a continuance is based on an agreement to engage in private mediation, the parties shall state the date scheduled for such mediation.¹

¹ A Scheduling Order will not be continually amended to accommodate the parties’ desire to limit costs while engaging in private mediation.

Joint Motions for Continuance of Scheduling Order Dates must also include a declaration from counsel detailing the steps taken to comply with the dates and deadlines in the Scheduling Order, the specific reasons why the deadlines cannot be met, and stating whether counsel met and conferred before filing the Joint Motion. Counsel are reminded they must “take all steps necessary to bring an action to readiness for trial.” Civil Local Rule 16.1(b). The dates and times set in the Scheduling Order will not be modified except for good cause shown. Fed. R. Civ. P. 16(b)(4). Requests to amend the Scheduling Order may be denied if the amendments necessitate an extension of the final pre-trial conference and/or trial date.

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

VII. Notification to Court of Case Resolution

If the parties reach a settlement without the Court’s assistance (e.g., outside of the ENE, MSC or VSC setting), counsel must promptly file a Notice of Settlement and call chambers to advise of the settlement.

VIII. Discovery Disputes

A. Meet and Confer Requirements

Prior to bringing any dispute to the attention of the Court, **lead counsel (or attorneys with full authority to make decisions and bind the client without later seeking approval from a supervising attorney, house counsel, or some other decision maker)**, are to promptly meet and confer “**concerning all disputed issues.**” Civil Local Rule 26.1(a). 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 for meet and confer discussions. In no event will meet and confer letters, facsimiles or emails satisfy this requirement.

The Court expects strict compliance with the meet and confer requirement. It is the experience of the Court that the vast majority of disputes can be resolved without the necessity of court intervention by means of this process provided counsel thoroughly meet and confer in good faith to resolve all disputes.

B. Deadlines for Raising Discovery Disputes

As outlined more fully in the next section, all discovery disputes must be brought to the Court’s attention ***by telephone*** within **30 days** of the event giving rise to the dispute and only after counsel have **thoroughly and completely** met and conferred. The 30-day deadline may be extended, but only by court order, i.e., counsel cannot unilaterally extend the deadline. Also,

ongoing meet and confer efforts, rolling document productions or supplemental responses do not extend the deadline. Counsel shall file Joint Motion for Extension of Time to request an extension of the 30-day deadline prior to the passing of the deadline.

The Court uses these parameters to determine the date of the event giving rise to the dispute:

1. **Oral Discovery:** the event giving rise to the discovery dispute is the receipt of the transcript from the court reporter of the affected portion of the deposition.
2. **Written Discovery:** the event giving rise to the discovery dispute is the service of the initial response, or the passage of the due date without a response or document production.
3. **Effect of Meet and Confer Efforts:** The Trigger Date is not the date that counsel reach an impasse in meet and confer efforts.

C. Conference Call with Chambers

Discovery motions may not be filed without prior leave of Court. If the parties fail to resolve their dispute through the meet and confer process, then counsel for all parties are required to determine a mutually agreeable time to jointly call chambers. Prior to calling chambers, counsel must agree on the issue(s) in dispute and be prepared to succinctly explain the dispute and the parties' respective positions.

Upon reaching a law clerk, counsel shall be prepared to: 1) verify the meet and confer process has been exhausted; 2) describe without argument the specific nature of issue(s) in dispute and the parties' respective positions; and 3) provide three mutually agreeable dates and times of availability within a seven (7) day window for an in-person or telephonic hearing with the Court. Based on the nature of the dispute, the Court will determine whether to engage in an informal discovery dispute resolution conference (telephonically or in person) or have the parties proceed directly to filing a Joint Motion for Determination of Discovery Dispute. The parties should be prepared to file a Joint Motion on a shortened timeframe after the conference call with the law clerk.

D. Disputes Arising During a Deposition

If a dispute arises during a deposition, you may call Judge Crawford's chambers with all counsel on the line and be prepared to provide a brief description of the dispute. If the Court is unable to review the matter at that moment, you are to have the subject portion of the deposition transcript marked and proceed with the deposition in other areas of inquiry until the Court can get back to you. If the matter cannot readily be resolved by the Court telephonically, or the Court is not available, the Court may require the parties to file a Joint Motion for Determination of Discovery Dispute following the close of the deposition (the deposing party may leave the record "open" for this purpose).

E. Contents of Joint Discovery Motions

1. **Joint Motion Procedure.** If leave of Court is granted for the filing of a discovery motion, counsel must file a joint statement entitled "Joint Motion for Determination of Discovery Dispute." The Joint Motion for Determination of Discovery Dispute must include:
 - a. A Declaration of Compliance with the in-person meet and confer requirement;
 - b. A Joint Memorandum of Points and Authorities (not to exceed 5 pages per side/10 pages total) that organizes the legal arguments according to dispute; and,
 - c. Any necessary and relevant exhibits (e.g., for disputes involving deposition testimony or other oral discovery, an exhibit or exhibits that include all disputed portions of the transcript.) Counsel shall not include copies of correspondence between counsel unless it is evidence of an agreement alleged to have been breached.

2. **Briefing of Joint Motion.** The purpose of the Joint Motion requirement is for parties to engage in a collaborative effort to provide the Court with a singular brief that synthesizes the parties' respective positions in a clearly organized and succinct format. If, for example, the moving party's initial draft addresses issues A & B, and the responding party's draft addresses issues A, B & C, the Court expects the moving party's portion to be modified to address all the arguments, and for the responding party to be given an opportunity to evaluate and address any new arguments made by the moving party. The purpose of the meet and confer/Joint Motion requirement is to ensure that if judicial intervention is needed, the parties provide the Court with synthesized briefing... meaning that each side has the opportunity to offer a counter argument as to each issue. In some respect the preparation of the Joint Motion for Determination of Discovery Dispute can be viewed as an extension of the meet and confer process, as it can be an opportunity for counsel to reflect on and further evaluate the other side's position in order to identify areas where common ground can be reached, and to provide responsive arguments and counter-arguments on issues where common ground cannot be reached.

The Joint Motion need not address discovery requests in their numerical sequence. When a dispute relates to multiple discovery requests with common or overlapping arguments, counsel shall endeavor to organize and categorize

their discussion by dispute, as opposed to setting forth the discovery requests numerically and referring back to arguments made earlier in their discussion.

Sample Format for: Joint Motion for Determination of Discovery Dispute

Plaintiff's Request No. 1: Any and all documents referencing, describing or approving the Metropolitan Correctional Center as a treatment facility for inmate mental health treatment by the Nassau County local mental health director or other government official or agency.

Defendant's Response to Request No. 1: Objection. This request is overly broad, irrelevant, burdensome, vague and ambiguous and not limited in scope as to time.

Plaintiff's Reason to Compel Production: This request is directly relevant to the denial of Equal Protection for male inmates. Two women's jails have specifically qualified Psychiatric Units with certain license to give high quality care to specific inmates with mental deficiencies. Each women's psychiatric Unit has specialized professional psychiatric treatment staff (i.e., 24 hour psychiatric nurses full time, psychiatric care, psychological care, etc.). Men do not have comparable services. This request will document the discrepancy.

Defendant's Basis for Objections: This request is not relevant to the issues in the case. Plaintiff does not have a cause of action relating to the disparate psychiatric treatment of male and female inmates. Rather, the issue in this case is limited to the specific care that Plaintiff received. Should the Court find that the request is relevant, Defendant requests that it be limited to a specific time frame.

Unless specifically requested by the Court, responses or replies to Joint Motions will not be accepted or considered without prior approval from the Court.

- 3. Reasonable Opportunity to Respond.** 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 for Determination of Discovery Dispute. **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 seven (7) days prior to the anticipated filing date of the Joint Motion for Determination of Discovery Dispute 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 comprehensive draft of the Joint Motion and any exhibits or supporting declarations at least seven (7) 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.

4. **Considerations Pertaining to Written Discovery.** Counsel should keep the following legal principles in mind when propounding written discovery, as well as when meeting and conferring and drafting a Joint Motion for Determination of Discovery Dispute involving written discovery requests:

"While the party seeking to compel discovery has the burden of establishing that its request satisfies relevancy requirements, the party opposing discovery bears the burden of showing that discovery should not be allowed, and of clarifying, explaining, and supporting its objections with competent evidence." *Lofton v. Verizon Wireless VAWJ LLC*, 308 F.R.D. 276, 281 (N.D. Cal. 2015).

"Boilerplate, generalized objections are inadequate and tantamount to not making any objection at all." *Walker v. Lakewood Condo. Owners Ass'n*, 186 F.R.D. 584, 587 (C.D. Cal. 1999). Accordingly, boilerplate objections, such as "overly burdensome" and "disproportionate to the needs of the case," will not be considered in resolving the dispute unless the reasons for the objections are obvious or have been explained and expanded in the Joint Motion or in a supporting declaration.

Since a party claiming a privilege must "expressly make the claim" and provide enough information to "enable other parties to assess the claim" (Fed.R.Civ.P. 26 26(b)(5)(A)(i)&(ii)), the Court will also not consider an unsupported privilege objection. Likewise, bare, unsupported objections referring to contractual privacy obligations will not be considered without some proof of the obligations, such as a supporting declaration.

Discovery requests that are not limited by time and scope are generally objectionable as overly broad. When a responding party contends that a discovery request is overly broad, the Court expects the propounding party to attempt to narrow the scope of the request during meet and confer efforts. The Court will not “rewrite a party’s discovery request to obtain the optimum result for that party. That is counsel’s job.” *Bartolome v. City and County of Honolulu*, WL 2736016, at 14 (D. Hawaii 2008).

IX. Privilege Logs

Any party withholding documents on the basis of a claimed protection or privilege must identify the withheld documents in a manner such that the requesting party can reasonably identify and challenge the withholding of the documents. A party withholding any documents on the basis the documents are privileged or otherwise protected from production, shall number each document to enable later reasonable identification, prepare an index of documents (without disclosing the substance of the document), and set forth any objection related to production of any particular document. At a minimum, the index shall include the following information:

1. Date of document
2. Author
3. Primary addressee (and the relationship of that person(s) to the client and/or author of the document)
4. Secondary addressee(s) (and the relationship of that person(s) to the client and/or author of the document)
5. Type of document (e.g., internal memo, letter with enclosures, draft affidavit, etc.)
6. Client (i.e., party asserting privilege)
7. Attorneys
8. Subject matter of document or privileged communication
9. Purpose of document or privileged communication (i.e., legal claim for privilege)
10. Whether the document or communication is withheld on the basis of work product, attorney client privilege, or some other asserted privilege
12. Identify any attachments
11. Identify each document by number or lettering system

The party withholding documents must also identify any documents it is willing to disclose without objection and deliver such documents to the requesting party forthwith.

X. Ex Parte Proceedings

As outlined above, the Court prefers that most requests, such as those to compel discovery, amend the Scheduling Order, continue a date or deadline, or enter a stipulated protective order be submitted as a Joint Motion. *Ex parte* applications or motions are generally only appropriate when opposing counsel cannot be reached or declines to participate in the preparation of a Joint Motion. **The Court does not have regular *ex parte* days or hours.** All *ex parte* applications must be filed electronically on CM/ECF and are to include a short description of the dispute and the relief sought, as well as **a separate affidavit indicating reasonable and appropriate notice to the opposition and meet and confer efforts made to resolve the dispute without the Court's intervention.** After service of the *ex parte* application, opposing counsel will ordinarily be given until 5:00 p.m. the next business day to respond. If more time is needed, opposing counsel must call the Court's law clerk at (619) 446-3964 to request additional time to respond. After receipt of both the application and the opposition, the Court will determine if a reply is warranted. Unless otherwise directed by the Court, a decision will be issued in most cases without a hearing or reply.

XI. Stipulated Protective Orders

Any stipulated protective order submitted for the Court's signature must contain these **two** provisions:

Nothing shall be filed under seal, and the Court shall not be required to take any action, without separate prior order by the Judge before whom the hearing or proceeding will take place, after application by the affected party with appropriate notice to opposing counsel. The parties shall follow and abide by applicable law, including Civ. L.R. 79.2, ECF Administrative Policies and Procedures, Section II.j, and the chambers' rules, with respect to filing documents under seal.

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

All stipulated protective orders shall be submitted as a Joint Motion. **The parties shall also e-mail the proposed protective order to the Court at efile_crawford@casd.uscourts.gov in Word format.**

XII. Procedure for Filing Documents Under Seal

- A. No document may be filed under seal, *i.e.*, closed to inspection by the public, except pursuant to a court order that authorizes the sealing of the particular document, or portions of it. 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 sealable material.

- B.** The parties shall follow and abide by applicable law, including Civil Local Rule 79.2 and ECF Administrative Policies and Procedures, Section II.j, with respect to filing documents under seal.
- C.** The party seeking to file under seal must electronically file a “Motion to File Documents Under Seal” and electronically lodge the said documents using a new event called “Sealed Lodged Proposed Document.” The System will inform the party that the documents will be sealed and only available to court staff. The Clerk’s Office will indicate on the public docket that proposed sealed documents were lodged. A party need only submit a courtesy copy of the documents to chambers if the documents exceed 20 pages in length. If the Court grants the motion to seal, the docket entry and documents will be sealed and designated on the docket as filed on the order date. If the Court denies the motion to seal, the lodged documents will remain lodged under seal absent an order to the contrary.
- D.** The parties shall simultaneously file a redacted version of the document sought to be filed under seal. The document shall 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.”