

**HONORABLE BARBARA LYNN MAJOR
U.S. MAGISTRATE JUDGE
CHAMBERS RULES-CIVIL CASES**

Please note: The Court provides this information for general guidance to counsel. However, the Court may vary these procedures as appropriate in any case. Counsel are reminded to carefully read the entire order issued by the Court, not just the docket entry summary.

I. Communication 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 telephone number for the law clerks is (619) 557-7372. The telephone number for the courtroom deputy is (619) 557-7099.

A. Letters or emails

Letters and emails to chambers are prohibited unless specifically requested by the Court. If letters or emails are requested by the Court, copies of the same must be simultaneously delivered to all counsel, unless otherwise directed by the Court (such as with confidential Early Neutral Evaluation ("ENE") statements and confidential Settlement Conference ("SC") statements). The Court should not be copied on correspondence between counsel.

B. Telephone calls

Telephone calls to chambers are permitted only for procedural matters such as scheduling a conference. Court personnel are prohibited from giving legal advice or discussing the merits of a case. When calling chambers, be prepared to identify your case as odd or even based on the last digit of the case number, so your call can be directed to the appropriate law clerk. **Only an attorney with knowledge of the case** may contact chambers.

C. Lodging documents

When an order directs you to "lodge" a document with chambers (usually an ENE or SC statement), it must be e-mailed to efile_major@casd.uscourts.gov. If the document including exhibits exceeds 30 pages, a courtesy copy must be

delivered to chambers, 333 West Broadway, Suite 1180, San Diego, CA 92101 or to the Clerk's Office if chambers' staff is unavailable.

D. Transcripts

A party seeking a copy of a transcript of a court proceeding on the record where no court reporter was present should electronically file the transcript order form found at <https://www.casd.uscourts.gov/attorney/transcript-order.aspx>.

E. Courtesy Copies

Unless otherwise ordered by the Court, parties must deliver a courtesy copy of a civil filing that exceeds 30 pages in length including attachments and exhibit to the Court's chambers, 333 West Broadway, Suite 1180, San Diego, CA 92101 or to the Clerk's Office if chambers' staff is unavailable. The courtesy copy must be delivered within 24 hours after the electronic filing. A party also must provide a courtesy copy of the filings if the party makes multiple filings in the same case on the same day and those filings cumulatively exceed 30 pages. A copy of the Notice of Electronic Filing must precede the first page of the courtesy copy.

II. Early Neutral Evaluation Conference ("ENE"), Mandatory Settlement Conference ("MSC") and other Settlement Conferences ("SC")

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 Major 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. A candid discussion allows Judge Major to fashion an appropriate scheduling order for the case and to consider how best to approach discovery. The ENE typically is not scheduled until an Answer has been filed.

The Court will issue a Notice and Order for Early Neutral Evaluation Conference and Case Management Conference containing all of the 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 Scheduling Order will set the MSC and the Court may issue additional orders setting further SCs. Again, read the orders carefully as parties are required to comply with all of the requirements contained therein.

A. Appearances

The Court conducts the majority of its ENEs, MSCs, and SCs via Zoom. The order setting the hearing will state whether the hearing is in person or via Zoom and will provide the logistics for accessing the Zoom proceeding. A proceeding conducted via Zoom is still a court proceeding and all attendees are expected to dress and conduct themselves in a manner that is appropriate for a court proceeding. All named parties and party representatives, insurance adjusters for insured parties, and principal attorneys are required to participate in the settlement proceeding and must be legally and factually prepared to discuss settlement of the case. The Court further requires that all attendees have "full settlement authority" as defined in the Court's order. A limited or sum certain settlement authority is not acceptable as each party must be able to engage in meaningful face-to-face discussions with the unfettered ability to change the party's settlement position. Please see the Court's order scheduling the conference for more information.

The Court will **not** grant requests to excuse a required party from attending the proceeding absent good cause. Counsel requesting that a required party be excused from appearing at a proceeding must meet and confer with opposing counsel prior to making the request and must file an appropriate motion establishing good cause for the request at least 5 court days before the ENE, MSC, or SC. Unless the Court grants the motion, all identified individuals are required to participate in the proceeding.

If the Court sets a Zoom proceeding and the parties would prefer to appear in person, they must meet and confer with each other and then contact the Court via telephone at (619) 557-7372. This must occur at least 5 court days before the proceeding.

B. Statements

The Court's order setting the ENE, MSC, or SC will contain information regarding the length and content of the required statement as well as the date by which it must be lodged.

C. Continuances

Counsel seeking to reschedule an ENE or other settlement conference must confer with opposing counsel prior to making the request. Such requests must be made in a filed motion at least seven days before the scheduled hearing and may be granted only upon good cause shown.

D. Time Allotted

The Court generally allots up to three hours for ENEs, MSCs, and SCs but the parties should be prepared to participate longer at the Court's discretion.

E. Notice of Resolution

If the case is settled in its entirety, or as to any party(ies), before the scheduled conference, counsel must file a Notice of Settlement and promptly call chambers at (619) 557-7372. After the Notice is filed, the Court will schedule a Settlement Disposition Conference which will be vacated with the filing of an appropriate Motion to Dismiss.

III. Case Management Conference ("CMC") and Scheduling Order

A. Rule 16 CMC

The Court conducts the CMC required by Fed. R. Civ. P. 16 immediately following the ENE, if no settlement has been reached. The requirements for this CMC are set forth in the Court's Notice and Order for Early Neutral Evaluation Conference and Case Management Conference and must be addressed in the Joint Discovery Plan filed by the parties prior to the ENE/CMC. The parties also must comply with the Southern District of California's Checklist for Rule 26(f) Conferences. After the CMC, the Court will issue a Scheduling Order Regulating Discovery and Other Pre-trial Proceedings ("Scheduling Order").

B. Requests to Amend the Scheduling Order

As provided in Fed. R. Civ. P. 16(b)(4), modification of the dates and times set in the Scheduling Order requires good cause and judicial consent. The Rule 16 "good cause" standard focuses on the reasonable diligence of the moving party. Counsel are reminded of that they must "take all steps necessary to bring an action to readiness for trial." Civil Local Rule 16.1(b).

Before requesting an extension of any date or deadline, the attorneys must "meet and confer" and the request should then be made by filing a joint motion. The joint motion must establish good cause for the request and shall include a declaration from counsel of record detailing the steps taken to comply with the date(s) or deadline(s), the specific reason why the identified deadline cannot be met, and whether any prior extensions or modifications to the Scheduling Order

have been requested or approved. A party seeking a modification may move *ex parte* if the other parties will not join in a motion to amend the schedule. In an *ex parte* motion, the declaration must address the steps counsel took to meet and confer with opposing counsel to obtain authorization to file a joint motion, as well as the subjects required for the joint motion. When the motion is made after the deadline has passed or time has expired, Fed. R. Civ. P. 6(b)(1)(B) requires the parties to address excusable neglect.

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

C. Additional Conferences

The Court may conduct additional conferences via Zoom or telephone to discuss case status, case management, or discovery issues. The order setting the hearing will state whether the hearing is by Zoom or telephone and who must participate in the hearing and will inform the parties what action they must take to participate in the conference. Counsel must read the order carefully and comply with all of the requirements set forth therein.

IV. Continuances

Parties requesting a continuance of any conference, motion or hearing date, or briefing schedule shall meet and confer prior to contacting the Court. If the parties reach an agreement, they shall file a joint motion identifying the current date, the requested date, the number and length of any prior continuance, and the reason for the requested continuance or extension of time. The joint motion must include a table of all remaining dates and deadlines in the operative scheduling order and the proposed new dates for all remaining dates and deadlines. The parties also shall e-mail a proposed order in Word format that includes the table of dates to efile_major@casd.uscourts.gov. Please refer to the Case Filing Administrative Policies and Procedures Manual located on the Court's website with regard to CM/ECF filings. If the parties are unable to reach an agreement, the requesting party shall file an *ex parte* motion 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* motion shall include (1) the original and proposed dates, (2) the number of previous requests and continuances, (3) whether previous requests were granted

or denied, (4) opposing counsel's position with regard to the requested continuance, and (5) a table containing all remaining dates and deadlines in the operative scheduling order and the proposed new dates for all remaining dates and deadlines.

The filing of a motion to continue any date or deadline does **NOT** permit the parties to disregard the challenged date or deadline. Unless and until the Court grants the motion to continue, all parties must continue to comply with all deadlines.

V. Discovery Disputes

A. Meet and Confer Requirement

Prior to bringing any discovery dispute to the Court, counsel must meet and confer pursuant to Civil Local Rule 26.1. If counsel are in the same county, they are to meet in person; if counsel practice in different counties, they are to confer by telephone or video. Under no circumstances may counsel satisfy the "meet and confer" obligation by written or emailed correspondence. The Court expects strict compliance with the meet and confer requirement, as it is the experience of the Court that the vast majority of disputes can be resolved by means of that process. Counsel must **thoroughly** meet and confer and shall make every effort to resolve all disputes without the necessity of court intervention.

If a party or lawyer fails to respond to opposing counsel's request to meet and confer for more than 72 hours, counsel may contact chambers and request a telephonic conference with the clerk assigned to the case or an appropriate briefing schedule.

B. Conference Call with Chambers

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 conduct a conference call with Chambers. The Court will not assign a hearing date before conducting a conference call with all counsel.

During the conference call, counsel for the parties will be asked to explain: (i) the details of their dispute; (ii) their respective positions; (iii) what meet and confer efforts have taken place; (iv) the precise relief the moving party is seeking; and (v) how soon they can file the motion and opposition.

Based upon the nature of the dispute, the Court will determine whether to conduct an informal dispute resolution process with the parties or have the parties proceed directly to filing a formal discovery motion.

C. Briefing Schedule

The Court believes it is important to resolve discovery disputes as soon as possible and routinely sets expedited briefing schedules for discovery motions. The parties should be prepared to file their motion and opposition in a shortened time frame after the Chambers' conference call.

Unless otherwise authorized, discovery motions and oppositions may not exceed **15 pages**, exclusive of exhibits. Reply briefs are not permitted unless requested and authorized by the Court.

D. Discovery Motion Hearings

Most discovery disputes can be resolved on the filed pleadings without oral argument and the Court rarely conducts discovery hearings. The parties will be notified if the Court will hear oral argument.

E. Timing of Motion

All discovery motions must be filed within 30 days of the event giving rise to the dispute and only after counsel have met and conferred and communicated with the Court as set forth above. The event giving rise to the dispute is **NOT** the date on which counsel reach an impasse in their meet and confer efforts. For written discovery, the event giving rise to the dispute is the service of the initial response or production of documents, or the passage of the due date without a response or document production. For oral discovery, the event giving rise to the dispute is the receipt of the transcript from the Court reporter of the relevant portion of the deposition.

F. Contents of the Written Motion

The discovery motion must contain at a minimum 1) a declaration from lead trial counsel establishing compliance with the meet and confer efforts; 2) the exact wording of the discovery request and response, and 3) an explanation as to why the response is inadequate, precisely what additional information the moving party is seeking, and the legal authority supporting the motion.

VI. Requests to File Documents Under Seal

There is a presumptive right of public access to court records based upon common law and the First Amendment. Accordingly, 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 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.

A motion to seal must be filed before the Judge who will rule on the motion associated with the proposed sealed document. For example, a motion to seal a document associated with a motion to compel discovery will be before Judge Major, while a motion to seal a document associated with a Motion for Summary Judgment will be before the District Judge assigned to the case.

If the motion is being made to Judge Major, the party requesting sealing must file a 'public' version of the document it seeks to file under seal. In the public version, the party may redact only that information that is deemed 'Confidential' or privileged. 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.

VII. Stipulated Protective Order

All stipulated protective orders must be filed as a joint motion. The joint motion must contain the language of the stipulated protective order sought and the parties' electronic signatures. The parties must also email a proposed order, in Word format, containing the text of the protective order to efile_major@casd.uscourts.gov. If the parties are unable to agree on the terms of the protective order, the joint motion should set forth the terms on which the parties agree and clearly identify the terms on which they disagree. For the terms that are in dispute, each party should state the precise language the party is proposing and provide the legal and factual support for the proposal. The Court will decide which of the disputed terms, if any, will be included in the protective order.

If the parties want the Court to retain jurisdiction to enforce the terms of the stipulated Protective Order, the Court is willing to do so for no more than one year. If the parties want continuing jurisdiction, the stipulated Protective Order should include the following language "Continuing Jurisdiction: The Court shall retain jurisdiction for a period of one (1) year after the conclusion of this action to enforce the terms of the Protective Order."

Any proposed stipulated Protective Order must contain the following provisions:

A. Filing Under Seal. Before any materials produced in discovery, answers to interrogatories, responses to requests for admissions, deposition transcripts, or other documents which are designated as Confidential Information are filed with the Court for any purpose, the party seeking to file such material must seek permission of the Court to file the material under seal. 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 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, in accordance with Judge Major's preferences, a party must file a 'public' version of any document that it seeks to file under seal. In the public version, the party may redact only that information that is deemed 'Confidential.' 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. Modification of the Protective Order by the Court. The Court may modify the terms and conditions of the Order for good cause, or in the interest of justice, or on its own order at any time during these proceedings.

VIII. Ex Parte Proceedings

The Court does not have regular *ex parte* hearing days or hours. Absent extraordinary circumstances, discovery disputes should not be filed as an *ex parte* motion. Appropriate *ex parte* applications must be filed electronically on CM/ECF

in accordance with the Local Rules and must explain why proceeding *ex parte* is necessary. The application also must include a description of the dispute, the relief sought, and a declaration describing the efforts made to resolve the dispute without the Court's intervention and establishing that reasonable and appropriate notice of the filing of the *ex parte* application was made to opposing counsel in accordance with Civil Local Rule 83.3.g. 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 assigned to the case to request additional time. After receipt of the application and opposition, the Court will review the submissions and most likely issue a decision without a hearing. If the Court requires a hearing, the Court will issue an order or contact the parties to set the date and time.

IX. General Decorum

The Court insists that all counsel and parties be courteous, professional, and civil at all times to opposing counsel, parties, and the Court, including all court personnel. Professionalism and civility—in court appearances, communications with Chambers, and written submissions—are of paramount importance to the Court. Personal attacks on counsel or opposing parties will not be tolerated. Counsel are expected to be punctual for all proceedings, dressed appropriately, and are reminded to follow Civil Local Rule 2.1, in their practice before this Court.