

HONORABLE RUTH BERMUDEZ MONTENEGRO
U.S. MAGISTRATE JUDGE
CIVIL CASE PROCEDURES AND 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.

Communications with Chambers

Counsel must be cautious when communicating with chambers. Counsel are required to consult the local rules, Federal Rules of Civil Procedure, and these chambers rules before calling chambers. When speaking with chambers staff, counsel should be mindful that law clerks and other judicial staff are not authorized to offer any legal advice. Legal advice is defined broadly and includes answering questions such as “what type of motion should I file?” or “what should the caption of my motion be?” Judicial staff should not be asked when counsel will receive a ruling on a pending motion or what will be the ruling. Generally, telephone calls to chambers are permitted to discuss non-substantive matters such as calendaring a motion or scheduling a conference. Mindful of these limitations, counsel may call chambers at (760) 339-4250 to address a specific inquiry.

Unless otherwise stated, emails to chambers are only permitted for (1) lodging proposed orders, (2) circulating a conference call number prior to a telephonic conference, and (3) submitting settlement conference briefs. Documents may be lodged with chambers via email at efile_montenegro@casd.uscourts.gov. Lodged settlement or scheduling briefs shall not be filed with the Clerk of Court or the CM/ECF system unless the Court directs otherwise.

Physical letters and faxes should not be sent to chambers unless requested by the Court.

Any questions regarding criminal matters should be directed to the courtroom deputy, Erika Flores, at (760) 339-4248 or generally to the Clerk’s Office at (760) 339-4242.

Rules Applicable for All Civil Motions

All hearing dates for any civil motion for which a ruling or report and recommendation is required and is to be assigned to the magistrate judge must be obtained from Judge Montenegro’s law clerk. All motions should be filed within 3 business days of obtaining a hearing date. All hearing dates for any civil motion for which a ruling is required and is assigned to the district judge must be obtained from the assigned District Judge’s law clerk.

Discovery Motions

Discovery motions may not be filed without first contacting Judge Montenegro's law clerk. When counsel is prepared to file a discovery motion, the attorney seeking to bring the motion must first call chambers to discuss the dispute. Counsel must be prepared to address (1) what type of discovery they are seeking to compel, (2) the subject matter of the discovery, (3) whether counsel have met and conferred as required by Local Civil Rule 26.1, and (4) whether the motion is timely.

Counsel must meet and confer before contacting the Court regarding a discovery dispute. Discovery disputes can often be resolved without the need for Court intervention through meet-and-confer efforts. These efforts are required under the local rules of the Southern District of California. Under the local rules, "[t]he court will entertain no motion pursuant to Rules 26 through 37, Fed. R. Civ. P., unless counsel [] have previously met and conferred concerning all disputed issues." S.D. Cal. Civ. R. 26.1(a). "If counsel have offices in the same county, they are to meet in person. If counsel have offices in different counties, they are to confer by telephone. Under no circumstances may the parties satisfy the meet and confer requirement by exchanging written correspondence [or emails]." Id.

All discovery motions must be timely. All discovery motions must be filed within 60 calendar days of the service of an objection, answer, or response that becomes the subject of dispute or the expiration of a discovery due date without response or production, and only after counsel have met and conferred and have reached impasse with regard to the particular issue. The 60-day deadline will not be extended without a prior Court order; counsel cannot unilaterally extend the deadline. For example, ongoing meet-and-confer efforts, rolling document productions, or supplemental responses do not extend the deadline. For oral discovery, the event giving rise to the discovery dispute is the completion of the transcript of the affected portion of the deposition. For written discovery, the event giving rise to the discovery dispute is the service of the response.

Discovery motions must be filed with sufficient time for production before the fact discovery deadline. All discovery shall be completed by all parties on or before the fact discovery deadline; this includes discovery ordered as a result of a discovery motion.

For each written discovery request in dispute, the motion to compel discovery must include:

1. The exact wording of the discovery request;
2. The exact response to the request by the responding party;
3. A statement by the propounding party and any points and authorities as to why a further response should be compelled; and
4. A precise statement by the responding party and any points and authorities as to the bases for all objections and/or claims of privilege.

If a dispute arises during the course of a deposition, parties are to set up a telephonic conference call with Judge Montenegro's chambers. Parties must be prepared to provide a brief description of the dispute. If the Court is unable to review the matter at that moment, parties are to have the subject portion of the deposition transcript marked and then should proceed with the deposition in other areas of inquiry until the Court can get back to the matter. If the matter cannot readily be resolved by the Court, or the Court is not available, the Court may require the parties to file a joint motion for determination of a discovery dispute.

Early Neutral Evaluation Conferences and Settlement Conferences

Pursuant to Rule 16.1(c) of the Local Rules of the United States District Court for the Southern District of California, all parties (including those who are indemnified by others), claims adjusters for insured Defendants, and non-lawyer representatives with full and unlimited authority¹ to enter in a binding settlement, as well as the principal attorneys responsible for the litigation, must be present and legally and factually prepared to discuss and resolve the case at the Early Neutral Evaluation (ENE) Conference. Corporate counsel shall not appear on behalf of a corporation as the party representative who has the authority to negotiate and enter into a settlement. Failure to attend or to obtain a proper excusal will be considered grounds for sanctions. Travel distance alone does not constitute a compelling circumstance justifying an excused personal appearance. (Where the suit involves the United States or one of its agencies, only counsel for the United States with full settlement authority need appear.) (If Plaintiff is incarcerated in a penal institution or other facility, the Plaintiff's presence is not required and Plaintiff will participate by telephone. Defense counsel is to coordinate the Plaintiff's appearance by telephone.) The above procedures also apply to any other subsequent settlement conference that may be held before the magistrate judge, including the Mandatory Settlement Conference.

Confidential Statements should be submitted in every case before an ENE or any other settlement conference. No later than 21 calendar days before the ENE or settlement conference, the parties shall lodge confidential statements of 10 pages or less directly with chambers at 2003 West Adams Avenue, Suite 220, El Centro, California 92243 or by email to efile_montenegro@casd.uscourts.gov. All confidential settlement 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.

The Court generally allots up to two and one half hours for ENEs and other settlement conferences. If the parties need more time for mediation, the Court will work with the parties to continue the settlement conference to a later date.

If the case is settled in its entirety before the scheduled date of the ENE or settlement conference, counsel must file a Notice of Settlement and call chambers at (760) 339-4250 as soon as possible before the scheduled ENE or settlement conference.

¹ "Full authority to settle" means that the individuals at the settlement conference be authorized to fully explore settlement options and to agree at that time to any settlement terms acceptable to the parties. Heilman Brewing Co. 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, 485-86 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement authority to attend the conference includes the fact that the person's view of the case may be altered during the face-to-face conference. Pitman, 216 F.R.D. at 486. A limited or a sum certain of authority is not adequate. Nick v. Morgan's Foods, Inc., 270 F.3d 590 (8th Cir. 2001).

Case Management Conference

The Court conducts all of its Case Management Conferences (CMCs) telephonically, and unless otherwise directed, defense counsel coordinates and initiates all conferences calls. It is the responsibility of defense counsel to gather all participants on the line prior to calling chambers at (760) 339-4262.

Following the ENE and before the CMC, the parties will be required to make their initial disclosures under Fed. R. Civ. P. 26(a) and also will be required to submit a Joint Discovery Plan prior to the first scheduled CMC. The Joint Discovery Plan must be one document and must explicitly address each item identified in Fed. R. Civ. P. 26(f)(3). The dates proposed by the parties in the Joint Discovery Plan will be given due weight by the Court in setting the Scheduling Order. The Joint Discovery Plan must specifically address:

1. 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;
2. The need for discovery of electronically stored information, any issues regarding production of such information and the requested form(s) and scope of production;
3. Whether there are issues in the case requiring expert evidence;
4. The procedure the parties propose to resolve disputed claims of privilege; and
5. Whether a protective order will be needed in the case.

The dates and times set in the Scheduling Order will not be modified except for good cause shown. Counsel are reminded that they must “take all steps necessary to bring an action to readiness for trial.” Civil Local Rule 16.1(b). Any requests for extensions must be preceded by a “meet and confer” conference by counsel. The Court prefers any motion to amend the schedule be brought as a joint motion, even if the parties disagree. Joint motions must include a declaration from counsel of record detailing the steps taken to comply with the dates and deadlines set in the Scheduling Order, and the specific reasons why the deadlines cannot be met. If the request for a continuance is based on engagement in private mediation, the parties shall state the date scheduled for such mediation.

Ex Parte Applications

Ex parte applications may be appropriate for certain procedural matters, such as requesting that an individual be given permission to appear as a client representative at a settlement conference. They may not be used in lieu of a substantive noticed motion. Counsel must be mindful of these constraints when considering filing an ex parte application. “Ex parte applications are not intended to save the day for parties who have failed to present requests when they should have” Mission Power Eng’g Co. v. Cont’l Cas. Co., 883 F. Supp. 488, 493 (C.D. Cal. 1995) (quoting In re Intermagnetics Am., Inc., 101 B.R. 191, 193 (C.D. Cal. 1989)). Rather, they “are a form of emergency relief that will only be granted upon an adequate showing of good cause or irreparable injury to the party seeking relief.” Clark v. Time Warner Cable, 2007 WL 1334965, at *1 (C.D. Cal. May 3, 2007) (citing Mission Power Eng’g Co., 883 F. Supp. at 493).

Stipulated Protective Orders

When filing a stipulated protective order, a proposed protective order must be emailed to chambers. The proposed order must contain the following language:

No items will be electronically filed under seal without a prior application to, and order from, the judge presiding over the hearing or trial. Only when the judge presiding over the hearing or trial permits filing an item or items under seal may confidential material be filed with the Court under seal.

Whenever the Court grants a party permission to file an item under seal, a redacted copy of the document disclosing all non-confidential information shall be filed and made part of the public record. The item may be redacted to eliminate confidential material from the public document. The public 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." The public redacted documents shall be filed within 24 hours of the Court order authorizing the filing of a document under seal.

Continuances

Whether made by joint motion or ex parte application, any request to continue an Early Neutral Evaluation conference, settlement conference, Case Management Conference, or scheduling order deadline shall be made in writing no less than 7 calendar days before the affected date. The request shall state:

1. The original deadline or date;
2. The number of previous requests for continuance;
3. A showing of good cause for the request;
4. Whether the request is opposed and why; and
5. Whether the requested continuance will affect other case management dates.

Joint motions for continuance shall be in the form required by Local Rule 7.2 except that it is not necessary for the parties to submit a proposed order.

Transcripts

If a court proceeding before Judge Montenegro was placed on the record and a party is seeking a copy of the transcript, the party must contact the courtroom deputy, Erika Flores, at (760) 339-4248 and provide the case name, case number, and date of the court proceeding.

Technical Questions Relating to CM/ECF

Technical questions relating to CM/ECF should be directed to the CM/ECF Help Desk at (866) 233-7983.