

HONORABLE NITA L. STORMES
U.S. MAGISTRATE JUDGE
CIVIL CASE PROCEDURES

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. 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) 557-5391. For criminal matters or for ordering transcripts, call (619) 557-7749.

- A. Letters, faxes, or emails.** Letters, faxes or emails to chambers are prohibited except for as set forth in these guidelines.
- B. Lodging Documents.** When an order directs you to “lodge” documents with chambers (*e.g.*, an ENE or MSC brief), please email the statement to efile_stormes@casd.uscourts.gov. If the total number of pages, including exhibits, is more than 20 pages, please provide a courtesy copy directly to chambers (either personal delivery by an attorney courier service or by overnight mail).
- C. Telephone Calls.** Counsel may call chambers only for procedural matters, such as scheduling a conference or a motion with the Court. Law clerks may not give legal advice, nor will they discuss how or when the Court will rule on a disputed matter. Law clerks will not discuss complex procedural issues with anyone other than **counsel** for the parties.

II. Ex Parte Proceedings

The Court does not have regular *ex parte* days or hours, and discovery disputes are not generally resolved via *ex parte* application. Appropriate *ex parte* applications must be filed electronically on CM/ECF and include a description of the dispute, the relief sought, reasonable and appropriate notice to the opposition, and evidence of an attempt to resolve the dispute without the Court's intervention. No hearing date is required to file the *ex parte* application. 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 may call the law clerk to ask for more time. The Court will take the matter under submission and will issue a decision without a hearing.

III. Continuances

Whether made by joint motion or *ex parte* application, any request to continue an Early Neutral Evaluation conference, settlement conference or scheduling order deadline (including Joint Motions for Determination of a Discovery Dispute) must be made in writing no less than **seven (7) calendar days** before the affected date. Joint motions for continuance must be in the form required by **Local Rule 7.2**. The request must state:

- 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; and
- E. Whether the requested continuance will affect other case management dates.

IV. Settlement Conferences

A. Due Dates for Settlement Conference Briefs. No later than **three court days** before an Early Neutral Evaluation (ENE), the parties must **lodge** confidential statements of **five pages or less** (see I.B.) directly with the chambers of Magistrate Judge Stormes outlining the nature of the claims and defenses and their settlement position. Confidential settlement briefs for a Mandatory Settlement Conference (MSC) must be lodged no later than **five court days** before the MSC.

B. Attendance at Settlement Conferences. The Court requires all named parties, all counsel, and any other person(s) [e.g. insurance adjusters] whose authority is required to negotiate and enter into a full and binding settlement to appear **in person** at the ENE, MSC, and other settlement conferences. A **government entity** is excused from this requirement so long as the government attorney who attends the 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 "extraordinary circumstances." Distance of travel or expense alone do not constitute "extraordinary circumstances."

V. Case Management Conferences (CMCs)

The Court conducts the majority of its CMCs by **telephone**, unless otherwise directed. In formulating a joint discovery plan, the parties are to follow the model attached to these Rules at Appendix A.

VI. Discovery Disputes

- A. Meet and Confer Requirements.** Counsel must meet and confer on all issues **before** contacting the Court. 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. In no event will meet and confer letters, facsimiles or emails satisfy this requirement.
- B. Depositions.** If a dispute arises during the course of a deposition, counsel should take a brief recess from the deposition and immediately meet and confer. If they cannot resolve the dispute at that time, they may call the Court's law clerks and ask for a ruling from the Judge. If the Court cannot review the matter, counsel must proceed with the deposition in other areas. If counsel ultimately cannot resolve the dispute at the time of the deposition, they may file a Joint Motion for Determination of Discovery Dispute.
- C. Joint Motion Procedure.** If the parties do not resolve their dispute through the meet and confer process, counsel must, **within forty-five (45) days of the date of the event giving rise to the dispute (see VI.C.2 below)**, file a joint statement entitled "Joint Motion for Determination of Discovery Dispute No. ___" with the Court.
- 1. Contents.** The Joint Motion 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 20 pages total) that organizes the legal arguments according to dispute; and
 - c. If not already listed in the Memorandum of Points and Authorities, a "Joint Statement" that lists the specific disputes in accordance with the sample format described below.
 - 2. Date of Event Giving Rise to the Dispute ("Trigger Date").** The Court uses these parameters to determine the date of the event giving rise to the dispute:
 - a. **For 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.
 - b. **For 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.
 - c. **Effect of Meet and Confer Efforts:** The Trigger Date is not the date that counsel reach an impasse in meet and confer efforts.
 - d. **Court Order Required for Extensions:** The 45-day deadline will not be extended without a prior 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.

3. **Exhibits.** Any exhibits accompanying the Joint Statement must also be filed. Please include only relevant and necessary exhibits. **Counsel may not attach copies of any meet and confer correspondence to the Joint Motion.**
4. **Briefing of Joint Motion.** Counsel must exchange their memorandum drafts in advance so that each side may address the opposition's argument in the Joint Motion.
5. **Joint Statement.** To the extent the Joint Motion includes several discovery requests at issue, and the content of each request is not included in the Joint Memorandum of Points and Authorities, the parties must provide a Joint Statement that lists each request, response, a **brief statement** of the moving party's reason to compel production, and a **brief statement** of the objecting party's basis for objection. **The Joint Statement should not repeat the arguments in the Memorandum of Points and Authorities.** Where a Joint Motion includes only a few discovery requests at issue, this Joint Statement should be embedded within the Memorandum of Points and Authorities.

Sample Format for: Joint Statement

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.

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.

The Court will either issue an order following the filing of the Joint Motion for Determination of Discovery Dispute or will schedule a discovery conference or hearing.

VII. Stipulated Protective Orders

All stipulated protective orders must be filed as a joint motion. The parties must also email directly to chambers a proposed order, in Word format, containing the text of the protective order.

Any provisions regarding the timing to ask for judicial intervention to determine challenges to designations must comply with this chambers' 45-day rule regarding resolution of discovery disputes. Further, any proposed protective order must contain these **two** provisions:

- A. Filing Under Seal.** 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.
- B. Modifications.** The Court may modify the protective order in the interests of justice or for public policy reasons.

VIII. Procedure for Filing Documents 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 sealable material.

The parties must comply with Civil Local Rule 79.2 and ECF Administrative Policies and Procedures, Section II.j, with respect to filing documents under seal.

- A. Motion to File Under Seal.** The party seeking to file under seal must electronically file a "Motion to File Documents Under Seal" and electronically lodge the 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.

B. Redacted Copies. The parties must file a redacted version of the document sought to be filed 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."

IX. Professional Courtesy

Be courteous and respectful at all times, in all settings. Counsel may expect such from the Court, and the Court expects such from counsel. Please be familiar with and abide by Civil Local Rule 83.4.

Appendix A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE: CASE MANAGEMENT

**MODEL RULE 26(f) REPORT
AND JOINT CASE
MANAGEMENT STATEMENT**

[insert CMC Date and Time]

The parties must include the following information in their Rule 26(f) report and joint case management statement.¹ Except in unusually complex cases the statement should not exceed 10 pages.

1. **Jurisdiction and Service:** The basis for the court's subject matter jurisdiction over the plaintiff's claims and counterclaims, whether any issues exist regarding personal jurisdiction or venue, whether any parties remain to be served, and, if any parties remain to be served, a proposed deadline for service.

2. **Facts:** A brief chronology of the facts and a statement of the principal factual issues in dispute.

3. **Legal Issues:** A brief statement, without extended legal argument, of the disputed points of law, including reference to specific statutes and decisions.

4. **Motions:** All prior and pending motions, their current status, and any anticipated motions.

¹ This Model Report is taken largely from the Standing Order for All Judges of the Northern District of California effective July 1, 2011 (Last Revised November 1, 2014).

5. **Amendment of Pleadings:** The extent to which parties, claims, or defenses are expected to be added or dismissed and a proposed deadline for amending the pleadings.
6. **Evidence Preservation:** A brief report certifying that the parties have met and conferred pursuant to Fed.R.Civ.P. 26(f) regarding reasonable and proportionate steps taken to preserve evidence relevant to the issues reasonably evident in this action.
7. **Disclosures:** Whether there has been full and timely compliance with the initial disclosure requirements of Fed.R.Civ.P. 26, and a description of the disclosures made.
8. **Discovery:** Discovery taken to date, if any, the scope of anticipated discovery, any proposed limitations or modifications of the discovery rules, a brief report on whether the parties have agreed to a proposed Electronic Discovery Order, a proposed Protective Order to govern the exchange of confidential information, a proposed discovery plan pursuant to Rule 26(f), and any identified discovery disputes.
9. **Class Actions:** If a class action, a proposal for how and when the class will be certified.
10. **Related Cases:** Any related cases or proceedings pending before another judge of this court, or before another court or administrative body.
11. **Relief:** All relief sought through complaint or counterclaim, including the amount of any damages sought and a description of the bases on which damages are calculated. In addition, any party from whom damages are sought must describe the bases on which it contends damages should be calculated if liability is established.

12. **Settlement and Mediation:** Prospects for settlement, settlement efforts to date, and whether the parties have been to or are planning to go to private mediation.

13. **Consent to Magistrate Judge for All Purposes:** Whether all parties will consent to have a magistrate judge conduct all further proceedings including trial and entry of judgment.

_____yes _____ no

14. **Other References:** Whether the case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. **Narrowing of Issues:** Issues that can be narrowed by agreement or by motion, suggestions to expedite the presentation of evidence at trial (e.g. through summaries or stipulated facts), and any request to bifurcate issues, claims, or defenses.

16. **Scheduling:** Proposed dates for fact discovery cutoff, expert designations and exchange of expert reports, expert discovery cutoff, dispositive motions cutoff, Markman hearing (in patent cases), pretrial conference and trial.

17. **Trial:** Whether the case will be tried to a jury or to the court and the expected length of trial.

18. **Disclosure of Non-party Interested Entities or Persons:** Whether each party has filed the "Notice of Party with Financial Interest" required by Civil Local Rule 40.2. In addition, each party must restate in the case management statement the contents of its certification by identifying any persons, firms, partnerships, corporations (including parent corporations) or other entities known by the party to have either: (i) a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding.

19. **Professional Conduct:** Whether all attorneys of record for the parties have reviewed Civil Local Rule 83.4 on Professionalism.

20. **Miscellaneous:** Such other matters as may facilitate the just, speedy and inexpensive disposition of this matter.

Dated: _____

Attorney for Plaintiff(s)

Dated: _____

Attorney for Defendant(s)