17th Annual Judith N. Keep Federal Civil Practice Seminar
MCLE Written Materials

Seventeenth Annual Judith N. Keep Federal Civil Practice Seminar

slido

Join at slido.com
#355403

ⓘ Start presenting to display the joining instructions on this slide.

slido

How many years of practice do you have?

ⓘ Start presenting to display the poll results on this slide.

slido

What area of law do you primarily practice?

ⓘ Start presenting to display the poll results on this slide.

slido

What are you most looking forward to gaining from today's seminar?

ⓘ Start presenting to display the poll results on this slide.

Making a Record for Appeal

Hon. John B. Owens, U.S. Circuit Judge

Hon. Dana M. Sabraw, Chief U.S. District Judge

Current Court Operations

Ninth Circuit Court of Appeals

Southern District of California

Starting Premise/General Rule

If it isn't properly in the record, it doesn't exist on appeal
(Leave nothing either to inference or to the imagination).

Objections to Testimony or Exhibits

Carefully Consider Evidence

Preserve the Record

Motions in Limine

Time Limits

Working with Difficult Evidence

Depositions

References to Exhibits

404(b) Evidence

Jury Instructions

Fed. R. Civ. P. 51

Ninth Circuit Model Instructions

CACI Instructions

Home-grown Instructions

Magistrate Judges on Settlement

Hon. William V. Gallo, U.S. Magistrate Judge

Hon. Michael S. Berg, U.S. Magistrate Judge

Hon. Nita L. Stormes, U.S. Magistrate Judge

Pretrial Motions

Hon. Gonzalo P. Curiel, U.S. District Judge

Hon. Todd W. Robinson, U.S. District Judge

Why Does Motion Practice Exist At All? Why Are Motions Helpful?

- Narrowing and focusing issues
- Confirming jurisdiction
- Case management
- Facilitate settlement

What Happens After I File My Motion?

- The Judge and/or law clerk reviews the briefing
- Judges have their own staff to assist them
- A procedural ruling or order may follow (scheduling, requiring supplemental briefing)
- The judge may hold oral argument, or may decide it on the papers

Importance of Following the Rules (Federal, Local, and Chambers Rules)

- The Southern District's Local Rules were most recently revised on July 5, 2021.
- Chambers Rules: These vary by judge, so it's important to check.
- Local and Chambers Rules are available on the Court's website.

Creating Opportunities For Young Lawyers

- One way to help young lawyers gain experience is to give them opportunities to argue motions.

- Some judges' chambers rules specifically provide for this. This is an under-used option that we encourage you to consider.

Oral Arguments

- Will the Court hold argument? Can vary by judge, type of motion, legal issues presented, and the facts of the case
- How valuable and useful is oral argument?
- What to expect: Presenting a prepared argument vs. Questions from the bench

Changes in Procedure Due to the Pandemic

- Sitting while addressing the court
- More use of telephonic and videoconference argument
- Advantages and disadvantages of telephonic/video vs. in-person appearances

Courtesy and Professionalism in Oral Arguments

- Why does it matter?
- What is the difference between zealous advocacy for my client and unprofessional conduct?
- Does it matter how an attorney treats courtroom staff and law clerks?
- If I have questions or concerns about my motion, how can I appropriately bring those to the judge's attention?
- Can my unprofessional behavior impact a ruling on my motion?

Trial & Care & Feeding of Jury

Hon. Cathy Ann Bencivengo, U.S. District Judge

Hon. Larry A. Burns, U.S. District Judge

Hon. Jeffrey T. Miller, U.S. District Judge

Voir Dire
Federal Civil Rules That Control: 38, 47 and 48

- While the right is guaranteed, a party must make a demand for jury trial or it is waived. (Rule 38)
- Peremptory challenges of 3 per side. (Rule 47) For a discussion on how the numbers were set, see, "Trial Jurors in Federal Criminal Cases", 29 F.R.D. 43.
- Court may permit parties or their attorneys to examine the jurors and must let them *follow up on the court's questions.* (Rule 47)
- A jury of 6 minimum to 12 maximum, and a unanimous verdict. (Rule 48) No "alternates", all empaneled vote. (Rule 48) Parties may agree to non- unanimous verdict and may agree to less than 6. Id.

The FBA-SD gratefully acknowledges the assistance of U.S. District Judge Anthony J. Battaglia, who provided the first few slides for this presentation.

Voir Dire

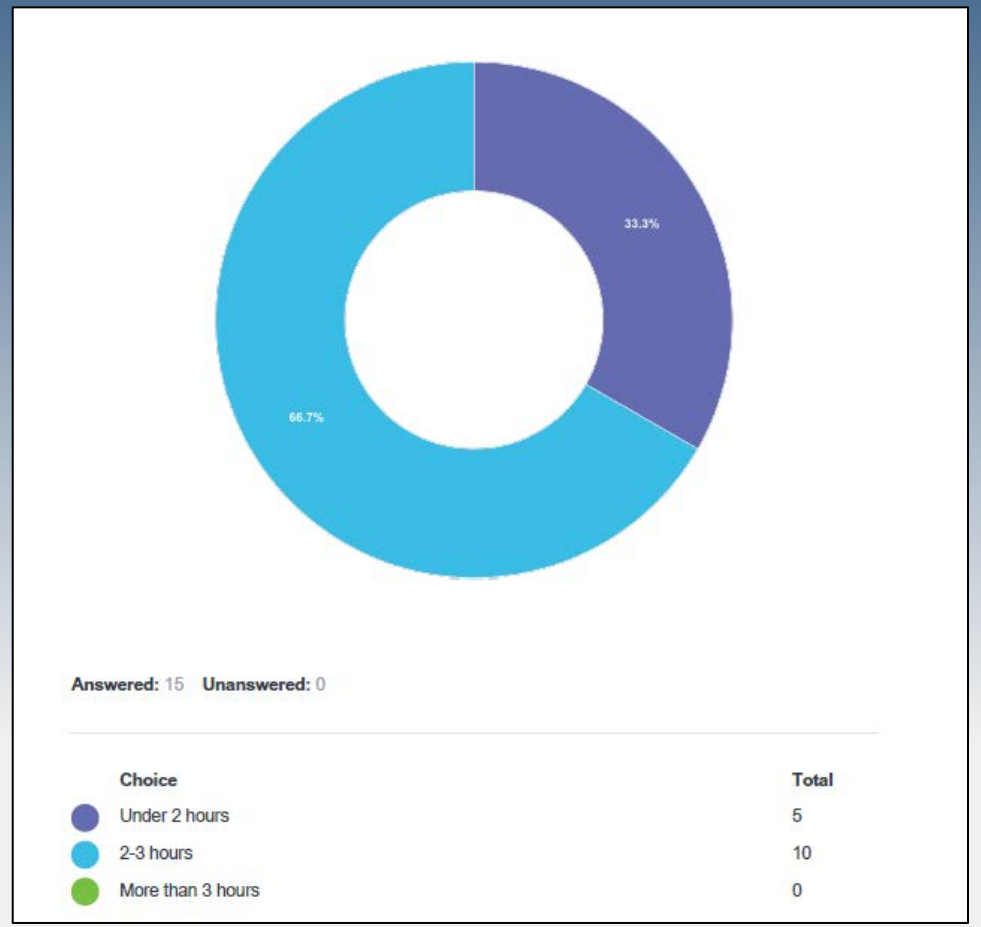
- Local Rules and Chambers Rules are Informative
- Remember No Right to Voir Dire
- Court may permit parties or their attorneys to examine the jurors and must let them *follow up on the court's questions.* (Rule 47)
- The limited attorney voir dire should be directed to follow up on answers to the questions asked by the judge and should be calculated to discover bias or prejudice with regard to circumstances of a particular case. No attempts to use the questioning to precondition the jury to a party's case will be allowed.
- You will not get enough time to establish a rapport, ingratiate yourself or argue your case.

Be Admonished

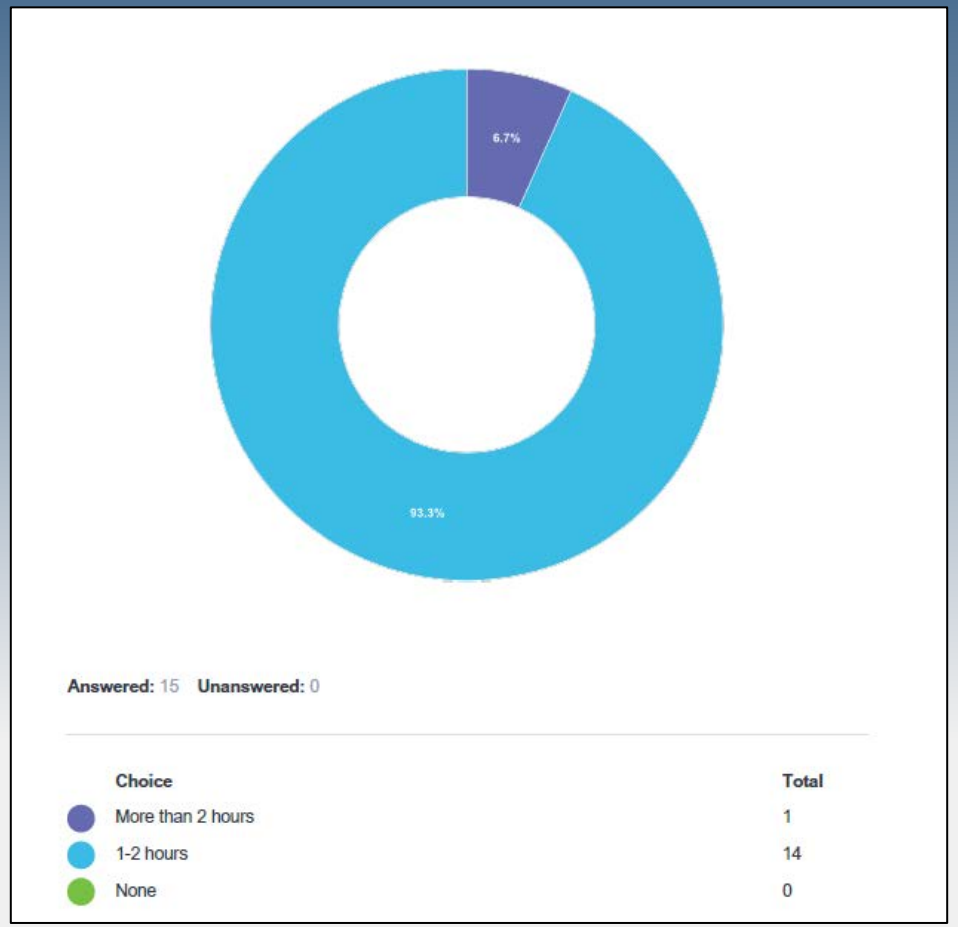
- Counsel should only ask questions calculated to discover bias or prejudice about the circumstances of the case;
- Counsel should not ask questions which have, as a dominant purpose, attempts to precondition jurors to a result, indoctrinate the jury, or question them concerning the pleadings or applicable law;
- Do Not Argue the law or the facts of the case;
- Do Not Repeat questions already asked by the court.

Results of Judicial Survey of Voir Dire Practices

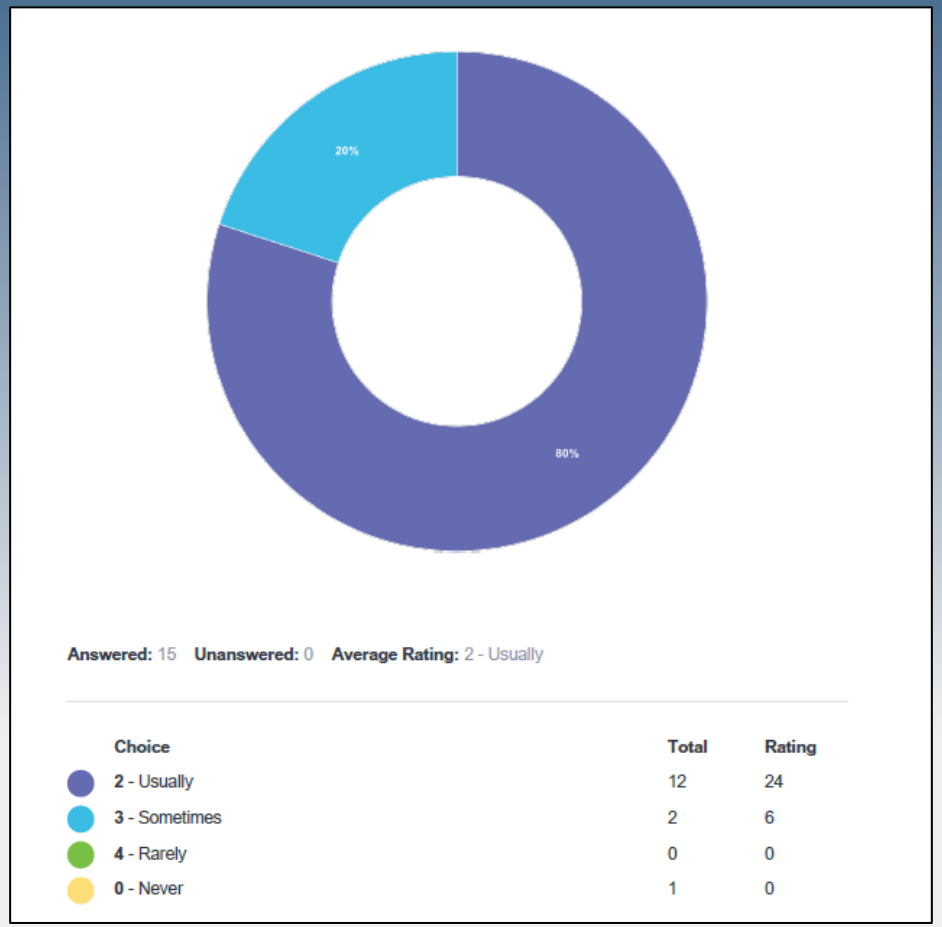
How long does voir dire (in total, court-led and attorney voir dire) take in the typical civil case in your courtroom?



How much questioning of the potential jurors do you do?

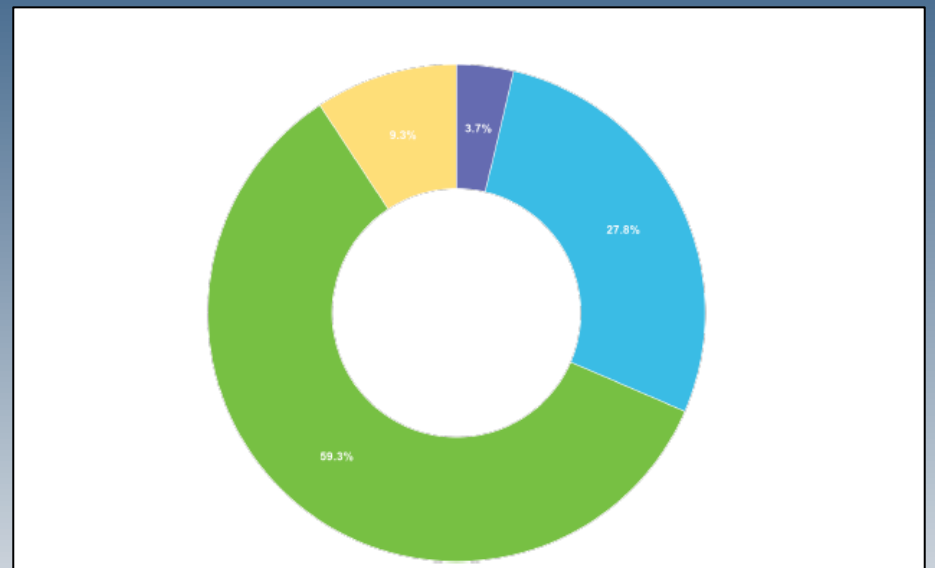


How often do you allow attorney voir dire?



Judges who allowed voir dire only sometimes cited complexity, trial length and significant issues as the factors that would cause them to allow attorney voir dire.

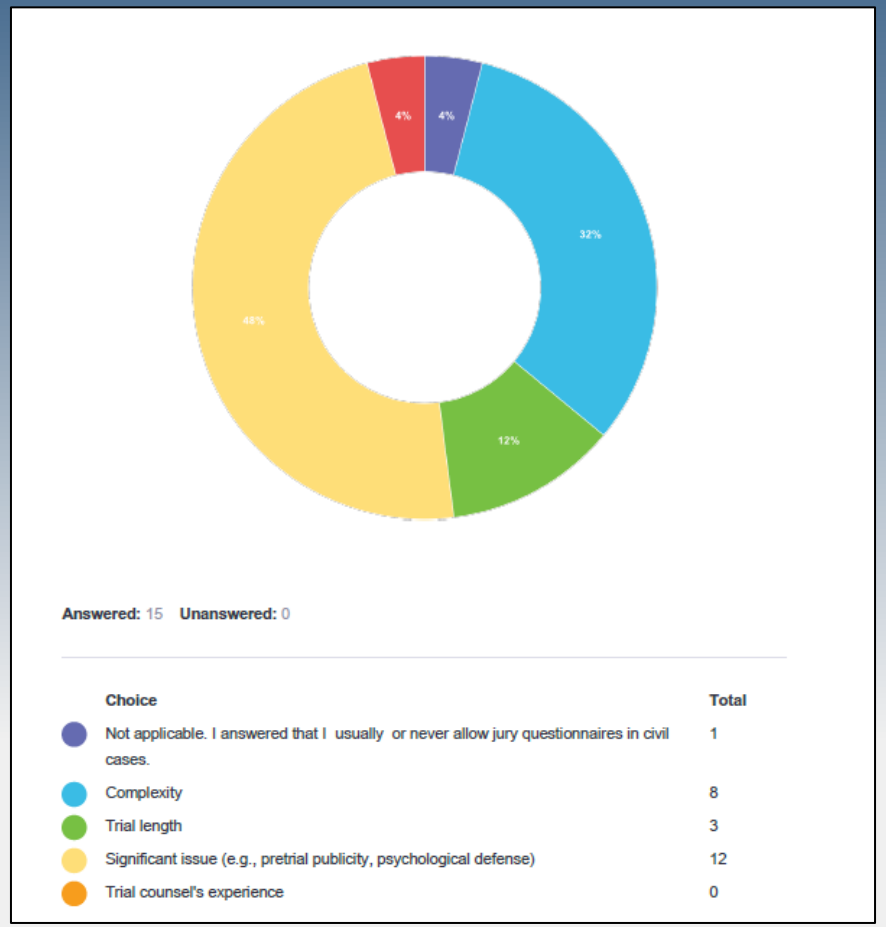
How often do you allow jury questionnaires in civil cases?



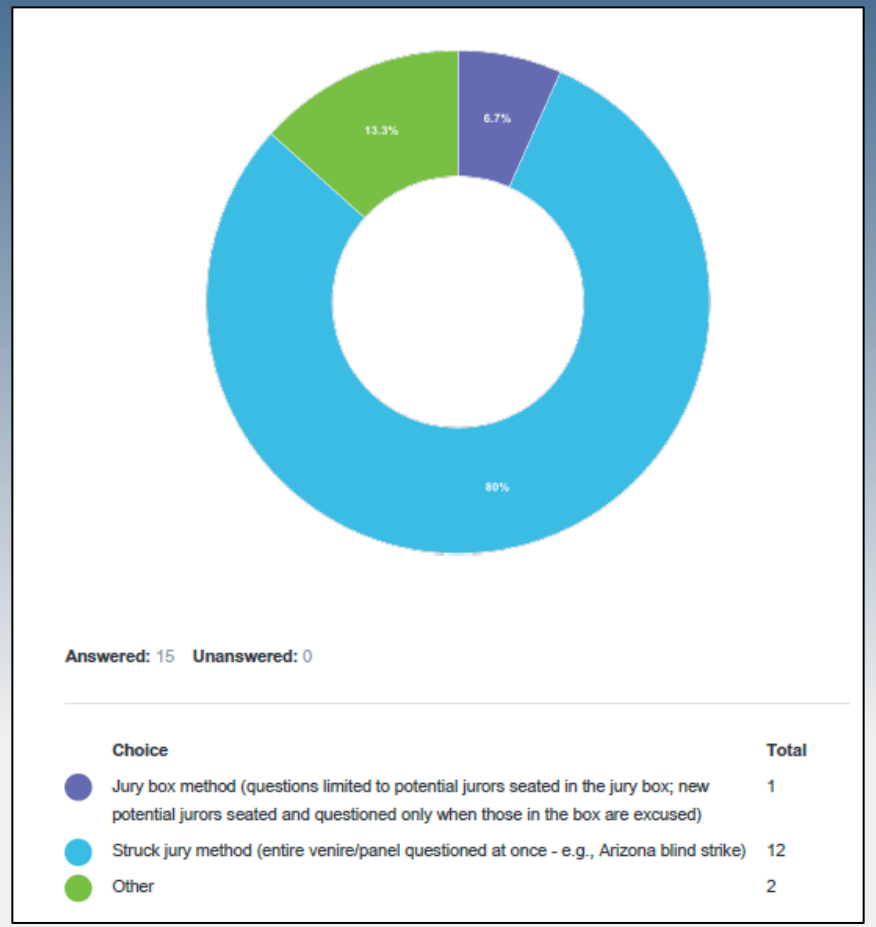
Answered: 15 **Unanswered:** 0 **Average Rating:** 4 - Rarely

Choice	Total	Rating
2 - Usually	1	2
3 - Sometimes	5	15
4 - Rarely	8	32
5 - Never	1	5

If sometimes or rarely, what factors counsel in favor (check all that apply)



What method do you use for jury selection, jury box, struck jury, or other?

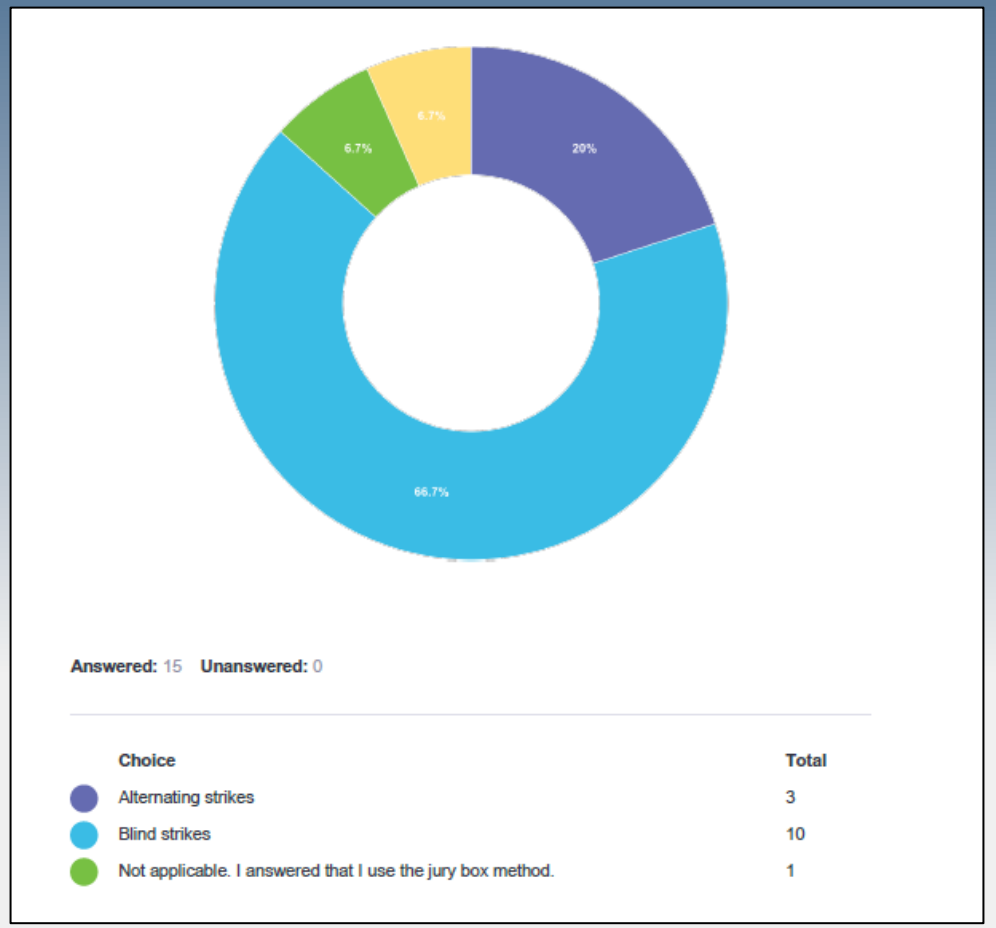


Jury box mechanics

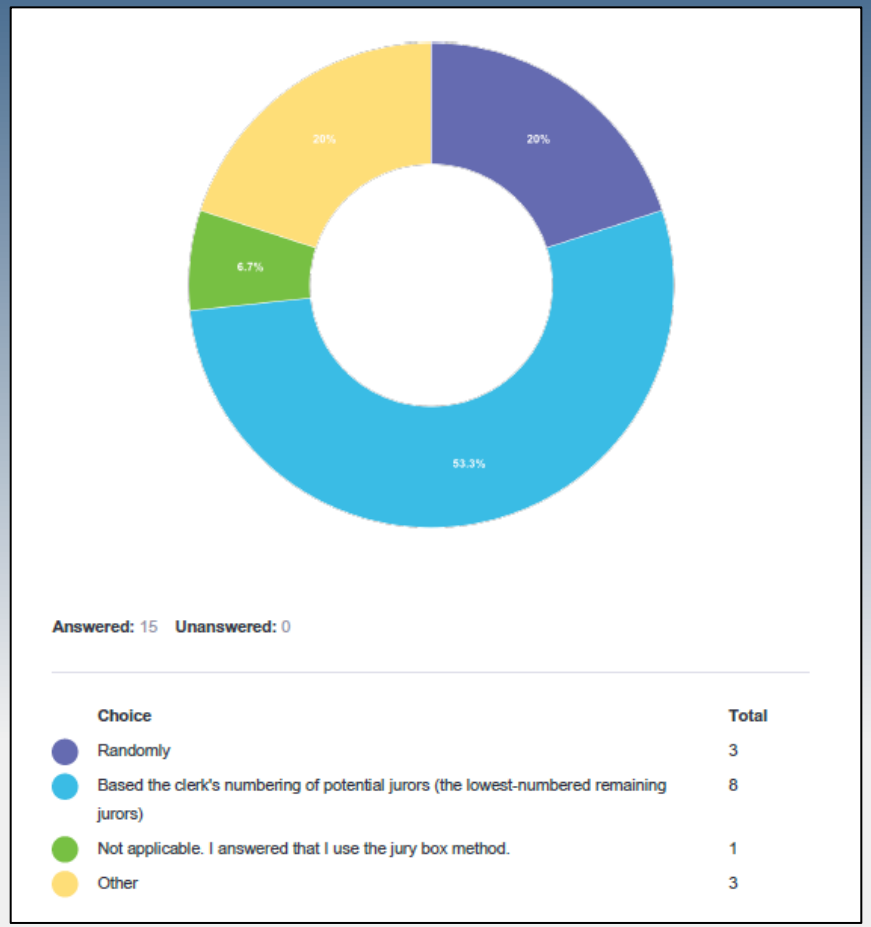
Of the two judges who use this method, one restricts questioning to those in the jury box, and one asks that additional jurors be questioned.

Both allow back strikes.

If you use the struck jury method, do you require challenges to be made on an alternating basis (plaintiff first, then defendant, then plaintiff, etc.) or on a “blind strike” basis (each side exercises all of its strikes at once, without knowing which jurors the other side is striking)?



If you use the struck jury method, how do you select the jury from the remaining potential jurors in the venire?



slido

Overall, what has been your experience with attorney voir dire time allowances in the Southern District of California?

ⓘ Start presenting to display the poll results on this slide.

Judges' Thoughts on Jury Selection

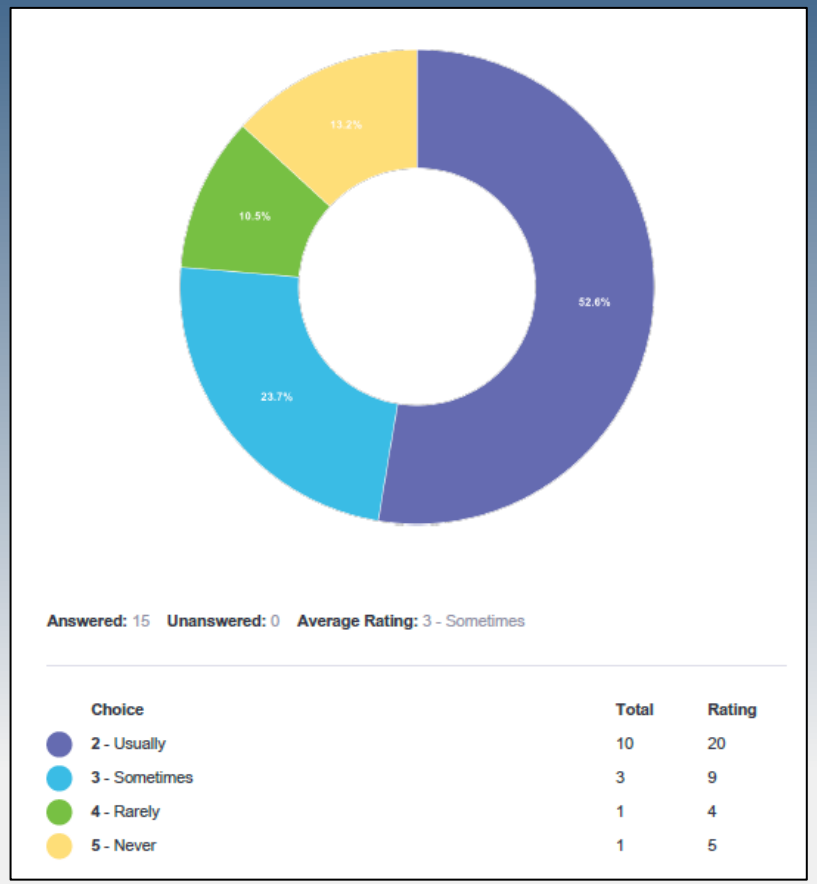
- How to think about it – jury selection vs. de-selection
- "Red flag" jurors, leaders, and other standouts
- Attorney voir dire in action
  - Gathering information for strikes v. ingratiating/arguing
  - Judge Gilliam's approach
- Case statements

Care of the Jury During Trial

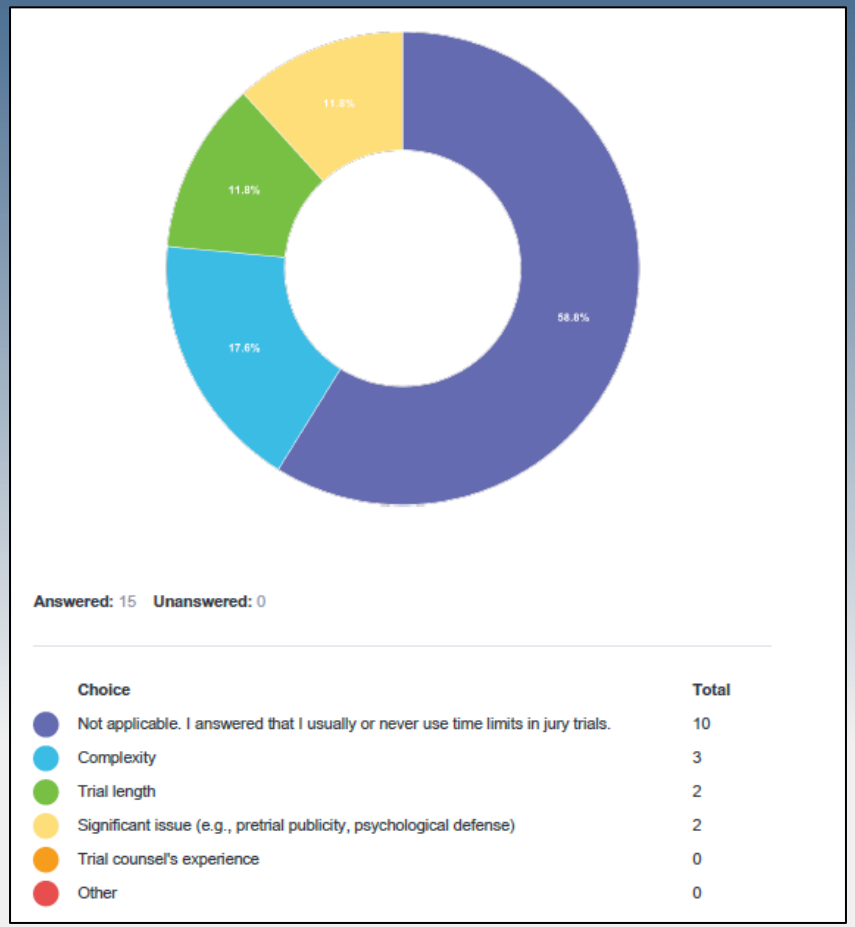
- Agenda for this portion of the discussion:
  - Judicial survey results on use of time limits at trial
  - Additional thoughts on effective jury trial practice

Survey Results

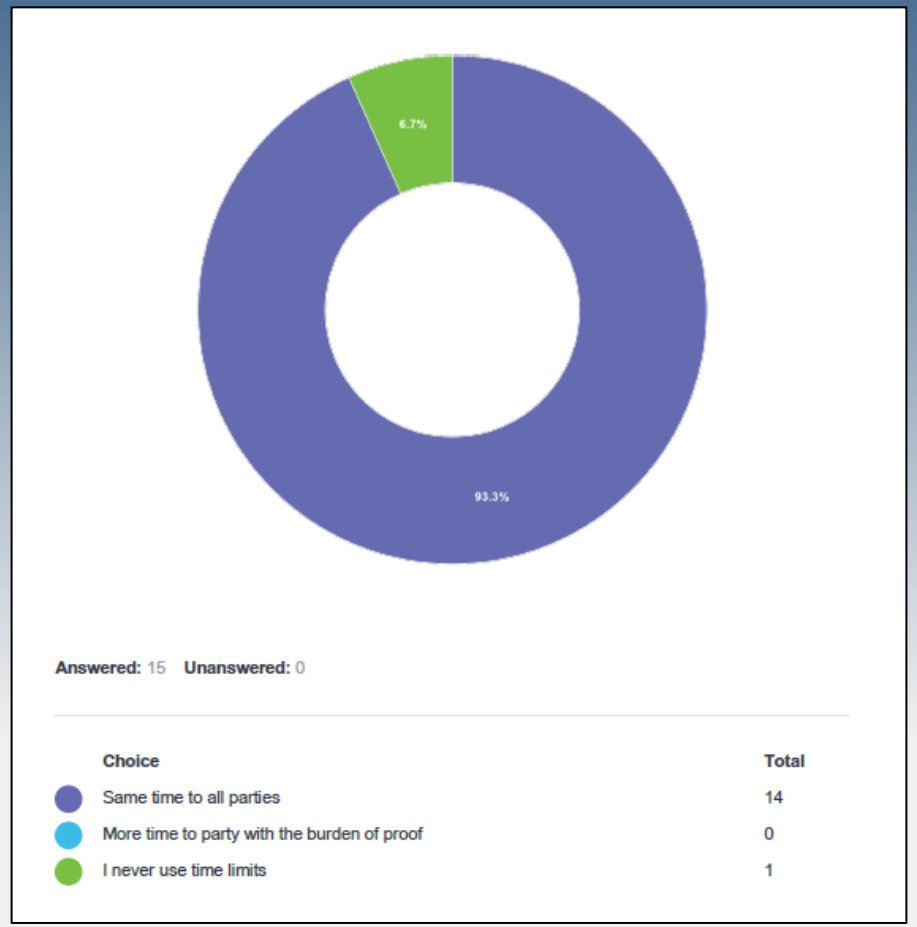
How often do you use time limits in civil jury trials?



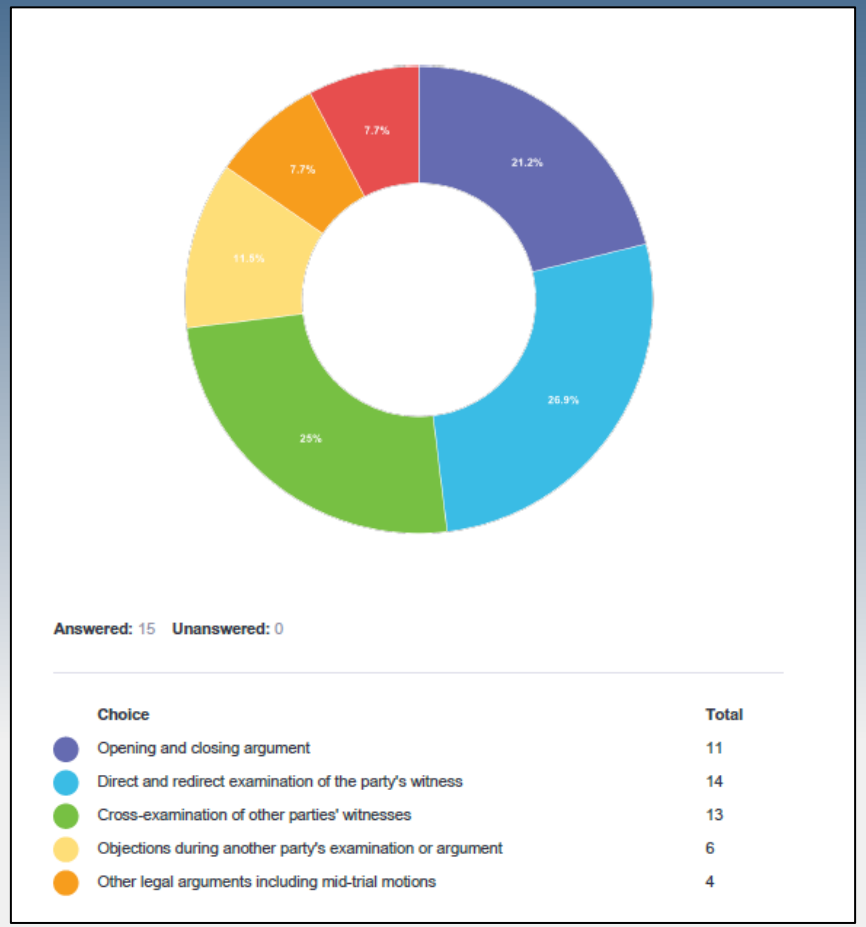
If sometimes or rarely, what factors counsel in favor (check all that apply)



When using time limits, do you generally allow each party the same time, or more time to the party with the burden of proof?



When using time limits, which of the following do you include in the party's time? (check all that apply)



Answered: 15 **Unanswered:** 0

Choice	Total
Opening and closing argument	11
Direct and redirect examination of the party's witness	14
Cross-examination of other parties' witnesses	13
Objections during another party's examination or argument	6
Other legal arguments including mid-trial motions	4

slido

Overall, what has been your experience with time limits at trial?

ⓘ Start presenting to display the poll results on this slide.

All About Time

- Discussion of time limits
  - Mechanics
  - Experiences
  - Juror feedback
- Trial Schedules and jury feedback on schedules
- Punctuality

Opening, Closing, and Verdict Forms

- Argument
  - Focus on what's actually in dispute
  - Length of argument
  - Use of exhibits in opening argument
- Verdict forms and jury instructions
  - Resolve issues in advance of trial
  - Avoid unduly complex verdict forms and jury interrogatories

Presenting Evidence

- How to not endear yourself to your jury
  - Sidebars
  - Unnecessary objections
- Presentation technology
  - Introducing real-time output from courtroom display systems
  - Making sure jurors and the appellate court can follow testimony
- Organization
  - Think ahead & pre-mark
  - Avoid unnecessary evidence

Intangibles

- Jury body language
- Jury meals & collegiality
- Jurors are watching everything

Thank You for Supporting

Federal Bar Association
San Diego Chapter

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT of CALIFORNIA
HON. DANA M. SABRAW, CHIEF JUDGE
JOHN MORRILL, CLERK OF COURT

Making a Record for Appeal

Hon. John B. Owens, U.S. Circuit Judge

Hon. Dana M. Sabraw, Chief U.S. District Judge

January 13, 2021
APPELLATE ISSUES | WINTER 2021

Preserving an Accurate Record for Appeal in the Time of COVID-19 Virtual Proceedings

By David A. Timchak

Share:

As every appellate advocate is aware, regardless of the standard of review on appeal, an accurate and complete trial court record is paramount to both advocates and appellate courts in performing their roles. (1) For this reason--anecdotally, but perhaps unsurprisingly-- appellate courts tend to prefer an accurate record over allowing procedural short comings of the parties to potentially undermine the foundation of an opinion or decision they may issue. This, of course, is not a bases for an appellate advocate to ignore this crucial step in the appellate process or wait to confirm the accuracy of the record until brief writing begins in earnest. Indeed, beyond the obvious, doing so may potentially undermine a party's credibility or the court's perception of a party, the advocate, or their position.

As such, confirming and correcting any issues in the record at the outset of an appeal should be a high priority for both the appellant and the appellee regardless of whether appellate counsel was also counsel in the trial court. In the normal world--pre-COVID-19--this process already had its own issues and complications, from assuring trial counsel's cooperation and assistance to timely identifying and ordering necessary transcripts. Although these issues have not been removed from the equation, COVID-19 and the dawn of widespread virtual proceedings only complicates the matter and adds new issues that an appellate advocate should be aware of and look out for. This is important not only to avoid complications in the process, but to ensure all parties involved can properly and efficiently perform their jobs--from appellate advocates to judges and justices

This article will briefly highlight some of the new issues created by virtual proceedings in the era of COVID-19 in relation to the record on appeal and suggest ways to either prevent them all together or lessen their potential for creating time consuming and distracting issues on appeal.

Exhibits and Exhibit Lists

As we are all aware, the trial court's accurate reflection of what exhibits were offered, admitted, stipulated, withdrawn, or deemed inadmissible is paramount to an accurate record on appeal. The virtual hearing has added new complications to assuring accuracy in this process. For example, when the parties are no longer in the same room, some courts have done away with the typical use of a signed exhibit worksheet, agreed to by all parties and the court to accurately reflect the disposition of the exhibits offered in a hearing or trial, instead opting for a verbal confirmation. This lack of written confirmation at or near the time of the virtual proceeding gets ever complicated by the fact that it is, now more than ever, possible to have confusion or misunderstandings as to which exhibit is which. For example, the parties may have submitted paper exhibits to the court prior to the virtual proceeding, which the court clerk marked. However, not being in the same room as the court clerk, it is likely that the parties are using electronic versions of the exhibits they themselves have compiled. Indeed, each party may have separately made a virtual copy of the exhibits. Each version of the exhibits, coupled with the fact that they were compiled by a different person, adds numerous additional places in which the numbering may not match the numbering assigned by the court.

The easiest way to avoid these pitfalls is transparency and communication amongst the parties and the court and avoiding last minute compilation of exhibits. Indeed, the best way to avoid these issues is to have a master electronic database of exhibits that the court can access and mark, and which all parties can simultaneously utilize for the virtual proceeding. While taking care to assure the exhibits are correctly identified it should also be a priority of trial counsel, to the extent possible, to file a written stipulation to any

exhibits that will be stipulated to. If this is not possible, an advocate or the court may be forced to attempt to utilize the transcript of proceedings to determine what happened to each exhibit, which is a lengthy and daunting task that is complicated by the issues arising from transcription of virtual proceedings.

Transcripts

Virtual proceedings in the time of COVID-19 have created new issues in the accuracy of transcription. For example, many courtrooms in the United States use recording methods that show which microphone in the courtroom picked up the audio being record. This is highly useful in determining who was speaking. In virtual proceedings this function is not possible, making the job of the court reporter in determining which voice corresponds with which speaker all the more challenging. Similarly, to the extent parties, witnesses, or their attorneys are wearing face coverings, this eliminates one of the ways on which we rely to understand speech, increasing the likelihood of an inaccurate understanding and thus an inaccurate transcription. Additionally, in virtual proceedings it is possible for one participant's internet connection to scramble or delay audio without any of the other participants realizing this is happening. This is problematic enough when it happens to a party, the court, or an advocate, but can lead to major transcription errors if the delayed connection is on the part of the court reporter or official audio recording. The simplest way to avoid these issues and assure the possibility of an accurate transcription is to have more than one party record the virtual proceeding, including the video of all participants. Luckily, most platforms utilized for virtual proceedings have the ability to allow for such redundant recording within the same application.

New Methods of Communication during Virtual Proceedings

Virtual proceedings occur on platforms the majority of which have a "chat" function. These functions allow a participant to send a written message privately to another participant or to the group as a whole. (2) Similarly, some courts have utilized email messaging to the parties in the case of technological issues with video or audio transmission. This adds a new component to the record of the virtual proceeding that would not otherwise be present in a non-virtual setting. While this particular issue may not come up as often as the others discussed herein, to the extent a communication was made by "chat" or email, thought needs to be given to how this form of communication will make it into the record or a transcript of the proceeding. Certain courts have simply filed the written log in the record after the hearing; however, to the extent a written message is in response to a verbal statement, assuring the written response makes its way into the proper place in a transcript will be necessary to preserve an accurate understanding and transcription of what occurred at the hearing.

Conclusion

As the examples discussed in this article make clear, the best practice to avoid issues in the record created by virtual proceedings is to assure open communication amongst the Court and all parties to facilitate a dialogue and understanding of how the proceeding will be recorded and how the record will ultimately be created.

Endnotes

ENTITY:

JUDICIAL DIVISION

TOPIC:

ETHICS, LITIGATION & TRIALS, PRACTICE MANAGEMENT, COURTS & JUDICIARY, TECHNOLOGY, GENERAL PRACTICE

Authors

CLE: Six Tips for the Record that All Appellate Lawyers Should Know

By Eder Castillo

The Eighth Circuit Bar Association presented a panel about the record on appeal on May 19. Adam Hansen of Apollo Law and Kyle Kroll of Winthrop & Weinstine moderated the CLE. Circuit Judges Ralph R. Erickson and David R. Stras, as well as Michael Gans, the Clerk of Court, provided six tips.

1. Use the addendum to highlight key parts of a transcript

Judge Stras pointed to his iPad, calling it his "bible." For each case, the iPad contains copies of the record on appeal, the briefs, the addenda, and the Judge's bench memorandum. The bench is "moving sharply toward digital," said Judge Stras. Since the addendum is always available to the judges in electronic form, Judge Erickson and Judge Stras recommend including the key parts of a transcript in the addendum. Mr. Gans added that the Court is considering a rule that would require parties to file an electronic version of the appendix along with the paper version. This new rule would not go into effect without a 30-day public comment period, which is likely to occur in 2022.

2. Correct the record as soon as possible

"The final prep for argument week gets pretty hectic," said Judge Erickson. The Court prefers timely corrections or additions, preferably by stipulation from both parties. Additions to the record may be required when an important trial exhibit that was presented to the district court was not uploaded to PACER. To supplement the record with an exhibit in your possession, order the transcripts that show the exhibit being received by the district court and submit the transcript and the exhibit to the Clerk's Office. If trial counsel is anticipating an appeal, Judge Stras advised leaving trial exhibits with the district court. Judge Erickson recommended asking the district court to upload paper exhibits into PACER to avoid delay and maintain the exhibits' integrity. If you are supplementing the record with a video exhibit, Mr. Gans suggests sending three copies of the video in a common format on thumb drives or CDs.

3. Don't include briefing that was submitted to the district court in your appendix

The members of the panel agreed that including briefing from below is strongly discouraged, unless preservation of an argument is an issue on appeal. On a separate note, the judges only expressed a slight preference for a joint appendix over separate appendices from each party.

4. Graphics help the judges visualize the facts of your case

"Some people may say, '[Including graphics] is condescending to the judges. The judges can figure it out.' We could, but it's going to take us a long time," said Judge Stras. Graphics can be used effectively to establish a location, and charts can be used to illustrate financial aspects of your case. However, any drawings made for the purpose of the appeal, , will be ignored unless both parties have stipulated to them. Judge Stras advised that you should place your graphics in the facts section; just don't make your brief "a picture book."

5. The Court has a high threshold for sealing records and closing arguments to the public

Don't redact information that judges need to see to decide your case. Judge Erickson recommended using initials or generic labels when redacting names. If you are requesting an oral argument that is closed to the public, Mr. Gans advises that you wait until you know the panel of judges that will hear your case. The panel will decide whether to close the courtroom. If the panel denies your motion for a closed argument, the Clerk's Office may offer to move your argument until the end of the day when the courtroom tends to be empty.

6. When you cite a case, a hyperlink to the case is automatically created

The Court looks forward to a future when citations to the record result in automated hyperlinks. For now, Judges have to open and scroll through the appendix to find your record citations. Proper case citations, however, are automatically hyperlinked. Therefore, brushing up on your Bluebook skills will ensure that a judge can move efficiently between your argument and the cases you cite.

Eder Castillo is a prosecutor at the Hennepin County Attorney's Office in Minneapolis, practicing white-collar prosecution and post-conviction litigation. He graduated from the University of Minnesota and received his law degree from the University of St. Thomas.

Time Limits in Civil Jury Trials

Posted on April 1, 2020 | by Michael Shammas | Posted in Uncategorized

By the Honorable Nathaniel Gorton, Judicial Advisor

As a United States District Judge, I almost invariably impose time limitations on counsel in civil jury trials. I find that such limitations benefit not only the jurors who are, of course, required to be present, but also counsel and the parties to the litigation. That is because counsel nearly always over-estimate the amount of time needed to present an effective case and then, in an abundance of caution, tend to call more witnesses and examine them for longer than necessary or advisable. Time limitations force counsel to be more selective and have the added benefit of preserving their rapport with jurors who, not surprisingly, have limited attention spans and are not as enthralled with a particular party's case as his/her own counsel.

I certainly try to be reasonable in the limitations I impose which are determined only after I hear counsel's estimates of time needed to put on their respective cases. I find those estimates are usually inflated by about 50% so I start with a presumption that about 2/3 of the combined requested time is really necessary and work backward (or occasionally forward) from there.

I tell counsel their parties will be charged for time spent on openings, direct exam of their own witnesses and cross examination of opponents' witnesses. The duration of Openings is also limited: 15 minutes for simple, short cases to no more than one hour for the most complex cases. I wait to set limits on closing arguments until the case is well along and I get a better sense of how much time will be needed but it is a rare case that cannot be fully summarized and argued to a jury in less than one hour.

Although the theoretical threat of cutting off attorneys in mid-examination is present, in all my years on the bench, I have never done it or even reached the point where it became a major issue. Once counsel know the rules, they operate within the parameters and I believe are grateful (even if begrudgingly) for the limits after all is said and done.

In preparing this paper I have read with interest a recent article published in the Georgetown Law Journal, written by Stanford Law School Professor Nora Freeman Engstrom. It is entitled: "The Trouble with Trial Time Limits" 106 Georgetown L. Jour. 933 (2018). The gist of Professor Engstrom's thesis is that the growing use of trial time limits, especially in federal courts, in an era of the "disappearing jury trial", is unwarranted, may deprive the parties of due process and, in any event, undermines the dignity and thoroughness of contemporary trials and jeopardizes "procedural justice." Id., at 937.

I take seriously Prof. Engstrom's constructive criticism and suggested recommendations and commend her article to all trial judges who impose, or are thinking of imposing, time limits in

In Archive

- July 2020
- June 2020
- May 2020
- April 2020
- March 2020
- February 2020
- March 2016

civil jury trials. Prof. Engstrom has made substantive objections to time limitations and they deserve careful and thoughtful responses. The remainder of this paper is my effort to do just that by first noting each objection and then recording my response:

1. *Rigid time limits make lawyers rush the presentation of facts and hurry oral arguments:*

That has not been my experience, especially when I have good trial lawyers before me (which is most of the time). Good lawyers manage the time allotted, synthesize material and focus their listener's attention just as they are required to do in appellate arguments which are also time-limited.

2. *Lawyers ought to be allowed to organize and make strategic decisions about their cases without interference from an arbitor who doesn't know the case nearly as well as they do:*

My concern is "defensive lawyering" (which is the professional equivalent of doctors practicing "defensive medicine") i.e., "If I don't put on every possible witness who could help my case and elicit every favorable tidbit of evidence, I will be criticized by my client, especially if I lose." Jurors don't like to be kept in the box any longer than necessary and I believe most trial judges have a better sense of that boundary than most trial lawyers, at least during the heat of the battle.

3. *Severe time limits discourage litigants and lawyers from going forward with trials and tend to force unfair settlements:*

First, I do not impose "severe" time limits. My limits are set only after I have heard oral arguments at the final pretrial conference and I have mulled the attorneys' plaintive cries for equity. Moreover, my objective is more long-range. If jurors generally believe that the trial judge is on their side and is doing everything to economize (i.e. shorten) the trial, they will be more attentive and they (and those with whom they converse about their jury service later) will be more willing to serve as jurors in the future.

4. *Time limits are difficult to administer:*

I disagree. I charge time (which is kept by my law clerk) against the inquiring party on direct and cross examination. With respect to objections, very few of which end up at sidebar in my session, time is charged against the "losing" party (or split evenly if it's a "draw"). I have had no "gaming" of the system, stalling or otherwise, and if I ever perceive any such tactic, the offender will be sanctioned.

5. *Time limits are often unfair to plaintiffs:*

I have not seen that in my trials because, although plaintiffs have the burden of proof, generally it takes just about as long to describe how a product is not dangerous as it does to describe how it caused the injury, etc. Plaintiffs rarely complain about my time allocation and if they do, cogently, I allow for differentials.

6. *There are no rules or regulations about time limits so they tend to be applied arbitrarily:*

I am unaware that any of my time limits applied in the 100+ civil jury trials over which I have presided have been appealed and, hopefully, that is because I try to be scrupulously fair and sensitive to any objections made at the pretrial conference.

7. *The increased application of trial time limits represents an ill-advised transfer of power from advocate to adjudicator and from jury to judge:*

I agree with Prof. Engstrom that the trial judge should not have complete control over the "pace, content and character of the litigation" but that judge certainly does have a duty not to let those factors get out of control or adversely affect the jury to which time is of the essence. Ultimately, in my humble opinion, discretion on how long a trial should last is better left in the hands of neutral judges rather than zealous advocates.

8. *The imposition of time limits may "spring from the view of jury trial as a mistake", i.e., cases should settle before trials which are expensive and wasteful, and if they don't,*

the lawyers should be constrained:

I could not disagree more with this proposition and say, to the contrary, that my motivation for time limits is the opposite: it is to preserve the sanctity of jury trials which are the best way devised in the history of humankind to settle disputes. Jury trials are made better, crisper and more palatable to jurors if there are time limits.

9. *Time limits should not be imposed "routinely" or be used excessively or indiscriminately:*

I certainly agree that setting excessive and/or indiscriminate time limits is out of order and I am unaware of any federal judge who does that, but I do "routinely" impose time limits. Lawyers who frequent my session are well aware of that and I think have come to understand and respect my reasons for doing so. It is a net benefit to our judicial system.

It would be unfair to suggest that, by concentrating on her objections, Prof. Engstrom is altogether opposed to time limits in civil jury trials. Her note presents a balanced review of the practice and I agree with many of her misgivings. It is just that, on balance, I come down in favor of time limits for a few more compelling reasons:

1. Time limits do, indeed, "empower lawyers … to decide in an ordered and organized way what should stay and what should go without repeated judicial interference" 106 Georgetown Law Jour., 964.

2. "Imposing firm limits on the length of a trial is one of the most important ways a court can assure a just, speedy and inexpensive determination." Tersigni Wyeth-Ayerst Pharm., Inc. No. 11-cv-10466, 2014 WL 793983 at *1 (D. Mass. Feb. 28, 2014)(Stearns, J.).

3. The ability to be able to predict the length of the jury trial and to stick to that prediction is extremely valuable in gaining and keeping the good will of serving jurors.

4. The preservation of jury trials depends upon the availability of willing jurors which may well be directly proportional to the amount of time we demand of jurors to perform their civic duties.

Ultimately, time limitations in jury trials not only save everybody time but also limit expense for the parties and encourage (I would argue ensure) more efficient and effective jury trials. That is my objective and perhaps time limits may have the added advantage of promoting the preservation of the jury trial itself which is important because, as they say, JURY MATTERS!

The Honorable Nathaniel Gorton *is one of our judicial advisors.*

‹ The Trial of Counting Trials

Seating a Civil Jury During a Pandemic ›

Magistrate Judges on Settlement

Hon. William V. Gallo, U.S. Magistrate Judge

Hon. Michael S. Berg, U.S. Magistrate Judge

Hon. Nita L. Stormes, U.S. Magistrate Judge

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SCOTT SCHUTZA, Plaintiff, v. BOOT WORLD, INC.; and DOES 1-10, Defendants.	Case No.: 20cv2395-BAS (NLS) **NOTICE AND ORDER SETTING EARLY NEUTRAL EVALUATION CONFERENCE IN AN A.D.A. CASE**

IT IS ORDERED that an Early Neutral Evaluation ("ENE") of your case will be held on **May 19, 2021** at **10:00 a.m.** before Magistrate Judge Nita L. Stormes. In light of the Chief Judge Orders regarding suspension of certain proceedings due to the Covid-19 pandemic, the ENE will be held **via videoconference** for all attendees, per instructions below. *See* Chief Judge Order Nos. 18, 24, 27, 30, 33, 34, 40, 42.

The following are **mandatory** guidelines for preparing for the ENE.

1. **Purpose of Conference:** The purpose of the ENE is to permit an informal discussion between the attorneys, parties, and the settlement judge of every aspect of the lawsuit in an effort to achieve an early resolution of the case. All conference discussions will be informal, off the record, privileged and confidential. Counsel for any non-English speaking parties is responsible for arranging for the appearance of an interpreter at the conference.

2. **Full Settlement Authority Required:** In addition to counsel who will try the case, a party or party representative with **full settlement authority** must be present for the conference. In the case of a corporate entity, an authorized representative of the corporation 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. Counsel for a government entity may be excused from this requirement so long as the government attorney who attends the ENE conference (1) has primary responsibility for handling the case; and (2) may negotiate settlement offers which the attorney is willing to recommend to the government official having ultimate settlement authority.

3. **Pre Conference Procedures.** Based upon the court's familiarity with these matters and in the interest of promoting the just, efficient and economical determination of this action, the court issues the following additional **Mandatory Procedures** to be followed in preparation for the ENE.

A. All formal discovery is stayed until the completion of the ENE.

B. No later than **April 21, 2021**, plaintiff's counsel shall serve on opposing counsel and lodge with Magistrate Judge Stormes' chambers a statement, **no longer than five (5) pages**, including:

i. An itemized list of all claimed violations of the Americans with Disabilities Act on the subject premises;

ii. A statement of the amount of damages claimed by plaintiff in this action and by what legal authority plaintiff is entitled to such damages;

iii. The amount claimed for attorney's fees and costs; and

iv. The plaintiff's demand for settlement of the case in its entirety.

v. Plaintiff's statement must include as an attachment, any expert or

consultant report regarding the premises and the alleged violations. Plaintiff's counsel shall also be prepared to present for in camera review documentation in support of the amount of attorney's fees and costs claimed.

C. After service of plaintiff's statement and no later than **May 5, 2021**, counsel for the parties, and any unrepresented parties, **must meet and confer** regarding settlement of (1) the alleged premise violations, and (2) damages, costs and attorney's fees. Plaintiff's counsel is responsible to arrange the conference. In light of the Covid-19 pandemic, the parties may satisfy the meet and confer requirement in any of the following ways: 1) by meeting in person physically at the subject premises if it is accessible and the parties are able to follow social distancing requirements consistent with state orders; 2) by videoconference where Defendant's counsel is physically at the subject premises if it is accessible; or 3) if the subject premises is not accessible at this time, by videoconference or telephone. The parties must agree to one of these options. **The meet and confer obligation cannot be satisfied by the exchange of letters.**

D. No later than **May 12, 2021**, counsel for all parties shall lodge with Magistrate Judge Stormes' chambers a **joint statement no longer than two (2) pages**, certifying that the required in-person conference between counsel took place and setting forth the results of the meet and confer and the issues remaining to be discussed at the ENE.

E. **The failure of any party to follow these mandatory procedures shall result in the imposition of sanctions.**

4. **Appearances via Videoconference Required:** All parties, adjusters for insured defendants, and other representatives of a party having full and complete authority to enter into a binding settlement, and the principal attorneys responsible for the litigation, must be present **via videoconference** and be legally and factually prepared to

discuss settlement of the case. Full authority to settle means that the individuals at the ENE 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, 653 (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 the face-to-face conference. *Pitman*, 216 F.R.D. at 486. Limited or sum certain authority is not adequate. *Nick v. Morgan's Foods, Inc.*, 270 F.3d 590, 595-597 (8th Cir. 2001). **Counsel appearing without their clients (whether or not counsel has been given settlement authority) will be cause for immediate imposition of sanctions and will also result in the immediate termination of the conference.** To facilitate the videoconference ENE, the parties shall abide by the following procedures:

a. The Court will use its official Zoom video conferencing account to hold the ENE. **If you are unfamiliar with Zoom:** Zoom is available on computers through a download on the Zoom website (https://zoom.us/meetings). Participants **must use laptops or desktop computers** for the conference. Participants are encouraged to create an account, install Zoom and familiarize themselves with Zoom in advance of the ENE.[1] There is a cost-free option for creating a Zoom account.

b. Prior to the start of the ENE, the Court will email each participant an invitation to join a Zoom video conference. Participants shall join the

[1] For help getting started with Zoom, visit: https://support.zoom.us/hc/en-us/categories/200101697-Getting-Started

video conference by following the ZoomGov Meeting hyperlink in the invitation. **Participants who do not have Zoom already installed on their device when they click on the ZoomGov Meeting hyperlink will be prompted to download and install Zoom before proceeding**. Zoom may then prompt participants to enter the password included in the invitation. All participants will be placed in a waiting room until the ENE begins.

c. Each participant should plan to join the Zoom video conference **at least five minutes before** the start of the ENE to ensure that the conference begins promptly at 10:00 a.m. **The Zoom e-mail invitation may indicate an earlier start time, but the ENE will begin at the Court-scheduled time.**

d. Zoom's functionalities will allow the Court to conduct the ENE as it ordinarily would conduct an in-person one. The Court will divide participants into separate, confidential sessions, which Zoom calls Breakout Rooms.[2] In a Breakout Room, the Court will be able to communicate with participants from a single party in confidence. Breakout Rooms will also allow parties and counsel to communicate confidentially without the Court.

e. No later than **May 12, 2021**, counsel for each party shall send an e-mail to the Court at efile_stormes@casd.uscourts.gov containing the following:

   i. The **name and title of each participant**, including all parties and party representatives with full settlement authority, claims adjusters for insured defendants, and the primary attorney(s)

---

[2] For more information on what to expect when participating in a Zoom Breakout Room, visit: https://support.zoom.us/hc/en-us/articles/115005769646

responsible for the litigation;

ii. An **e-mail address for each participant** to receive the Zoom video conference invitation; and

iii. A **telephone number where each participant** may be reached so that if technical difficulties arise, the Court will be in a position to proceed telephonically instead of by video conference. (If counsel prefers to have all participants of their party on a single conference call, counsel may provide a conference number and appropriate call-in information, including an access code, where all counsel and parties or party representatives for that side may be reached as an alternative to providing individual telephone numbers for each participant.)

iv. A **cell phone number for that party's preferred point of contact** (and the name of the individual whose cell phone it is) for the Court to use during the ENE to alert counsel via text message that the Court will soon return to that party's Breakout Room, to avoid any unexpected interruptions of confidential discussions.

f. All participants shall display the same level of professionalism during the ENE and be prepared to devote their full attention to the ENE as if they were attending in person.

5. **New Parties Must Be Notified by Plaintiff's Counsel:** Plaintiff's counsel shall give notice of the ENE to parties responding to the complaint after the date of this notice.

6. **Case Management Under the Amended Federal Rules:** In the event the case does not settle at the ENE, the court will issue a scheduling order setting deadlines for completing discovery and dates for other pre-trial proceedings.

7. **Requests to Continue an ENE Conference:** Local Rule 16.1(c) requires

that an ENE take place within 45 days of the filing of the first answer. Requests to continue ENEs are rarely granted. However, the Court will consider formal, written ex parte requests to continue an ENE conference when extraordinary circumstances exist that make a continuance appropriate. In and of itself, having to travel a long distance to appear in person is not "extraordinary." Absent extraordinary circumstances, requests for continuances will **not be considered unless submitted in writing** no less than seven (7) days prior to the scheduled conference.

Questions regarding this case or the mandatory guidelines set forth herein may be directed to the Magistrate Judge's law clerks at (619) 557-5391.

A Notice of Right to Consent to Trial Before a United States Magistrate Judge is attached for your information.

IT IS SO ORDERED.

Dated: April 9, 2021

Hon. Nita L. Stormes
United States Magistrate Judge

NOTICE OF RIGHT TO CONSENT TO TRIAL
BEFORE A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. § 636(c), you are notified that a U.S. Magistrate Judge of this district may, upon the consent of all parties, on form 1A available in the Clerk's office, conduct any or all proceedings, including a jury or non-jury trial, and order the entry of a final judgment. Counsel for the plaintiff is responsible to obtain the consent of all parties, if they want to consent.

Be aware that your decision to consent or not to consent is entirely voluntary. Only if all parties consent will the Judge or Magistrate Judge to whom the case has been assigned be informed of your decision.

Judgments of the U.S. Magistrate Judges are appealable to the U.S. Court of Appeals in accordance with this statute and the Federal Rules of Appellate Procedure.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CHRIS D. DEHGHANI, Plaintiff, v. MIDLAND CREDIT MANAGEMENT, INC., Defendant.	Case No.: 21cv319-WQH (NLS) **NOTICE AND ORDER SETTING EARLY NEUTRAL EVALUATION CONFERENCE**

IT IS ORDERED that an Early Neutral Evaluation Conference ("ENE") of your case be held **July 13, 2021** starting at **10:00 a.m.** In light of the Chief Judge Orders regarding suspension of certain proceedings due to the Covid-19 pandemic, the ENE will be held **via videoconference** for all attendees, per instructions below. *See* Chief Judge Order Nos. 18, 24, 27, 30, 33, 34, 40, 42, 47, 50, 52, 52A, 52B, 52C.

The following are **mandatory** guidelines for preparing for the ENE.

1. **Purpose of Conference:** The purpose of the ENE is to permit an informal discussion between the attorneys and the settlement judge of every aspect of the lawsuit in an effort to achieve an early resolution of the case. All conference discussions will be informal, off the record, privileged and confidential. The principal attorneys responsible for the litigation must attend and must be legally and factually prepared to discuss

settlement of the case.

2. **Full Settlement Authority Required:** In addition to counsel who will try the case, a party or party representative with **full settlement authority** must be present for the conference. In the case of a corporate entity, an authorized representative of the corporation 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. Counsel for a government entity may be excused from this requirement so long as the government attorney who attends the ENE conference (1) has primary responsibility for handling the case; and (2) may negotiate settlement offers which the attorney is willing to recommend to the government official having ultimate settlement authority.

3. **Confidential ENE Statements Required:** No later than **seven court days** before the ENE, the parties must submit confidential statements of five pages or less directly to the chambers of Magistrate Judge Stormes outlining the nature of the case, the claims, and the defenses. **These statements shall not be filed or served on opposing counsel.** They can be lodged via email at efile_stormes@casd.uscourts.gov. If exhibits are attached and the total submission amounts to more than 20 pages, a hard copy must be delivered directly to chambers.

4. **Appearances via Videoconference Required:** All parties, adjusters for insured defendants, and other representatives of a party having full and complete authority to enter into a binding settlement, and the principal attorneys responsible for the litigation, must be present **via videoconference** and be legally and factually prepared to discuss settlement of the case. Full authority to settle means that the individuals at the ENE 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, 653 (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 the face-to-face conference. *Pitman*, 216 F.R.D. at 486. Limited or sum certain authority is not adequate. *Nick v. Morgan's Foods, Inc.*, 270 F.3d 590, 595-597 (8th Cir. 2001). **Counsel appearing without their clients (whether or not counsel has been given settlement authority) will be cause for immediate imposition of sanctions and will also result in the immediate termination of the conference.** To facilitate the videoconference ENE, the parties shall abide by the following procedures:

a. The Court will use its official Zoom video conferencing account to hold the ENE. **If you are unfamiliar with Zoom:** Zoom is available on computers through a download on the Zoom website (https://zoom.us/meetings). Participants **must use laptops or desktop computers** for the conference. Participants are encouraged to create an account, install Zoom and familiarize themselves with Zoom in advance of the ENE.[1] There is a cost-free option for creating a Zoom account.

b. Prior to the start of the ENE, the Court will email each participant an invitation to join a Zoom video conference. Participants shall join the video conference by following the ZoomGov Meeting hyperlink in the invitation. **Participants who do not have Zoom already installed on their device when they click on the ZoomGov Meeting hyperlink will be prompted to download and install Zoom before**

---

[1] For help getting started with Zoom, visit: https://support.zoom.us/hc/en-us/categories/200101697-Getting-Started

proceeding. Zoom may then prompt participants to enter the password included in the invitation. All participants will be placed in a waiting room until the ENE begins.

c. Each participant should plan to join the Zoom video conference **at least five minutes before** the start of the ENE to ensure that the conference begins promptly at 10:00 a.m. **The Zoom e-mail invitation may indicate an earlier start time, but the ENE will begin at the Court-scheduled time.**

d. Zoom's functionalities will allow the Court to conduct the ENE as it ordinarily would conduct an in-person one. The Court will divide participants into separate, confidential sessions, which Zoom calls Breakout Rooms.[2] In a Breakout Room, the Court will be able to communicate with participants from a single party in confidence. Breakout Rooms will also allow parties and counsel to communicate confidentially without the Court.

e. No later than **seven court days before the ENE**, counsel for each party shall send an e-mail to the Court at efile_stormes@casd.uscourts.gov containing the following:

i. The **name and title of each participant**, including all parties and party representatives with full settlement authority, claims adjusters for insured defendants, and the primary attorney(s) responsible for the litigation;

ii. An **e-mail address for each participant** to receive the Zoom video conference invitation; and

iii. A **telephone number where each participant** may be reached

---

[2] For more information on what to expect when participating in a Zoom Breakout Room, visit: https://support.zoom.us/hc/en-us/articles/115005769646

so that if technical difficulties arise, the Court will be in a position to proceed telephonically instead of by video conference. (If counsel prefers to have all participants of their party on a single conference call, counsel may provide a conference number and appropriate call-in information, including an access code, where all counsel and parties or party representatives for that side may be reached as an alternative to providing individual telephone numbers for each participant.)

iv. A **cell phone number for that party's preferred point of contact** (and the name of the individual whose cell phone it is) for the Court to use during the ENE to alert counsel via text message that the Court will soon return to that party's Breakout Room, to avoid any unexpected interruptions of confidential discussions.

f. All participants shall display the same level of professionalism during the ENE and be prepared to devote their full attention to the ENE as if they were attending in person.

5. **New Parties Must Be Notified by Plaintiff's Counsel:** Plaintiff's counsel must give notice of the ENE to parties responding to the complaint after the date of this notice.

6. **Case Management Under the Amended Federal Rules:** If the case does not settle at the ENE, the parties can expect to leave the ENE with Rule 26 compliance dates or deadlines. Parties shall be prepared to discuss the following matters at the conclusion of the ENE conference:

a. Any anticipated objections under Federal Rule of Civil Procedure 26(a)(1)(E) to the initial disclosure provisions of Federal Rule of Civil Procedure 26(a)(1)(A-D);

b. The scheduling of the Federal Rule of Civil Procedure 26(f)

conference within 14 days following the ENE;

c. The date of initial disclosure and the date for lodging the discovery plan within 7 days following the Rule 26(f) conference; and

d. The scheduling of a Case Management Conference pursuant to Federal Rule of Civil Procedure 16(b) within 14 days following the Rule 26(f) conference.

The Court will issue an order following the ENE addressing these issues and setting dates as appropriate.

7. **Requests to Continue an ENE Conference:** Local Rule 16.1(c) requires that an ENE take place within 45 days of the filing of the first answer. Requests to continue ENEs are rarely granted. However, the Court will consider formal, written ex parte or joint motion requests to continue an ENE conference when extraordinary circumstances exist that make a continuance appropriate. Absent extraordinary circumstances, requests for continuances **will not be considered unless submitted in writing** no less than seven (7) days before the scheduled ENE.

Questions regarding this case or the mandatory guidelines set forth herein may be directed to the Magistrate Judge's law clerks at (619) 557-5391.

A Notice of Right to Consent to Trial Before a United States Magistrate Judge is attached for your information.

IT IS SO ORDERED.

Dated: June 10, 2021

Hon. Nita L. Stormes
United States Magistrate Judge

NOTICE OF RIGHT TO CONSENT TO TRIAL
BEFORE A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. § 636(c), you are notified that a U.S. Magistrate Judge of this district may, upon the consent of all parties, on form 1A available in the Clerk's office, conduct any or all proceedings, including a jury or non-jury trial, and order the entry of a final judgment. Counsel for the plaintiff is responsible to obtain the consent of all parties, if they want to consent.

Be aware that your decision to consent or not to consent is entirely voluntary. Only if all parties consent will the Judge or Magistrate Judge to whom the case has been assigned be informed of your decision.

Judgments of the U.S. Magistrate Judges are appealable to the U.S. Court of Appeals in accordance with this statute and the Federal Rules of Appellate Procedure.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JANEY SALGADO,

Plaintiff,

v.

JON QUICK; RICHARD MONTES; and DOES 1 through 50, inclusive,

Defendant.

Case No.: 21cv600-MMA (NLS)

ORDER:

(1) FOLLOWING EARLY NEUTRAL EVALUATION CONFERENCE;

(2) SETTING RULE 26 COMPLIANCE; and

(3) NOTICE OF CASE MANAGEMENT CONFERENCE VIA VIDEOCONFERENCE

On July 14, 2021, the court held an Early Neutral Evaluation Conference. The case did not settle. The court discussed compliance with Federal Rule of Civil Procedure 26, and now **ORDERS**:

1. Plaintiff's deadline to file an amended complaint is **July 30, 2021**.

2. Counsel must appear **via videoconference** on **August 25, 2021** at **10:00 a.m.** before Magistrate Judge Stormes for a Case Management Conference pursuant to Federal Rule of Civil Procedure 16(b). By **August 18, 2021**, parties/counsel must email the Court at efile_stormes@casd.uscourts.gov to identify the name and title of everyone

who will be attending the conference, an e-mail address for each participant to receive the Zoom invitation, and a telephone number where each participant may be reached in the event of technical issues.

3. The Rule 26(f) conference must be completed by **August 11, 2021**.

4. The parties must lodge a Joint Discovery Plan with Judge Stormes by **August 18, 2021**. The Joint Discovery Plan must address all points in the attached "Model Rule 26(f) Report and Joint Case Management Statement."

5. Initial disclosures pursuant to Rule 26(a)(1)(A-D) must occur by **August 18, 2021**.

Plaintiff's(s') counsel must serve a copy of this order on all parties that enter the case from this point forward. Each responsible attorney of record and all parties representing themselves must participate in the conference. Represented parties need not participate.

IT IS SO ORDERED.

Dated: July 14, 2021

Hon. Nita L. Stormes
United States Magistrate Judge

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

If yes, please fill out the attached consent form and lodge it with the district judge.

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)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JANEY SALGADO,
Plaintiff(s)

v.

JON QUICK; RICHARD MONTES; and DOES 1 through 50, inclusive,
Defendant(s)

Case No.: 21cv600-MMA (NLS)

NOTICE, CONSENT, AND REFERENCE OF A CIVIL ACTION TO A MAGISTRATE JUDGE

Notice of a magistrate judge's availability. A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States court of appeals like any other judgment of this court. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

Consent to a magistrate judge's authority. The following parties ☐ Consent / ☐ Do Not Consent

to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

Printed Names	*Signatures of parties and attorneys*	*Dates*

REFERENCE ORDER

IT IS ORDERED: This case is referred to United States Magistrate Judge Nita L. Stormes, to conduct all proceedings and order entry of a final judgment in accordance with 28 U.S.C. § 636(c), Fed. R. Civ. P. 73, and CivLR 73.1.

Date

United States District Judge

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DON GAYNOR; NANCY GAYNOR, Plaintiffs, v. CHAD SLADE; LINDA McCRAKEN; and DOES 1 through 30, inclusive, Defendants.	Case No.: 21cv777-GPC (NLS) **SCHEDULING ORDER REGULATING DISCOVERY AND OTHER PRE-TRIAL PROCEEDINGS**

Pursuant to Rule 16.1(d) of the Local Rules, a Case Management Conference was held on **August 4, 2021**. After consulting with the attorneys of record for the parties and being advised of the status of the case, and good cause appearing, **IT IS HEREBY ORDERED**:

1. All fact discovery shall be completed by all parties by **February 18, 2022**. "Completed" means that all discovery under Rules 30-36 of the Federal Rules of Civil Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient period of time in advance of the cut-off date, **so that it may be completed** by the cut-off date, taking into account the times for service, notice and response as set forth in the Federal Rules of Civil Procedure. **Counsel shall promptly and in good faith meet and confer with regard to all discovery disputes in compliance with Local Rule 26.1(a).** The

Court expects counsel to make every effort to resolve all disputes without court intervention through the meet and confer process. If the parties reach an impasse on any discovery issue, counsel shall file an appropriate motion within the time limit and procedures outlined in the undersigned magistrate judge's chambers rules. **A failure to comply in this regard will result in a waiver of a party's discovery issue. Absent an order of the court, no stipulation continuing or altering this requirement will be recognized by the court.**

2. The parties shall designate their respective experts in writing by **April 8, 2022**. Pursuant to Fed. R. Civ. P. 26(a)(2)(A), the parties must identify any person who may be used at trial to present evidence pursuant to Rules 702, 703 or 705 of the Fed. R. Evid. This requirement is not limited to retained experts. The date for exchange of rebuttal experts shall be by **April 29, 2022**. The written designations shall include the name, address and telephone number of the expert and a reasonable summary of the testimony the expert is expected to provide. The list shall also include the normal rates the expert charges for deposition and trial testimony.

3. By **April 8, 2022**, each party shall comply with the disclosure provisions in Rule 26(a)(2)(A) and (B) of the Federal Rules of Civil Procedure. This disclosure requirement applies to all persons retained or specially employed to provide expert testimony, or whose duties as an employee of the party regularly involve the giving of expert testimony. **Except as provided in the paragraph below, any party that fails to make these disclosures shall not, absent substantial justification, be permitted to use evidence or testimony not disclosed at any hearing or at the time of trial. In addition, the Court may impose sanctions as permitted by Fed. R. Civ. P. 37(c).**

4. Any party shall supplement its disclosure regarding contradictory or rebuttal evidence under Fed. R. Civ. P. 26(a)(2)(D) and 26(e) by **April 29, 2022**.

5. All expert discovery shall be completed by all parties by **May 30, 2022**. The parties shall comply with the same procedures set forth in the paragraph governing fact discovery. Failure to comply with this section or any other discovery order of the court

may result in the sanctions provided for in Fed. R. Civ. P. 37, including a prohibition on the introduction of experts or other designated matters in evidence.

6. All other pretrial motions, including those addressing Daubert issues related to dispositive motions must be filed by **June 27, 2022**. Pursuant to Honorable Gonzalo P. Curiel's Civil Pretrial & Trial Procedures, all motions for summary judgment shall be accompanied by a separate statement of undisputed material facts. Any opposition to a summary judgment motion shall include a response to the separate statement of undisputed material facts. Counsel for the moving party must obtain a motion hearing date from the law clerk of the judge who will hear the motion. Motion papers MUST be filed and served the same day of obtaining a motion hearing date from chambers. A briefing schedule will be issued once a motion has been filed. The period of time between the date you request a motion date and the hearing date may vary. Please plan accordingly. Failure to make a timely request for a motion date may result in the motion not being heard.

7. A Mandatory Settlement Conference shall be conducted on **September 15, 2022** at **10:00 a.m.** in the chambers of **Magistrate Judge Nita L. Stormes**. Counsel or any party representing himself or herself shall lodge confidential settlement briefs directly to chambers by **September 8, 2022**. All parties are ordered to read and to fully comply with the Chamber Rules of the assigned magistrate judge.

8. Pursuant to Honorable Gonzalo P. Curiel's Civil Pretrial & Trial Procedures, the parties are excused from the requirement of Local Rule 16.1(f)(2)(a); no Memoranda of Law or Contentions of Fact are to be filed.

9. Counsel shall comply with the pre-trial disclosure requirements of Fed. R. Civ. P. 26(a)(3) by **September 30, 2022**. Failure to comply with these disclosure requirements could result in evidence preclusion or other sanctions under Fed. R. Civ. P. 37.

10. Counsel shall meet and take the action required by Local Rule 16.1(f)(4) by **October 7, 2022**. At this meeting, counsel shall discuss and attempt to enter into

stipulations and agreements resulting in simplification of the triable issues. Counsel shall exchange copies and/or display all exhibits other than those to be used for impeachment. The exhibits shall be prepared in accordance with Local Rule 16.1(f)(4)(c). Counsel shall note any objections they have to any other parties' Pretrial Disclosures under Fed. R. Civ. P. 26(a)(3). Counsel shall cooperate in the preparation of the proposed pretrial conference order.

11. Counsel for plaintiff will be responsible for preparing the pretrial order and arranging the meetings of counsel pursuant to Civil Local Rule 16.1(f). By **October 14, 2022**, plaintiff's counsel must provide opposing counsel with the proposed pretrial order for review and approval. Opposing counsel must communicate promptly with plaintiff's attorney concerning any objections to form or content of the pretrial order, and both parties shall attempt promptly to resolve their differences, if any, concerning the order.

12. The Proposed Final Pretrial Conference Order, including objections to any other parties' Fed. R. Civ. P. 26(a)(3) Pretrial Disclosures shall be prepared, served and lodged with the assigned district judge by **October 21, 2022**, and shall be in the form prescribed in and comply with Local Rule 16.1(f)(6).

13. The final Pretrial Conference is scheduled on the calendar of the **Honorable Gonzalo P. Curiel** on **October 28, 2022** at **1:30pm**. The Court will set a trial date during the pretrial conference. The Court will also schedule a motion in limine hearing date during the pretrial conference.

14. The parties must review the chambers' rules for the assigned district judge and magistrate judge.

15. A post trial settlement conference before a magistrate judge may be held within 30 days of verdict in the case.

16. The dates and times set forth herein will not be modified except for good cause shown.

17. Briefs or memoranda in support of or in opposition to all motions noticed for the same motion day shall not exceed twenty-five (25) pages in length, per party, without

leave of the judge who will hear the motion. No reply memorandum shall exceed ten (10) pages without leave of a district court judge. Briefs and memoranda exceeding ten (10) pages in length shall have a table of contents and a table of authorities cited.

18. Plaintiff's counsel shall serve a copy of this order on all parties that enter this case hereafter.

IT IS SO ORDERED.

Dated: August 4, 2021

Hon. Nita L. Stormes
United States Magistrate Judge

HONORABLE MICHAEL S. BERG
U.S. MAGISTRATE JUDGE
CIVIL 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.

I. Civility. First and foremost, the Court does not simply expect, but rather demands civility from the parties. As part of its Chambers Rules, the Court adopts the "Ethics, Professionalism and Civility Guidelines" enacted by the Association of Business Trial Lawyers and the San Diego County Bar Association. Parties appearing before this Court must be aware of and adhere to these guidelines. The guidelines may be found here: **Guidelines**.

II. 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. For civil matters, contact the law clerks in chambers at (619) 557-6632. For criminal matters, call (619) 557-6695.

A. Letters, Faxes, or E-mails. Letters, faxes, or e-mails to chambers are prohibited unless specifically requested by the Court.

B. Telephone Calls. Telephone calls to chambers are permitted only for matters such as scheduling and calendaring, or as specifically permitted in 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.

C. Lodging Documents. When an order directs you to "lodge" a document with chambers, you should either send it via e-mail to efile_berg@casd.uscourts.gov, or deliver the document to Judge Berg's chambers, 221 West Broadway, Suite 2160, San Diego, CA 92101. Proposed orders must be lodged in **Word format**.

D. Courtesy Copies. Courtesy copies of filings **exceeding 20 pages** must be submitted directly to chambers, 221 West Broadway, Suite 2160, San Diego, CA 92101. Unless expressly required by the Court, courtesy copies must be identical to the electronically-filed documents. The pages of each pleading must be firmly bound. If a pleading or settlement brief has exhibits, the exhibits must be tabbed.

E. Transcript Requests. Requests for hearing transcripts are no longer submitted through the courtroom deputy. Attorneys must submit transcript requests online, through CM/ECF. Detailed instructions are on the Court's website, under the "Attorneys" tab.

III. **Early Neutral Evaluation ("ENE") Conference and Other Settlement Conferences.** All named parties and party representatives (including claims adjusters for insured defendants), as well as the principal attorney(s) responsible for the litigation, must be present **in person** and legally and factually prepared to discuss and resolve the case at the ENE or any other settlement conference. **Please see the order scheduling the conference for more information.** The Court will **not** grant requests to excuse a required party from personally appearing absent extraordinary circumstances. Distance of travel alone does **not** constitute an "extraordinary circumstance."

IV. **Discovery Disputes.** (Fed. R. Civ. P. 26–37, 45; Civ. LR 26.1)

A. **Meet and Confer Requirement.** Counsel are to promptly meet and confer regarding all disputed issues, pursuant to the requirements of Civil Local Rule 26.1.a.

B. **Trigger Dates and Deadlines for Raising Discovery Disputes With the Court.**

1. **Written Discovery.** For written discovery (e.g. interrogatories, requests for production) or third-party discovery, the event giving rise to the discovery dispute is the date of service of the response, **not** the date on which counsel reach an impasse in meet and confer efforts. If a party fails to provide a discovery response, the event giving rise to the discovery dispute is the date response was due. If the parties are unable to resolve a dispute regarding written discovery through the meet and confer process, they must contact the Court to request an informal discovery conference within **thirty (30) days** of the event giving rise to the discovery dispute.

2. **Depositions.** If the dispute arises during a deposition regarding an issue of privilege, enforcement of a court-ordered limitation on evidence, or pursuant to Fed. R. Civ. P. 30(d), counsel should suspend the deposition and immediately meet and confer. If the dispute is not resolved in the meet and confer process, counsel may call Judge Berg's chambers for an immediate ruling on the dispute. If Judge Berg is available, he will either rule on the dispute or give counsel further instructions on how to proceed. If Judge Berg is unavailable, counsel must mark the deposition at the point of the dispute and continue with the deposition. Counsel must contact the Court to request an informal discovery conference within **fourteen (14) days** of the completion of the transcript of the relevant portion of the deposition. If counsel cannot informally resolve their disputes, the Court may require the parties to file a joint motion as provided below.

C. **Informal Discovery Dispute Conference. No discovery motion may be filed until the Court has conducted its pre-motion telephonic conference, unless the movant has obtained leave of Court. The Court will strike any discovery motion that does not comply with this process.**

1. Requesting a discovery conference. Within the time limits indicated above, parties who wish to file a discovery motion must first place a joint call to chambers to obtain a date for an informal discovery conference from Judge Berg's law clerk.

2. If directed to do so by the Court when the parties call to request a discovery conference, the parties shall exchange **informal letter briefs** and lodge the same by e-mail to Judge Berg's Chambers at efile_berg@casd.uscourts.gov. The informal letter brief must specify the issue(s) in dispute and the party's position and supporting authority for each issue. Counsel should not attach copies of any meet and confer correspondence. The Court will review the lodgments before the discovery conference.

3. If the parties cannot resolve their discovery dispute during the discovery conference with Judge Berg, **they will be given a deadline to file a Joint Discovery Motion**.

D. Joint Discovery Motion. If given permission and a deadline from the Court, the parties may file a Joint Discovery Motion.

1. The Joint Discovery Motion must include the following:

a. The Interrogatory, Request for Admission, Request for Production, or deposition question in dispute;

b. The verbatim response to the request or question by the responding party;

c. A statement by the propounding party as to why a further response should be compelled; and

d. A precise statement by the responding party as to the basis for all objections and/or claims of privilege.

2. The Joint Discovery Motion shall be accompanied by a declaration of compliance with the meet and confer requirement. It may also include points and authorities (not to exceed five (5) pages per side).

3. The joint motion shall not be accompanied by copies of correspondence or electronic mail between counsel unless it is evidence of an agreement alleged to have been breached.

4. Opportunity to Participate. 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. 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 **five (5) business days** prior to the anticipated filing date of the joint motion 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 discovery motion must provide opposing counsel with a complete draft of the joint motion and any exhibits or supporting declarations **at least five (5) business days** prior to the anticipated filing date. An *ex parte* motion or application to compel discovery that does 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.

E. Hearings on Discovery Motions. Following the filing of the Joint Discovery Motion, the Court will either issue an order, or will hold a telephonic or in-person discovery hearing.

F. These rules address the most common discovery disputes. **If litigants encounter circumstances that do not fit within these rules, they should contact Judge Berg's law clerk for applicable procedures.**

V. Continuances. Whether made by joint motion or *ex parte* application, any request to continue an ENE, MSC, or scheduling order deadline shall be made in writing no less than **seven (7) calendar days** before the affected date. The request shall include:

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;

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

F. A declaration from counsel of record detailing the steps taken to comply with the dates and deadlines set in the order, and the specific reasons why the deadlines cannot be met.

VI. Stipulated Protective Orders.

A. When filing a motion for entry of a stipulated protective order, the motion must include the language of the stipulated protective order and the signatures of counsel for all parties. A proposed stipulated protective order must be e-mailed to efile_berg@casd.uscourts.gov.

B. The proposed protective order must contain:

1. The following language:

"No document may be filed under seal, except pursuant to a court order that authorizes the sealing of the particular document, or portion of the document. 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, a party must file a redacted version of any document that it seeks to file 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.' 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."

2. A provision regarding the disposition of confidential or sealed documents and information after the case is closed.

VII. *Ex Parte* Motions. All *ex parte* motions must comply with Civ. LR 83.3(g). Further, declaration(s) in support of the *ex parte* motion must describe meet and confer efforts made to resolve the dispute without the Court's intervention. After service of the *ex parte* motion, opposing counsel will ordinarily be given until 5:00 p.m. on the next business day to respond or contact the assigned law clerk to request additional time. The Court will either issue an order on the written submissions or set a date and time for a hearing.

HONORABLE WILLIAM V. GALLO
U.S. MAGISTRATE JUDGE
CIVIL 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. Accordingly, any Order issued by the Court that deviates from these Rules supersedes these Rules.

I. Communications With Chambers

A. Letters, faxes, or emails. Letters, faxes, or e-mails to chambers are disfavored unless specifically requested by the Court. If letters, faxes, or emails are requested, copies of the same must be simultaneously delivered to all counsel. Copies of correspondence between counsel should not be sent to the Court.

B. Telephone Calls. Except as noted in Rule IV(B), telephone calls to chambers are permitted only for matters such as scheduling and calendaring. *Ex parte* communications are prohibited except where the purpose of the call is purely administrative-*e.g.*, to provide a telephone number for a telephonic status conference-or in exigent circumstances. In all other circumstances, counsel shall call the Court jointly. Court personnel are prohibited from giving legal advice or discussing the merits of a case. Call Judge Gallo's chambers at (619) 557-6384 and address your scheduling inquiries to the Research Attorney assigned to the case.

C. Lodging Documents. When an Order directs you to "lodge" documents with the Court, either send it via e-mail to efile_Gallo@casd.uscourts.gov, or deliver the document to Judge Gallo's chambers. Ordinarily, documents under 20 pages in total length, including exhibits, should be e-mailed in PDF format *as one PDF file*.

II. Early Neutral Evaluation ("ENE") Conferences or Other Settlement Conferences ("SC")

A. Statements Required. The parties shall submit directly to Judge Gallo's chambers an ENE or SC Statement of **five (5)** double spaced pages or less, excluding exhibits, using 14-point font which, outlines the nature of the case, the claims, the defenses, and the parties' positions regarding settlement of the case. Exhibits, if submitted, shall not contain argument. Statements in excess of **five (5) pages**, exclusive of non-argumentative exhibits, will not be considered unless the Court has authorized an oversized statement.

It is the Court's view that resolution of lawsuits is generally facilitated when parties share information. Accordingly, the parties are required to exchange their ENE or SC Statements with all other parties and to lodge a confidential or non-confidential Statement with the Court. The confidential Statements lodged with the Court may contain confidential information about the settlement process or the party's settlement position that has not been

shared with opposing parties. The Court's Order that schedules the ENE or SC will set the deadline for exchanging and lodging Statements.

B. **Lodging of Statements.** The ENE or SC Statements should be e-mailed to Judge Gallo's chambers: efile_Gallo@casd.uscourts.gov. Ordinarily, Statements and included exhibits under 20 pages in total length should be e-mailed in PDF format *as one PDF file*.

C. **Time Allotment.** The Court generally allots two (2) hours for ENEs and SCs. Counsel should be prepared to be succinct and to the point. Requests for additional time must be made in writing and included in the party's ENE or SC Statement and accompanied by a short explanation.

D. **Pre-ENE or pre-SC Status Conference.** In addition to holding an ENE and SC, the Court may also hold an attorneys-only telephonic pre-ENE or SC status conference with each party separately. The intended purpose of this conversation is for the Court's benefit in assessing, in advance of the ENE or SC, settlement prospects and each party's concerns, challenges, and whether the Court can assist in alleviating these. These conversations will be confidential and off the record.

The scheduling Order that sets the ENE or SC will also set the deadline by which the parties shall filed their ENE or SC Statements as well as the date and time of the pre-ENE or SC telephonic status conference.

E. **Personal Attendance Required.** The Court requires all named parties, all counsel, and any other person(s) whose authority is required to negotiate and enter into settlement to appear **in person** at the ENE and SCs. Please see the order scheduling the conference for more information. The Court will **not** grant requests to excuse a required party from personally appearing, absent extraordinary circumstances. Distance or cost of travel alone do **not** constitute an "extraordinary circumstance." If counsel still wish 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 submitting the request **in writing** at least **fourteen (14)** days before the scheduled ENE or SC. The request must be **filed** on the docket through CM/ECF.

F. **Pre-ENE or pre-SC Settlement.** If the case is settled in its entirety before the scheduled date of the ENE or SC, counsel must file a Notice of Settlement and notify Judge Gallo's chambers as soon as possible, but no later than 24 hours before the scheduled ENE or SC.

III. Case Management Conferences ("CMC")

A. Ordinarily, the Court conducts its CMCs immediately after the ENE if the ENE does not result in a settlement. The Order setting the ENE will specify deadlines for tasks related to the CMC. However, on rare occasions, and at the Court's sole discretion, the Court may hold a telephonic CMC approximately 45 days after the ENE. The Order setting the ENE will specify whether the CMC will be held immediately after the ENE or at a later date.

B. **Discovery Plans.** The parties are required to submit a Joint Discovery Plan as directed by the ENE scheduling order. The Joint Discovery Plan must be one document and must explicitly cover the parties' views and proposals for each item identified in Federal Rule of Civil Procedure 26(f)(3). **For additional information about discovery responses, please see Appendix A to these Chambers Rules.**

Please note: At a minimum, the discovery plan must identify and include the following mandatory items:

1. Identify the counsel who attended the Rule 26(f) conference, and the manner in which it was held (*i.e.*, in person or telephonic);

2. List the cases, if any, related to this one that are pending in any state or federal court with the case number and court;

3. List anticipated additional parties that should be included, when they can or will be added, and by whom they are wanted;

4. List anticipated interventions;

5. Describe class-action issues;

6. State whether each party represents that it has made the initial disclosures required by Rule 26(a). If not, describe the arrangements that have been made to complete the disclosures, and when initial disclosures will be completed;

7. Describe the proposed agreed discovery plan, including:

    a. By name and/or title, all witnesses counsel plans to depose in the case and a brief explanation as to why counsel wants to depose the witness. If counsel do not agree to the deposition of a specific witness, counsel must explain the legal basis for the objection;

    b. Whether counsel anticipate exceeding the maximum number of depositions set forth in Federal Rule of Civil Procedure 30 and, if so, whether counsel will stipulate to the excess number.

    c. Specific documents or categories of documents that counsel wants produced during discovery. If counsel disagree about the production of documents or categories of documents, the plan must articulate a specific and valid legal basis for the objection;

    d. When and to whom counsel anticipate it may send interrogatories;

e. Whether counsel anticipate serving interrogatories in excess of the number permitted by Federal Rule of Civil Procedure 33 and, if so, whether counsel will stipulate to the excess number.

f. Any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced.

8. Prompt settlement or resolution.

a. Describe the possibilities for a prompt settlement or resolution of the case that were discussed in your Rule 26(f) meeting;

b. Describe what each party has done or agreed to do to bring about a prompt resolution;

c. What limited discovery may enable them to make a reasonable settlement evaluation (*e.g.*, deposition of plaintiff, defendant, or key witness, and exchange of a few pertinent documents.);

9. State whether alternative dispute techniques are reasonably suitable and when such a technique may be effectively used in this case;

10. What issues in the case implicate expert evidence, including whether counsel anticipates any issues under *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993);

11. Threshold legal issues that may be resolved by summary judgment or partial summary judgment;

12. The procedure the parties plan to use regarding claims of privilege;

13. Whether a protective order will be needed in the case;

14. List any pending motions;

15. Indicate other matters peculiar to this case, including discovery that deserves the special attention of the Court at the conference;

16. Magistrate judges may hear jury and non-jury trials. Indicate the parties' joint position on trial before a magistrate judge;

17. State whether a jury demand has been made and if it was made on time;

18. If the parties are not agreed on a part of the discovery plan, describe the separate views and proposals of each party;

19. A proposed schedule for:
    a. the filing of motions to amend pleadings and/or add parties;
    b. the completion of fact and expert witness discovery;
    c. the designation and supplemental designation of expert witnesses;
    d. the service of expert witness reports and rebuttal expert witness reports;
    e. the date by which all motions, including dispositive motions, shall be filed;
    f. a date for a Settlement Conference; and
    g. a date for a Pretrial Conference before the assigned District Judge.

C. Requests to Amend the Case Management Conference Order. The dates and times set in the Case Management Conference Order **will not** be modified except for good cause shown. Fed. R. Civ. P. 16(b)(4). Counsel are reminded of their duty of diligence and 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 made by filing a joint motion. The joint motion shall include a declaration from counsel of record detailing the steps taken to comply with the dates and deadlines set in the order, and the specific reasons why deadlines cannot be met.

IV. Discovery Disputes

Refer to Appendix A and B for the Court's guidance and expectations in resolving disputes.

A. Pursuant to the requirements of Civil Local Rule 26.1(a), 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 regarding all disputed issues. If counsel practice in the same county, they **shall** meet in person; if counsel practice in different counties, they **shall** confer by telephone. Under no circumstances may counsel satisfy the "meet and confer" obligation by only written correspondence. Counsel must proceed with due diligence in scheduling and conducting an appropriate meet and confer conference as soon as the dispute arises.

B. 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. If the dispute cannot be resolved through good faith meet and confer efforts, counsel shall jointly call chambers to notify the Court of a discovery dispute within **thirty (30) calendar days** of the date upon which the event giving rise to the dispute occurred. (See IV.F. below for guidance on calculating the **30 day deadline**).

C. When counsel jointly call chambers to notify the Court of a discovery dispute, counsel shall be prepared to provide the Court's Research Attorney the basic facts of the dispute. Counsel

may not present argument at this time—only the facts of the dispute. The Research Attorney will inform the Court of the facts of the dispute. The Court will then determine whether the dispute merits formal briefing, submission of simultaneous briefs, or a joint motion for determination of discovery dispute, and whether to schedule an informal telephonic discovery conference, an in-person discovery hearing, or to rule on the papers.

If the Court requires the parties to file briefing, the motions/briefs shall include:

1. A declaration of compliance with the meet and confer requirement which summarizes, without argument, the results of their meet and confer discussions, including all agreements, understandings, promises and concessions, and specifically identifying any issues that remain for determination by the Court. Counsel **shall not** attach copies of any meet and confer correspondence to the declaration or briefing;

2. A specific identification of each dispute;

3. A statement of the dispute(s) which follows the format below (see sample in subsection H. below):
    a. The exact wording of the discovery request in dispute;
    b. The exact objection of the responding party;
    c. A statement by the propounding party as to why the discovery is needed, including any legal basis to support the position;
    d. The legal basis for the objection by the responding party.

4. Exhibits shall not contain argument.

5. Please see Section 2(e) of the Court's Electronic Case Filing Administrative Policies and Procedures Manual[1] to determine whether a courtesy copy of the Joint Motion needs to be delivered to chambers. If a courtesy copy is required, it shall be delivered directly to the Court's chambers in a binder with all motions, declarations and exhibits appropriately indexed and tabbed.

D. If the dispute arises during a deposition, counsel may call Judge Gallo's chambers at (619) 557-6384 for an immediate ruling on the dispute. If Judge Gallo is available, he will either rule on the dispute or give counsel further instructions regarding how to proceed. If Judge Gallo is unavailable, counsel shall mark the deposition at the point of the dispute and continue with the deposition. Thereafter, counsel shall meet and confer regarding all disputed issues pursuant to the requirements of Civil Local Rule 26(1)(a). If counsel have not resolved their disputes through the meet and confer process, they shall proceed as noted in paragraphs B and/or C above.

---

[1] This Manual can be found online at the Court's website www.casd.uscourts.gov.

E. The Court will **not accept** motions pursuant to Federal Rules of Civil Procedure 16, 26 through 37 and 45 until counsel have met and conferred to resolve the dispute and participated in an informal teleconference with the Court. Strict compliance with these procedures is mandatory before the Court will accept any discovery motions.

F. 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 date when the response was actually served or when legally due to be served.

For example, the thirty-day clock begins to run on the day:

1. Interrogatory responses or document production were due, if responses or production were untimely;
2. Insufficient interrogatory responses or document production were timely served; or
3. Timely objections are served.

G. The Court will either issue an order following the filing of the joint motion, schedule another telephonic discovery conference, or hold a hearing.

1. If the Court rules, with or without a hearing, the party prevailing overall, as determined by the Court, may be awarded its costs and expenses after the non-prevailing party has been given the opportunity to be heard. The costs will likely include, but not be limited to, (1) the time required to file pleadings, prepare for, travel to, and attend the required meeting, and, if necessary, the time required to prepare for, travel to, and attend the hearing; and (2) the actual cost of court reporting, travel, sustenance, and accommodations for all of the above. The costs will be paid by the non-prevailing attorney and not charged to the client unless counsel provides written proof that the client insisted on going forward against counsel's advice.

2. In the event that the discovery dispute involved a truly justiciable issue, the Court will not impose sanctions. The Court, in its discretion, will decide whether that criterion has been met.

3. **Bottom line: The Court is not a discovery dispute hotline to be called every time the parties have a disagreement and have not put in the effort to resolve it on their own. Before counsel involves the Court to rule on a dispute, counsel must be sure to have exhausted every reasonable possibility of resolving it. Counsel are hereby forewarned that involving the Court unnecessarily or without adequately meeting and conferring may result in the imposition of severe sanctions.**

H. Sample Format: Joint Motion for Determination Of Discovery Dispute

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 (include relevant Points and Authorities).

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 (include relevant Points and Authorities).

V. Stipulated Protective Order Provisions for Filing Documents Under Seal

All stipulated protective orders submitted to the Court must include the following provision:

> No document shall be filed under seal unless counsel secures a court order allowing the filing of a document under seal. An application to file a document under seal shall be served on opposing counsel, and on the person or entity that has custody and control of the document, if different from opposing counsel. If opposing counsel, or the person or entity who has custody and control of the document, wishes to oppose the application, he/she must contact the chambers of the judge who will rule on the application, to notify the judge's staff that an opposition to the application will be filed.

If an application to file a document under seal is granted by Judge Gallo, a redacted version of the document shall be e-filed. A courtesy copy of the unredacted document shall be delivered to Judge Gallo's chambers.

All stipulated protective orders submitted to the Court must be filed as a joint motion and must include a proposed order. Please refer to Sections 2(f)(4) and 2(h) of the Court's Electronic Case Filing Administrative Policies and Procedures Manual for more information.

VI. *Ex Parte* Proceedings

Appropriate *ex parte* applications may be made at any time after first contacting Judge Gallo's Research Attorney assigned to the case. The application must be e-filed and should include a description of the dispute, the relief sought, and a declaration that indicates reasonable and appropriate notice to opposing counsel, in accordance with Civil Local Rule 83.3.g. The Court does not have regular *ex parte* hearing days or hours.

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 Judge Gallo's Research Attorney assigned to the case to request to modify the schedule. After receipt of the application and opposition, the Court will review them, and a decision may be made without a hearing. If the Court requires a hearing, the parties will be contacted to set a date and time for the hearing.

VII. Requests to Continue

The Court disfavors continuances, but is amenable to such requests if good cause is shown. Good cause includes, among other things, a showing that the parties have been diligent and have not been dilatory. Parties should not assume the Court will grant motions to continue as a matter of course. For example, if the parties seek continuance of a discovery cut-off, they should not operate under the assumption that such requests are routinely granted and proceed to schedule a deposition after the discovery cut-off as a result. Finally, parties should seek continuances at their absolute earliest possible opportunity upon discovering the need for the continuance.

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

1. The original date or deadline;
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 dates in the Case Management Conference Order.

Joint motions for continuance shall be made in the form required by Civil Local Rule 7.2.

VIII. General Decorum

The Court expects all counsel and parties to be courteous, professional, and civil at all times to opposing counsel, parties, and the Court, including all court personnel. Counsel may expect such from the Court and the Court expects such from counsel. 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 under any circumstances.

Counsel are to read and be familiar with the tenets espoused in Civil Local Rule 83.4, which shall be the guiding principles of conduct in this Court. Counsel are expected to be punctual for all proceedings.

IX. Participation By Junior Attorneys

Participation by Junior Attorneys. The Court encourages the participation of less experienced attorneys in all proceedings, particularly where that attorney played a substantial role in drafting the underlying filing or matter. The Court is amenable to permitting more than one lawyer to argue for one party if this creates an opportunity for a junior lawyer to participate. Nevertheless, all attorneys appearing before the Court must have authority to bind the party they represent consistent with the proceedings (for example, by agreeing to a discovery or briefing schedule), and should be prepared to address any matters likely to arise at the proceeding. The ultimate decision of who speaks on behalf of the client is for the lawyer in charge of the case, not for the Court.

X. Technical Questions Relating to CM/ECF

If you have a technical question relating to CM/ECF, please contact the CM/ECF Help Desk at (866) 233-7983.

XI. Inquiries Regarding Criminal Matters

All inquiries regarding criminal matters shall be directed to Judge Gallo's Courtroom Deputy at (619) 557-7141. Please see Judge Gallo's Criminal Pretrial Procedures.

APPENDIX A

Resolution of Discovery Disputes and Expectations

The Court is well aware that abuse of the legal process most often occurs during discovery, and that lawyers do things during discovery that they would not dream of doing if a judge were present. An attorney or client who engages in bad behavior, is not civil, refuses to extend common courtesy, or engages in bullying tactics, can expect a response in kind. This Court will not consider half-baked arguments, lame excuses, delays caused by the client, mudslinging, passing the buck, pointing fingers, ad hominem attacks, blaming support staff, or, particularly, lack of time. If counsel's caseload prevents devoting sufficient and adequate attention to the litigation before this Court, then counsel should reduce his/her caseload. An attorney's "busy" schedule is not a valid and justifiable reason for untimely responses, nor does it excuse unprofessional conduct. Claims of ethical violations are not taken lightly. Counsel who make such an accusation better be prepared to prove it.

In the Court's experience, the great majority of discovery disputes arise when one or both sides exhibit (1) a failure to grasp, or disdain for, the law, the rules, or the facts; (2) lack of professionalism; (3) lack of civility; (4) a refusal to extend common courtesy to a fellow professional (and therefore to the Court); (5) bad faith; or (6) some or all of the above. Indeed, it is very rare for this Court to see a truly justiciable discovery issue requiring thoughtful consideration and resolution by the Court if the parties have met and genuinely conferred in good faith to resolve the dispute.

The Court also does not favor either fishing expeditions or questions and requests which are unlimited in time or place. Neither does the Court favor totally unsupported objections to discovery based on the usual boilerplate assertions that the request is overbroad or unduly burdensome, or that the information sought is irrelevant, privileged, or is unlikely to lead to the discovery of admissible evidence. **Support your objection with facts or it will be overruled.** (See Appendix B, Section (A)(1) for guidance on boilerplate objections.) **If you have answered a discovery request "subject to" or after "reserving" an objection (or similar phrase), you have waived your objection.** (See Appendix B, Section (A)(2) for guidance on conditional responses.) You should not assume that the Court will buy your argument that a common English word is "vague" or "ambiguous."

APPENDIX B

A. December 2015 Amendments to the Federal Rules of Civil Procedure

The recently amended Federal Rules of Civil Procedure have now codified what has long been expected practice. Everyone – the Court, the attorneys, and the parties – are all charged with the responsibility to engage in civil discovery practices that are meant to achieve "the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1. The scope of discovery is generally broad enough to allow the parties to obtain discovery "regarding any non-privileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1). Such discovery "need not be admissible in evidence to be discoverable." Fed. R. Civ. P. 26(b)(1). Objections to discovery requests must state with specificity the grounds for objecting to the request. Fed. R. Civ. P. 33(b)(3) and 34(b)(2)(B).

The Court expects all counsel to adopt these best practices rule amendments when engaging in civil discovery. Making only relevant, proportional discovery requests will further the laudatory goals of Rule 1, which is in everyone's interests. Moreover, as the 2010 Duke University Law School Conference recognized, "cooperation among litigants can reduce time and expense of civil litigation without compromising vigorous and professional advocacy." "Effective advocacy is consistent with – and indeed depends upon – cooperation and proportional use of procedure." Fed. R. Civ. P. 1, Advisory Committee Notes.

B. Waiver of Discovery Objections

1. Boilerplate Objections

The Court observes that many responses to discovery requests state boilerplate objections such as vague, ambiguous, over broad, seeks attorney-client privileged information, seeks work product, premature, discovery in this matter is ongoing and all the facts in issue have not been discovered, misstates the law, and it is the other party's burden to prove a particular claim or defense.

Where the responding party provides a boilerplate or generalized objection, the "objections are inadequate and tantamount to not making any objection at all." *Walker v. Lakewood Condo. Owners Ass'ns*, 186 F.R.D. 584, 587 (C.D. Cal. 1999); *Sherwin-Williams Co. v. JB Collision Servs., Inc.*, 2014 WL 3388871, at *2 (S.D. Cal. Jul. 9, 2014); *See also Ritacca v. Abbott Labs.*, 203 F.R.D. 332, 335 n.4 (N.D. Ill. 2001) ("As courts have repeatedly pointed out, blanket objections are patently improper, . . . [and] we treat [the] general objections as if they were never made."). The responding party must clarify, explain, and support its objections. *Anderson v. Hansen*, 2012 WL 4049979, at 8 (E.D. Cal. Sept. 13, 2012). "The grounds for objecting to a request must be stated . . . and as with other forms of discovery, it is well established that boilerplate objections do not suffice." *Id.* (discussing boilerplate objections asserted in response to requests for admission).

2. Conditional Responses

You either have a sustainable objection or you do not. You cannot have it both ways. Additionally, discovery responses often contain language stating "subject to and without waiving these objections, [Plaintiff/Defendant] responds as follows:," and "[Plaintiff/Defendant] will produce non-privileged responsive documents within its custody and control." Conditional responses and/or the purported reservation of rights by Plaintiffs or Defendants are improper and ultimately have the effect of waiving Plaintiff's or Defendant's objections to the discovery requests. *Sprint Commc'ns Co. v. Comcast Cable Commc'ns, LLC*, 2014 WL 545544, at *2 (D. Kan. Feb. 11, 2014) ("*Sprint I*"), modified 2014 WL 1569963 (D. Kans. 2014) ("*Sprint II*"); *Sherwin-Williams*, at *2; *Fay Avenue Props., LLC v. Travelers Property Casualty Co. of Am.*, 2014 WL 2965316, at *1 (S.D. Cal. Jul. 1, 2014); *Meese v. Eaton Mfg. Co.*, 35 F.R.D. 162, 166 (N.D. Ohio 1964) (holding that "[w]henever an answer accompanies an objection, the objection is deemed waived, and the answer, if responsive, stands."); *see also* Wright, Miller & Marcus, Federal Practice and Procedure: Civil § 2173: "A voluntary answer to an interrogatory is also a waiver of the objection."

The Court recognizes that it is common practice among attorneys to respond to discovery requests by asserting objections and then responding to the discovery requests "subject to" and/or "without waiving" their objections. This practice is confusing and misleading. Moreover, it has no basis in the Federal Rules of Civil Procedure. *Sprint I*, at *2; *Sherwin-Williams*, at *2; *Fay Avenue*, at *1.

These responses are confusing and misleading because, for example, when a party responds to an interrogatory that is "subject to" and "without waiving its objections," the propounder of the interrogatory is "left guessing as to whether the responding party has fully or only partially responded to the interrogatory." *Estridge v. Target Corp.*, 2012 WL 527051, at *1-2 (S.D. Fla. Feb. 16, 2012); *Sherwin-Williams*, at *2; *Fay Avenue*, at *1. Similarly, with respect to requests for production of documents, a response "subject to" and "without waiving objections," leaves the requesting party to guess whether the producing party has produced all responsive documents, or only some responsive documents and withheld others on the basis of the objections. *Sprint I*, at *2; *Rodriguez v. Simmons*, 2011 WL 1322003 at *7 (E.D. Cal. Apr. 4, 2011).

Consequently, responses to discovery requests that are "subject to" and "without waiving objections," are improper, the objections are deemed waived, and the response to the discovery request stands. *Estridge*, at *2 (citing *Tardif v. People for the Ethical Treatment of Animals*, 2011 WL 1627165, at *2 (M.D. FL 2011); *Pepperwood of Naples Condo. Assn. v. Nationwide Mut. Fire Ins. Co.*, 2011 WL 4382104, at *4-5 (M.D. FL 2011); *Consumer Elecs. Ass'n v. Compras And Buys Magazine, Inc.*, 2008 WL 4327253, at *3 (S.D. Fla. 2008) ("subject to" and "without waiving objections" "preserve . . . nothing and serve . . . only to waste the time and resources of both the Parties and the Court. Further, such practice leaves the requesting party uncertain as to whether the question has actually been fully answered or whether only a portion of the question has been answered."); *Sherwin-Williams*, at *3; *Fay Avenue*, at *2.

"If [a party has] responsive documents, but wish[es] to withhold them on privacy (or privilege) grounds, [the opposing party] should be made aware of this fact and the parties should continue their meet and confer obligations to ensure redaction, a protective order, *in camera review*, or other (privilege or) privacy-guarding measures are implemented to properly balance the need for discovery against the need for (privilege or) privacy." *Id.* at *7, n. 9 (citation omitted) (emphasis in original); *Fay Avenue*, at *2.

Moreover, when a party responds to a request for production of documents, it has three options under Federal Rule of Civil Procedure 34: (1) serve an objection to the requests as a whole, (Federal Rule of Civil Procedure 34(b)(2)(B)); or (2) serve an "objection to part of the request, provided it specifies the part to which it objects and respond to the non-objectionable portions, (Federal Rule of Civil Procedure 34(b)(2)(C)); or (3) serve a response that says that all responsive documents will be produced. What a party cannot do is combine its objections into a partial response without any indication that the response was actually a partial response. *Haeger v. Goodyear Tire & Rubber Co.*, 906 F. Supp. 2d 938, 976 (D. Ariz. 2012); *Fay Avenue*, at *2.

Further, conditional responses to discovery requests violate Federal Rule of Civil Procedure 26. Rule 26(g)(1)(B)(i)-(iii) requires responders to discovery requests to certify that the discovery responses are consistent with the Federal Rules of Civil Procedure, "not imposed for any improper purpose," and are "neither unreasonable nor unduly burdensome." Moreover, the 1983 Committee comments to Rule 26(g) state that "Rule 26 imposes an affirmative duty to engage in pretrial discovery in a responsible manner that is consistent with the spirit and purposes of Rule 26 through 37." Providing conditional responses to discovery requests is improper. *Sprint II*, at *3; *Sherwin-Williams*, at *2; *Fay Avenue*, at *1.

C. Reference to Documents In Discovery Requests

A party may answer an interrogatory by specifying records from which the answer may be obtained and by making the records available for inspection. Fed. R. Civ. P. 33(d)(2). But the records must be specified "in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could." Fed. R. Civ. P. 33(d)(1). Responses to interrogatories that do not specify where in the records the answers could be found do not comply with Rule 33(d)(1). Rule 33 was amended in 1980 "to make clear that a responding party has the duty to specify, by category and location, the records from which the answers to the interrogatories can be derived." *Rainbow Pioneer No. 44-18-04A v. Haw. Nev. Inv. Co.*, 711 F.2d 902, 906 (9th Cir. 1983) (discussing former Federal Rule of Civil Procedure 33(c)); *West v. Ultimate Metals Co.*, 2014 WL 466795, at *2 (N.D. Cal. 2014); *Tourgeman v. Collins Fin. Servs., Inc.*, 2010 WL 2181416, at *6 (S.D. Cal. 2010). Former Federal Rule of Civil Procedure 33(c) is the same as the current Federal Rule of Civil Procedure 33(d). *Cambridge Elecs. Corp. v. MGA Elecs.*, 227 F.R.D. 313, 323 (C.D. Cal. 2004); *Fay Avenue* at *2.

D. Contention Interrogatories

Contention interrogatories ask the receiving party to state the factual bases for its allegations. The purpose of contentions interrogatories "is not to obtain facts, but rather to narrow the issues that will be addressed at trial and to enable the propounding party to determine the proof

required to rebut the respondent's position." *Folz v. Union Pac. Railroad Co.*, 2014 WL 357929, at *1 (S.D. Cal. 2014) (citing *Lexington Ins. Co. v. Commonwealth Ins. Co.*, 1999 WL 33292943, at *7 (N.D. Cal. 1999)). Courts recognize that contention interrogatories, when served after substantial discovery is complete, may be appropriate. *Folz*, 2014 WL 357929, at *2 (citing *Tennison v. City and County of San Francisco*, 226 F.R.D. 615, 618 (N.D. Cal. 2005)). At some point in time, parties answering contention interrogatories will have to fully respond to the contention interrogatories. *Folz*, 2014 WL 357929, at *1.

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)

Pretrial Motions

Hon. Gonzalo P. Curiel, U.S. District Judge

Hon. Todd W. Robinson, U.S. District Judge

PRETRIAL MOTIONS PRACTICE

Panelists District Judge Gonzalo Curiel and District Judge Todd Robinson

Moderators Hayley Grunvald and Mark Myers

BRIEF OUTLINE OF TOPICS

A. **Why Does Motion Practice Exist At All? Why Are Motions Helpful?**

a. Narrowing and focusing issues

b. Confirm jurisdiction

c. Case management

d. Facilitate settlement

e. Various kinds of motions: motion to dismiss, summary judgment or partial summary judgment, motion to strike, TRO and preliminary injunction

B. **What Happens After I File My Motion?**

a. Judge and/or law clerk reviews the briefing

b. Judges have their own staff to assist them

c. A procedural ruling may follow (scheduling, requiring supplemental briefing)

d. The judge may hold oral argument, or may decide it on the papers

C. **Importance of Following the Rules (Federal, Local, Chambers)**

a. Local Rules

The Southern District's Local Rules can be found at https://www.casd.uscourts.gov/rules/local-rules.aspx. They were most recently revised on July 5, 2021.

b. Chambers Rules

These vary by judge, so it's important to check.

D. **Creating Opportunities For Young Lawyers**

One way to help young lawyers gain experience is to give them opportunities to argue motions (or parts of motions). Some judges' chambers rules specifically provide for this. This is an under-used option that we encourage you to consider.

E. **Oral Arguments.**

a. Will the Court hold argument? Can vary by judge, type of motion, legal issues presented, and the facts of the case

b. How valuable and useful are they?

c. What to expect: Presenting a prepared argument vs. Questions from the bench

d. Changes in procedure due to the pandemic

1. Sitting while addressing the court

2. More use of telephonic and videoconference argument

3. Advantages and disadvantages of telephonic vs. in person appearances

F. **Courtesy and Professionalism in Oral Arguments**

a. Why does it matter?

b. What is the difference between zealous advocacy for my client and unprofessional conduct?

c. Does it matter how an attorney treats Courtroom staff and law clerks?

d. If I have questions or concerns about my motion, how can I appropriately bring those to the judge's attention?

e. Can my unprofessional behavior impact a ruling on my motion?