Federal v. State – The Battle of West Broadway

Enright Inn of Court, February 2024

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Rule 26. Duty to Disclose; General Provisions Governing Discovery

(a) Required Disclosures.

(1) *Initial Disclosure.*

(A) *In General.* Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(iii) a computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(iv) for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(B) *Proceedings Exempt from Initial Disclosure.* The following proceedings are exempt from initial disclosure:

(i) an action for review on an administrative record;

(ii) a forfeiture action in rem arising from a federal statute;

(iii) a petition for habeas corpus or any other proceeding to challenge a criminal conviction or sentence;

(iv) an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;

(v) an action to enforce or quash an administrative summons or subpoena;

(vi) an action by the United States to recover benefit payments;

(vii) an action by the United States to collect on a student loan guaranteed by the United States;

(viii) a proceeding ancillary to a proceeding in another court; and

(ix) an action to enforce an arbitration award.

(C) *Time for Initial Disclosures—In General.* A party must make the initial disclosures at or within 14 days after the parties' Rule 26(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in this action and states the objection in the proposed discovery plan. In ruling on the objection, the court must determine what disclosures, if any, are to be made and must set the time for disclosure.

(D) *Time for Initial Disclosures—For Parties Served or Joined Later.* A party that is first served or otherwise joined after the Rule 26(f) conference must make the initial disclosures within 30 days after being served or joined, unless a different time is set by stipulation or court order.

(E) *Basis for Initial Disclosure; Unacceptable Excuses.* A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) *Disclosure of Expert Testimony.*

(A) *In General.* In addition to the disclosures required by Rule 26(a)(1), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705.

(B) *Witnesses Who Must Provide a Written Report.* Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report—prepared and signed by the witness—if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

(i) a complete statement of all opinions the witness will express and the basis and reasons for them;

(ii) the facts or data considered by the witness in forming them;

(iii) any exhibits that will be used to summarize or support them;

(iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and

(vi) a statement of the compensation to be paid for the study and testimony in the case.

(C) *Witnesses Who Do Not Provide a Written Report.* Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this disclosure must state:

(i) the subject matter on which the witness is expected to present evidence under Federal Rule of Evidence 702, 703, or 705; and

(ii) a summary of the facts and opinions to which the witness is expected to testify.

(D) Time to Disclose Expert Testimony. A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or a court order, the disclosures must be made:

(i) at least 90 days before the date set for trial or for the case to be ready for trial; or

(ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B) or (C), within 30 days after the other party's disclosure.

(E) *Supplementing the Disclosure.* The parties must supplement these disclosures when required under Rule 26(e).

(3) *Pretrial Disclosures.*

(A) *In General.* In addition to the disclosures required by Rule 26(a)(1) and (2), a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:

(i) the name and, if not previously provided, the address and telephone number of each witness—separately identifying those the party expects to present and those it may call if the need arises;

(ii) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and

(iii) an identification of each document or other exhibit, including summaries of other evidence—separately identifying those items the party expects to offer and those it may offer if the need arises.

(B) *Time for Pretrial Disclosures; Objections.* Unless the court orders otherwise, these disclosures must be made at least 30 days before trial. Within 14 days after they are made, unless the court sets a different time, a party may serve and promptly file a list of the following objections: any objections to the use under Rule 32(a) of a deposition designated by another party under Rule 26(a)(3)(A)(ii); and any objection, together with the grounds for it, that may be made to the admissibility of materials identified under Rule 26(a)(3)(A)(iii). An objection not so made—except for one under Federal Rule of Evidence 402 or 403—is waived unless excused by the court for good cause.

(4) *Form of Disclosures.* Unless the court orders otherwise, all disclosures under Rule 26(a) must be in writing, signed, and served.

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§ 2016.090. Initial disclosures; application of section

Section operative until Jan. 1, 2027. See, also, § 2016.090 operative Jan. 1, 2027.

(a) The following shall apply * * * in a civil action * * * unless modified by stipulation by all parties to the action:

(1) Within 60 days of * * * a demand by any party to the action, each party that has appeared in the action, including the party that made the demand, shall * * * provide to the other parties an initial disclosure that includes all of the following information:

(A) The names, addresses, telephone numbers, and email addresses of all persons likely to have discoverable information, along with the subjects of that information, that the disclosing party may use to support its claims or defenses, or that is relevant to the subject matter of the action or the order on any motion made in that action, unless the use would be solely for impeachment. The disclosure required by this subparagraph is not required to include persons who are expert trial witnesses or are retained as consultants who may later be designated as expert trial witnesses, as that term is described in Chapter 18 (commencing with Section 2034.010) of Title 4 of Part 4.

(B) A copy, or a description by category and location, of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, or that is relevant to the subject matter of the action or the order on any motion made in that action, unless the use would be solely for impeachment.

(C) Any contractual agreement and any insurance policy under which an insurance company may be liable to satisfy, in whole or in part, a judgment entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(D) Any * * * and all contractual agreements and any and all insurance policies under which a person, as defined in Section 175 of the Evidence Code, may be liable to satisfy, in whole or in part, a judgment entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Only those provisions of an agreement that are material to the terms of the insurance, indemnification, or reimbursement are required to be included in the initial disclosure. Material provisions include, but are not limited to, the identities of parties to the agreement * * *, the nature and limits of the coverage, and any and all documents regarding whether any insurance carrier is disputing the agreement's or policy's coverage of the claim involved in the action.

(2) A party shall make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its initial disclosures because it has not fully investigated the case, because it challenges the sufficiency of another party's disclosures, or because another party has not made its disclosures.

* * *

(3)(A) A party that has made, or responded to, a demand for an initial disclosure pursuant to paragraph (1) may propound a supplemental demand on any other party to elicit any later-acquired information bearing on all disclosures previously made by any party.

(B) A party may propound a supplemental demand twice before the initial setting of a trial date, and, subject to the time limits on discovery proceedings and motions provided in Chapter 8 (commencing with Section 2024.010) of Title 4 of Part 4, once after the initial setting of a trial date.

(C) Notwithstanding subparagraphs (A) and (B), on motion, for good cause shown, the court may grant leave to a party to propound one additional supplemental demand.

(4) A party's obligations under this section may be enforced by a court on its own motion or the motion of a party to compel disclosure.

(5) A party's disclosures under this section shall be verified * * * either in a written declaration by the party or the party's * * * authorized representative, or signed by the party's counsel.

(b) Notwithstanding subdivision (a), this section does not apply to the following actions:

(1) An unlawful detainer action, as defined in Section 1161.

(2) An action in the small claims division of a court, as defined in Section 116.210.

(3) An action or proceeding commenced in whole or in part under the Family Code.

(4) An action or proceeding commenced in whole or in part under the Probate Code.

(5) An action in which a party has been granted preference pursuant to Section 36.

(c) This section does not apply to any party in the action who is not represented by counsel.

(d) The changes made to this section by the act adding this subdivision [1] apply only to civil actions filed on or after January 1, 2024.

(e) This section shall remain in effect until January 1, 2027, and as of that date is repealed. *(Added by Stats.2019, c. 836 (S.B.17), § 1, eff. Jan. 1, 2020. Amended by Stats.2023, c. 284 (S.B.235), § 1, eff. Jan. 1, 2024.)*

1 Stats.2023, c. 284 (S.B.235), § 1.

Repeal

For repeal of this section, see its terms.

§ 2016.090. Initial disclosures; application of section

Section operative Jan. 1, 2027. See, also, § 2016.090 operative until Jan. 1, 2027.

(a) The following shall apply only to a civil action upon an order of the court following stipulation by all parties to the action:

(1) Within 45 days of the order of the court, a party shall, without awaiting a discovery request, provide to the other parties an initial disclosure that includes all of the following information:

(A) The names, addresses, telephone numbers, and email addresses of all persons likely to have discoverable information, along with the subjects of that information, that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.

(B) A copy, or a description by category and location, of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.

(C) Any agreement under which an insurance company may be liable to satisfy, in whole or in part, a judgment entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(D) Any agreement under which a person, as defined in Section 175 of the Evidence Code, may be liable to satisfy, in whole or in part, a judgment entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Only those provisions of an agreement that are material to the terms of the insurance, indemnification, or reimbursement are required to be included in the initial disclosure. Material provisions include, but are not limited to, the identities of parties to the agreement and the nature and limits of the coverage.

(2) A party shall make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its initial disclosures because it has not fully investigated the case, because it challenges the sufficiency of another party's disclosures, or because another party has not made its disclosures.

(3) A party that has made its initial disclosures, as described in paragraph (1), or that has responded to another party's discovery request, shall supplement or correct a disclosure or response in the following situations:

(A) In a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect and the additional or corrective information has not otherwise been made known to the other parties during the disclosure or discovery process.

(B) As ordered by the court.

(4) A party's obligations under this section may be enforced by a court on its own motion or the motion of a party to compel disclosure.

(5) A party's disclosures under this section shall be verified under penalty of perjury as being true and correct to the best of the party's knowledge.

(b) Notwithstanding subdivision (a), this section does not apply to the following actions:

(1) An unlawful detainer action, as defined in Section 1161.

(2) An action in the small claims division of a court, as defined in Section 116.210.

(c) This section shall become operative on January 1, 2027. *(Added by Stats.2023, c. 284 (S.B.235), § 2, eff. Jan. 1, 2024, operative Jan. 1, 2027.)*

[redacted]

§ 2023.050. Monetary sanctions; failure to respond in good faith to document request; production of requested documents within 7 days of motion to compel; failure to meet and confer

(a) Notwithstanding any other law, and in addition to any other sanctions imposed pursuant to this chapter, a court shall impose a * * * one-thousand-dollar ($1,000) sanction, payable to the requesting party, upon a party, person, or attorney if, upon reviewing a request for a sanction made pursuant to Section 2023.040, the court finds any of the following:

(1) The party, person, or attorney did not respond in good faith to a request for the production of documents made pursuant to Section 2020.010, 2020.410, 2020.510, or 2025.210, or to an inspection demand made pursuant to Section 2031.010.

(2) The party, person, or attorney produced requested documents within seven days before the court was scheduled to hear a motion to compel production of the records pursuant to Section 2025.450, 2025.480, or 2031.320 that is filed by the requesting party as a result of the other party's, person's, or attorney's failure to respond in good faith.

(3) The party, person, or attorney failed to confer in person, by telephone, letter, or other means of communication in writing, as defined in Section 250 of the Evidence Code, with the party or attorney requesting the documents in a reasonable and good faith attempt to resolve informally any dispute concerning the request.

(b) Notwithstanding paragraph (3) of subdivision (*o*) of Section 6068 of the Business and Professions Code, the court may, in its discretion, require an attorney who is sanctioned pursuant to subdivision (a) to report the sanction, in writing, to the State Bar within 30 days of the imposition of the sanction.

(c) The court may excuse the imposition of the sanction required by subdivision (a) if the court makes written findings that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(d) Sanctions pursuant to this section shall be imposed only after notice to the party, person, or attorney against whom the sanction is proposed to be imposed and opportunity for that party, person, or attorney to be heard.

(e) For purposes of this section, there is a rebuttable presumption that a natural person acted in good faith if that person was not represented by an attorney in the action at the time the conduct that is sanctionable under subdivision (a) occurred. This presumption may only be overcome by clear and convincing evidence. *(Added by Stats.2019, c. 836 (S.B.17), § 2, eff. Jan. 1, 2020. Amended by Stats.2023, c. 284 (S.B.235), § 3, eff. Jan. 1, 2024.)*

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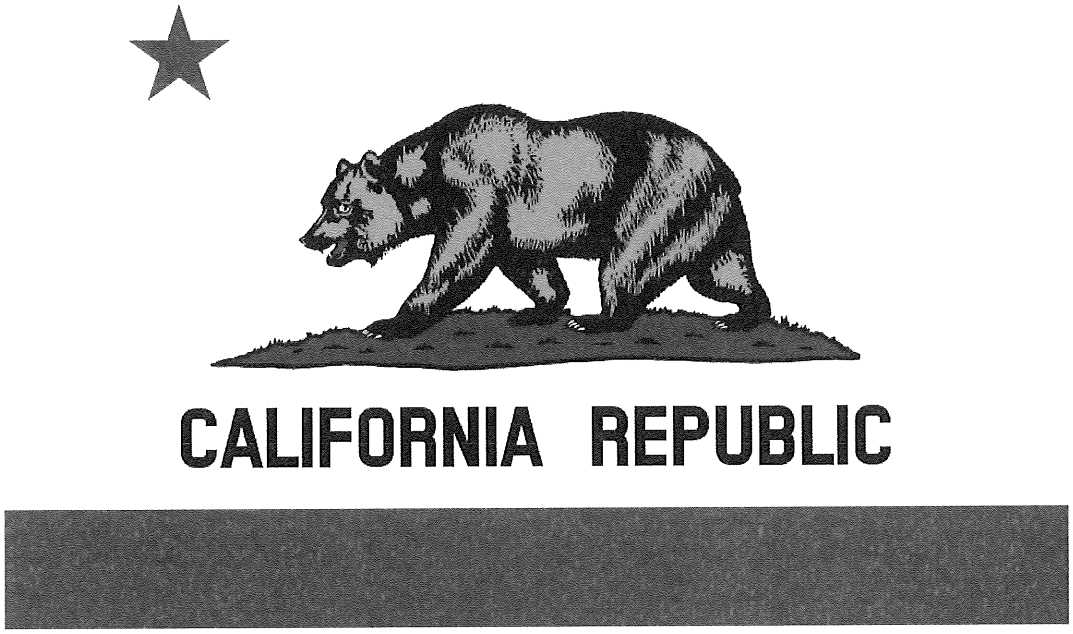
Ogletree Deakins

California Imposes New Discovery Requirement: Initial Disclosures

October 25, 2023

By Charles L. Thompson, IV, Carlos Bacio, and Omar F. Hassan

On September 30, 2023, California Governor Gavin Newsom signed into law Senate Bill (SB) No. 235, which adds new rules for initial disclosures of information in discovery.



Specifically, the new law amends California Code of Civil Procedure section 2016.090 and institutes a procedure for initial disclosures of information and documents that is similar to the Federal Rules of Civil Procedure. The changes apply to civil actions filed on or after January 1, 2024, and remain in effect until January 1, 2027.

Quick Hits

- SB 235 amends California Code of Civil Procedure section 2016.090 and imposes new discovery obligations requiring parties to make initial witness and document disclosures within sixty days of another party's request.
- SB 235 requires that courts impose a $1,000 sanction on parties that fail to comply/act in good faith with the new law.
- The new law applies to all cases filed on or after January 1, 2024.

California Code of Civil Procedure section 2016.090 currently authorizes the court, with the stipulation of the parties to a civil action, to order the parties to provide initial disclosures within forty-five days of the court's order.

SB 235 amends California Code of Civil Procedure section 2016.090 to require each party that has appeared in a civil action to provide initial disclosures within sixty days of a demand by any party to the action unless the parties otherwise stipulate.

The initial disclosures must include the following:

- "The names, addresses, telephone numbers, and email addresses of all persons likely to have discoverable information ... that the disclosing party may use to support its claims or defenses, or that is relevant to the subject matter of the action or the order on any motion made in that action." SB 235 excludes information that would be used solely for impeachment. It also excludes expert witnesses and consultants whom a party later may designate as experts;
- "A copy, or a description by category and location, of all documents" that fall within the same categories above; and
- Any relevant insurance policies that may be used "to satisfy, in whole or in part, a judgment entered in the action or to indemnify or reimburse for payments made to satisfy the judgment."

The disclosing party must verify the disclosures via a written declaration by the party or the party's authorized representative or counsel.

The initial disclosure requirements do not apply to:

- any party in an action who is not represented by counsel;
- unlawful detainer actions;
- actions brought in the small claims division of a court;
- actions commenced under the Family Code or Probate Code; or

- an action in which a party has been granted preference pursuant to California Code of Civil Procedure section 36.

Notably, SB 235 makes it clear that "[a] party is not excused from making its initial disclosures because it has not fully investigated the case, because it challenges the sufficiency of another party's disclosures, or because another party has not made its disclosures."

In accordance with existing law, a party may propound supplemental demands for information twice before the initial setting of a trial date and once after the initial setting of a trial date.

SB 235 also raises the mandatory discovery abuse sanction from $250 to $1,000, upon a finding that a party "did not respond in good faith to a request for the production of documents," "produced requested documents within seven days before the court was scheduled to hear a motion to compel production of the records," or "failed to confer ... in a reasonable and good faith attempt to resolve informally any dispute concerning the request." The court may excuse the sanction upon making a written finding that the party "acted with substantial justification or that other circumstances make the imposition of the sanction unjust."

Key Takeaways

SB 235 falls in line with the obligations dictated by the Federal Rules of Civil Procedure, Rule 26(a)(1), wherein parties are required to disclose witnesses and documents *"that the disclosing party may use to support its claims or defenses."* (Emphasis added.) It is important to note that SB 235 goes beyond Rule 26 in that the parties must disclose witnesses and documents that are *relevant* to the case, which means that a party must disclose witnesses and documents that may potentially be harmful to its case.

In short, SB 235 promotes a potentially streamlined discovery process that may force parties to evaluate their positions sooner than they otherwise would have. SB 235 also may reduce the amount of discovery needed by parties, given that the parties are now required to disclose all existing relevant witness information and documents at the outset.

Ogletree Deakins will continue to monitor developments and will provide updates on the California blog as additional information becomes available.

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Civil Rule 16.1 Pretrial and Setting for Trial

a. Application of this Rule.

1. Pretrial proceedings and setting of cases for trial must be governed by Fed. R. Civ. P. 16 and this rule, and by such orders as are issued pursuant thereto. The timing of the Federal Rule 16(b) scheduling order is adjusted to accommodate the Early Neutral Evaluation Conference, as allowed under Fed. R. Civ P. 1.

2. All civil and admiralty cases must be pre-tried unless pre-trial is waived by order of the Court.

b. Counsels Duty of Diligence. All counsel and parties, if they are proceeding pro se, must proceed with diligence to take all steps necessary to bring an action to readiness for trial. In doing so they should be mindful of the requirements of Rule 16(c), Fed. R. Civ. P., following subparagraph (11) thereto, and the sanctions contained in Rule 16(f) Fed. R. Civ .P., for failure to prepare for and participate in good faith in the pretrial conference process.

c. Early Neutral Evaluation ("ENE") Conference.

1. Within forty-five (45) days of the filing of an answer, counsel and the parties must appear before the assigned judge for an early neutral evaluation conference; this appearance must be made with complete authority to discuss and enter into settlement.

   At any time after the filing of a complaint and before an answer has been filed, counsel for any party may make a request in writing to the judge in the case to hold an early neutral evaluation conference, discovery conference or status/case management conference. Copies of the request must be sent to counsel for the parties and the parties whose addresses are known to the requesting counsel. Upon receiving such request, the judge will examine the circumstances of the case and the reasons for the request and determine whether any such conference would assist in the reduction of expense and delay in the case. The judge will hold such conferences as he or she deems appropriate.

   a) At the ENE conference, the judge and the parties will discuss the claims and defenses and seek to settle the case.

   b) The ENE conference will be informal, off the record, privileged, and confidential.

   c) Attendance may be excused only for good cause shown and by permission of the judge. Sanctions may be appropriate for an unexcused failure to attend.

d) The judge conducting the ENE may conduct the proceeding by video conference, in their discretion.

2. If no settlement is reached at the ENE conference, the judge may do one of the following:

a) Discus the parties' willingness to agree to non-binding arbitration or mediation within forty-five (45) days (1) in any case where the judge believes arbitration or mediation might result in a cost-effective resolution of the lawsuit, or (2) in any case where the parties have indicated an interest in arbitration or mediation. Additionally, a case management conference will be set in these cases approximately sixty (60) days after the ENE conference.

b) Where no arbitration or mediation is agreed upon, the judge must hold a case management conference within thirty (30) days after the ENE conference. The case management conference may be held at the conclusion of the ENE conference.

d. Case Management Conference. The parties who have responsibility over the litigation and the counsel who is responsible for the case, will be present at the case management conference. The judicial officer may approve attendance of a party or counsel by telephonic conference call. At a reasonable time *before* this conference all counsel will discuss discovery and endeavor to resolve any disputes.

1. At the conference, the judge will (1) discuss the complexity of the case; (2) encourage a cooperative discovery schedule; (3) discuss the likelihood for further motions; (4) discuss the number of anticipated percipient and expert witnesses; (5) evaluate the case and the need for early supervision of settlement discussions; (6) discuss the availability of ADR alternatives; and (7) discuss any other special factors applicable to the progress of the case.

2. At the end of the conference the judge must prepare a case management order which will:

a) Include a discovery schedule;

b) Set a time for a further case management conference, if necessary;

c) If appropriate, set a time for the proponent of each issue to identify expert witnesses; set a time for the responding party to identify expert witnesses in reply; set a time for the depositions of experts; set a time for the supplementation of such expert designation depending on the circumstances;

d) Set a deadline for filing pretrial motions.

e) Set a date for a pretrial hearing before the district judge who will try the case. The date for such hearing will be approved by the trial judge.

3. Setting of Dates.

a) At the case management or pre-trial conference, a trial date will be set by the magistrate judge if directed by the district judge assigned to the case.

b) Senior district judges who have not referred the case to a magistrate judge will set all dates themselves.

c) The trial date must be firm and all requests for continuances of trial and motions dates will be granted only for good cause shown.

d) No trial date will be continued except by written order approved by the trial judge.

4. At the case management conference, the judge will set a date for a mandatory settlement conference unless it is determined that such a conference should be excused.

e. **Cases in which Early Neutral Evaluation (ENE) and Case Management Conferences are not Required**. At the discretion of a judge assigned to the case, ENE and case management conferences need not be set in the following categories of cases:

1. Habeas corpus cases;
2. Cases reviewing administrative rulings;
3. Social Security Cases;
4. Default proceedings;
5. Cases in which a substantial number of defendants have not answered;
6. Actions to enforce judgments;
7. Bankruptcy appeals.

f. **Pretrial.**

1. **Postponement of Pretrial Proceeding.**

a) **By Stipulation.** If additional time is required in which to comply with this rule, the parties may contact the Court's staff and submit a timely stipulation which sets forth the reasons for their request for a continuance.

b) **By Motion.** If counsel is unable to obtain the stipulation provided by the Civil Local Rule 7.2 a motion to continue or to be relieved from compliance with any requirement of Civil Local Rule 7.1.g.1 may, upon seven (7) days written notice, be presented on the Court's motion calendar.

2. **Memorandum of Contention of Fact and Law.**

a) **General.** Unless the Court specifies otherwise, no later than 5:00 p.m. twenty-eight (28) days prior to the pretrial hearing, each party must serve on each other party and file with the Clerk a "Memorandum of Contentions of Fact and Law" which contains a concise statement of the material facts and the points of law claimed by such party and cites the authorities upon which the party intends to rely at trial.

b) **Abandoned Issues.** Each party must set forth a statement of any issues raised by the pleadings which have been abandoned.

c) **Exhibits.** Each party must set forth a list of all exhibits such party expects to offer at the trial other than those to be used for impeachment with a description of each exhibit sufficient for identification, the list being substantially in the following form:

Case Title_____Case No_____
List of Exhibits

NUMBER	DATE MARKED	DATE ADMITTED	DESCRIPTION

Each party must place the case caption at the top as shown, and show "Plaintiff's" or "Defendant's" before the word "Exhibits" and, below that, only the spaces labeled "Number" and "Description" are required to be filled in prior to trial.

Plaintiff must number plaintiff's exhibits numerically and defendant's by alphabetic letters as follows: A to Z; then AA to AZ; then BA to BZ, etc. So far as is possible, exhibits must be numbered in the order in which they will be presented and offered at trial.

The parties are to consult the judge's courtroom clerk concerning problems as to the numbering of exhibits.

d) Witnesses. Each party must set forth the names and addresses of all prospective witnesses, except impeaching witnesses, and, in the case of expert witnesses, a brief narrative statement of qualifications of such witness and the substance of the testimony which such witness is expected to give. Only witnesses so listed will be permitted to testify at the trial except for good cause shown.

3. **Memorandum of Contentions of Fact and Law: Specific Situations.** In negligence, wrongful death, contract, eminent domain and patent cases the memorandum must particularize items set forth below.

a) Negligence Cases. The plaintiff must set forth: acts of negligence claimed, specific laws and regulations alleged to have been violated, a statement as to whether the doctrine of res ipsa loquitur is relied upon, and the basis for such reliance, a detailed list of personal injuries claimed, a detailed list of permanent personal injuries claimed including the nature and extent thereof, the age of the plaintiff, the life and work expectancy of the plaintiff if permanent injury is claimed, an itemized statement of all special damages to date, such as medical, hospital, nursing, etc., expenses, with the amount and to whom paid, a detailed statement of loss of earnings claimed and a detailed list of any property damage.

The defendant must set forth any acts of comparative or contributory negligence claimed in addition to any other defense he intends to interpose.

b) Wrongful Death Cases. In addition to the information required by Civil Local Rule 16.1.f.3.a., the plaintiff must set forth further information as follows: decedent's date of birth, marital status, including age of surviving spouse; employment for five years before date of death; work expectancy; reasonable probability of promotion; rate of earnings for five years before date of death; life expectancy under the mortality tables; general physical condition immediately prior to date of death; the names, dates of birth, and relationship of decedent's children and relatives; a detailed list of injuries claimed by said relatives and children; a list of decedent's dependents; the amounts of monetary contributions or their equivalent made to each of such dependents by decedent for a five-year period prior to date of death; a statement of the decedent's personal expenses and a fair allocation of the usual family expenses for decedent's living expenses for a period of at least three years prior to the date of death; and the amount claimed for care, advice, nurture, guidance, training, etc., by the deceased, if a parent, during the minority of any dependent.

The defendant must set forth any acts of comparative or contributory negligence claimed, in addition to any other defenses the defendant intends to interpose.

c) **Contract Cases.** The parties must set forth: whether the contract relied on was oral or in writing, specifying the writing, the date thereof and the parties thereto, the terms of the contract which are relied on by the party, any collateral oral agreement, if claimed, and the terms thereof, any specific breach of contract claimed, any misrepresentations of fact alleged, an itemized statement of damages claimed to have resulted from any alleged breach, the source of such information, how computed, and any books or records available to sustain such damage claim, whether modification of the contract or waiver of covenant is claimed, and if so, what modification or waiver and how accomplished.

d) **Eminent Domain Cases.** Disclosure in addition to that contained within Civil Local Rule 16.1.f.2 must be made as follows: Not later than seven (7) days in advance of pretrial hearing, each party appearing must file with the trial judge *in camera* a summary "Statement of Comparable Transactions" which contains: relevant facts as to each sale or other transaction to be relied upon as comparable to the taking, including the alleged date of such transaction, the names of all of the parties to the transaction, the consideration paid and the date of recordation, and the book, page or other identification of any record of such transaction. Such statements must be in a form and content suitable to be presented to the jury as a summary of evidence on the subject. The judge may, thereafter, release the list of comparables to opposing counsel.

At least seven (7) days prior to trial each party appearing must serve and file a "Statement as to Just Compensation" setting forth a brief schedule of contentions as to the fair market value in cash, at the time of taking, of the estate or interest taken, the maximum amount of any benefit proximately resulting from the taking, and the amount of any claimed damage proximately resulting from severance.

e) **Patent Cases.** The parties and attorneys must comply with the following:

1. Each party must set forth a short specific statement of the party's contentions as to the teaching of the claims in the patents where it is contended the patent or patents are invalid;

2. The party asserting the validity of the patent must set forth a short specific statement of plaintiff's contentions as to how the patent or patents are infringed;

3. The party contesting the validity of the patent must set forth a short specific statement of defendant's contentions as to why the patent or patents are not infringed.

4. **Meetings of Counsel.**

a) **Timing and Purpose of Meeting.** At least twenty-one (21) days in advance of the pretrial hearing, and after each party has filed and served its memorandum of contentions of fact and law, the attorneys for the parties must convene at a suitable time and place. The purpose of the meeting is to arrive at stipulations and agreements resulting in simplification of the triable issues and to confer concerning the content of the pretrial order. Counsel for the plaintiff has

the duty of arranging for meetings and for preparation of the Pretrial Order mandated by Civil Local Rule 16.1.f.6.c

b) **Exchanges Between Counsel.** At the meeting, all exhibits other than those to be used for impeachment must be displayed or exchanged.

c) **Content of Exhibits Exchanged.** Each photograph, map, drawing and the like must contain a legend on its face or reverse side. The legend must state by date the relevant matters of fact as to what the party offering such an exhibit claims is fairly duplicate.

d) **Failure to Display and/or Exchange Exhibits.** Failure to display and/or exchange exhibits to or with opposing counsel will permit the Court to decline admission of same into evidence.

5. **Conduct of the Pretrial Hearing.** At the pretrial hearing the Court will consider:

a) **Pleadings and Other Documents.** The pleadings, proposed amendments to the pleadings and papers and exhibits then on file including stipulations, statements and memoranda filed pursuant to Civil Local Rule 16.1.f.2 and f.3 and all matters referred to in Fed. R. Civ. P. 16.

b) **Motions.** All motions and other proceedings then pending.

c) **Settlement and Simplification.** The possibilities for settlement of the case and other matters which may be presented concerning parties, process, pleading or proof with a view to simplifying issues and bringing about a just, speedy and inexpensive determination of the matter.

d) **Future Proceedings.** Future and additional pretrial meetings where required and, upon termination of the final pretrial hearing, the date upon which the case will be set for trial.

e) **Consent to a Magistrate Judge.** Whether the parties will consent to a magistrate judge to conduct the trial.

6. **Pretrial Order**.

a) **Responsibility of Plaintiff's Counsel.** Counsel for the plaintiff will be responsible for preparing the pretrial order and arranging the meetings of counsel pursuant to this rule. Not less than fourteen (14) days in advance of the pretrial hearing, 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 should attempt promptly to resolve their differences, if any, concerning the order.

b) **Lodging with the Judge's Chambers**. No later than seven (7) days prior to the pretrial hearing, plaintiff will lodge a Pretrial Order with the judge's chambers.

c) **Format.** Attorneys for all parties appearing in the case must have approved the Pretrial Order as to form and substance. The Pretrial Order will contain the following unless the Court orders otherwise:

1. A statement to be read to the jury, not in excess of one page, of the nature of the case and the claims and defenses.

2. A list of the causes of action to be tried, referenced to the Complaint [and Counterclaim if applicable]. For each cause of action, the order must succinctly list the elements of the claim, damages and any defenses. A cause of action in the Complaint [and/or Counterclaim] which is not listed will be dismissed with prejudice.

3. (a) A list of each witness counsel actually expect to call at trial with a brief statement not exceeding four sentences, of the substance of the witnesses' testimony.

   (b) A list of each expert witness counsel actually expects to call at trial with a brief statement, no exceeding four sentences, of the substance of the expert witnesses' testimony.

   (c) A list of additional witnesses, including experts, counsel do not expect to call at this time but reserve the right to call along with a brief statement, not to exceed four sentences, of the substance of the witnesses' testimony.

4. (a) A list of all exhibits that counsel actually expect to offer at trial with a one-sentence description of the exhibit.

   (b) A list of all other exhibits that counsel do not expect to offer at this time but reserve the right to offer if necessary at trial with a one-sentence description of the exhibit.

5. A statement of all facts to which the parties stipulate. This statement must be on a separate page and will be read to and provided to the jury. The parties are directed to meet with the assigned magistrate judge to work out as many stipulations of fact as possible.

6. A list of all deposition transcripts by page and line, or videotape depositions by section that will be offered at trial.

7. In addition to filing proposed jury instruction in accordance with Fed. R. Civ. P. 51 and CivLR 51.1, the parties must e-mail the proposed instructions in Word or Wordperfect form to Chambers. If a party disagrees with a particular instruction, the party must submit an alternate instruction.

8. This case will be tried by (jury) (by the Court without a jury).

9. Time estimated for trial is ( ) days.

7. **Trial Counsel to be Present.** Unless otherwise ordered by the Court, counsel who will conduct the trial will appear at the pretrial hearing.

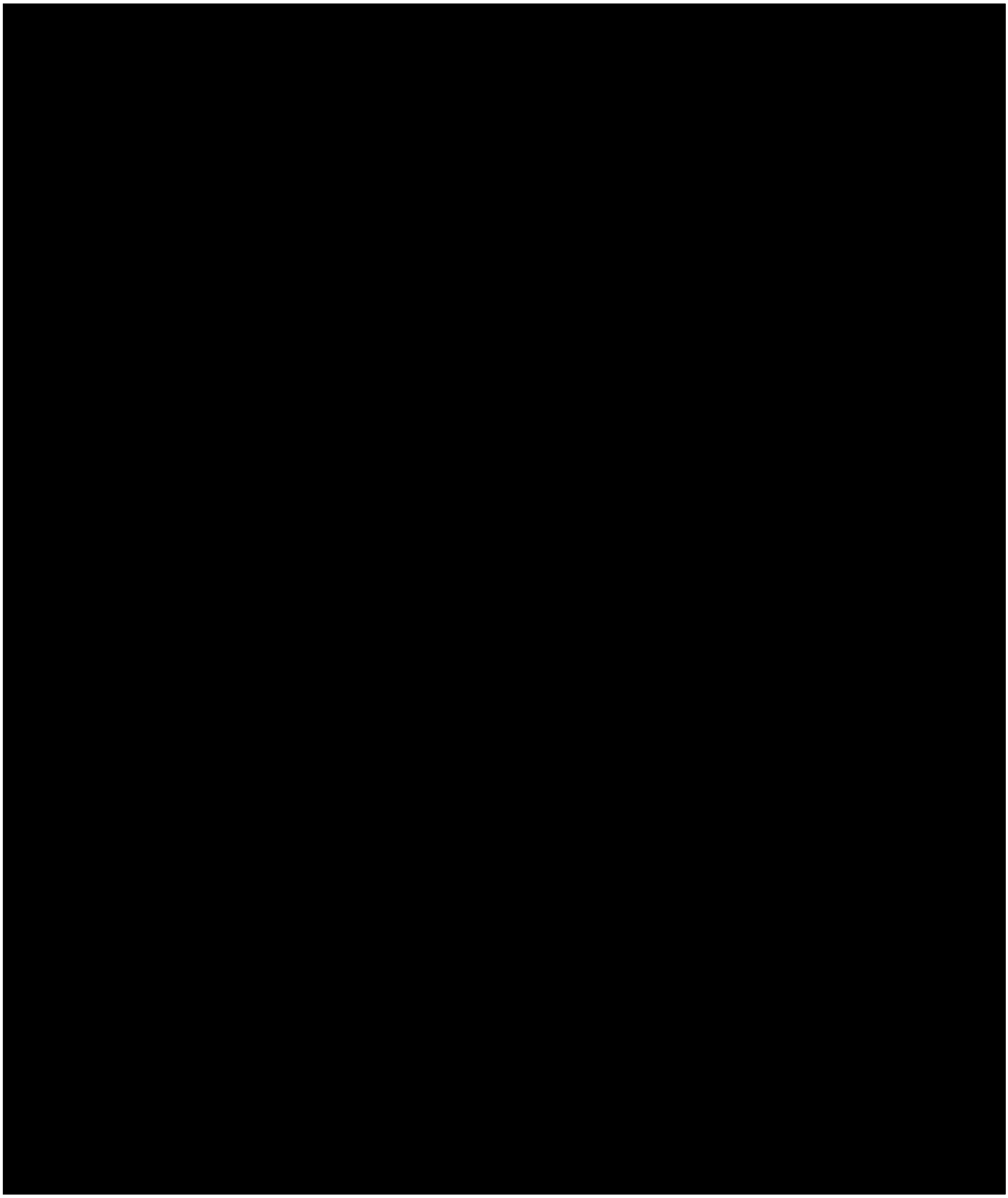
8. **Penalties; Pretrial.** Failure of counsel for any party to appear before the Court at pretrial proceedings or to complete the necessary preparations therefor may be considered an abandonment or failure to prosecute or defend diligently, and judgment may be entered against the defaulting party either with respect to a specific issue or on the entire case.

9. **Preparations for Trial.** Unless otherwise ordered, the parties must, not less than seven (7) calendar days prior to the date on which the trial is scheduled to commence:

   a) Serve and file briefs on all significant disputed issues of the law, including foreseeable procedural and evidentiary issues, setting forth briefly the party's position and the supporting arguments and authorities;

   b) In Jury cases, serve and file proposed voir dire questions, jury instructions and forms of verdict which must conform to Civil Local Rule 51.1; and (2) in court cases, serve and file proposed findings of fact and conclusions of law;

   c) Exchange copies of all exhibits to be offered that were not already provided under Civil Local Rule 16.1.f.4.b and all schedules, summaries, diagrams and charts to be used at the trial other than for impeachment or rebuttal. Each proposed exhibit must be pre-marked for identification in a manner clearly distinguishing plaintiff's from defendant's exhibits. Upon request, a party must make the original or the underlying documents of any exhibit available for inspection and copying. Nothing in this rule will excuse a failure to comply in good faith with the time for exchanging exhibits under Civil Local Rule 16.1.f.4.b.



Rule 2.1.15

Trial Readiness Conference

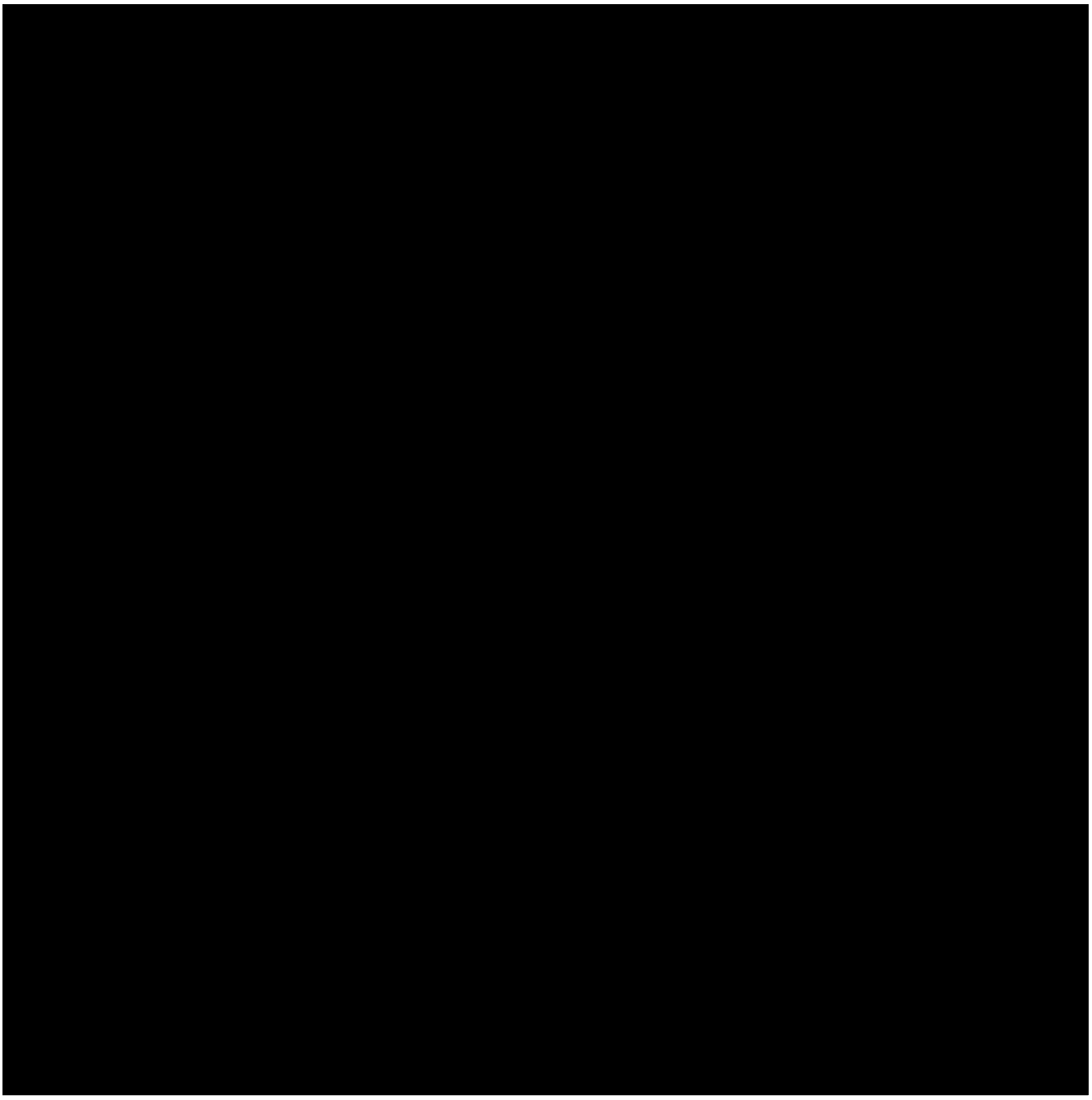
A trial readiness conference generally will be scheduled three weeks before the trial date. The parties must meet and confer prior to the scheduled hearing and attempt to resolve the case, or, if resolution is not possible, limit issues for trial. If the case is not settled in its entirety, all parties must prepare and sign a joint trial readiness conference report in the format set forth in the joint trial readiness conference report available on the Civil Forms area of the court's website at http://www.sdcourt.ca.gov. Separate reports will not be accepted. Failure to disclose and identify all trial exhibits and witnesses intended to be called at trial and all other items required by the report may, in the court's

discretion, result in exclusion or restriction of use at trial. The completed report must be submitted to the judge five court days before the scheduled conference. If a joint trial readiness conference report is not timely filed, personal appearances may be required at the trial readiness conference. No part of the joint trial readiness conference report is to be received into evidence against any party in later proceedings.

Parties completely familiar with the case and possessing authority to enter into stipulations must be present at the scheduled hearing. Orders made will be binding on the parties and will not be subject to reconsideration due to an attorney's unfamiliarity with the case at the time of the hearing. The parties must be prepared to discuss any unusual evidentiary or legal issues anticipated during the trial and all remaining matters believed by any party to be appropriate for stipulation.

During the trial readiness conference, the court will review with counsel and sign or issue the advance trial review order setting forth specific trial preparation requirements of the trial department.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2016; Rev. 1/1/2022; Rev. 1/1/2023; Rev. 1/1/2024)



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

JOINT TRIAL READINESS CONFERENCE REPORT FORMAT

(Formerly SDSC Local Rules, Division II, Appendix B)

The Joint Trial Conference Report must be prepared on pleading paper in accordance with the California Rules of Court. Information in the format indicated below must be provided for filing at the Trial Readiness Conference. Failure to file the Joint Trial Readiness Conference Report **OR** to appear at the Trial Readiness Conference may result in imposition of monetary sanctions, dismissal of the case, or entry of a default judgment. Failure to **fully** disclose all required items in the report may result in exclusion or restriction of evidence at trial. This is a JOINT REPORT. Separate reports will not be accepted.

Plaintiff(s)

v.

Defendant(s)

CASE NUMBER
JOINT TRIAL READINESS CONFERENCE REPORT

Trial Readiness Conference: (date/time/dept)

Trial Date: Trial time estimate:
Jury Requested: (Y/N) Jury fee deposited: (Y/N)
Court Reporter Requested: (Y/N)

A. The parties to the above case, by their attorneys: [list parties and attorneys] met at [address] on [date] but could not settle the case. They are prepared for trial.
B. Nature of case: (provide a joint, brief, non-argumentative description of the case, suitable for reading to a jury panel).
C. Legal issues which **are not** in dispute: (If a motion for summary adjudication has been granted in this case, specify the cause(s) of action, affirmative defense(s), claim for damage(s) or issue(s) of duty so adjudicated.)
D. Legal issues which **are** in dispute:
E. Exhibits: (Counsel must prepare a joint numerical index of all exhibits.) Each exhibit must be separately listed. There must be no sub-parts to an exhibit. The index must be prepared in the format provided below and must indicate: (1) exhibit number; (2) by whom submitted; (3) a description of each exhibit sufficient for identification; (4) whether the parties have stipulated to admissibility, and if not, the legal ground(s) for objection(s).

EXHIBIT INDEX

Exhibit No.	Submitted by	Description	Ground(s) for Objection	Date Identified	Date Admitted **(leave this blank)**

GROUNDS FOR OBJECTION:

1. No Objection: Admissibility Stipulated
2. Irrelevant (Evid. Code § 210)
3. Hearsay (Evid. Code § 1200)
4. Best Evidence (Evid. Code § 1500)
5. Inadmissible Opinion (Evid. Code § 800)
6. Insufficient Foundation (Evid. Code § 403) (Relevancy, Personal Knowledge Authenticity) (Evid. Code § 1400, Identity)
7. Unduly Time Consuming, Prejudicial, Confusing, or Misleading (Evid. Code § 352)
8. Subsequent Repair (Evid. Code § 1151)
9. Other (Specify)

F. List standard jury instructions, requested by plaintiff(s), citing each instruction by number and Special Instructions by title. Copies of proposed Special Instructions must be presented to the court, at the conference, for review. THEY MUST NOT BE FILED WITH THE REPORT.

G. List standard jury instructions, requested by defendant(s), citing each instruction by number and Special Instructions by title. Copies of proposed Special Instructions shall be presented to the court, at the conference, for review. THEY MUST NOT BE FILED WITH THE REPORT.

H. If a Special Verdict form will be proposed, attach to the report.

I. List the names of all witnesses, including experts, as follows: (Note: Witnesses used solely for impeachment need not be listed.)

PLAINTIFF	
NAME OF WITNESS	**TYPE OF WITNESS (expert/percipient)**
DEFENDANT	
NAME OF WITNESS	**TYPE OF WITNESS (expert/percipient)**

The attorneys noted below certify that they have met and conferred jointly, made a good faith settlement demand or offer, but have been unable to settle the case. All deadlines, set by the court for exchange of experts have been met and all discovery is complete. The parties are prepared for trial. (Explain here any variance from the above recital.)

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

Date: _____

Signature: _____

Type Name: _____

Attorney For: _____

Date: _____

Signature: _____

Type Name: _____

Attorney For: _____

Date: _____

Signature: _____

Type Name: _____

Attorney For: _____

Date: _____

Signature: _____

Type Name: _____

Attorney For: _____