

## 16. CASE MANAGEMENT AND PRETRIAL CONFERENCES

### 16-1. Definitions

“Scheduling,” “discovery,” or “status” conferences under Fed. R. Civ. P. 16 and 26 shall be designated as “case management conferences” in this Court. All statements, proposed orders, or other documents prepared in connection with such conferences must be referred to as such.

### 16-2. Order Setting Initial Case Management Conference

1. **(a) Issuance and Service of Order.** Except in categories of cases excluded under the Federal Rules of Civil Procedure, or these Local Rules or orders of this Court, when an action is filed the Court shall issue to the filing party an Order Setting Initial Case Management Conference and ADR Deadlines. The Order shall set the date for the Initial Case Management Conference—which shall be on the first date available on the assigned Judge’s calendar that is not less than 90 days after the action was filed, and shall specify the deadline for filing the ADR Certification required by Civil L.R. 16-8(b) and either a Stipulation Selecting an ADR Process or a Notice of Need for ADR Phone Conference as required by Civil L.R. 16-8 (c) and ADR L.R. 3-5(c). A copy of this Order must be served by the plaintiff on each defendant, along with the supplementary materials specified by Civil L.R. 4-2.
2. **(b) Case Management Schedule in Removed Cases.** When a case is removed from a state court to this Court, upon the filing of the notice of removal the Court shall issue to the removing party an Order Setting Initial Case Management Conference, as described in subsection (a), above. The removing party must serve the other parties in the case with a copy of the Order and the supplementary materials specified in Civil L.R. 4-2. Unless ordered otherwise by the Court, the filing of a motion for remand does not relieve the parties of any obligations under this rule.
3. **(c) Case Management Schedule in Transferred Cases.** When a civil action is transferred to this district, the Court shall issue to the plaintiff an Order Setting Initial Case Management Conference, as described in subsection (a), above. The plaintiff must serve the other parties in the case with a copy of the Order and the pertinent supplementary materials specified in Civil L.R. 4-2.
4. **(d) Relief from Case Management Schedule.** By serving and filing a motion with the assigned judge pursuant to Civil L.R. 7, a party, including a party added later in the case, may seek relief from an obligation imposed by Fed. R. Civ. P. 16 or 26 or the Order Setting Initial Case Management Conference. The motion must:
  1. **(1)** Describe the circumstances which support the request;
  2. **(2)** Affirm that counsel for the moving party has conferred with all other counsel in an effort to reach agreement about the matter and, for each other party, report whether that party supports or opposes the request for relief;
  3. **(3)** Be accompanied by a proposed revised case management schedule; and
  4. **(4)** If applicable, indicate any changes required in the ADR process or schedule in the case.
5. **(e) Limitation on Stipulations.** Any stipulation that would vary the date of a Case Management Conference shall have no effect unless approved by the assigned Judge before the date set for the conference. Any stipulation must comply with Civil L.R. 7-12.

### 16-3. Lead Trial Counsel Required to Confer

Unless otherwise ordered, the conferring and planning that is mandated by Fed. R. Civ. P. 26(f) and by ADR Local Rule 3-5 must be done by lead trial counsel for each party.

## **16-4. Procedure in Bankruptcy Appeals**

Appeals from the United States Bankruptcy Court to the United States District Court are governed by the Federal Rules of Bankruptcy Procedure and the Bankruptcy Local Rules of this district.

### **Cross Reference**

*See Fed. R. Bankr. P. 8001 through 8020 and B.L.R. 8001-1 through 8011-1.*

## **16-5. Procedure in Actions for Review on an Administrative Record**

In actions for District Court review on an administrative record, the defendant must serve and file an answer, together with a certified copy of the transcript of the administrative record, within 90 days of receipt of service of the summons and complaint. Within 28 days of receipt of defendant's answer, plaintiff must file a motion for summary judgment pursuant to Civil L.R. 7-2 and Fed. R. Civ. P. 56. Defendant must serve and file any opposition or counter-motion within 28 days of service of plaintiff's motion. Plaintiff may serve and file a reply within 14 days after service of defendant's opposition or counter-motion. Unless the Court orders otherwise, upon the conclusion of this briefing schedule, the matter will be deemed submitted for decision by the District Court without oral argument.

## **16-6. Procedure in U.S. Debt Collection Cases**

1. These cases shall proceed as follows:
2. **(a) Identification.** The first page of the complaint must identify the action by using the words "Debt Collection Case;"
3. **(b) Assignment.** Upon filing the complaint, the matter will be assigned to a Magistrate Judge for all pre-trial proceedings; and
4. **(c) Collection Proceedings.** If the United States files an application under the Federal Debt Collection Procedures Act, either pre-judgment or post-judgment, such matter will be assigned to a Magistrate Judge.

## **16-7. Procedure in Other Exempt Cases**

Unless otherwise provided in these local rules, in categories of cases that are exempted by Fed. R. Civ. P. 26(a)(1)(B) from the initial disclosure requirements of Fed. R. Civ. P. 26(a)(1), promptly after the commencement of the action the assigned judge will schedule a Case Management Conference or issue a case management order without such conference. Discovery shall proceed in such cases only at the time, and to the extent, authorized by the Judge in the case management order.

## **16-8. Alternative Dispute Resolution (ADR) in the Northern District**

1. **(a) District Policy Regarding ADR.** It is the policy of this Court to assist parties involved in civil litigation to resolve their disputes in a just, timely and cost-effective manner. The Court has created and makes available its own Alternative Dispute Resolution (ADR) programs for which it has promulgated local rules. The Court also encourages civil litigants to consider use of ADR programs operated by private entities. At any time after an action has been filed, the Court on its own initiative or at the request of one or more parties may refer the case to one of the Court's ADR programs.

## Cross Reference

See ADR L.R. 1-2 "Purpose and Scope;" ADR L.R. 2-3 "Referral to ADR Program." The Court's ADR processes and procedures are described on the Court's ADR website: [cand.uscourts.gov/adr](http://cand.uscourts.gov/adr).

1. **(b) ADR Certification.** In cases assigned to the ADR Multi-Option Program, no later than the date specified in the Order Setting Initial Case Management Conference and ADR Deadlines (presumptively 21 days before the date set for the initial case management conference), counsel and client must sign, serve and file an ADR Certification. The certification must be made on a form established for this purpose by the Court and in conformity with the instructions approved by the Court. Separate Certifications may be filed by each party. If the client is a government or governmental agency, the certificate must be signed by a person who meets the requirements of Civil L.R. 3-9(c). If the date of the initial case management conference is changed, unless otherwise ordered the ADR Certification deadline adjusts accordingly.

Counsel and client must certify that both have:

1. **(1)** Read the document entitled "*Alternative Dispute Resolution Procedures Handbook*" on the ADR website, found at [cand.uscourts.gov/adr](http://cand.uscourts.gov/adr);
  2. **(2)** Discussed with each other the available dispute resolution options provided by the Court and private entities; and
  3. **(3)** Considered whether their case might benefit from any of the available dispute resolution options.
2. Counsel must further certify that they have discussed selection of an ADR process and an appropriate deadline for an ADR session with counsel for the other parties to the case and shall indicate whether they intend to stipulate to an ADR process and deadline or prefer to discuss ADR selection with the assigned Judge at the case management conference.

## Cross Reference

See ADR L.R. 3-5 "Selecting an ADR Process."

## Commentary

Certification forms and the document entitled "*Alternative Dispute Resolution Procedures Handbook*" are available on the Court's ADR website: [cand.uscourts.gov/adr](http://cand.uscourts.gov/adr). The Clerk's Office will print copies upon request for pro se parties.

1. **(c) Stipulation to ADR Process.** If the parties agree to participate in an ADR process and they wish the Court to make an ADR referral in advance of the case management conference, they may file a Stipulation and Proposed Order selecting an ADR process.
2. **(d) Selection at Case Management Conference**
  1. **(1) Consideration of ADR Processes.** Counsel must include in their joint case management statement a report on the status of ADR, specifying which ADR process option they have selected and a proposed deadline by which the parties will conduct the ADR session or, if they do not agree, setting forth which option and timing each party prefers. Unless the assigned Judge already has approved a stipulation to an ADR process, counsel must be prepared to discuss all of the subjects about which they were required to meet and confer under ADR L.R. 3-5(a). If the ADR legal staff holds an ADR Phone Conference in advance of the initial case management conference, they ordinarily will make a recommendation to the assigned Judge.
  2. **(2) Selection by Stipulation or Order.** If the parties agree to a particular ADR process at the case management conference and the assigned Judge approves, the Judge will issue an order referring the case to that process. Alternatively, even if the parties do

not agree, the Judge may issue an order referring the case to ENE, Mediation, or a Settlement Conference.

3. **(3) Deferred Referral or Exemption.** If, considering the views of the parties, the Judge at the case management conference concludes that the case is not ripe for an ADR referral or that no ADR process is likely to deliver benefits to the parties sufficient to justify the resources devoted to it, the Judge may defer making an ADR referral or may exempt the case from participating in any ADR process.
3. **(e) ADR Phone Conference.** An ADR Phone Conference conducted by a member of the ADR legal staff may be set to assist the parties or the assigned Judge in selecting or customizing an ADR process, in aid of the administration of a case that has been referred to an ADR process, or as otherwise directed by the Court. An ADR Phone Conference may be set at the request of the parties on the form established for that purpose by the Court, by referral from the assigned Judge, or at the initiative of the ADR legal staff.

### Cross Reference

See ADR L.R. 3-5.

### Commentary

Forms for “Stipulation to an ADR Process” and “Request for ADR Phone Conference” are available on the Court’s ADR website: [cand.uscourts.gov/adr](http://cand.uscourts.gov/adr). The Clerk’s Office will print copies upon request for pro se parties.

## 16-9. Case Management Statement and Proposed Order

1. **(a) Joint or Separate Case Management Statement.** Unless otherwise ordered, no later than the date specified in Fed. R. Civ. P. 26(f), counsel must file a Joint Case Management Statement addressing all of the topics set forth in the Standing Order for All Judges of the Northern District of California – Contents of Joint Case Management Statement, which can be found on the Court’s website located at [cand.uscourts.gov](http://cand.uscourts.gov). If one or more of the parties is not represented by counsel, the parties may file separate case management statements. If a party is unable, despite reasonable efforts, to obtain the cooperation of another party in the preparation of a joint statement, the complying party may file a separate case management statement, accompanied by a declaration describing the conduct of the uncooperative party which prevented the preparation of a joint statement. Separate statements must also address all of the topics set forth in the Standing Order referenced above.
2. **(b) Case Management Statement in Class Action.** Any party seeking to maintain a case as a class action must include in the Case Management Statement required by Civil L.R. 16-9(a) the following additional information:
  1. **(1)** The specific paragraphs of Fed. R. Civ. P. 23 under which the action is maintainable as a class action;
  2. **(2)** A description of the class or classes in whose behalf the action is brought;
  3. **(3)** Facts showing that the party is entitled to maintain the action under Fed. R. Civ. P. 23(a) and (b); and
  4. **(4)** A proposed date for the Court to consider whether the case can be maintained as a class action.

## 16-10. Case Management Conference

1. **(a) Initial Case Management Conference.** Unless otherwise ordered, no later than the date specified in the Order Setting Initial Case Management Conference, the Court will

conduct an initial Case Management Conference. The assigned District Judge may designate a Magistrate Judge to conduct the initial Case Management Conference and, subject to 28 U.S.C. § 636, other pretrial proceedings in the case. Unless excused by the Judge, lead trial counsel for each party must attend the initial Case Management Conference. Requests to participate in the conference by telephone must be filed and served at least 7 days before the conference or in accordance with the Standing Orders of the assigned Judge.

2. **(b) Case Management Orders.** After a Case Management Conference, the Judge will enter a Case Management Order or sign the Joint Case Management Statement and Proposed Order submitted by the parties. This order will comply with Fed. R. Civ. P. 16(b) and will identify the principal issues in the case, establish deadlines for joining parties and amending pleadings, identify and set the date for filing any motions that should be considered early in the pretrial period, establish a disclosure and discovery plan, set appropriate limits on discovery and refer the case to ADR unless such a referral would be inappropriate. In addition, in the initial Case Management Order or in any subsequent case management order, the Court may establish deadlines for:
  1. **(1)** Commencement and completion of any ADR proceedings;
  2. **(2)** Disclosure of proposed expert or other opinion witnesses pursuant to Fed. R. Civ. P. 26(a)(2), as well as supplementation of such disclosures;
  3. **(3)** Conclusion of pretrial discovery and disclosure;
  4. **(4)** Hearing pretrial motions;
  5. **(5)** Counsel to meet and confer to prepare joint final pretrial conference statement and proposed order and coordinated submission of trial exhibits and other material;
  6. **(6)** Filing joint final pretrial conference statement and proposed order;
  7. **(7)** Lodging exhibits and other trial material, including copies of all exhibits to be offered and all schedules, summaries, diagrams and charts to be used at the trial other than for impeachment or rebuttal. Each proposed exhibit must be premarked for identification. Upon request, a party must make the original or the underlying documents of any exhibit available for inspection and copying;
  8. **(8)** Serving and filing briefs on all significant disputed issues of law, including procedural and evidentiary issues;
  9. **(9)** In jury cases, serving and filing requested voir dire questions, jury instructions, and forms of verdict; or in court cases, serving and filing proposed findings of fact and conclusions of law;
  10. **(10)** Serving and filing statements designating excerpts from depositions (specifying the witness and page and line references), from interrogatory answers and from responses to requests for admission to be offered at the trial other than for impeachment or rebuttal;
  11. **(11)** A date by which parties objecting to receipt into evidence of any proposed testimony or exhibit must advise and confer with the opposing party with respect to resolving such objection;
  12. **(12)** A final pretrial conference and any necessary Court hearing to consider unresolved objections to proposed testimony or exhibits;
  13. **(13)** A trial date and schedule;
  14. **(14)** Determination of whether the case will be maintained as a class action; and
  15. **(15)** Any other activities appropriate in the management of the case, including use of procedures set forth in the Manual for Complex Litigation.
3. **(c) Subsequent Case Management Conferences.** Pursuant to Fed. R. Civ. P. 16, the assigned Judge or Magistrate Judge may, *sua sponte* or in response to a stipulated request or motion, schedule subsequent case management conferences during the pendency of an action. Each party must be represented at such subsequent case management conferences by counsel having authority with respect to matters under consideration.

4. **(d) Subsequent Case Management Statements.** Unless otherwise ordered, no fewer than 7 days before any subsequent case management conference, the parties must file a Joint Case Management Statement, reporting progress or changes since the last statement was filed and making proposals for the remainder of the case development process. Such statements must report the parties' views about whether using some form of ADR would be appropriate.

### **Commentary**

*See Appendix B to these Local Rules for sample form. See also "Forms" link on the Court's website, located at [cand.uscourts.gov](http://cand.uscourts.gov).*

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