

## **Procedures for Civil Discovery and Settlement Matters**

This document contains information on the following matters:

- I. General Briefing and Hearing Guidelines
- II. Checklist for Rule 26(f) Meet-and-Confer and Rule 16 Scheduling Conferences
- III. Minor Discovery Matters
- IV. Settlement Conference Guidelines

### **I. General Briefing and Hearing Guidelines**

- A. Opposing counsel must be copied on all email communications that counsel initiate with the Court.
- B. For any opposed motion, counsel should indicate in their briefing whether they request a hearing on the motion. Hearings are held at the Court's discretion. Judge Martínez normally conducts discovery hearings telephonically.
- C. If materials must be sent to the Court for any reason, they should be sent electronically to [Martínezchambers@nmd.uscourts.gov](mailto:Martínezchambers@nmd.uscourts.gov). Please do not send by facsimile. Opposing counsel must be copied on all written or email communications that counsel conduct with the Court with the exception of the confidential letter sent in anticipation of a settlement conference.
- D. Even if stipulated, parties seeking an extension in excess of ten days for any filing deadline must file a Motion to Extend with the Court by the day of the original deadline. If the parties agree to a filing extension of less than ten days that does not interfere with other established case management deadlines, they must file a notice as required by Local Rule 7.4(a).
- E. Proposed orders must be sent to [Martínezproposedtext@nmd.uscourts.gov](mailto:Martínezproposedtext@nmd.uscourts.gov) after the filing of any unopposed motion. They should be submitted in Microsoft Word format (as .docx files), with 1" margins, be justified, and use Times Roman font, size 12. In civil cases, the case number should be presented as follows: Case No. ####-cv-#### [Presiding Judge initials] / [Referral Judge initials]. Further, they must indicate the approval of all parties by including the electronic signature of all parties at the end of the document.
- F. Parties must clearly label all exhibits attached to a filing on CM/ECF. For example, rather than merely labeling an exhibit "Exhibit A," parties must provide additional description, such as "Exhibit A: Deposition of Plaintiff Jones," or "Exhibit A: Defendant Smith's Responses to Interrogatories."
- G. For telephonic conferences or hearings, counsel must call into the conference line no later than three minutes before the conference or hearing begins.
- H. Counsel are reminded that when Judge Martínez is assigned as the discovery/referral judge, the parties may consent to him presiding over the case pursuant to Local Rule 73.2. Judge

Martínez will conduct trials in Albuquerque or Roswell if the parties unanimously request it. Should the parties wish to do so, they must fill out Form [AO 85 Notice, Consent, and Reference of a Civil Action to a Magistrate Judge](#). The form must be returned to the Clerk's Office and should not be sent directly to either assigned judge.

## II. Checklist for Rule 26(f) Meet-and-Confer and Rule 16 Scheduling Conferences

To ensure that civil litigation is “just, speedy, and inexpensive” as required by Federal Rule of Civil Procedure 1, attorneys and parties must collaborate in the discovery process. To that end, the Court requires attorneys and pro se litigants to review this Checklist at the mandatory Rule 26(f) Meet-and-Confer conference. The Court expects the parties to summarize any actual or anticipated disputes in each area of the Checklist in the Joint Status Report and Provisional Discovery Plan (JSR) they file prior to the Rule 16 Scheduling Conference.

- A. Counsel must use the Court's form JSR.<sup>1</sup> Counsel shall thoroughly read and comply with the Court's Initial Scheduling Order and this Checklist when completing the JSR. The Initial Scheduling Order is normally entered shortly after the first answer is filed in a lawsuit. Parties must take care to respond to each section of the JSR completely (*i.e.*, by writing the parties' contentions in the appropriate spot rather than directing the Court to read the pleadings) and to fill in specific dates as requested.
  - 1. Although the JSR does not mention requests for production (RFP), the Court asks the parties to discuss and, if possible, agree on how many RFPs each side will need.
- B. **Protective Orders:** The parties must discuss whether a protective order is necessary prior to exchanging information in discovery. If so, the parties should be prepared to submit a proposed order, formatted according to this Chambers' Guidelines,<sup>2</sup> no later than seven days following the Rule 16 Scheduling Conference.
- C. **Preservation and Collection of Information:** The parties must confirm that they are preserving relevant evidence, including electronically stored information (ESI), and that proper litigation holds are in place. The parties should be wary of applying too narrow a definition of what constitutes relevant ESI, since a miscalculation could lead to the permanent loss of relevant information. They must also disclose the scope of any litigation hold with respect to custodians, information sources, and time period. The parties should discuss collection of ESI and any specific requirements for collection, such as forensic imaging. The parties should also discuss whether they agree that certain categories of ESI need *not* be preserved or produced because they are inaccessible, burdensome, or unlikely to yield relevant information.
- D. **Sources of Information:** The parties must discuss the sources of relevant information, including corporate and personal accounts, and disclose all software and applications that

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<sup>1</sup> The JSR is available at <https://www.nmd.uscourts.gov/forms/joint-status-report-and-provisional-discovery-plan-pdf>.

<sup>2</sup> See Guidelines for Proposed Protective Orders, available at <https://www.nmd.uscourts.gov/content/honorable-damian-l-martinez>.

are used to generate, manage, and store that information. This includes, but is not limited to:

- Email systems
- Mobile device data
- Text and messaging applications, including, for example, iMessage, WhatsApp, Facebook Messenger, SnapChat, Signal, Wickr, and Telegram
- Workplace collaboration tools and chat applications, such as Slack and Microsoft Teams
- Social media accounts
- Unstructured data, such as documents created by commonly used Microsoft Office programs and Google programs
- Structured data, such as information stored in structured databases like Salesforce and Basecamp
- Wearable devices, such as data from watches or tags
- Backup media, such as data from tapes, discs, or cloud accounts
- External storage media, such as portable hard drives or flash drives
- Voicemail systems
- Video surveillance systems

**E. Search Methodology for ESI:** The parties must discuss what search methodologies will be used to identify responsive ESI, including the use of search terms or technology assisted review, and how those methodologies will be validated. An agreed-upon search methodology should include whether a producing party reserves the right to conduct a separate relevance review of information that is identified as responsive under the search methodology. The Court expects the parties to follow *The Sedona Principles* “and seek to reach agreement regarding the preservation and production of [ESI].”<sup>19</sup> *The Sedona Principles, Third Ed.*, 19 Sedona Conf. J. 1, 71 (2018).

**F. Production of ESI:** The parties must discuss how ESI will be produced, including:

- The format of production, i.e., native files, PDF files, TIFF+ files, etc.
- Whether the production will include a load file
- Applicable metadata by source of ESI
- The scope of messages to be produced from text messages and collaborative apps; i.e., the entire thread or a portion based on proximity to the responsive information
- Threading of emails
- Any applicable process for de-duplication of information
- Whether hyperlinked documents will be included in the production, and (where applicable) whether they will be produced in a family relationship with the underlying communication (email, chat message, text message, etc.)
- How to resolve any claims of privilege, and whether a separate court order under Fed. R. Evid. 502(d) is appropriate
- How redactions will be handled and logged
- Production methods and timing, including any plans for supplemental or rolling productions

- G. ESI Order:** The parties must discuss whether the case warrants a joint submission of a proposed order governing discovery of ESI. The parties must include language in any proposed ESI order that recognizes the Court's authority to modify the terms of the order for good cause at later stages of the litigation.
- H.** At the Rule 16 Scheduling Conference, counsel shall be prepared to discuss items from the above checklist. Counsel must also be prepared to discuss setting a settlement conference.

### **III. Minor Discovery Matters**

Judge Martínez will accept requests for telephonic resolution on discovery matters, including resolution of problems occurring during a deposition, provided that the following requirements are met:

- A.** The parties have not briefed the matter.
- B.** The matter involves a narrow or discrete issue: i.e., instructing a witness not to answer, a question about a protective order, scheduled depositions, or production of files or documents. Requests to compel responses to a number of interrogatories, etc., cannot be easily resolved in telephonic conferences.
- C.** Counsel shall attempt to resolve the dispute themselves by telephone or in person before contacting Judge Martínez. An email or letter exchange is not sufficient.
- D. Counsel shall file a motion for an informal discovery conference.** All parties must agree to a telephonic conference before any one counsel files the motion. Counsel shall also email chambers ([Martinezchambers@nmd.uscourts.gov](mailto:Martinezchambers@nmd.uscourts.gov)) to make an appointment.
- E.** Written requests for a telephonic discovery conference shall not include any argument on the merits of the request or complaints about opposing counsel. The email should include a brief outline of the narrow and discrete nature of the request, the request for a conference, and alert the Court to any relevant deadlines or time constraints.

### **IV. Settlement Conference Guidelines**

- A.** Unless otherwise requested and ordered, all settlement conferences with Judge Martínez are held in the Doña Ana courtroom of the U.S. District Courthouse in Las Cruces.
- B.** The Court does not provide interpreters for settlement conferences. If a participant requires an interpreter, counsel must ensure one is present.
- C.** Counsel must email settlement documents as instructed to Judge Martínez's chambers.