What Do You Consider a Good Faith Meet and Confer Effort?

Folks,

What do you consider a good faith meet and confer effort? California has a code section that now requires a moving party to meet and confer before filing a demurrer. I filed a cross complaint against a debt collector.

They emailed me their demurrer today and wrote " Our legal arguments as to why the FACC is deficient and what facts must be alleged are put forth in the attached demurrer. "

To me, that is not a good faith meet and confer effort. Heck, it is not a meet and confer effort at all. It is simply sending me a courtesy copy of the motion. But what do you think?

Thanks!

I think this California meet and confer requirement will generate a lot of crap to enable folks to say they met the requirement when in fact it is just pro forma posturing.

I would be interested to see any challenges to it but then why waste your time.

Jordan Rosenberg, Paralegal, California

I've always viewed a meet-and-confer as a discussion about the merits, or lack thereof, of the motion. If, after that discussion, the parties can't come to an agreement, then the motion gets heard.

Scott I. Barer, California

I'm not sure if this is in a rule somewhere or not, but I know at least local rules in Idaho federal court a meet and confer is defined as either an in-person discussion between the attorneys, or if they are too far for that then at a

minimum a phone call. I can't imagine a courtesy copy with a note attached satisfies any meet and confer requirements.

Ryan Ballard, Idaho

My experience is similar to Ryan's. In the US District Court of the Virgin Islands, an email exchange about a discovery dispute will rarely cut it.

There's got to be a phone call or face-to-face.

I also agree with Jordon that it's a bunch of crap that won't make a bloody difference. The meet and confer usually goes like this:

OC: You saw my email about why your discovery responses are insufficient?

Me: Yes. I disagree, for the reasons stated in my email in response.

OC: And you won't change your mind?

Me: Nope.

OC: Do you agree that we've met and conferred for purposes of the local rule?

Me: Yes.

OC: Ok, thanks. Have a nice day.

Me: You too.

Andy Simpson, U.S. Virgin Islands

Well. assuming meet and confer mean what the diction says they me.

meet1

mēt/

verb

verb: *meet*; 3rd person present: *meets*; past tense: *met*; past

participle: *met*; gerund or present participle: *meeting*

1. 1.

come into the presence or company of (someone) by chance or arrangement.

Sound like they didn't meet the meet requirement. So try again evil debt collector.

John Davidson, Pennsylvania

Some CA state courts have local rules touching on this meeting & conferring, especially when it concerns discovery. I have seen local (San

Francisco) law & motion judge decline to rule on a demurrer where there was no genuine meet & confer as is now required

Michael L. Boli, California

When people show up.

Joseph G. Bonanno, Massachusetts

What Ryan mentions about an in-person or phone call confer is required for family law cases in California under the Rules of Court whenever one party wants to file a motion for anything. I don't think it make a difference personally, but failing to jump through that hoop is something that the other party will hold against you. I hold it against opposing parties all the time. Shockingly, some opposing parties in divorce cases I handle don't like me so I might also enjoy forcing them to deal with me.

Speaking generally, the problem I have with most meet and confer efforts is that it is nothing but posturing. In other words, opposing counsel's letter is simply him or her on a soapbox saying why he/she is completely correct and

how my position is completely full of crap and that the judge will absolutely not see it my way.

The first problem with this, obviously, is that no one cares what opposing counsel thinks except opposing counsel. What I, as the lawyer, care about is what the cases and statutes say because, hopefully, that's where the judge will start his or her analysis. Second, "meet-and-confer" -- to me at least -- says the parties should (1) meet somehow, and (2) confer. To me, confer means the exchange of information with the consideration of said information by the recipient with an open mind. Hopefully each party will see things differently than they had previously and a compromise will be reached somehow. Third, you don't have to go to court that often to realize that it's rare for a judge to side completely with one party or the other.

Thus, what is more likely is that the judge would find that both parties' positions are somewhat justified and somewhat full of crap and, thus, order something in the middle that will disappoint both parties equally.

Given this, how I usually write my meet-and-confer letters or phone or in-person meet and confers is to explain my client's position and ask the opposing party or counsel to explain their position. I then listen without interrupting. The "asking and listening to what the other side has to say" bit seems obvious to me, but I rarely see the opposing side do it.

I agree with Ryan that sending you a courtesy copy of the demurrer is not sufficient meet and confer. First, there's no meeting. Second, there's no conferring (i.e. an exchange of information). It depends on your judge, but it might help if you could show to the judge (e.g. via a sent email or letter) that you asked to meet and confer with the opposing party on the phone or face-to-face and they declined.

Andy Chen, California

I once heard a federal judge tell an audience that it had to be either face to face or by phone. email was not enough.

Face to face is often impractical if you are in different counties or states which is usually the case for me.

I hate phones so what I'd like to do ideally is sort it out by email to the extent possible and then, if we must, get on the phone and confirm that what we said in email is where we stand.

However, when they contact you on the last possible day for meet and confer then it isn't going to be my preference.

Jordan Rosenberg, a paralegal

Thanks for the input. I emailed them back (these are the same fools who ended a response to my meet and confer letter on discovery with "File your motion."). They claim that instead of spending time sending me a letter, it is easier for them to just email me their motion, for me to read it, and then explain what I disagree with. I have suggested they set up a time to call me if they want to actually meet and confer.

The dumb thing is that they know the grounds for my cross complaint and all they are doing is eating up any fees they would get. There is no basis for them to claim attorney fees so at this point they are spending time on a case for which their fee is set. Weird!

Jonathan Stein, California

Are their arguments well-taken? Can you survive the demurrer, or do you want to amend your cross-complaint?

I think the statute on meeting and conferring has some explicit requirement about how it is to be done.

They have to file a declaration stating that they met the requirements.

But I don't think the statute requires the court to overrule the demurrer if the moving party either fails to include the declaration or the declaration fails to

establish a true attempt to meet and confer. I have not looked at this in a while.

Roger Rosen, California

In certain instances, we have a requirement to do such in state court here where I try to keep my cases. We have to include an affidavit of good faith where opposing counsel fails to respond to communication requests, this would include dates, times, phone numbers, fax numbers and email addresses we used in our attempts. Federal court has a similar requirement, we must include in letter motions or formal motions that counsel was contacted prior to proceeding and what the outcome of that contact was.

Michael A. Huerta, New York

I have dealt with this in the California courts. Jonathan, the communication you describe from your opponent is not a good faith meet-and-confer attempt; it's not even a pro-forma attempt to meet-and-confer, because the opponent simply says he's standing pat, there's no possibility of his being persuaded otherwise. That's not a good-faith meet-and-confer attempt. In my view if you simply wanted the demurrer dismissed on procedural grounds you could show up and state what you stated here, and your testimony would show the meet-and-confer prerequisite to the demurrer not to have been met. If the demurrer is poorly reasoned the court might entertain it and dismiss it on the merits anyway.

Max Taylor
