

**FILED**

**MAR 2 - 2010**

**CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY: Y. A. WILLIAMS  
DEPUTY CLERK**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

**IN RE:**

**ADOPTION OF LOCAL RULE 401  
(Fed. R. Crim. P. 43)**

**GENERAL ORDER NO. 486**

IT IS HEREBY ORDERED that the Judges of the Eastern District of California, after the notice and comment period provided by 28 U.S.C. §2071(e), finally adopt the attached LOCAL RULE 401 (Fed. R. Crim. P. 43) applicable to the shackling of in custody defendants during criminal court proceedings convened in the Sacramento and Fresno Courthouses.

DATED: *March 2, 2010*

FOR THE COURT:

  
ANTHONY W. ISHII  
Chief United States District Judge

**RULE 401 (Fed. R. Crim. P. 43)**

**SHACKLING OF IN-CUSTODY DEFENDANTS**

**(a) Applicability.** This Rule is applicable to the shackling, when advisable, of in custody defendants during criminal court proceedings convened in the Sacramento and the Fresno Courthouses.

**(b) Definitions.**

(1) "Crime of Violence" means:

(A) an offense that has as an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another;

(B) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(2) "Fully Shackled" means leg restraints (including waist chains), and handcuffs.

(3) "Long Cause Proceeding" means a proceeding that is expected to last at least 30 minutes, such as an evidentiary hearing.

**(c) Shackling at Initial Appearance.**

**(1) Single Defendant Actions.**

(A) Prior to the commencement of initial appearances, the Marshal shall make an individualized shackling recommendation for each prisoner. In connection with this recommendation, the Marshal shall complete a written form (Prisoner Restraint Level Form) giving the recommendation regarding the level of restraint necessary, if any.

(B) Once the Prisoner Restraint Level Form is completed by the Marshal, and as soon as practicable, it shall be given to the Judge or Magistrate Judge presiding over the initial proceeding. The Court may review the information on the Form, a Pre-Trial Service report, and any other information pertinent to shackling. The Court shall then annotate on the form its determination regarding the appropriate restraint level. Unless it is not feasible, the Form shall be distributed to the defendant's attorney and the Assistant United States Attorney prior to hearing.

(C) The attorney for either party may request that the Court modify its restraint level determination for the initial proceeding. At the end of the initial proceeding, the deputy courtroom clerk shall annotate the Court's final restraint level determination in the minutes.

(D) When making a determination on restraints, the Court shall, where information is reasonably available, consider the following as it may weigh in favor of, or against, imposition of restraints:

- (i) The nature and circumstances of the offense charged, including whether the offense is a crime of violence, a federal crime of terrorism, or involves a firearm, explosive, or destructive device;
- (ii) The weight of the evidence against the in custody defendant;
- (iii) The history and characteristics of the in custody defendant, including: the in custody defendant's character, physical and mental condition, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and whether, at the time of the current offense or arrest, the in custody defendant was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal, state, or local law;
- (iv) Circumstances of the defendant's arrest, including but not limited to, voluntary surrender, or flight to avoid apprehension, resistance upon arrest, other indicia of possible flight.

**(2) Multiple Defendant Actions.** In an action where multiple defendants are charged, and it is likely that the action will require an appearance by multiple defendants at any proceeding, the Court shall consider the following in determining restraint levels:

- (A) Those factors described in (c)(1)(D) above;
- (B) The number of defendants in the action;

(C) The Marshal staffing actually available to counteract any disruption or other untoward behavior;

(D) The logistical disruption which might entail in having numerous defendants with varied restraint levels.

The Prisoner Restraint Form procedure set forth in (c)(1)(A)-(C) above shall be employed in a multiple defendant action. A determination shall be made for each defendant.

**(d) Subsequent Proceedings.** The Court's determination of shackling status made at the initial appearance shall continue in effect unless changed circumstances warrant a different restraint level, or a Judge determines on de novo review that a different restraint level is appropriate, giving the affected parties an opportunity to be heard. Any party may request that the court change the restraint level. Nothing herein alters the inherent power of the Judge to order up to full and immediate shackling if such an order is necessary, in the discretion of the Judge, to ensure the safety of all people in the courtroom. After the implementation of such an order, the affected parties will be afforded the opportunity to be heard within a time reasonably proximate to the shackling.

**(e) Multiple Actions Proceedings.** Notwithstanding any other provision of this Rule, in a proceeding in which multiple defendants in different actions are present in the courtroom at the same time, a Judge may direct, prior to the commencement of the proceeding, that all in custody defendants be restrained at the level the Judge believes appropriate. Any party may be heard to argue a different restraint level at the time that party's case is heard.

**(f) Unshackling of Writing Hand.** When an in custody defendant is fully shackled:

(1) At Rule 11 proceedings, the in custody defendant shall be permitted the unshackled use of the defendant's writing hand, unless the Marshal recommends full shackling for particularized reasons, and the Court adopts the recommendation.

(2) In long cause proceedings, the in custody defendant shall be permitted the unshackled use of the defendant's writing hand, unless the Marshal recommends full shackling for particularized reasons, and the Court adopts the recommendation. The in custody defendant shall remain seated at the defense table, except when giving testimony.

**(g) Jury Proceedings.** This Rule does not apply to trial proceedings at which a jury is being chosen or has been impaneled.