

FILED
Sep 26, 2013
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

IN RE:)
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ADOPTION OF AMENDED LOCAL)
RULES 101, 137, 159, 163, 202, 205,) **GENERAL ORDER NO. 536**
281, 403, 460)
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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(b), adopt the attached Amended Local Rules: Local Rule 101 (Fed. R. Civ. P. 1)- Definitions; Local Rule 137 (Fed. R. Civ. P. 5)- Reduction of Orders to Writing – Service of Orders; Local Rule 159 (Fed. R. Civ. P. 16)- Notice of Filing Bankruptcy; Local Rule 163 (Fed. R. Civ. P. 51)- Jury Instructions and Verdicts (Civil and Criminal Actions); Local Rule 202 (Fed. R. Civ. P. 17)- Minors and Incompetents; Local Rule 205 (Fed. R. Civ. P. 23)- Special Rule for Class Actions; Local Rule 281 (Fed. R. Civ. P. 16)- Pretrial Statements; Local Rule 403 (Fed. R. Crim. P. 5)- Court Interpreter Services in Criminal Actions; and Local Rule 460 (Fed. R. Crim. P. 32, 18 U.S.C. §3152(c))- Disclosure of Presentence Reports, Pretrial Services Reports and Related Records. These Amended Local Rules shall take effect October 1, 2013.

Date: September 26, 2013


MORRISON C. ENGLAND, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT

RULE 101 (Fed. R. Civ. P. 1)

DEFINITIONS

For purposes of these Rules, unless the context otherwise requires, the terms below are defined as follows.

"Action" means a case, proceeding, or matter.

"Affidavit" includes a declaration prepared in accordance with federal law. See 28 U.S.C. § 1746.

"Attorney" refers to a member of the Bar of this Court, licensed to practice law by the State of California or a member of the bar in another state authorized to practice in this Court unless inconsistent with the purpose and intent of a particular Rule. Compare "attorney" with "counsel." See L.R. 183.

"Attorney's Signature" includes either a handwritten signature or an electronic signature.

"Briefs" include memoranda, points and authorities, and other written arguments, or compilations of authorities.

"Chief Judge" means the Chief Judge of the District appointed pursuant to 28 U.S.C. § 136.

"Clerk" means the Clerk of the District Court appointed pursuant to 28 U.S.C. § 751, or a duly authorized deputy clerk, as the case may be.

"CM/ECF" is the Case Management / Electronic Case Files docketing and file system implemented by the Eastern District of California. Districts implementing CM/ECF electronically manage their case files, i.e., the case files are stored in a data base and not in paper (CM), and filings in court are performed, to the extent possible, electronically in lieu of paper (ECF).

"Complaint" includes any complaint, petition, counterclaim, cross-claim, claim for relief under Fed. R. Civ. P. 14, or other claim for affirmative relief.

"Consent to Service" is the authorization by an attorney or party to accept service during the course of an action by electronic means pursuant to Fed. R. Civ. P. 5(b)(2)(E) and Fed. R. Crim. P. 49. See L.R. 135(g).

"Conventional Filing" is the filing of a document with the Clerk of Court in paper format. Documents filed conventionally may be filed via mail or in person. Parties that require a conventionally-filed document to be conformed and returned must submit one

additional legible conformed copy, and if mailed, a postage paid return envelope. If a postage paid envelope is not received, documents cannot be returned.

"Conventional Service" is service during the course of an action accomplished pursuant to Fed. R. Civ. P. 5(b)(2)(A)-(D) and Fed. R. Crim. P. 49.

"Courtesy Paper Copy" is a document submitted in paper format to the Clerk for delivery to chambers when an electronic filing exceeds 25 pages or an exhibit or attachment exceeds 50 pages. The courtesy paper copy must be prominently labeled COURTESY COPY in the upper right corner of the first page. See L.R. 133(f).

"Counsel" refers to an attorney and/or a party acting in propria persona or pro se. See L.R. 183.

"Court" means the Judge and/or Magistrate Judge to whom an action has been assigned or before whom an action is being conducted.

"Courtroom Deputy Clerk" means the deputy clerk assigned to the particular Judge or Magistrate Judge to whom an action has been assigned or the Judge or Magistrate Judge before whom an action or a part thereof is being conducted.

"Days" are calculated pursuant to Fed. R. Civ. P. 6 and Fed. R. Crim. P. 45, for the purposes of these Local Rules.

"Defendant" includes any party against whom a complaint, petition, counterclaim, cross-claim, claim for relief under Fed. R. Civ. P. 14, indictment, information, violation notice, citation, or any other claim for affirmative relief is made.

"Direct Electronic Filing" means the filing of a document in electronic format via the Internet through the Court's ECF system.

"ECF System" means the Electronic Case Files system used by the Court, also referred to as CM/ECF, that allows for the filing and service of documents in .pdf format.

"E-Filing Registration" means registering with the United States District Court for the Eastern District of California to file documents electronically through ECF, distinct from PACER registration; e-filing registration also acts as a consent to service by electronic means during the course of an action unless the attorney opts out. See L.R. 135(g).

"Electronic Case Files" are the official records of each case file kept by the Court in electronic format.

"Electronic Filing" means the filing of documents in .pdf format through the Court's ECF system or submitted to the Clerk in electronic format on portable electronic media.

"Electronic Signature" is the signature on an electronically-filed document, constituting a combination of (1) the person's representative signature, "/s/ - Name" or a facsimile personalized signature on the signature line of the document, coupled with (2) the successful electronic filing of that document through use of the person's login and password. Alternatively, when a document is submitted to the Clerk on portable electronic media, signatures shall appear either as a facsimile of the original (in a scanned document placed on portable electronic media), or on a separate, scanned signature page if the document was published to .pdf and then placed on portable electronic media. In the latter situation, the docket shall reflect submission of the signature page.

"Email Box" means the email box assigned to each respective Judge or Magistrate Judge as listed on the Court's website used exclusively for transmission of emailed documents pertinent to court proceedings.

"En banc" means the several Judges or Magistrate Judges acting as a group or sitting en banc.

"Fed. R. App. P." means the Federal Rules of Appellate Procedure.

"Fed. R. Civ. P." means the Federal Rules of Civil Procedure.

"Fed. R. Crim. P." means the Federal Rules of Criminal Procedure.

"Filed" means delivered into the custody of the Clerk and accepted by the Clerk for inclusion in the official records of the action. Documents are filed for purposes of these Rules whether they are conventionally filed in paper or electronically filed, so long as the manner of filing is as provided for in these Rules or by order of the Court. See generally L.R. 133.

"General Duty Judge" means the Judge in Sacramento appointed by the Chief Judge to perform the following duties in Sacramento:

(a) Preside over naturalization ceremonies (or arrange for a substitute Judge or Magistrate Judge), and hear contested applications for citizenship;

(b) Select and impanel Grand Juries and preside over matters before the Grand Jury, including release and substitution of jurors and alternates, motions to compel testimony and production of records, bank secrecy and other protective orders, issuance of subpoenas and motions to disclose or quash, receipt and safekeeping of confidential materials such as those submitted to the Court pursuant to Fed. R. Crim. P. 6(e)(3)(B);

(c) Preside over attorney admissions;

(d) Assume and discharge the duties of a United States Magistrate Judge when the need arises; and

(e) Preside over such other miscellaneous matters as may from time to time be designated by the Chief Judge.

"General Order" means an order entered or adopted by the Chief Judge or by the Judges en banc relating to internal court administration. See L.R. 102(a).

"Judge" means a United States District Judge.

"Lodged" means delivered to the Clerk or to the courtroom deputy clerk for inclusion in the official records of the action. Lodged documents are not normally part of a record on appeal.

"Magistrate Judge" means a United States Magistrate Judge appointed pursuant to 28 U.S.C. § 631.

"Magistrate Judge Actions" are all criminal complaints, initial Rule 40 appearances or class B and C misdemeanors also known as "Petty Offense Actions," and all other actions opened as "mj" actions.

"Miscellaneous Case/Action" is a number assigned to an ancillary or supplementary proceeding not defined as a civil or criminal action.

"Motion" means a motion, application, petition, or other request made to the Court for an order or other judicial activity.

"Notice of Electronic Filing" is a notice generated in ECF that notifies parties that a document has been filed.

"Order" means any directive by the Court other than a judgment, including oral, telephonic, written, and electronic directives.

"PACER," short for Public Access to Court Electronic Records, is a system maintained by the Administrative Office of the United States Courts for access to court electronic records. Registration to this system is required to access documents filed in ECF.

"PACER Registration" is a separate requirement for e-filing along with e-filing registration. PACER registration allows users to view documents through the PACER (Public Access to Court Electronic Records) System, <http://pacer.psc.uscourts.gov>. See L.R. 135(g)(3).

".PDF" or "Portable Document Format" is the required format for documents filed through the ECF system. Documents may be converted to .pdf format through .PDF software.

".PDF Software" is the software needed to convert word processor or scanned documents to .pdf format.

"Plaintiff" includes any party who files a complaint, petition, cross-claim, claim for relief under Fed. R. Civ. P. 14, or any other claim for affirmative relief.

"Pretrial Conference" means the final pretrial conference as defined in Fed. R. Civ. P. 16(e). See L.R. 282.

"Prisoner Actions" are actions brought in propria persona by a person in custody who is seeking habeas corpus relief (28 U.S.C. § 2241 et seq.) or any relief authorized by 42 U.S.C. § 1981 et seq., or actions pursuant to *Bivens* or the Federal Tort Claims Act.

"Pro Se Action" means an action in which all the plaintiffs or all the defendants are proceeding in propria persona. In these Rules, "pro se" and "in propria persona" are used interchangeably.

"Received" means accepted by the Clerk for physical inclusion in the Court's records but not suitable for filing as part of the official record in the action, e.g., copies of correspondence between the parties, letters to the Court not suitable for filing, and other miscellaneous documents. Received documents are not normally part of a record on appeal.

"Removed Case" means an action removed from state court to federal court pursuant to 28 U.S.C. § 1441 et seq. Removed cases are initiated pursuant to the CM/ECF procedures in the same fashion as any other civil action. The appropriate state court file records, see 28 U.S.C. §§ 1446(a), 1447(b), should be filed electronically or as otherwise provided herein. See L.R. 133.

"Serve" includes service of process, personal and mailed service during the course of the action by conventional filers, and the service of documents by electronic filers during the course of the action effected through the CM/ECF System and communicated by the Notice of Electronic Filing. See Fed. R. Civ. P. 4, 4.1, 5; Fed. R. Crim. P. 49, L.R. 135.

"Signature" refers to either a handwritten signature on a paper document or an electronic signature. A signature on a document submitted to the Clerk on portable electronic media shall appear either as a facsimile of the original in a scanned document, or on a separate, scanned signature page if the document was published to .pdf. See L.R. 131.

"Status Conference" means any pretrial, scheduling, or discovery conference excepting the final pretrial conference as defined in Fed. R. Civ. P. 16(e). See L.R. 240.

"Text Only Order" refers to an order issued by the Court without an attached electronic document. The order appears as a docket entry with the words "Text Entry Only." See L.R. 137.

"Weapon" means any instrument intended to be used for attack or defense, including but not limited to firearms and knives. See L.R. 103.

RULE 137 (Fed. R. Civ. P. 5)

REDUCTION OF ORDERS TO WRITING - SERVICE OF ORDERS

(a) Reduction of Orders to Writing. Subject to Fed. R. Civ. P. 58 and unless the Court otherwise directs or permits, whenever the Court makes an oral order (except intermediate orders in the course of a hearing), the prevailing party shall serve upon all other parties and lodge a proposed written order embodying all provisions of the orally-announced order. Unless all counsel have approved the order as to form, counsel preparing the order shall serve it on all other parties and wait seven (7) days before lodging the proposed order. Counsel submitting a proposed order to the Court shall provide a certificate reflecting service and expiration of the seven (7) days. Counsel not preparing the order shall have seven (7) days after service of a copy of the proposed order within which to apply to the Court for correction or modification of the proposed order to reflect accurately the ruling of the Court or to submit an alternative order. If the proposed order is approved by the Court, it shall be signed and filed.

(b) Electronically-Lodged Proposed Orders. When a proposed order is electronically submitted to the Court, the person proposing the order must submit it via CM/ECF, thereby effecting service on all other parties. Except in situations in which a proposed order is contained in a stipulation, electronically-submitted proposed orders may not be combined into a motion or request. In addition to filing the proposed order electronically in .pdf format, the proposing person must also submit by email a separate proposed order in Word ~~or Word Perfect~~ format to the appropriate Judge or Magistrate Judge's email box listed on the Court's website. The email subject line must contain the words "proposed order" as well as the case number. Counsel should not include table/cell formatting in the date and signature portions of proposed orders. Use of table/cell formatting in the date and signature portions of proposed orders may cause the document(s) to be returned unsigned and/or unprocessed.

In all cases involving submission of a proposed order, simply emailing the word processing document to the Judge or Magistrate Judge's email box does **not** constitute the proper submission of that proposed order with the Court. Conversely, simply submitting a .pdf version of the proposed order via CM/ECF does **not** constitute proper submission of the proposed order. **Both** the submission of the .pdf version and the submission via email to the email box of the assigned Judge or Magistrate Judge must be accomplished.

(c) Documents Requiring Leave of Court. If filing a document requires leave of court, such as an amended complaint after the time to amend as a matter of course has expired, counsel shall attach the document proposed to be filed as an exhibit to moving papers seeking such leave and lodge a proposed order as required by these Rules. If the Court grants the motion, counsel shall file and serve the document in accordance with these Rules and the Federal Rules of Civil and Criminal Procedure.

(d) Order Processing. Orders will be generated by chambers and converted to .pdf, or generated in .pdf format in CM/ECF. The assigned Judge, Magistrate Judge, or their designee will electronically file all signed orders. Any order signed electronically has the same force and effect as if the Judge or Magistrate Judge had signed a paper copy of the order and it **had** been entered on the docket conventionally.

(e) Routine Orders. The Court may grant routine orders by a text-only entry upon the docket. In such cases, no .pdf document will issue; the text-only entry shall constitute the Court's only order on the matter. The System will generate a "Notice of Electronic Filing" as described in these procedures for purposes of electronic service, and the Clerk will effect conventional service if required.

(f) Service. Copies of all written orders signed and filed by the Court conventionally or electronically, whether drafted by counsel or by the Court, shall be served forthwith by the Clerk on all counsel who have appeared in the action. A certificate of service by the Clerk shall accompany the order as served and shall be attached to the order as filed.

RULE 159 (Fed. R. Civ. P. 16)

NOTICE OF FILING OF BANKRUPTCY

When a party files a bankruptcy petition, or an involuntary proceeding is commenced against a party, the party shall file a "Notice of Bankruptcy Proceeding" in the action within seven (7) days after the filing of the petition. The Notice must identify the filing party, the date of the filing, the bankruptcy case number, the court where the filing occurred, and set forth the party's position regarding whether the action is subject to the automatic stay of 11 U.S.C. § 362. If the filing party has not filed the required Notice and another party learns of the bankruptcy filing, that party must file the Notice within seven (7) days of learning of the bankruptcy filing.

RULE 163 (Fed. R. Civ. P. 51)

JURY INSTRUCTIONS AND VERDICTS - CIVIL AND CRIMINAL ACTIONS

(a) Filing. Unless the Court otherwise orders or permits, requested jury instructions in all actions shall be filed and copies served on all parties at the opening of the trial. Instructions thereafter presented may be deemed not to have been properly requested unless (1) the necessity for the request arose in the course of trial and could not reasonably have been anticipated before trial from the pleadings, discovery or nature of the action and (2) the request is presented as promptly as possible. See Fed. R. Civ. P. 51; Fed. R. Crim. P. 30.

(b) Form and Number.

(1) Electronic Filers. Two copies of the instructions shall be submitted. One copy shall be electronically filed as a .pdf document and shall contain each instruction on a separate page, numbered and identified as to the party presenting it. Each instruction shall cite the decision, statute, ordinance, regulation, or other authority supporting the proposition stated in the instruction. The second copy (jury copy) shall comply with (b)(4) and shall be submitted by e-mail to the appropriate e-mail address as listed on the Court's website in Word ~~or Word Perfect~~ format. See L.R. 137(b).

(2) Conventional Filers. Two (2) copies of the instructions shall be filed on 8-1/2" x 11" paper. The first copy shall contain each instruction on a separate page, numbered and identified as to the party presenting it. Each instruction shall cite the decision, statute, ordinance, regulation, or other authority supporting the proposition stated in the instruction. The second copy (jury copy) shall comply with (b)(4).

(3) Cover Sheet. The cover sheet on each set of instructions shall contain the appropriate caption (title, Court and cause) and an identification of the party presenting the instructions.

(4) Jury Copies. As the jury copy may be duplicated and given to the jury, the individual instructions shall be unnumbered and unidentified as to the party presenting them and shall contain no citation to the authority supporting the proposition stated in the instruction.

(c) Content. Each requested instruction shall be (as far as possible) free of legal jargon, understandable, concise, impartial, and free from argument. All requested instructions on a single subject shall be grouped together when submitted to the Court. All instructions intended as alternates shall be so designated.

(d) Standard Instructions. When the instructions are derived from the Ninth Circuit Pattern Jury Instructions, California Jury Instructions-Civil (CACI), California Jury Instructions-Civil (BAJI), California Jury Instructions-Criminal (CALJIC) or Federal Jury Practice and Instructions (Civil and Criminal), or other source of standard instructions, the source shall be from the latest edition provided. If a standard instruction is altered by omissions, additions, or modifications by counsel (other than substitution of the parties' names for "plaintiff" and "defendant"), the modification shall be specifically noted and explained on the file copy.

(e) Verdict and Special Interrogatories. The jury instructions shall be accompanied by a form or forms of verdict. Requests for special verdicts or interrogatories to be answered in connection with a general verdict shall also accompany the instructions.

(f) Conference - Objections. The Court will set a time for a conference with counsel for the purpose of settling instructions. Unless the Court orders otherwise, counsel shall be prepared at that time to object to any instructions and to support any objection with citation to authority. Upon the settling of the instructions, and before counsel's final argument to the jury, the Court will hold a hearing on the record and outside the presence of the jury for the purpose of permitting counsel to voice any objections concerning the instructions.

RULE 202 (Fed. R. Civ. P. 17)

MINORS AND INCOMPETENTS

(a) Appointment of Representative or Guardian. Upon commencement of an action or upon initial appearance in defense of an action by or on behalf of a minor or incompetent person, the attorney representing the minor or incompetent person shall present (1) appropriate evidence of the appointment of a representative for the minor or incompetent person under state law, (2) a motion for the appointment of a guardian ad litem by the Court, or, (3) a showing satisfactory to the Court that no such appointment is necessary to ensure adequate representation of the minor or incompetent person. See Fed. R. Civ. P. 17(c).

(b) Settlement. No claim by or against a minor or incompetent person may be settled or compromised absent an order by the Court approving the settlement or compromise.

(1) Initial State Court Approval. In actions in which the minor or incompetent is represented by an appointed representative pursuant to appropriate state law, excepting only those actions in which the United States courts have exclusive jurisdiction, the settlement or compromise shall first be approved by the state court having jurisdiction over the personal representative. Following such approval, a copy of the order and all supporting and opposing documents filed in connection therewith shall be filed in the District Court with a copy to all parties and to the Judge or Magistrate Judge who may either approve the settlement or compromise without hearing or calendar the matter for hearing.

(2) Approval in All Other Actions. In all other actions, the motion for approval of a proposed settlement or compromise shall be filed and calendared pursuant to L.R. 230. The application shall disclose, among other things, the age and sex of the minor or incompetent, the nature of the causes of action to be settled or compromised, the facts and circumstances out of which the causes of action arose, including the time, place and persons involved, the manner in which the compromise amount or other consideration was determined, including such additional information as may be required to enable the Court to determine the fairness of the settlement or compromise, and, if a personal injury claim, the nature and extent of the injury with sufficient particularity to inform the Court whether the injury is temporary or permanent. If reports of physicians or other similar experts have been prepared, such reports shall be provided to the Court. The Court may also require the filing of experts' reports when none have previously been prepared or additional experts' reports if appropriate under the circumstances. Reports protected by an evidentiary privilege may be submitted in a sealed condition to be reviewed only by the Court in camera, with notice of such submission to all parties.

(c) Disclosure of Attorney's Interest. When the minor or incompetent is

represented by an attorney, it shall be disclosed to the Court by whom and the terms under which the attorney was employed; whether the attorney became involved in the application at the instance of the party against whom the causes of action are asserted, directly or indirectly; whether the attorney stands in any relationship to that party; and whether the attorney has received or expects to receive any compensation, from whom, and the amount.

(d) Attendance at Hearing. Upon the hearing of the application, the representative compromising the claim on behalf of the minor or incompetent, and the minor or incompetent shall be in attendance unless, for good cause shown, the Court excuses their personal attendance. The Court may require the testimony of any appropriate expert, as well as the submission of other evidence relating to the application.

(e) Payment of Judgment. Whenever money or property is recovered on behalf of a minor or incompetent person, the money or property will be (1) disbursed to the representative pursuant to state law upon a showing that the representative is duly qualified under state law, (2) disbursed otherwise pursuant to state law, or (3) disbursed pursuant to such other order as the Court deems proper for the protection of the minor or incompetent person.

(f) Interim Disbursements. Applications for orders authorizing interim disbursements shall be heard by the appropriate state court judge or by the assigned Magistrate Judge. See L.R. 302(c)(14). In the event of a hearing by a state court judge concerning interim disbursements, a copy of the order shall be filed with a copy to the Magistrate Judge and shall be reviewed by the Magistrate Judge in accordance with (b)(1).

RULE 205 (Fed. R. Civ. P. 23)

SPECIAL RULE FOR CLASS ACTIONS

In any action sought to be maintained as a class action:

(1) Determination. Within such time as the Court may direct pursuant to order issued under Fed. R. Civ. P. 16(d), the plaintiff shall move for a determination under Fed. R. Civ. P. 23 whether the action is to be maintained as a class action. In ruling on the motion, the Court may allow or conditionally allow the action to be so maintained, may disallow and strike the class action allegations, or may order postponement of the determination pending discovery or such other preliminary procedures as appear appropriate and necessary.

(2) Counterclaims or Cross-Claims. The foregoing provisions shall apply, with appropriate adaptations, to any counterclaim or cross-claim alleged to be brought for or against a class.

(3) Notice of Petition for Permissive Appeal Pursuant to F. R. Civ. P. 23(f). When, pursuant to F. R. Civ. P. 23(f), a party files a petition in the Court of Appeals, requesting permission to appeal an order granting or denying class-certification, the party shall file a "Notice of Petition for Permission to Appeal Pursuant to Fed. R. Civ. P. 23(f)" in the district court within seven (7) days. The Notice must identify the filing party, the court of appeals case number, date of the filing, the party's position regarding the effect of the permissive appeal and whether the party will be requesting a stay.

RULE 281 (Fed. R. Civ. P. 16)

PRETRIAL STATEMENTS

(a) Time for Filing. As required by the pretrial (scheduling) order in the action, counsel shall file either separate pretrial statements or a joint pretrial statement as follows:

(1) Separate Statements. Not less than fourteen (14) days before the date set by the Court for the holding of the final pretrial conference, counsel for the plaintiff shall serve and file a pretrial statement in the form prescribed herein. Not less than seven (7) days before the date set for the holding of the pretrial conference, counsel for all other parties shall serve on all parties and file pretrial statements that may adopt by reference any or all of the matters set forth in the plaintiff's pretrial statement.

(2) Joint Statements. Not less than seven (7) days before the date set by the Court for the holding of the final pretrial conference, or such other time as the Court may order, counsel for all parties shall file a joint pretrial statement in the form prescribed herein or in such other form as the Court may prescribe.

(3) Word Processed Copy. Electronic filers shall also concurrently submit an electronic copy of their statement in Word ~~or Word Perfect~~ format following the procedures for proposed orders. See L.R. 137(b).

(b) Form, Contents. The pretrial statement shall state the name of the party or parties on whose behalf it is presented and set forth the nature of the action and the following matters, under the following captions and in the following order:

(1) Jurisdiction - Venue. The factual and statutory basis of federal jurisdiction and venue and whether there is any dispute concerning jurisdiction or venue.

(2) Jury - Non-Jury. Whether the party has demanded a jury trial of all or any of the issues or, if not, whether a demand for jury trial made by any other party is conceded or contested.

(3) Undisputed Facts. A plain, concise statement of the facts that are undisputed.

(4) Disputed Factual Issues. A plain, concise statement of each fact (and any related essential facts) that the party claims or concedes to be in dispute.

(5) Disputed Evidentiary Issues. A plain, concise summary of any reasonably anticipated disputes concerning admissibility of live and deposition

testimony, physical and demonstrative evidence and the use of special technology at trial, including computer animation, video discs, and other high technology, and a statement whether each such dispute should be resolved by motion in limine, briefed in the trial brief, or addressed in some other manner.

(6) Special Factual Information in Certain Actions. In addition to the facts and issues described in (3) through (5), the following special information with respect to the following types of actions shall be specified within either the disputed or undisputed facts sections as appropriate:

(i) In eminent domain actions:

(A) As to each parcel involved, its designation, general description, location, and size; the interest taken; the names of persons claiming an interest therein and the interests claimed; whether an order of possession has been issued; each objection or defense to the taking, if any; and the claimed market value of the interest taken at the time of the taking.

(B) Whether consolidation of trial with other actions would be practicable or desirable.

(C) Suggested procedures for a mutual exchange of lists of comparable sales to be relied upon by the valuation experts, such lists to include for each transaction, to the extent known, the names of the parties, the date of transaction, amount of consideration, location of property, and recording date.

(D) Whether evidence of value other than comparable sales is to be relied upon and, if so, the method of valuation and the authority for its use.

(ii) In patent actions:

(A) The name, number, filing, and issue date of the patent or patents involved.

(B) The names of all persons claiming a present interest in each patent.

(C) An abstract of each patent sufficient to permit determination of the nature and essence of the technical disclosure of the application. An abstract in keeping with that called for in Patent Office Rule 1.72(b) shall be deemed sufficient. See 37 C.F.R. § 1.72.

(D) A statement of the facts relied upon to support any charge of infringement.

(E) Where invalidity of a patent has been asserted as a

defense, any and all prior art (patents, publications, and public uses) pleaded in the answer or noticed pursuant to 35 U.S.C. § 282, in relation to the defense invoked, whether the defense be 35 U.S.C. § 102 or 35 U.S.C. § 103.

(F) An explanation of any interparty tests that have been conducted and a request for such interparty tests as should be ordered before setting for trial.

(iii) In actions involving contracts:

(A) The parties' respective versions of the terms of the contract.

(B) Whether the contract and any modifications or collateral agreements were written or oral or both, specifying any document, letter, or other writing relied upon by date and parties, and indicating any oral agreement relied upon by date, place, and parties.

(C) Any misrepresentation of fact, mistake, or other matter affecting validity.

(D) Any breach of contract.

(E) Any waiver or estoppel.

(F) The relief sought (rescission, restitution, damages for breach, specific performance, etc.).

(G) The measure of restitution or damages and an itemized statement of the elements thereof.

(iv) In tort actions for personal injury, wrongful death or property damage:

(A) The date, place, and general nature of the incident; the particular acts, omissions, or conditions constituting the basis for liability; the particular acts, omissions or conditions constituting the basis of any defense; any statute, ordinance, or regulation violated by either party; the applicability of the doctrine of strict liability or res ipsa loquitur.

(B) Each plaintiff's age; injuries sustained; any prior injury or condition worsened; periods of hospitalization; medical expenses and estimated future medical expenses; the period of total and/or partial disability; annual, monthly, or weekly earnings before the incident; earnings loss to date and estimated diminution of future earnings power; property damage; general damages; punitive damages.

(C) In wrongful death actions: the names and ages of dependents; the annual, monthly, or weekly contribution of decedent to dependents before death; the physical condition, education, and training of decedent at the time of death.

(7) Relief Sought. The elements of monetary damage, if any, and the specific nature of any other relief sought.

(8) Points of Law. A statement of the legal theory or theories of recovery or of defense and of any points of law (substantive or procedural) that are or may reasonably be expected to be in controversy, citing the pertinent statutes, ordinances, regulations, cases, and other authorities relied upon. Extended legal argument is not required in the pretrial statement.

(9) Abandoned Issues. A statement of all issues raised by the pleadings that have been abandoned, including, for example, claims for relief and affirmative defenses.

(10) Witnesses. A list (names and addresses) of all prospective witnesses, whether offered in person or by deposition or interrogatory, designating those who are expert witnesses. Only witnesses so listed will be permitted to testify at the trial, except as may be otherwise provided in the pretrial order.

(11) Exhibits - Schedules and Summaries. A list of documents or other exhibits that the party expects to offer at trial. Only exhibits so listed will be permitted to be offered at trial except as may be otherwise provided in the pretrial order.

(12) Discovery Documents. A list of all portions of depositions, answers to interrogatories, and responses to requests for admission that the party expects to offer at trial.

(13) Further Discovery or Motions. Any requests for further discovery or pretrial motions. Where discovery and/or law and motion has been terminated by a Court order, counsel shall set forth the grounds for relief from that order and why a motion to be relieved was not made before the date ordered in the status conference for termination. Motions for relief at pretrial are not favored and will ordinarily be denied unless the moving party makes a strong showing.

(14) Stipulations. Any stipulations requested or offered for pretrial or trial purposes.

(15) Amendments - Dismissals. Any requested amendments to pleadings, dismissals, additions or substitutions of parties, or dispositions as to defaulting parties.

(16) Settlement Negotiations. A statement whether settlement

negotiations between parties and/or a court settlement conference under L.R. 270 would be helpful.

(17) Agreed Statements. A statement whether presentation of all or part of the action upon an Agreed Statement of Facts is feasible and advisable.

(18) Separate Trial of Issues. A statement whether separate trial of any of the issues is feasible and advisable.

(19) Impartial Experts - Limitation of Experts. A statement whether appointment by the Court of impartial expert witnesses or limitation of the number of expert witnesses is advisable.

(20) Attorneys' Fees. A statement whether attorneys' fees are sought and the time and manner in which they are to be ascertained. See L.R. 293.

(21) Trial Exhibits. Any special handling of trial exhibits and a statement of advisability of court retention of exhibits pending appeal decision. See L.R. 138(e).

(22) Trial Protective Order. Whether a trial protective order will be sought pursuant to L.R. 141.1(b)(2).

(23) Miscellaneous. Any other appropriate comments, suggestions, or information that might aid in the disposition of the action, including references to any matters set forth in Fed. R. Civ. P. 16(c).

(c) Claims of Privilege. If any privilege against disclosure is claimed with respect to any statement required by this Rule and the validity of the claim has not yet been determined, a party may omit such statement and include instead a statement of such claim of privilege and the grounds therefor.

(d) Fed. R. Civ. P. 26(a)(3) Disclosures. The foregoing disclosures satisfy the requirements of Fed. R. Civ. P. 26(a)(3).

RULE 403 (Fed. R. Crim. P. 5)

COURT INTERPRETER SERVICES IN CRIMINAL ACTIONS

(a) Courtroom Proceedings. Regardless of the presence of a private interpreter, only official, judicially-designated interpreters may interpret official courtroom proceedings in criminal actions, except as provided in 28 U.S.C. § 1827(f)(1).

(b) Notice of Need for Interpreter Services. Defense counsel in criminal actions shall promptly determine whether they will need interpreter services for any defendants or defense witnesses at future court proceedings and shall timely notify the court staff interpreter, and/or the courtroom deputy clerk for the Judge or Magistrate Judge assigned to hear the action, that an interpreter is needed. It may take up to one week to arrange for interpreter services in languages other than Spanish, and three court days for Spanish interpreter services. Notification of the need for interpreter services should include identification of the language required, any dialect, and any additional information that could assist the court staff interpreter. If a scheduled court proceeding is canceled or rescheduled, counsel shall promptly notify the staff interpreter and/or courtroom deputy to cancel or reschedule any accompanying interpreter arrangements. As to interpreters for Government witnesses, see 28 U.S.C. § 1827.

(c) Staff Interpreter. Pursuant to 28 U.S.C. § 1827(c), the Court employs a staff interpreter in both Sacramento and Fresno, who is responsible for securing the services of qualified interpreters. The staff interpreter can be reached through the Clerk.

(d) Sanctions. Unjustified failure to notify the staff court interpreters of the need for an interpreter or of a cancelled or rescheduled hearing may result in sanctions, including an order ~~directing counsel for the party, or counsel calling a witness, requiring the interpreter~~ to pay the cost of interpreter services.

RULE 460 (Fed. R. Crim. P. 32, 18 U.S.C. § 3153(c))

**DISCLOSURE OF PRESENTENCE REPORTS, PRETRIAL SERVICES REPORTS
AND RELATED RECORDS**

(a) Confidential Character of Presentence Reports, Pretrial Services Reports, and Related Records. The presentence reports, pretrial services reports, violation reports, and related documents are confidential records of the United States District Court. Unless further disclosure is expressly authorized by order of the Court or this rule, such records shall be disclosed only to the Court, court personnel, the defendant, the defendant's counsel, the defense investigator, if any, and the United States Attorney's Office in connection with the sentencing, detention/release, or violation hearing.

(b) Requests for Disclosure. Any applicant seeking an order authorizing further disclosure of a presentence report or pretrial services report maintained by the probation or pretrial services offices shall file a written petition to the Court establishing with particularity the need for specific information in the records. Requests for disclosure made to probation or pretrial services officers are improper. Except as provided in (c) below, no further disclosure shall be made except upon an order issued by the Court.

(c) Exceptions. Nothing in this rule is intended to prohibit probation or pretrial services from disclosing records without court order as is authorized by statute, regulation, or formalized national policy.

(d) Availability of Proposed Presentence Report. A copy of the probation officer's proposed presentence report, including the probation officer's recommendations, shall be made available to the United States Attorney's Office and to defense counsel not less than thirty-five (35) days before the date set for sentencing hearing.

(e) Objections to the Report. Defense counsel shall discuss the presentence report with the defendant. Not less than twenty-one (21) days before the date set for the sentencing hearing, counsel for defendant and the Government shall each deliver to the probation officer and exchange with each other a written statement of all objections they have to statements of material fact, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the presentence report. ~~These objections are not and shall not become part of the Court file.~~ After receipt of the objections, the probation officer shall conduct any further investigation and make any necessary revisions to the presentence report.

(f) Submission to the Court. Not less than fourteen (14) days before the date set for the sentencing hearing, the probation officer shall submit the presentence report, including recommendations, to the sentencing Judge and make it available to counsel for the defendant and the Government. If the presentence report has not been

revised, counsel may be so notified and not given a new report.

(g) Formal Objections to Report. Not less than seven (7) days before the sentencing hearing, counsel for the defendant and the Government shall each file and serve on each other and the probation officer, a concise memorandum of all objections and facts in dispute to be resolved by the Court. This memorandum must specifically identify each item in the report which is challenged as inaccurate or untrue, must set forth the remedy sought (i.e., specified findings or the Court's agreement to disregard the disputed information), and must set forth the reason that the contested information will affect the sentencing guideline, departure or adjustment in the particular action. This requirement is not satisfied by submission of the written objections to the probation officer as set forth in (d).

(h) Limitation on Objections. Except for good cause shown, no objections may be made to the presentence report other than those previously submitted to the probation officer pursuant to (d) and those relating to information contained in the presentence report that was not contained in the proposed presentence report.

(i) Resolution of Disputes. Except with regard to objections not yet resolved, the Court may accept the presentence report as accurate. In resolving any disputes concerning the report, the Court may consider any relevant information having sufficient indicia of reliability.

(j) Sentencing Proceedings. At the time set for imposition of sentence, if there are no material items in dispute, the Court may proceed with the imposition of sentence. If any material dispute remains with respect to the presentence report, the Court shall afford the parties adequate opportunity to present arguments and information on the matter. If the Court determines that the matter cannot be resolved without an evidentiary hearing, the action may be continued for a reasonable period if necessary to enable the parties to secure the attendance of witnesses and the production of documents at the hearing.