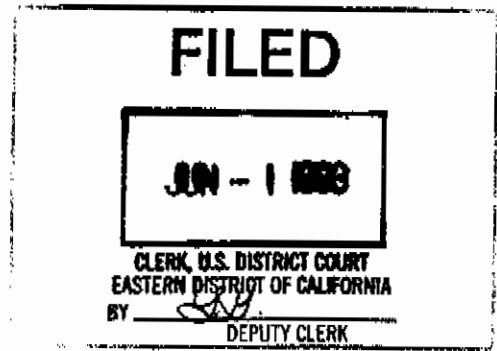




**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

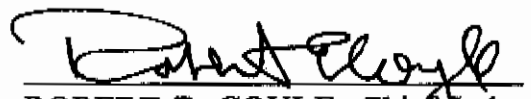
RE:)
) GENERAL ORDER NO. 298
ADOPTION OF AMENDMENTS TO)
MAGISTRATE JUDGES' RULES)
(LOCAL RULES 300 - 305))
_____)

Good cause appearing,

IT IS HEREBY ORDERED that the amendments to the Magistrate Judges' Rules (Local Rules 300 - 305), detailed in the attachment hereto, are hereby adopted.

DATED: June 1, 1993.

FOR THE COURT:



ROBERT E. COYLE, Chief Judge
Eastern District of California

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

TRANSMITTAL 1

June 1, 1993

TO: Legal Community
FROM: Jack L. Wagner, Clerk
RE: Amendments to Local Rules

This transmittal provides amendments to the Magistrate Judges' Rules (Local Rules 300 - 305), adopted by the court on June 1, 1993.

Also included are relevant updates to the Table of Contents and a revised Index.

FILING INSTRUCTIONS

<u>Remove Previous</u>	<u>Insert</u>	<u>Dated</u>
Table of Contents Pages x and xi	Table of Contents Pages x and xi	6/1/93
Pages 99-108	Pages 99-108	6/1/93
Index Pages 151-193	Index Pages 151-193	6/1/93

Any questions regarding the filing of these amendments, should be directed to:

Jack L. Wagner, Clerk
U.S. District Court
650 Capitol Mall, Rm. 2546
Sacramento, CA 95814
(916) 551-2615

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MAGISTRATE JUDGES' RULES

RULE 300

SCOPE OF MAGISTRATE JUDGES' RULES - GENERAL AUTHORITY

(a) **General Applicability.** Rules 300 through 399 govern the discharge of duties by the United States Magistrate Judges in the Eastern District of California in both criminal and civil proceedings. They are promulgated pursuant to 28 U.S.C. § 636(b)(4) and are intended to amplify the provisions of Chapter 43 of Title 28 of the United States Code and the Federal Rules of Civil and Criminal Procedure (including the Supplemental Rules for Certain Admiralty and Maritime Cases).

(b) **Definitions.** As used in these Magistrate Judges' Rules:

(1) "Magistrate Judge" means both the full-time Magistrate Judges and the part-time Magistrate Judges sitting in the Eastern District of California.

(2) "General pretrial matters" means all pretrial matters as to which the standard of review is the "clearly erroneous or contrary to law" standard set forth in 28 U.S.C. § 636(b)(1)(A). See Fed. R. Civ. P. 72(a).

(3) "Excepted pretrial matters" means all pretrial matters as to which de novo review by a Judge is available. See Fed. R. Civ. P. 72(b).

RULE 301

SPECIAL MASTER REFERENCES AND TRIALS BY CONSENT

Upon the consent of the appearing parties, the Magistrate Judges at Sacramento and Fresno are specially designated to act as special masters in any civil action, to conduct any and all proceedings in any civil action, including the conduct of jury or nonjury trials, and to order the entry of final judgments, in accordance with Fed. R. Civ. P. 53 and 73 and 28 U.S.C. § 636(c). In such actions, L.R. 303 and L.R. 304 shall be inapplicable.

RULE 302

DUTIES TO BE PERFORMED BY MAGISTRATE JUDGES

(a) **General.** It is the intent of this Rule that Magistrate Judges perform all duties permitted by 28 U.S.C. § 636(a), (b)(1)(A), or other law where the standard of review of the Magistrate Judge's decision is clearly erroneous or contrary to law. Specific duties are enumerated in subsection (b) and (c) of the Rule; however, those described duties are not to be considered a limitation of this general grant.

Magistrate Judges will perform the duties described in 28 U.S.C. § 636(b)(1)(B) upon specific designation of a District Judge or by designation in subsection (b) of this Rule.

(b) **Duties To Be Performed In Criminal Matters By A Magistrate Judge Pursuant To 28 U.S.C. § 636(a), (b)(1)(A), (b)(1)(B), (b)(3), or Other Law.**

(1) All pretrial matters in felony criminal cases except motions to suppress evidence, motions to quash or dismiss an indictment or information, motions to discover the identity of an informant, motions for severance, and entry of pleas of guilty;

(2) Preliminary proceedings in felony probation or supervised release revocation cases;

(3) All pretrial, trial, and post-trial matters in any misdemeanor case (includes petty offense and infractions);

(4) Supervision of proceedings conducted pursuant to letters rogatory;

(5) Receive indictments returned by the Grand Jury in accordance with Fed. R. Crim. P. 6(f);

(6) Conduct all proceedings contemplated by Fed. R. Crim. P. 3, 4 and 41 except Rule 41(e) post-indictment/information motions and Rule 41(f) motions in felony cases made at any time; included within this grant are applications for mobile tracking devices (18 U.S.C. § 3117), pen registers or trap and trace devices (18 U.S.C. § 3121 et seq.), applications for retrieval of electronic communications records (18 U.S.C. § 2701 et seq.), and applications for disclosure of tax return information (26 U.S.C. § 6103);

(7) Motions to exonerate bail;

(8) Upon specific designation of a district judge and consent of the parties, jury voir dire in criminal cases;

(c) Duties To Be Performed In Civil Matters By A Magistrate Judge Pursuant To 28 U.S.C. § 636(a), (b)(1)(A), (b)(1)(B), (b)(3), or Other Law.

- (1) All discovery motions, including Fed. R. Civ. P. 37 motions;
- (2) Supervision of proceedings conducted pursuant to letters rogatory;
- (3) All pretrial motions and applications pursuant to the Supplemental Rules for Certain Admiralty and Maritime Cases, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss for failure to state a claim upon which relief can be granted, and to dismiss an action involuntarily;
- (4) Review of petitions in civil commitment proceedings under Title III of the Narcotic Addict Rehabilitation Act;
- (5) Proceedings for the collection of civil penalties of not more than \$200 assessed under the coordinated National Boating Safety Program;
- (6) All motions for specific leave of court for the making of deposits into the registry of the Court, and all motions for orders providing for special placement of deposits. L.R. 150;
- (7) All motions and applications brought pursuant to the Federal Debt Collections Procedures Act of 1990, 28 U.S.C. §§ 3001 et seq.;
- (8) Applications for writs of entry in connection with the enforcement of Internal Revenue Service tax liens;
- (9) Petitions to enforce Internal Revenue Service summonses filed pursuant to 26 U.S.C. §§ 7402(b) and 7604(a);
- (10) Petitions to quash administrative summonses filed pursuant to 26 U.S.C. § 7609(b)(2);
- (11) Examinations of judgment debtors in accordance with Fed. R. Civ. P. 69;
- (12) Settlement conferences as may be calendared;
- (13) In Fresno, all pretrial scheduling conferences and the final pretrial conference;
- (14) All applications for interim disbursement under L.R. 202(e);
- (15) Cases brought under 42 U.S.C. §§ 405(g), 1383(c)(3) and 1395ff to review a final decision of the Secretary Of Health and Human Services, including dispositive motions (non-dispositive motions and matters shall be adjudicated pursuant to 28 U.S.C. § 636 (b)(1)(A));

(16) Cases involving federally insured student loans, 20 U.S.C. §§ 1071-87, including dispositive motions (non-dispositive motions and matters shall be adjudicated pursuant to 28 U.S.C. § 636(b)(1)(A));

(17) Cases brought 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., including dispositive motions (non-dispositive motions and matters shall be adjudicated pursuant to 28 U.S.C. § 636(b)(1)(A));

(18) Upon specific designation of a district judge, jury verdicts in civil cases.

(19) Motions for entry of default judgment under Fed. R. Civ. P. 55(b)(2).

(d) Retention By A District Judge. Notwithstanding any other provision of this Rule, a district judge may retain any matter otherwise routinely referred to a magistrate judge. Applications for retention of such matters, however, are looked upon with disfavor and granted only in unusual and compelling circumstances.

RULE 303

ROLE OF MAGISTRATE JUDGE AND PROCEDURE FOR RESOLVING GENERAL PRETRIAL MATTERS IN CRIMINAL AND CIVIL ACTIONS

(a) **Determination.** In accordance with 28 U.S.C. § 636(b)(1)(A), a Magistrate Judge shall hear, conduct such evidentiary hearings as are appropriate, and determine all general pretrial matters referred in accordance with L.R. 302. Rulings of the Magistrate Judge shall be in writing with a statement of the reasons therefor and shall be served on all parties and filed with the Clerk.

(b) **Finality.** Rulings by Magistrate Judges shall be final if no reconsideration thereof is sought from the Court within ten (10) court days in civil actions or five (5) court days in criminal actions calculated from the date of service of the ruling on the parties, see Fed. R. Civ. P. 6(a); Fed. R. Civ. P. 6(e); Fed. R. Crim. P. 45(a); Fed. R. Crim. P. 45(e), unless a different time is prescribed by the Magistrate Judge or the Judge. See L.R. 136. No motion for reconsideration of rulings on criminal motions in felony cases may be made to the Magistrate Judge.

(c) **Reconsideration by a Judge.** A party seeking reconsideration of the Magistrate Judge's ruling shall file an original and one copy with the Clerk and serve on the Magistrate Judge and on all parties a written request for reconsideration by a Judge. Such request shall specifically designate the ruling, or part thereof, objected to and the basis for that objection. This request shall be captioned "Request for Reconsideration by the District Court of Magistrate Judge's Ruling."

(d) **Opposition.** Opposition to the request shall be served and filed within five (5) court days after service of the request. See L.R. 136. The assigned Judge may also reconsider any matter at any time sua sponte.

(e) **Notice and Argument.** L.R. 230 has no application to requests for reconsideration under this Rule. No separate notice is required. The request shall be referred to the assigned Judge automatically by the Clerk, promptly following the date for filing opposition, without the necessity of a specific motion for such reference by the parties. Unless otherwise ordered, requests in criminal actions shall be calendared and heard at the trial confirmation. No oral argument shall be allowed in the usual civil action unless the assigned Judge specifically calendars such argument, either on request of a party or sua sponte.

(f) **Standard of Review.** The standard that the assigned Judge shall use in all such requests is the "clearly erroneous or contrary to law" standard set forth in 28 U.S.C. § 636(b)(1)(A). See Fed. R. Civ. P. 72(a).

RULE 304

MAGISTRATE JUDGES' AUTHORITY IN EXCEPTED PRETRIAL MATTERS

(a) **Determination.** In accordance with 28 U.S.C. § 636(b)(1)(B) and (C), the Magistrate Judges shall hear, conduct such evidentiary hearings as appropriate, and submit to the assigned Judge proposed findings of fact and recommendations for the disposition of excepted pretrial motions referred in accordance with L.R. 302. Proposed findings and recommendations shall be served on all parties and filed with the Clerk.

(b) **Objections.** Within ten (10) court days in civil actions and five (5) court days in criminal actions after service of the proposed findings and recommendations on the parties, see Fed. R. Civ. P. 6(a); Fed. R. Civ. P. 6(e); Fed. R. Crim. P. 45(a); Fed. R. Crim. P. 45(e), unless a different time is prescribed by the Magistrate Judge or a Judge, any party may file an original and one copy with the Clerk, and on all parties, written objections to such proposed findings and/or recommendations to which objection is made and the basis for the objection.

(c) **Transcripts.** If objection is made to a proposed finding or recommendation based upon a ruling made during the course of any evidentiary hearing, which ruling has not otherwise been reduced to writing, the party making such objection shall so indicate at the time of filing objections and shall forthwith cause a transcript of all relevant portions of the record to be prepared and filed.

(d) **Opposition.** Responses to objections shall be filed with the Clerk, and served on the Magistrate Judge and on all parties, within five (5) court days after service of the objections. See L.R. 136.

(e) **Notice and Argument.** L.R. 230 has no application to objections to proposed findings and recommendations under this Rule. No separate notice is required. The objections shall be referred to the assigned Judge automatically by the Clerk, promptly following the date for filing opposition, without the necessity of a specific motion for such reference by the parties. Unless otherwise ordered, requests in criminal actions shall be calendared by the courtroom deputy clerk upon request of any party filed with that party's objections or opposition thereto or upon the direction of the assigned Judge.

(f) **Review.** See Fed. R. Civ. P. 72(b).

RULE 305

PROCEDURES FOR THE DISPOSITION OF CIVIL ACTIONS ON CONSENT OF THE PARTIES

(a) **Notice of Option.** The Clerk shall notify the parties in all civil actions that they may consent to have a Magistrate Judge conduct any and all proceedings in the action and order the entry of a final judgment. Such notice shall be handed or mailed by the Clerk to the plaintiff at the time the action is filed, and the plaintiff shall transmit the notice to all other parties as an attachment to copies of the complaint and summons, when served. The definitions set forth in L.R. 101(5) and L.R. 101(19) do not apply to this subsection. See also 28 U.S.C. § 636(c). A district judge or magistrate judge may, at appropriate times, inform the parties of the options available under § 636(c). All such communication shall comply with the requirement of § 636(c)(2).

(b) **Reference to Magistrate Judge.** After all necessary consents have been obtained, the Clerk shall transmit the file in the action to the assigned Judge, for review, approval by the Judge and Magistrate Judge, and referral. Notwithstanding the consent of all parties, the Judge or Magistrate Judge may reject the referral. Once an action has been referred to a Magistrate Judge, that Magistrate Judge shall have authority to conduct all proceedings referred to the Magistrate Judge, including, if appropriate, authority to enter a final judgment in the action. See Fed. R. Civ. P. 73(a).

(c) **Appeal to the Court of Appeals.** Upon the entry of final judgment in any action disposed of by a Magistrate Judge on consent of the parties under the authority of 28 U.S.C. § 636(c) and these Local Rules, an aggrieved party may appeal directly to the United States Court of Appeals for the Ninth Circuit in the same manner as governs appeals from any other final judgment of the Court. See Fed. R. Civ. P. 73(c).

(d) **Appeal to a District Judge.** See Fed. R. Civ. P. 73(d), 74-76.

(1) **Notice of Appeal.** In accordance with 28 U.S.C. § 636(c)(4), the parties may consent to appeal any judgment by a Magistrate Judge to the Judge to whom the case was originally assigned, rather than directly to the court of appeals. Such an appeal shall be governed by Fed. R. Civ. P. 74(a) and (b) and, in the absence of direction therein, by the applicable Rules of the Federal Rules of Appellate Procedure.

(2) **Record on Appeal.** The record on appeal to a Judge shall consist of the original papers and exhibits filed with the Court and the transcript, if any, of the proceedings before the Magistrate Judge. See Fed. R. Civ. P. 75(b).

(3) **Briefs.** The appellant shall, within thirty (30) days of the filing of the Notice of Appeal, file an original and one copy with the Clerk, and serve on the Magistrate Judge and on all parties, a typewritten brief setting forth the specific facts, points of law, and authorities on which the appeal is based. The appellee shall similarly file and serve a response within thirty (30) days of the service of appellant's brief. The appellant may similarly file and serve a reply brief within fourteen (14) days of service of appellee's response. The assigned Judge may extend these time limits upon a showing of good

cause, which may include reasonable delay in the preparation of any necessary transcript. If the appellant fails to file an opening brief within the time prescribed, the assigned Judge may dismiss the appeal. See Fed. R. Civ. P. 75(d), L.R. 136.

(4) Oral Argument. Oral argument shall be calendared by the courtroom deputy clerk only upon request of any party filed with that party's opening, opposition or reply brief or upon the direction of the assigned Judge.

(5) Disposition of the Appeal. See Fed. R. Civ. P. 76.

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