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

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY 
DEPUTY CLERK

RE:)
) GENERAL ORDER NO. 325
ADOPTION OF AMENDMENTS)
TO LOCAL RULES 101, 123, 134,)
250 AND 292)
_____)

Good cause appearing,

IT IS HEREBY ORDERED that the Judges of the Eastern District of California hereby adopt the attached amendments to Local Rules 101, 123, 134, 250 and 292, effective October 5, 1996.

DATED: September 5, 1996.

FOR THE COURT:



WILLIAM B. SHUBB, Chief Judge
Eastern District of California

GENERAL RULES

RULE 100

TITLE - CONSTRUCTION

(a) **Title.** These are the Local Rules of Practice for the United States District Court, Eastern District of California. They may be cited as "L.R."

(b) **Construction.** These Local Rules are adopted pursuant to 28 U.S.C. § 2071, Fed. R. Civ. P. 83, and Fed. R. Crim. P. 57. They are intended to supplement and shall be construed and administered consistently with and subordinately to the Federal Rules of Civil Procedure (including the Supplemental Rules for Certain Admiralty and Maritime Cases), the Federal Rules of Criminal Procedure and the Federal Rules of Appellate Procedure.

(c) **Applicability.** Local Rules 100 through 199 and 300 through 399 govern proceedings in all civil and criminal actions in the United States District Court for the Eastern District of California. Local Rules 200 through 299 govern proceedings in civil actions only, while Local Rules 400 through 499 are limited in application to criminal actions. Local Rules 500 through 599 are the Admiralty and In Rem Rules for the Eastern District of California.

(d) **Effective Date.** These Local Rules are effective on **December 19, 1994**, and shall govern all actions then pending or commenced thereafter. Where justice requires, the Court may order that an action pending prior to that date be governed by the practice of the Court prior to the adoption of these Local Rules.

RULE 101

DEFINITIONS

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

- (1) "Action" includes any case, proceeding, or matter.
- (2) "Affidavit" includes a declaration prepared in accordance with federal law. See 28 U.S.C. § 1746.
- (3) "Briefs" include memoranda, points and authorities, and other written arguments, or compilations of authorities.
- (4) "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.
- (5) "Complaint" includes any complaint, petition, counterclaim, cross-claim, claim for relief under Fed. R. Civ. P. 14, or other claim for affirmative relief.
- (6) "Counsel" includes a party acting in propria persona, pro se. See L.R. 183.
- (7) "Court" means the Judge or Magistrate Judge to whom an action has been assigned or before whom an action is being conducted.
- (8) "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.
- (9) "Defendant" includes any party against whom a complaint, petition, counterclaim, cross-claim, claim for relief under Fed. R. Civ. P. 14, or any other claim for affirmative relief is made.
- (10) "En banc" means the several Judges or Magistrate Judges acting as a group or sitting en banc.
- (11) "Fed. R. Civ. P." means the Federal Rules of Civil Procedure.
- (12) "Fed. R. Crim. P." means the Federal Rules of Criminal Procedure.
- (13) "Filed" means delivered into the custody of the Clerk and accepted by the Clerk for inclusion in the official records of the action.

(14) "General Duty Judge" means the Judge in Sacramento appointed by the Chief Judge to perform the following:

(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.

(15) "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).

(16) "Judge" means a United States District Judge.

(17) "Lodged" means delivered to the Clerk or to the courtroom deputy clerk for inclusion in the official records of the action, with a request for signature or other appropriate action by the Court.

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

(19) "Motion" includes all motions, applications, petitions, or other requests made to the Court for orders or other judicial activity.

(20) "Order" means any directive by the Court other than a judgment, including oral and telephonic as well as written directives.

(21) "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.

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

(23) "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.

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

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

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RULE 102

SCOPE AND AVAILABILITY OF LOCAL RULES

(a) **Scope.** These Rules govern civil and criminal litigation in the United States District Court for the Eastern District of California, the boundaries of which are set forth in 28 U.S.C. § 84. Outside the scope of these Rules are matters relating to internal court administration that, in the discretion of the Court *en banc*, may be accomplished through the use of General Orders, provided, however, that no matter appropriate for inclusion in these Rules shall be treated by General Order. No litigant shall be bound by any General Order.

(b) **Availability of Local Rules.** The Clerk shall maintain in suitable form updated copies of these Rules and make copies of these Rules available on request or upon payment of a nominal charge, which may be set by General Order. Upon admission to practice in the Eastern District of California, each admittee shall be given a copy of the Local Rules then in effect.

(c) **Notice After Adoption.** Immediately upon the adoption of these Rules or any change in these Rules, copies of the new and revised Local Rules shall be provided to such publications and persons as the Chief Judge deems appropriate. The Clerk shall promptly notify the Judicial Council and the Administrative Office of the United States Courts, all county law libraries in the Eastern District and other law libraries maintained by the State or by law schools in the Eastern District of California. Copies shall be distributed in a manner calculated to ensure maximum notification to those practicing in the Eastern District of California. A notice shall be posted prominently in the Clerk's Offices, and copies shall be publicly available there for distribution.

(d) **Procedures Outside the Rules.** The Court may make such orders supplementary or contrary to the provisions of these Rules as it may deem appropriate and in the interests of justice in any particular action.

RULE 122

ASSIGNMENT OF ACTIONS AND EMERGENCIES

(a) **Assignment of Actions.** All actions will be assigned in accordance with the Assignment Plan approved by the Court en banc and reproduced as Appendix A to these Rules.

(b) **Refiling.** An action may not be dismissed and thereafter refiled for the purpose of obtaining a different Judge or Magistrate Judge. If an action is dismissed and it, or one essentially the same, is refiled, it shall be assigned to the same Judge and Magistrate Judge. It is the duty of all counsel appearing therein to bring the facts of the refiling to the attention of the Clerk pursuant to L.R. 123. See L.R. 110.

(c) **Authority of Assigned Judge and Emergencies.** The assigned Judge shall preside over the trial and determine all motions or other matters in the action, except as otherwise provided in Fed. R. Civ. P. 63 and Fed. R. Crim. P. 25, or as otherwise ordered by that Judge, or in cases of emergency. In the event of an emergency requiring prompt action, if the assigned Judge is unavailable, the matter shall be presented to the Clerk for temporary assignment to another available Judge, if necessary. In such instance, it shall be the responsibility of counsel presenting the matter to provide the Judge to whom the matter is presented with a detailed explanation of the necessity for the application's being handled on an emergency basis. The matter shall be returned to the calendar of the unavailable assigned Judge upon completion of the hearing on the emergency application.

(d) **General Duty Judge.** The Chief Judge shall, from time to time, appoint a Judge sitting in Sacramento to serve as the General Duty Judge. Appointments shall be made on an equitable and rotating basis. See L.R. 101(14).

RULE 123

RELATED CASES

(a) **Definition of Related Cases.** An action is related to another action within the meaning of this Rule when

(1) both actions involve the same parties and are based on the same or a similar claim;

(2) both actions involve the same property, transaction or event; or

(3) both actions involve similar questions of fact and the same question of law and their assignment to the same Judge or Magistrate Judge is likely to effect a substantial savings of judicial effort, either because the same result should follow in both actions or otherwise.

(b) **Duties of Counsel.** Counsel who has reason to believe that an action on file or about to be filed is related to another action on file (whether or not dismissed or otherwise terminated) shall promptly file in each action and serve on all parties in each action a Notice of Related Cases. This notice shall set forth the title and number of each possibly related action, together with a brief statement of their relationship and the reasons why assignment to a single Judge or Magistrate Judge is likely to effect a savings of judicial effort and other economies. The Clerk shall notify the Judges or Magistrate Judges to whom the actions are assigned promptly of such filing.

(c) **Reassignment.** Following the filing of a Notice of Related Cases, the Chief Judge or a Judge designated by the Chief Judge may, by special order, reassign either case to any Judge or Magistrate Judge sitting in the Eastern District of California as the situation may dictate. If the Judge to whom the case with the lower or lowest number has been assigned determines that assignment of the cases to a single Judge is likely to effect a savings of judicial effort or other economies, that Judge is authorized to enter an order reassigning all higher numbered related cases to himself or herself.

(d) **Habeas Corpus Petitions.** Related habeas corpus petitions are governed by L.R. 190(d).

RULE 134

FILING AND CONTENTS OF DOCUMENTS

(a) **Delivery to the Clerk.** Except as expressly authorized in advance by a Judge or Magistrate Judge, all documents presented for filing or lodging shall be delivered to the Clerk who will, when appropriate, deliver the documents to the Judge or Magistrate Judge after docketing. Original documents to be filed or lodged shall not be mailed to the chambers of a Judge. If a particular document is to be brought to the immediate attention of the Judge or Magistrate Judge assigned to the action, a copy may be mailed or otherwise delivered to the chambers, but the original shall be presented to the Clerk. See Fed. R. Civ. P. 5; L.R. 121(b). All documents delivered to the Clerk for filing or lodging in a pending action must be presented to the Clerk at the office where the action is pending. Documents proffered for filing in a pending action at an incorrect office will be not be accepted. See L.R. 120, 121.

(b) **Filing of Multiple Copies.** One additional legible conformed copy of all documents to be filed or lodged shall be delivered to the Clerk, for the Court's use, except that in actions to be heard by a District Court composed of three Judges, three additional legible conformed copies of each brief and supporting documents shall be delivered to the Clerk.

(c) **Reference to Parties.** If there are more than two parties, including intervenors or amici, references to all parties shall include the name (which may be abbreviated) of the particular party or parties to whom reference is made.

(d) **Citations.** Citations of federal cases shall be to the United States Supreme Court Reports, Federal Reports, Federal Supplement, or Federal Rules Decisions, if so reported, and shall indicate the court and year of decision. Citations to federal statutes shall be to the United States Code, if so codified. Citations to federal administrative rules shall be to the Code of Federal Regulations, if so codified, or to the Federal Register, if published therein. Citations of California cases shall be to the official California Reports. Citations of other state cases shall be to the National Reporter System, showing state and year of decision. Other citations may be added. If case, statutory, or regulatory authority is relied upon which has not been reported, published, or codified in any of the foregoing references, a copy of that authority shall be appended to the brief or other document in which it is cited. This requirement shall include, but not be limited to, the Statutes at Large, the Public Laws of the United States, the California Administrative Code, administrative regulations not contained in the Code of Federal Regulations or the Federal Register, and decisions and other matters published in specialized reporter services.

(e) **Depositions.** Prior to or upon the filing of a document making reference to a deposition, it shall be the duty of the attorney relying on the deposition to ensure that the original of the deposition so relied upon has been filed or lodged with the Clerk. See Fed. R. Civ. P. 30(f).

(f) **Tables.** Briefs exceeding fifteen (15) pages in length shall be accompanied by an indexed table of contents related to the headings or subheadings and by an indexed table of statutes, rules, ordinances, cases, and other authorities cited.

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RULE 135

SERVICE OF DOCUMENTS DURING ACTION

(a) **Proof of Service.** When service of any pleading, notice, or other document required to be served is made, proof of such service shall be endorsed upon or affixed to the original of the document when it is lodged or filed. Except for ex parte matters, a document shall not be submitted for filing unless it is accompanied by a proof of service. Proof of service shall include the date, manner and place of service.

(b) **Service Upon All Parties.** Unless a party expressly waives service, copies of all documents submitted to the Court shall be served upon all parties to the action, except that no service need be made upon parties held in default for failure to appear unless the paper involved asserts new or additional claims for relief against such defaulting parties. See Fed. R. Civ. P. 5(a).

(c) **Service Upon Attorney.** Service of all documents authorized to be served in accordance with Fed. R. Civ. P. 5 or Fed. R. Crim. P. 49 shall be complete when served upon the attorney for the party, if the party has appeared and is represented by an attorney. Where an attorney represents multiple parties, service of one copy of such document upon said attorney shall constitute service upon all parties represented by that attorney, unless the Court otherwise orders. Where multiple attorneys represent the same party or parties, service shall be made upon all such attorneys, unless the Court otherwise orders. See also Fed. R. Civ. P. 4.1.

RULE 250

DISCOVERY DOCUMENTS

(a) **Interrogatories.** Interrogatories shall be so arranged that after each separate question there shall appear a blank space reasonably calculated to enable the answering party to insert the answers and/or objections. The answering party shall answer or object within the spaces provided or, if unable to do so, shall retype the interrogatories along with the answers and/or objections.

(b) **Requests for Admission and Requests for Production.** Responses to requests for admission or requests for production shall set forth each request in full before each response.

(c) **Objections.** Each objection to any discovery request shall include a statement of reasons.

(d) **Filing of Discovery Documents.** The following documents and proofs of service thereof shall not be filed with the Clerk until there is a proceeding in which the document or proof of service is at issue:

- (1) transcripts of depositions upon oral examination;
- (2) transcripts of depositions upon written questions;
- (3) interrogatories;
- (4) answers or objections to interrogatories;
- (5) requests for the production of documents or to inspect tangible things;
- (6) responses or objections to requests for the production of documents or to inspect tangible things;
- (7) requests for admission;
- (8) responses or objections to requests for admission;
- (9) notices of deposition; and
- (10) subpoenas for deposition and deposition duces tecum.

When required in a proceeding, the original transcripts of depositions shall be filed. See L.R. 140(b), 260(d). As to other discovery materials, only that part of the document which is in issue shall be filed.

(e) **Custody and Maintenance of Deposition Transcripts.** Counsel noticing a deposition is responsible to obtain the original deposition transcript or audio or video tape record from the deposition reporter, see Fed. R. Civ. P. 30(f), and to retain it under conditions suitable to protect it from loss, destruction or tampering until the earlier of (1) the date it is filed with the Court in accordance with L.R. 250(d), or (2) one year after the judgment has become final or other final disposition of the action. Prior to such date, for good cause, any party or intervenor may move the Court for an order prohibiting the destruction of a transcript or record permitted hereunder or otherwise directing the custody and maintenance of the transcript or record.

(f) **Cross-Reference to Fed. R. Civ. P. 26.** See L.R. 253.

RULE 291

MOTIONS FOR NEW TRIAL AND MOTIONS FOR JUDGMENT AS A MATTER OF LAW

Motions for new trial and motions for judgment as a matter of law shall state with specific references to relevant portions of any existing record and to any supporting affidavits: (1) the particular errors of law claimed, (2) if a ground is insufficiency of the evidence, the particulars thereof, and (3) if a ground is newly discovered evidence, the particulars thereof, together with a full complete description of the facts relating to the discovery of such evidence and the movant's diligence in connection therewith. A motion for new trial or for judgment as a matter of law and any opposition thereto shall be supported by briefs. Except as otherwise provided in this Rule or in the Federal Rules of Civil Procedure, L.R. 230 shall apply to motions for new trial or motions for judgment as a matter of law. See Fed. R. Civ. P. 50.

RULE 292

COSTS

(a) **Rules for Taxing Costs.** Costs shall be taxed in conformity with the provisions of 28 U.S.C. § 1920, and such other provisions of law as may be applicable.

(b) **Filing of Cost Bill.** Within ten (10) days after entry of judgment or order under which costs may be claimed, the prevailing party may serve on all other parties and file with the Clerk a bill of costs conforming to 28 U.S.C. § 1924. See Fed. R. Civ. P. 6(a), (e). The cost bill shall itemize the costs claimed and shall be supported by a memorandum of costs and an affidavit of counsel that the costs claimed are allowable by law, are correctly stated, and were necessarily incurred. Cost bill forms shall be made available by the Clerk's Office upon request.

(c) **Objections.** The party against whom costs are claimed may, within ten (10) days from date of service, file specific objections to claimed items with a statement of grounds for objection.

(d) **Taxing Costs.** If no objection is filed, the Clerk shall proceed to tax and enter costs. If objections are filed, they should state specific objections to claimed items with a statement of grounds thereof. The Clerk may require and consider further affidavits as necessary to determine allowable costs. The parties may request a hearing, in person or by telephone conference call, and the Clerk shall schedule the hearing as needed. Upon the taxation and entry of costs the Clerk shall serve notice thereof to all parties.

(e) **Review.** On motion filed and served within five (5) court days after notice of the taxing of costs has been served, the action of the Clerk may be reviewed by the Court as provided in Fed. R. Civ. P. 54(d). See L.R. 230.

(f) **Items Taxable.** Items taxable as costs include the following:

- (1) Clerk's fees (28 U.S.C. §§ 1914, 1920(1));
- (2) Marshal's fees and fees for service by a person other than the Marshal under Fed. R. Civ. P. 4 to the extent they do not exceed the amount allowable for the same service by the Marshal (28 U.S.C. §§ 1920(1), 1921);
- (3) Court reporter's fees (28 U.S.C. § 1920(2));
- (4) Docket fees (28 U.S.C. §§ 1920(5), 1923);
- (5) Fees for exemplification and copies of papers necessarily obtained for use in the case (28 U.S.C. § 1920(4));

- (6) Fees to masters, receivers and commissioners (Fed. R. Civ. P. 53(a));
- (7) Premiums on undertaking bonds or security required by law or by order of the Court or necessarily incurred by a party to secure a right accorded in the action;
- (8) Per diem, mileage and subsistence for witnesses (28 U.S.C. § 1821);
- (9) Compensation of Court-appointed experts, compensation for interpreters, and salaries, fees, expenses and costs of special interpretation services (28 U.S.C. §§ 1828, 1920(6));
- (10) Costs taxable pursuant to Fed. R. Civ. P. 76(c);
- (11) Costs on appeal taxable in the District Court pursuant to Rule 39(e) of the Federal Rules of Appellate Procedure; and
- (12) Other items allowed by any statute or rule or by the Court in the interest of justice.

RULE 293

AWARDS OF ATTORNEYS' FEES

(a) **Time for Application.** Motions for awards of attorneys' fees to prevailing parties pursuant to statute shall be filed not later than thirty (30) days after entry of final judgment. Such motions are not governed either by Fed. R. Civ. P. 59(e) or by L.R. 292, but are governed by L.R. 230. See also Fed. R. Civ. P. 54(d), 58.

(b) **Matters to be Shown.** All motions for awards of attorneys' fees pursuant to statute shall, at a minimum, include an affidavit of counsel showing:

(1) that the moving party was a prevailing party, in whole or in part, in the subject action, and, if the party prevailed only in part, the specific basis on which the moving party claims to be a prevailing party;

(2) that the moving party is eligible to receive an award of attorneys' fees, and the basis of such eligibility;

(3) the amount of attorneys' fees sought;

(4) the information pertaining to each of the criteria set forth in subsection (c) of this Rule; and

(5) such other matters as are required under the statute under which the fee award is claimed.

(c) **Criteria for Award.** In fixing an award of attorneys' fees in those actions in which such an award is appropriate, the Court will consider the following criteria:

(1) the time and labor required of counsel;

(2) the novelty and difficulty of the questions presented;

(3) the skill requisite to perform the legal service properly;

(4) the preclusion of other employment by counsel because of the acceptance of the action;

(5) the customary fee charged in matters of the type involved;

(6) whether the fee contracted between the attorney and the client is fixed or contingent;