UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RE:	)	
	)	GENERAL ORDER NO. 335
ADOPTION OF AMENDMENTS	)	
TO LOCAL RULES OF COURT	)	
	)	

Good cause appearing,

The Judges of the Eastern District of California hereby adopt the attached amendments to the Local Rules, **effective on April 15, 1997.**

IT IS SO ORDERED.

DATED: April 14, 1997.

FOR THE COURT:

William B. Shubb

WILLIAM B. SHUBB, Chief Judge
Eastern District of California

Local Rules of the United States District Court

EASTERN DISTRICT OF CALIFORNIA

Effective April 15, 1997

The Court wishes to acknowledge the generous assistance rendered by Ann Taylor Schwing, Esq., in the preparation of these Local Rules.

EASTERN DISTRICT OF CALIFORNIA LOCAL RULES
TABLE OF NEW RULES TO OLD RULES

NEW NATIONAL Rule Number	OLD LOCAL Rule Number	TITLE AND CONTENTS OF RULE
1-100	100	**TITLE - CONSTRUCTION** (a) Title (b) Renumbering (c) Construction (d) Applicability (e) Effective Date
1-101	101	**DEFINITIONS**
1-102	102	**SCOPE AND AVAILABILITY OF LOCAL RULES** (a) Scope (b) Availability of Local Rules (c) Notice After Adoption (d) Procedures Outside the Rules
3-120	120	**SESSIONS OF COURT - INTRADISTRICT VENUE** (a) Sacramento and Fresno (b) Commencement of Civil Actions (c) Assignment of Actions (d) Transfer (e) General Duty Judge
3-200	200	**DESIGNATION OF CATEGORY OF ACTION**
4-210	210	**SERVICE OF PROCESS AND RETURN OF SERVICE** (a) Issuance of Summons (b) Proof of Service of Process (c) Filing of Waiver of Service
5-134	134	**FILING AND CONTENTS OF DOCUMENTS** (a) Delivery to the Clerk (b) Filing of Multiple Copies (c) Reference to Parties (d) Citations (e) Depositions (f) Tables
5-135	135	**SERVICE OF DOCUMENTS DURING ACTION** (a) Proof of Service (b) Service Upon All Parties (c) Service Upon Attorney

CRIMINAL RULES

NEW NATIONAL RULE NUMBER	OLD LOCAL RULE NUMBER	TITLE AND CONTENTS OF RULE
Crim 12-430	430	**CRIMINAL MOTIONS AND PROCEDURES** (a) Motion Calendar (b) Motion Procedures (c) Notice (d) Opposition (e) Reply (f) Extensions of Time (g) Calculation of Time Periods (h) Evidentiary Hearings (i) Applications for Reconsideration (j) Appeal from Magistrate Judge's Rulings
Crim 16-440	440	**PRETRIAL DISCOVERY AND INSPECTION**
Crim 17.1-430	430	**CRIMINAL TRIAL SETTING PROCEDURES** (a) Trial, Trial Confirmation Dates (b) Complex Cases (c) Shortening and Extending Time
Crim 17.1-450	450	**TRIAL CONFIRMATION**
Crim 18-402	402	**INTRADISTRICT VENUE** (a) Commencement of Criminal Actions (b) Assignment of Actions (c) Transfer
Crim 32-460	460	**DISCLOSURE OF PRESENTENCE REPORTS AND RELATED RECORDS** (a) Confidential Character of Presentence Reports and Related Records (b) Requests for Disclosure (c) Availability of Proposed Presentence Report (d) Objections to the Report (e) Submission to the Court (f) Formal Objections to Report (g) Limitation on Objections (h) Resolution of Disputes (i) Sentencing Proceedings
Crim 32-461	461	**DISCLOSURE OF OTHER PROBATION RECORDS** (a) Confidential Character of Probation Records (b) Requests for Disclosure
Crim 35-480	480	**RULE 35 MOTIONS - SERVICE**
Crim 46-410	410	**FIXED SUMS PAYABLE IN LIEU OF APPEARANCE**

Crim 50-400	400	**GENERAL RULES APPLICABLE IN CRIMINAL CASES AND PLAN FOR PROMPT DISPOSITION OF CRIMINAL CASES** (a) Applicability of General Rules (b) Adoption of Plan for Prompt Disposition of Criminal Cases (c) Availability of Plan
Crim 58-420	420	**REFERRAL OF MISDEMEANORS TO MAGISTRATE JUDGES** (a) Reference to a Magistrate Judge (b) Court Reporters
Crim 58-421	421	**DISPOSITION OF MISDEMEANOR ACTIONS** (a) Authorization (b) Pretrial and Post-Trial Matters (c) Jury Trials (d) Presentence Reports
Crim 58-422	422	**APPEAL FROM CONVICTION BY A MAGISTRATE JUDGE** (a) Notice of Appeal (b) Record (c) Assignment to a Judge (d) Notice of Hearing (e) Time for Serving and Filing Briefs
Crim 58-423	423	**REFERRAL OF MISDEMEANORS AND PETTY OFFENSES TO THE DISTRICT COURT**

ADMIRALTY AND IN REM RULES

NEW NATIONAL RULE NUMBER	OLD LOCAL RULE NUMBER	TITLE AND CONTENTS OF RULE
A-500	500	**TITLE AND SCOPE OF RULES** (a) Title (b) Applicability (c) Inconsistency with Other Local Rules
A-501	501	**THE UNITED STATES MARSHAL** (a) Locations (b) Office Hours (c) Emergency Telephone (d) Meaning of "Marshal"
A-510	510	**COMPLAINTS, ALLEGATIONS AND ACCOMPANYING AFFIDAVIT** (a) Caption (b) Mandatory Allegations (c) Mandatory Allegations in Salvage Actions (d) Affidavit Showing Defendant's Absence

GENERAL RULES

RULE 1-100

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) Renumbering. These Local Rules have been renumbered in accordance with a directive from the Judicial Conference of the United States. The numbering is based on a combination of the most relevant Federal Rule of Civil Procedure and the pre-existing number of the Local Rule at the time of renumbering. When the relevant Federal Rule is civil, the number appears without designation; when criminal, the abbreviation "Crim" prefaces the rule number to distinguish it. Admiralty and in rem rules are prefaced by the letter "A." When appropriate, Local Rules previously appearing as single general rules have been restated differently as separate rules. Thus, for example, Local Rules 47-162 and 48-162 contain material previously contained in Local Rule 162, now divided into separate rules corresponding to Fed. R. Civ. P. 47 and 48.

(c) 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.

(d) Applicability. Local Rules ending in 100 through 199 and 300 through 399 govern proceedings in all actions in the United States District Court for the Eastern District of California to the extent not inconsistent with other rules more specifically applicable to the particular case. Local Rules ending in 200 through 299 govern proceedings in civil actions only, while Local Rules ending in 400 through 499 are limited in application to criminal actions. Local Rules ending in 500 through 599 are the Admiralty and In Rem Rules for the Eastern District of California.

(e) Effective Date. These Local Rules are effective on **April 15, 1997**, 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 1-101

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. 83-183.

(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 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.

(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. 1-102(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. 16-282.

(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. 16-240.

(25) "Weapon" means any instrument intended to be used for attack or defense, including but not limited to firearms and knives. See L.R. 83-103.

RULE 1-102

SCOPE AND AVAILABILITY OF LOCAL RULES

(a) Scope. These Rules govern all 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. The Rules are available from the Clerk in printed form and on 3.5 inch computer disk in WordPerfect™ 5.1 (DOS) and ASCII. 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. Unless contrary to the Federal Rules of Civil and Criminal Procedure, the Court in its discretion may make such orders supplementary or contrary to the provisions of these Rules as it may deem appropriate and in the interests of justice and case management under Fed. R. Civ. P. 16 or Fed. R. Crim. P. 17.1 in a special action circumstance.

RULE 3-120

SESSIONS OF COURT - INTRADISTRICT VENUE

(a) Sacramento and Fresno. Court shall be in continuous session at Sacramento and Fresno. Sessions of Court may also be held at Redding. See 28 U.S.C. §§ 84, 132 et seq. The Court maintains libraries in Sacramento and Fresno open to attorneys admitted to practice in this Court and to persons appearing in propria persona in this Court who may use the libraries in accordance with such General Orders as the Court may adopt. Persons using the libraries are directed to refrain from requesting legal advice.

(b) Commencement of Civil Actions. All civil actions and non-criminal legal proceedings of every nature and kind cognizable by the United States District Court for the Eastern District of California arising in Calaveras, Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Stanislaus, Tulare and Tuolumne counties shall be commenced in the United States District Court sitting in Fresno, California. All civil actions and non-criminal legal proceedings of every nature and kind cognizable in the United States District Court for the Eastern District of California arising in Alpine, Amador, Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Mono, Nevada, Placer, Plumas, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sutter, Tehama, Trinity, Yolo and Yuba counties shall be commenced in Sacramento, California. As to criminal actions, see L.R. Crim 18-402.

(c) 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.

(d) Transfer. Whenever in any civil action the Court finds upon its own motion, motion of any party, or stipulation that an action has not been commenced in the proper Court in accordance with this Rule, or for other good cause, the Judge may transfer the same to another Court within the District.

(e) General Duty Judge. The Chief Judge shall, from time to time, appoint a General Duty Judge. See L.R. 1-101(14).

CIVIL RULES

RULE 3-200

DESIGNATION OF CATEGORY OF ACTION

Every complaint, amended complaint, or other document initiating a civil action shall be accompanied by a completed civil cover sheet, on a form available from the Clerk.

This requirement is solely for administrative purposes, and matters appearing only on the civil cover sheet have no cognizable effect in the action.

RULE 4-210

SERVICE OF PROCESS AND RETURN OF SERVICE

(a) Issuance of Summons. Summons shall be prepared by counsel for issuance by the Clerk.

(b) Proof of Service of Process. If service is not waived, proof of service of process shall be made by acknowledgment of the party served or by affidavit of the person serving such process. Such proof of service shall be filed and served on all parties who have been served or who have appeared in the action as of the time of filing the proof of service, as soon as possible after service has been completed and, in any event, before any action based upon the service is requested or taken by the Court or is taken by a party in reliance on proper service. Such proof of service shall show the date, place and manner of the service. When service is made by manual delivery, it shall show the hour, the particular address or vicinity at which service was made, the name and address of the person served, and the name and address of the person making the service. See Fed. R. Civ. P. 4(l).

(c) Filing of Waiver of Service. If the defendant has waived service of process, the plaintiff shall file the waiver of service as soon as possible after the waiver has been received and, in any event, before any action based upon the waiver of service is requested or taken by the Court or is taken by a party in reliance on proper service or a waiver thereof. See Fed. R. Civ. P. 4(d)(4).

RULE 5-134

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. 77-121(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. 3-120, 77-121.

(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.

RULE 5-135

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 5-137

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 forthwith together with sufficient copies for all counsel, 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 five (5) days before lodging the proposed order with the Court. The certificate of service attached to the proposed order shall reflect the date of service and of filing. Counsel not preparing the order shall have five (5) court 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. See L.R. 6-136.

(b) Service. Copies of all written orders signed and filed by the Court, 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 6-136

CALCULATION OF TIME PERIODS

(a) Additional Time After Service by Mail. The time period fixed by these Local Rules shall be subject to the provisions of Fed. R. Civ. P. 6(e) or Fed. R. Crim. P. 45(e), allowing, when authorized by law, additional time to do some act or take some proceeding within a prescribed period after service of a notice or other paper on the party by mail. Whenever in these Local Rules a different time period is prescribed for an act depending on whether service is in person or by mail, the Rule shall be deemed to include the time period prescribed in Fed. R. Civ. P. 6(e) and Fed. R. Crim. P. 45(e), and no additional time shall be allowed for service by mail.

(b) Computation of Time. The time periods fixed by these Local Rules shall be subject to the provisions of Fed. R. Civ. P. 6(a) or Fed. R. Crim. P. 45(a). References in these Local Rules to "court days" are intended to invoke the computation prescribed by Fed. R. Civ. P. 6(a) and Fed. R. Crim. P. 45(a).

(c) Specific Time Provisions. Pursuant to the provisions of Fed. R. Civ. P. 6(d) or Fed. R. Crim. P. 45(d), the otherwise applicable time periods fixed by those Rules have been lengthened by order of the Court as set forth in these Local Rules governing service of notices of motion, affidavits, and other documents.

RULE 6-142

EXTENDING AND SHORTENING TIME

(a) Extensions on Stipulation. Unless the filing date has been set by order of the Court, an initial stipulation extending time for no more than thirty (30) days to respond to a complaint, cross-claim or counterclaim, or to respond to interrogatories, requests for admissions, or requests for production of documents may be filed without approval of the Court if the stipulation is signed on behalf of all parties who have appeared in the action and are affected by the stipulation. All other extensions of time must be approved by the Court. No open extensions of time by stipulation of the parties will be recognized.

(b) Contents of Application for Extension. All applications to the Court for extensions of time shall set forth the total period of extensions already obtained by the parties as to the particular matters for which the extension is sought.

(c) Initial Ex Parte Extension. The Court may, in its discretion, grant an initial extension ex parte upon the affidavit of counsel that a stipulation extending time cannot reasonably be obtained, explaining the reasons why such stipulation cannot be obtained and the reasons why the extension is necessary. Except for one such initial extension, ex parte applications for extension of time will not ordinarily be granted.

(d) Time for Requesting Extensions. Counsel shall seek to obtain a necessary extension from the Court or from other counsel or parties in an action as soon as the need for an extension becomes apparent. Request for Court-approved extensions brought on the required filing date for the pleading or other document are looked upon with disfavor.

(e) Shortening Time. Applications to shorten time shall set forth by affidavit of counsel the circumstances claimed to justify the issuance of an order shortening time. Ex parte applications to shorten time will not be granted except upon affidavit of counsel showing a satisfactory explanation for the need for the issuance of such an order and for the failure of counsel to obtain a stipulation for the issuance of such an order from other counsel or parties in the action. Stipulations for the issuance of an order shortening time require the approval of the Judge or Magistrate Judge on whose calendar the matter is to be heard before such stipulations will be given effect. Any proposed order shortening time shall include blanks for the Court to designate a time and date for the hearing and for the filing of any response to the motion.

RULE 7-130

GENERAL FORMAT OF PAPERS

All documents presented for filing or lodging shall be on white, unglazed opaque paper of good quality with numbered lines in the left margin, 8-1/2" x 11" in size, and shall be flat, unfolded (except where necessary for presentation of exhibits), firmly bound at the top left corner, pre-punched with two (2) holes (approximately 1/4" diameter) centered 2-3/4" apart, 1/2" to 5/8" from the top edge of the document, and shall comply with all other applicable provisions of these Rules. Matters contained thereon shall be presented by typewriting, printing, photographic or offset reproduction, or other clearly legible process, without erasures or interlining which materially defaces the document, and shall appear on one side of each sheet only. Documents shall be double-spaced except for the identification of counsel, title of the action, category headings, footnotes, quotations, exhibits and descriptions of real property. Quotations of more than fifty (50) words shall be indented. Each page shall be numbered consecutively at the bottom.

RULE 7-131

COUNSEL IDENTIFICATION AND SIGNATURE

The name, address, telephone number, and the California State Bar membership number of all counsel (or, if in propria persona, of the party) and the specific identification of each party represented by name and interest in the litigation (e.g., plaintiff Smith, defendant Jones) shall appear in the upper left-hand corner of the first page of each document presented for filing, except that in the instance of multi-party representation reference may be made to the signature page for the complete list of parties represented. See Fed. R. Civ. P. 11; L.R. 83-180, 83-182; Cal. Rules of Court 201(e).

All pleadings or other documents shall be signed by the individual attorney for the party presenting them, or by the party involved if that party is appearing in propria persona. The name of the person signing the document shall be typed underneath the signature. See Fed. R. Civ. P. 11.

RULE 7-132

CAPTION AND TITLE

Following the counsel identification and commencing on the eighth line of the initial page of each document (except where additional space is required for identification), there shall appear: (1) the title of the Court, (2) the title of the action, (3) the file number of the action, followed by the initials of the Judge and Magistrate Judge to whom it is currently assigned, (4) a title describing the document, (5) immediately below the case number and title of the document, a statement of the date, time, and name of the Judge or Magistrate Judge for any scheduled hearing, and (6) any other matter required by these Rules.

RULE 8-204

ALLEGATIONS OF JURISDICTION

When an affirmative allegation of jurisdiction is required pursuant to Fed. R. Civ. P. 8(a)(1), it (i) shall appear as the first allegation of any complaint, petition, counterclaim, cross-claim or third party claim, (ii) shall be styled "Jurisdiction," (iii) shall state the claimed statutory or other basis of federal jurisdiction, and (iv) shall state the facts supporting such jurisdictional claim.

RULE 8-206

SPECIAL RULE FOR SOCIAL SECURITY AND BLACK LUNG ACTIONS

Complaints under Titles II, XVI, and XVIII of the Social Security Act, 42 U.S.C. §§ 405(g), 1383(c)(3), and 1395ff, or under Part B, Title N, of the Federal Coal Mine Health and Safety Act of 1969, shall contain the following information in addition to the matters otherwise required by the Federal Rules of Civil Procedure and Local Rules:

(1) In actions involving claims for retirement, survivors, disability, health insurance and black lung benefits, the social security number of the worker on whose wage record the application for benefits was filed (who may or may not be the plaintiff), or

(2) In actions involving claims for supplemental security income benefits, the social security number of the plaintiff.

RULE 11-110

SANCTIONS FOR NONCOMPLIANCE WITH RULES

Failure of counsel or of a party to comply with these Rules or with any order of the Court may be grounds for imposition by the Court of any and all sanctions authorized by statute or Rule or within the inherent power of the Court.

RULE 15-220

CHANGED PLEADINGS

As used in this Local Rule, the term "changed pleadings" shall refer to amended and supplemental pleadings permitted and filed pursuant to Fed. R. Civ. P. 15.

Unless prior approval to the contrary is obtained from the Court, every pleading to which an amendment or supplement is permitted as a matter of right or has been allowed by Court order shall be retyped and filed so that it is complete in itself without reference to the prior or superseded pleading. No pleading shall be deemed supplemented until this Rule has been complied with. All changed pleadings shall contain copies of all exhibits referred to in the changed pleading. Permission may be obtained from the Court, if desired, for the removal of any exhibit or exhibits attached to prior pleadings, in order that the same may be attached to the changed pleading.

RULE 16-160

NOTICE OF SETTLEMENT OR OTHER DISPOSITION

(a) Notice. When an action has been settled or otherwise disposed of, or when any motion seeking general or interim relief has been resolved, whether by settlement conference or out of Court, and whether the action is pending in the District Court or is before an appellate court, it is the duty of counsel to inform the courtroom deputy clerk and the assigned Court's chambers immediately. See L.R. 16-272.

(b) Dispositional Documents. Upon such notification of disposition or resolution of an action or motion, the Court shall thereupon fix a date upon which the documents disposing of the action or motion must be filed, which date shall not be more than twenty (20) calendar days from the date of said notification, absent good cause. The Court may, on good cause shown, extend the time for filing the dispositional papers. A failure to file dispositional papers on the date prescribed by the Court may be grounds for sanctions. See L.R. 16-272.

RULE 16-240

STATUS CONFERENCE

(a) Conference. After an action has been filed, the assigned Judge or Magistrate Judge shall order the holding of one or more status conferences for the purpose of entering a pretrial scheduling order, and further status conferences may be held at any time thereafter, with or without the written request of any party. See Fed. R. Civ. P. 16. All parties receiving notice of any status conference shall appear in person or by counsel and shall be prepared to discuss such subjects as may be specified in the order noticing the conference and shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed. Such subjects may include:

(1) service of process on parties not yet served;

(2) jurisdiction and venue;

(3) joinder of additional parties and amendment of pleadings;

(4) the formulation and simplification of the issues, including elimination of frivolous claims and defenses;

(5) the disposition of pending motions, the timing of a motion for class certification, see L.R. 23-205, the appropriateness and timing of summary adjudication under Fed. R. Civ. P. 56, and other anticipated motions;

(6) anticipated or outstanding discovery, and the control and scheduling of discovery, including deferral of discovery under Fed. R. Civ. P. 26(d), whether to hold a discovery conference under Fed. R. Civ. P. 26(f), and other orders affecting discovery pursuant to Fed. R. Civ. P. 26 and 29 through 37;

(7) the avoidance of unnecessary proof and of cumulative evidence, and limitations or restrictions on the use of testimony under Fed. R. Evid. 702;

(8) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the Court on the admissibility of evidence;

(9) further proceedings, including setting dates for further conferences, for the completion of motions and discovery and for pretrial and trial; the appropriateness of an order adopting a plan for disclosure of experts under Fed. R. Civ. P. 26(a)(2)(B), Cal.Code Civ.Proc. § 2034, or an alternative plan, the appropriateness of an order establishing a reasonable limit on the time allowed for presenting evidence;

(10) modification of the standard pretrial procedures specified by these Rules because of the relative simplicity or complexity of the action;

(11) the appropriateness of an order for a separate trial pursuant to Fed. R. Civ. P. 42(b) with respect to a claim, counterclaim, cross-claim, or third-party claim, or with respect to any particular issue in the case;

(12) the appropriateness of an order directing a party or parties to present evidence early in the trial with respect to a manageable issue that could, on the evidence, be the basis for a judgment as a matter of law under Fed. R. Civ. P. 50(a) or a judgment on partial findings under Fed. R. Civ. P. 52(c);

(13) appropriateness of special procedures such as reference to a special master or Magistrate Judge or the Judicial Panel on Multidistrict Litigation, or application of the Manual for Complex Litigation;

(14) the prospects for settlement and the use of special procedures to assist in resolving the dispute when authorized by statute or these Rules, provided, however, that counsel shall not, in the absence of a written stipulation, reveal any offers made or rejected during settlement negotiations, and counsel shall specify whether they will stipulate to the trial Judge or Magistrate Judge acting as settlement Judge and waive any disqualification by virtue thereof;

(15) whether the action is required to be heard by a District Court composed of three Judges, see L.R. 24-203, or whether the action draws in issue the constitutionality of a statute or regulation under circumstances requiring notice as set forth in L.R. 24-133;

(16) the appropriateness of alternate dispute resolution, such as voluntary arbitration, this District's Early Neutral Evaluation program, mediation, or any other alternative dispute resolution procedure; and

(17) any other matters which may facilitate the just, speedy and inexpensive determination of the action.

(b) Reports. The Court may require the submission of preconference reports on some or all of the foregoing subjects.

(c) Exceptions to Mandatory Scheduling Order Requirement. The following categories of civil actions are excepted from the mandatory scheduling order requirement pursuant to Fed. R. Civ. P. 16(b):

(1) actions brought solely 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;

(2) actions brought to enforce Internal Revenue Service summonses filed pursuant to 26 U.S.C. §§ 7402(b) and 7604(a), and actions to quash administrative summonses filed pursuant to 26 U.S.C. § 7609(b)(2);

(3) actions for writs of entry in connection with the enforcement of Internal Revenue Service tax liens;

(4) actions to enforce collection on promissory notes involving federally insured loans and direct federal loans in which the prayer for relief is less than $25,000;

(5) actions to enforce cease and desist orders issued by the National Labor Relations Board, 29 U.S.C. § 301;

(6) actions to enforce arbitration awards;

(7) actions under 46 U.S.C. §§ 2302, 4311(d) and 12309(c); and

(8) petitions for writs or actions seeking relief under the Federal Civil Rights Acts, by incarcerated persons acting in propria persona.

RULE 16-270

COURT SETTLEMENT CONFERENCES

(a) Setting of Settlement Conferences. A settlement conference shall be held in all cases unless otherwise ordered by the Court on objection of a party or for other good cause. Counsel shall notify the Court when the settlement conference is set if the litigation is unusual or complex and if there is a need to provide for additional time or special arrangements to ensure that the settlement conference will be meaningful.

(b) Settlement Conferences Before the Assigned Judge or Magistrate Judge. Unless all the parties affirmatively request that the assigned Judge or Magistrate Judge participate in the conference and waive in writing any claim of disqualification on that basis to try the case thereafter, the assigned Judge or Magistrate Judge shall not conduct the settlement conference.

(c) Settlement Conference Statements. Unless otherwise ordered by the Court, the submission of settlement conference statements prior to the conference is optional. Statements submitted prior to the conference are reviewed in preparation for the conference and may assist in achieving the goals of the conference; they should be drafted with that purpose in mind.

(d) Confidentiality of Settlement Conference Statements. Settlement conference statements shall not be disclosed to the assigned Judge or Magistrate Judge. Unless otherwise ordered by the Court, settlement conference statements may, at the option of submitting counsel, be submitted in confidence to the Judge or Magistrate Judge before whom the settlement conference is to be held, or may also be delivered to all other parties. In the former case, the statement must be clearly captioned to reveal its confidential character and a simple notice of its submission shall be provided to all other parties.

(e) Delivery and Return of Settlement Conference Statements. Settlement conference statements shall be delivered directly to the chambers of the Judge or Magistrate Judge before whom the settlement conference is to be held, either by mail addressed to that chambers or by sealed envelope delivered to the Clerk's Office specifically addressed to that chambers. At the completion of the settlement conference, the Judge or Magistrate Judge before whom the settlement conference is held shall return the statements to the respective parties who submitted them or otherwise dispose of them.

(f) Participation of a Principal.

(1) In cases in which the United States is not a party, counsel shall be accompanied in person, unless specifically permitted otherwise by the Judge or

Magistrate Judge conducting the settlement conference, by a person capable of disposition, or shall be fully authorized to settle the matter at the settlement conference on any terms. When settlement must be approved by a vote of a party's governing body, unless specifically permitted otherwise by the Judge or Magistrate Judge conducting the settlement conference, counsel shall be designated or shall be accompanied in person by a representative designated by the body who shall have learned the body's preconference disposition relative to settlement.

(2) In cases in which the United States is a party, the attorney for the United States shall obtain the approval of the United States Attorney to compromise any matter within the authority delegated to the United States Attorney by rule or regulation of the Attorney General. If such delegated authority to approve a compromise settlement is limited by the opposition of another federal agency, a responsible and knowledgeable representative of such agency shall attend the conference. In other cases, in which the approval of officials of the Department of Justice in Washington, D.C. is required for a compromise settlement, the attorney for the United States shall, before the settlement conference, attempt to confer with such officials, or their appropriate representatives, to determine the terms and conditions upon which a compromise settlement would be approved. If a tentative compromise settlement that is within such terms and conditions is agreed to at the conference, the attorney for the United States shall promptly recommend it to and seek the required approval of the appropriate official.

RULE 16-271

VOLUNTARY EARLY NEUTRAL EVALUATION

(a) Scope and Purpose of Rule. In recognition of the economic burdens and delay in the resolution of disputes that can be imposed by full, formal litigation, this Rule governs the voluntary referral of certain actions to early neutral evaluation at the election of the parties. As used in this Rule only, the term "Clerk" means the Clerk of the Court or any other person designated by the Clerk to engage in the administration of activities under this Rule.

(b) Actions Subject to this Rule. All civil actions are eligible for referral to early neutral evaluation under this Rule except for the following: (i) prisoner petitions and actions, (ii) actions in which one of the parties is appearing pro se, (iii) voting rights actions, (iv) social security actions, (v) deportation actions, (vi) Freedom of Information Act actions, and (vii) actions involving the constitutionality of federal, state or local statutes or ordinances.

(c) Notice of Availability. The Clerk shall provide a notice of the availability of early neutral evaluation with a citation to this Rule to all plaintiffs upon the filing of the complaint or a removal action. The notice will order the plaintiff to provide all other parties with copies of the notice at the time service is effected or, for parties already served, no more than ten (10) days after plaintiff receives the notice from the Court. After the filing of the original complaint or a removal action, any party who causes a new party to be joined in the action shall promptly serve a copy of the notice on the new party.

(d) Referral to Early Neutral Evaluation.

(1) Election by the Parties. Parties may elect early neutral evaluation by filing with the Court a stipulation indicating that all parties to the action agree to submit the action to early neutral evaluation pursuant to this Rule. A copy of the stipulation shall be provided to the Clerk at the time of filing. See L.R. 83-141.

(2) Authority of Assigned Judge and Magistrate Judge. As part of a status or scheduling conference or otherwise, the assigned Judge or Magistrate Judge may inform the parties of the availability of early neutral evaluation. See L.R. 16-240(b)(16). Actions may not be assigned to early neutral evaluation over the objection of a party. Nevertheless, when complex actions including counterclaims, cross-actions or third-party actions are pending, the Court may assign discrete sub-parts of the complex action if all parties to the sub-part elect early neutral evaluation and the party objecting to early neutral evaluation is not a party to the sub-part of the complaint, counterclaim, cross-action or third-party action to be assigned to early neutral evaluation.

(e) Selection of Evaluator.

(1) Selection by the Parties or Randomly by the Clerk. Upon the filing of a stipulation for or assignment to early neutral evaluation, the assigned Judge or Magistrate Judge or the Clerk may assign an evaluator, or the Clerk may supply to the parties a list of not more than three (3) potential evaluators, from which list the parties shall agree upon one. If the identity of the evaluator is by selection of the parties, counsel for the party first asserting jurisdiction in the Court shall report the selection, in writing, to the Clerk within ten (10) days following service of the list by the Clerk. If the parties are unable to agree upon an evaluator or fail to communicate their agreement to the Clerk, the Clerk may designate an evaluator drawn randomly from the panel of evaluators to be the evaluator assigned to the action and shall notify the parties and the evaluator of that designation. If the evaluator so selected is unable or unwilling to serve, the Clerk shall select and notify another evaluator. When an evaluator has agreed to serve, the Clerk shall send notice to the evaluator and the parties of the selection.

(2) Neutrality of the Evaluator. No person may serve as an evaluator in any action in which any of the circumstances specified in 28 U.S.C. § 455 exist or may in good faith be believed to exist. If a circumstance specified in 28 U.S.C. § 455 exists, including the fact that the evaluator's law firm represents or has represented one of the parties or that one of the lawyers who would appear before the evaluator is involved in litigation in another action with the evaluator, the evaluator shall promptly disclose the circumstance to all parties in writing. A party who believes that an assigned evaluator has a conflict of interest shall bring the concern to the attention of the Clerk within ten (10) days after learning of the conflict or shall be deemed to have waived any objection based on that conflict.

(3) Maintenance of the Panel of Evaluators. The Clerk shall maintain a panel of evaluators, initially consisting of the evaluators who were selected to participate as evaluators in the early neutral evaluation pilot project. Evaluators may request that their names be dropped from the panel for specified periods of time or permanently. Additional names may be added to the panel by the Chief Judge, with the consent of the individuals to be named. The panel shall consist of experienced civil litigators who are familiar with practice in federal court.

(f) Evaluation Proceedings. Once an evaluator has been selected, the assigned Judge or Magistrate Judge, or the Clerk, or the evaluator, shall fix the date of the early neutral evaluation session after conferring with the parties. The session shall be held as soon as reasonably possible but in no event more than ninety (90) days after the evaluator is selected, unless otherwise ordered by the Court.

(1) Written Evaluation Statements. At least seven (7) days prior to the evaluation session, each party shall submit to the evaluator and serve on all other parties a written evaluation statement not to exceed ten (10) pages. Statements shall not be filed

with the Court, and the assigned Judge or Magistrate Judge shall not have access to them.

(2) The Content of the Statements. Each statement must

(i) give a brief statement of the facts,

(ii) identify the pertinent principles of law,

(iii) identify the significant legal and factual issues that are in dispute,

(iv) identify any legal or factual issues whose early resolution might reduce the scope of the dispute or contribute significantly to the productivity of settlement discussions,

(v) identify by name and role with respect to the litigation and the litigants the person(s) in addition to counsel who will attend the session as representatives of the party filing the statement with decision-making authority, and

(vi) identify or attach particular document(s) or other physical evidence, if any, central to an understanding of the dispute and an appreciation of the merits of each party's case.

(3) Attendance at the Session. The attorney who is to be primarily responsible for handling the trial of the action shall attend the early neutral evaluation session. In addition, the parties themselves shall attend the session, unless excused as provided herein. A party other than a natural person satisfies this attendance requirement if it is represented at the session by a person or persons other than counsel with reasonable settlement authority and authority to enter into stipulations. If there is insurance coverage, an adjuster with reasonable settlement authority shall attend. A governmental body may satisfy the attendance requirement if represented by an attorney who has authority to settle or to recommend settlement.

(4) Location of the Session. The early neutral evaluation session shall be held at a location selected by the evaluator.

(5) Evaluation Session Procedures. Early neutral evaluation sessions are informal; rules of evidence shall not apply and there shall be no formal examination or cross-examination of witnesses. The evaluator may structure sessions in the manner most productive of resolution of the action or issues in the action. As a part of early neutral evaluation sessions, either in open session or privately with each party as appropriate, the evaluator shall

(i) permit each party to make an oral presentation,

(ii) assist the parties to identify areas of agreement and, when appropriate, to enter into stipulations,

(iii) assess and assist the parties in assessing the strengths and weaknesses of their contentions and evidence, their chance of success on important issues, the consequences of an unfavorable verdict on each important issue, the number of witnesses to be deposed regarding that issue and the costs and fees associated with proving that issue,

(iv) determine the settlement offers that parties are willing to make and whether offers may be communicated to the opposing parties,

(v) estimate when feasible the likelihood of liability and the dollar range of damages or other relief, and

(vi) undertake such other efforts at resolution of the action, of issues in the action, or of procedural steps to be taken in the action as may be appropriate.

(6) Follow-Up Sessions. If the action is not resolved at the initial session, the evaluator shall determine whether to schedule any follow-up sessions or procedures.

(7) Report to the Court. Within thirty (30) days following the early neutral evaluation session, the evaluator shall advise the Clerk by letter whether the action has settled and, if not, whether any follow-up sessions or procedures remain to be completed. The evaluator shall not report any of the substantive matters discussed in the evaluation nor the evaluator's substantive views of the merits of any party's position.

(g) Confidentiality. All written and oral communications made during any early neutral evaluation session shall be treated as absolutely confidential by the Court and the evaluator. The Court extends to all such communications all the protections federal courts and Federal Rule of Evidence 408 give to communications made in settlement negotiations or to offers of compromise. In addition, no communication made during any session may be disclosed by the parties, their counsel or the evaluator or used for any purpose (including impeachment or to prove bias or prejudice of a witness) in any pending or future proceeding in this Court. The privileged and confidential status afforded to communications made during any session is extended to include the evaluator's comments, assessments, evaluations and recommendations as to development of the action, discovery or motions.

(h) Scope and Limitations on Powers of Evaluators. Evaluators have authority to structure and conduct evaluation sessions and to fix their time and place. Evaluators shall promptly report violations of the requirements of this Rule, including failure to submit timely statements or to comply with attendance requirements, to the Magistrate Judge assigned to the action. Evaluators have no authority to order parties or counsel to take

action outside the evaluation session, to compel parties to produce information, to rule on disputed matters, or to determine what the issues are in the action.

(l) **Enforcement.** The Magistrate Judge assigned to the action shall conduct evidentiary hearings, make findings of fact, and recommend conclusions of law with respect to alleged violations of this Rule. See L.R. 72-302(c)(20).

RULE 16-272

NOTICE OF SETTLEMENT

(a) General Rule. See L.R. 16-160.

(b) Sanctions. If for any reason attributable to counsel or parties, including settlement, the Court is unable to commence a jury trial as scheduled where a panel of prospective jurors has reported for voir dire, the Court may assess against counsel or parties responsible all or part of the cost of the panel. See L.R. 11-110.

RULE 16-281

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 ten (10) court days prior to the date set by the Court for the holding of the final pretrial conference, counsel for the plaintiff shall personally serve and file in duplicate a pretrial statement in the form prescribed herein. Alternatively, counsel for the plaintiff may serve by mail thirteen (13) court days and file ten (10) court days prior to the conference. Not less than five (5) court days prior to the date set for the holding of the pretrial conference, counsel for all other parties shall serve on all parties and file in duplicate pretrial statements which may adopt by reference any or all of the matters set forth in the plaintiff's pretrial statement.

(2) Joint Statements. Not less than five (5) court days prior to 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 in duplicate a joint pretrial statement in the form prescribed herein or in such other form as the Court may prescribe.

(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.

(6) Special Factual Information In Certain Actions. In addition to the facts and issues described in (3) through (5) above, 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 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 (anticipation) or 35 U.S.C. § 103 (obviousness).

(F) An explanation of any interparty tests which 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) 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 prior to 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 prior to death, and 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 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 status conference order, counsel shall set forth the grounds for relief from that order and why a motion to be relieved was not made prior to 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. 16-270 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. 54-293.

(21) 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 Local 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.

RULE 16-282

PRETRIAL CONFERENCE

The agenda for the pretrial conference shall include discussion of the following:

(1) The items set forth in the pretrial statements filed pursuant to L.R. 16-281 and the matters set forth in Fed. R. Civ. P. 16(c).

(2) The filing of trial briefs on designated points of law likely to be presented at trial. See L.R. 16-285.

(3) The procedures for voir dire and the filing of proposed voir dire questions and proposed jury instructions. See L.R. 51-163.

(4) The filing and exchange of lists of documentary and other exhibits, summaries, schedules, and other illustrative exhibits to be offered at trial, statements waiving or reserving objections to the exhibits listed by other parties, and the marking and indexing of exhibits.

(5) The filing of statements designating portions of depositions, admissions and answers to interrogatories which the respective parties intend to offer at the trial (except portions to be used only for impeachment or rebuttal).

(6) The inspection of originals of listed exhibits and of reports of experts who will be called as witnesses. See L.R. 16-281.

(7) The filing of proposed findings of fact and conclusions of law.

All of the foregoing agenda items shall be subject to any appropriate claims of privilege from disclosure. See L.R. 16-281(c).

RULE 16-283

PRETRIAL ORDER

(a) Preparation of Pretrial Order. The Court, or a party if so directed by the Court, shall prepare a proposed pretrial order, serve a copy thereof on all parties, and lodge the original. If directed by the Court, a party shall do so within eight (8) court days after the pretrial conference. Any party upon whom the proposed pretrial order is served may, within the time permitted in the proposed pretrial order, submit objections to the proposed pretrial order and, in so doing, shall set forth the basis of the objections and any changes to be made in the proposed pretrial order.

(b) Contents of Pretrial Order. All pretrial orders shall recite the appearances and representations (and any non-appearances) at the pretrial conference and the action taken by the Court and agreements made by the parties with respect to each of the items discussed at the conference, except that parties shall not refer to settlement negotiations. All pretrial orders shall conclude by setting the date for the trial and stating the Court's estimate of the number of court days required for the trial.

(c) Pretrial Order to Control. See Fed. R. Civ. P. 16.

RULE 16-285

TRIAL BRIEFS

(a) Opening Briefs. Counsel for each party shall file in duplicate and serve on all other parties within the time set by the Court but not less than ten (10) court days prior to trial a brief setting forth:

(1) a short statement of facts;

(2) all admissions and stipulations not recited in the pretrial order; and

(3) a summary of points of law, including reasonably anticipated disputes concerning admissibility of evidence, legal arguments, and citations of authority in support thereof.

(b) Responding Briefs. Although not required to do so, opposing counsel may file in duplicate and serve on all other parties an answering brief within the time set by the Court but not less than three (3) court days prior to trial; provided, however, that as to any evidentiary questions raised in a trial brief by one party and not also addressed in the opposing party's opening brief, a brief shall be filed and served by the opposing party on those questions at least three (3) court days prior to trial.

RULE 17-202

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 appropriate evidence of the appointment of a representative for the minor or incompetent person under state law or a motion for the appointment of a guardian ad litem by the Court. 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 court order by the assigned Judge or Magistrate Judge approving the settlement or compromise.

(1) In those 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 assigned Judge or Magistrate Judge who may either approve the settlement or compromise without hearing or calendar the matter for hearing.

(2) In all other actions, the motion for approval of a proposed settlement or compromise shall be filed and calendared pursuant to L.R. 78-230 before the assigned Judge or Magistrate Judge. Such 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 said 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 such 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 he is the duly qualified representative 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. 72-302(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 the Court with a copy to the Magistrate Judge and shall be reviewed by the Magistrate Judge in accordance with subsection (b)(1) of this Rule.

RULE 23-205

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(e), the plaintiff shall move for a determination under Fed. R. Civ. P. 23(c)(1) 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.

RULE 24-133

NOTICE OF CLAIM OF UNCONSTITUTIONALITY

(a) Notice of Claim of Unconstitutionality of Federal Law. If, at any time in an action to which neither the United States nor any of its officers, agencies, or employees is a party, any party draws in issue the constitutionality of a federal administration regulation of general applicability, that party shall immediately file a notice with the Court identifying the regulation in issue and setting forth in what respects its constitutionality is questioned, and shall serve a copy of the notice on the United States Attorney General, on the United States Attorney, on the Judge to whom the action has been assigned, and on all other parties. If the party required to file and serve the notice fails to do so, every other party shall file and serve such a notice, provided that as soon as a notice is filed and served, all other parties are relieved of this obligation. Cf. 28 U.S.C. § 2403(a) (requirement re Acts of Congress); Fed. R. Civ. P. 24(c).

(b) Notice of Claim of Unconstitutionality of State Law. If, at any time in an action to which neither a State nor any of its officers, agencies, or employees is a party, any party draws in issue the constitutionality of any state administrative regulation of general applicability, that party shall immediately file a notice with the Court identifying the regulation in issue and setting forth in what respects its constitutionality is questioned, and shall serve a copy of that notice on the Attorney General of the State, on the Judge to whom the action has been assigned, and on all other parties. If the party required to file and serve such a notice fails to do so, every other party shall file and serve such notice, provided that as soon as a notice is filed and served, all other parties are relieved of this obligation. Cf. 28 U.S.C. § 2403(b) (requirement re state statutes); Fed. R. Civ. P. 24(c).

RULE 24-203

NOTICE OF REQUIREMENT OF THREE-JUDGE COURT

Whenever any action is required by Act of Congress to be heard and determined by a District Court of three Judges, the plaintiff shall immediately file a notice with the Clerk to this effect, serve a copy of the notice on the single Judge to whom the action is assigned, and serve a copy on all other parties. If the plaintiff fails to do so, every other party shall file and serve such notice, provided that as soon as a notice is filed and served, all other parties are relieved of this obligation. See 28 U.S.C. § 2284 and L.R. 5-134(b) which govern the filing of papers in actions heard by a three-Judge Court.

RULE 26-252

DISCOVERY LIMITATIONS

(a) No Automatic Disclosure. Pursuant to the provisions of Fed. R. Civ. P. 26(a)(1), the automatic disclosure procedures described therein shall not be required in any action in this Court, nor shall any automatic disclosures of any type be required in any action in this Court, except as otherwise provided by a scheduling or status order entered in a specific action.

(b) Expert Witness Disclosure. Pursuant to the provisions of Fed. R. Civ. P. 26(a)(2)(B), the expert witness disclosure requirements described therein shall not be required in any action in this Court, and all disclosure of matters pertaining to expert witnesses shall be performed in accordance with the provisions of a scheduling or status order entered in a specific action, or pursuant to the provisions of Fed. R. Civ. P. 30, 33 and 34, as applicable.

(c) Pretrial Disclosure. Pursuant to the provisions of Fed. R. Civ. P. 26(a)(3), the pretrial disclosure requirements described therein shall not be required in any action in this Court, and all disclosure of matters of the type described therein shall be performed in accordance with the provisions of L.R. 16-281 and the Court's final pretrial order as provided for in Fed. R. Civ. P. 16(e) and L.R. 16-283.

(d) Interrogatories and Deposition Limits. Pursuant to the provisions of Fed. R. Civ. P. 26(b)(2), there shall be no presumptive limitations upon the number of oral or written depositions taken (see Fed. R. Civ. P. 30(a)(2)(A) and 31(a)(2)(A)) or upon the number of interrogatories to parties served (see Fed. R. Civ. P. 33(a)) in any action in this Court. If any party believes that any such proposed discovery is burdensome, oppressive or otherwise improper, that party shall have the burden of seeking a protective order against such proposed discovery in accordance with the provisions of Fed. R. Civ. P. 26(c).

(e) Meet and Confer Requirements. Pursuant to the provisions of Fed. R. Civ. P. 26(d) and 26(f), there is no requirement that parties or counsel engage in any meet-and-confer procedure prior to any scheduling conference or prior to seeking discovery in the first instance. The parties and counsel shall comply with L.R. 16-240, as modified by any scheduling or status order entered in a specific action, and with L.R. 37-251 concerning discovery disagreements.

RULE 30-250

DEPOSITIONS

(a) Filing of Depositions. Depositions taken orally or by written question, whether duces tecum or not, subpoenas and notices therefor, proofs of service thereof and related documents shall not be filed with the Clerk until there is a proceeding in which the document or proof of service is at issue. When required in a proceeding, the original transcripts of depositions shall be filed. See L.R. 43-140(b), 56-260(d). 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).

(b) 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. 30-250(a), 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.

(c) Cross-Reference. On the number of depositions permitted, see L.R. 26-252.

RULE 33-250

INTERROGATORIES

(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) Objections. Each objection to any interrogatory shall include a statement of reasons.

(c) Filing of Interrogatories. Interrogatories, responses, and proofs of service thereof shall not be filed with the Clerk until there is a proceeding in which the interrogatories or proof of service is at issue. When required in a proceeding, only that part of the set of interrogatories and answers which is in issue shall be filed.

(d) Cross-Reference. On the number of interrogatories permitted, see L.R. 26-252.

RULE 34-250

PRODUCTION OF DOCUMENTS

(a) Requests for Production. Responses to requests for production shall set forth each request in full before each response.

(b) Objections. Each objection to any request for production shall include a statement of reasons.

(c) Filing of Requests for Production. Requests for production, responses and proofs of service thereof shall not be filed with the Clerk until there is a proceeding in which the request, response, or proof of service is at issue. When required in a proceeding, only that part of the request for production, response or proof of service which is in issue shall be filed.

(d) Cross-Reference. On the number of requests for production of documents permitted, see L.R. 26-252.

RULE 36-250

REQUESTS FOR ADMISSION

(a) Requests for Admission. Responses to requests for admission shall set forth each request in full before each response.

(b) Objections. Each objection to any request for admission shall include a statement of reasons.

(c) Filing of Requests for Admission. Requests for admission, responses, 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. When required in a proceeding, only that part of the request for admission and response which is in issue shall be filed.

(d) Cross-Reference. On the number of requests for admission permitted, see L.R. 26-252.

RULE 37-251

MOTIONS DEALING WITH DISCOVERY MATTERS

(a) Hearing re Discovery Disagreements. Except as provided in paragraph (e), a hearing of a motion pursuant to Fed. R. Civ. P. 26 through 37 may be had by the filing of a notice of motion and motion scheduling the hearing date on the appropriate calendar at least twenty-one (21) days from the date of filing. No other documents need be filed at this time. The hearing shall be dropped from the calendar without prejudice if the stipulation re discovery disputes or an affidavit as set forth below is not filed, with a copy provided for the Magistrate Judge or Judge hearing the motion, on or before three (3) court days prior to the scheduled hearing date. If the notice of motion and motion are filed concurrently with the stipulation, the motion shall be placed on the next regularly scheduled calendar for the Magistrate Judge or Judge hearing the motion at least three (3) court days thereafter.

(b) Requirement of Conferring. Except as hereinafter set forth, a motion made pursuant to Fed. R. Civ. P. 26 through 37 shall not be heard unless (1) the parties have conferred and attempted to resolve their differences, and (2) the parties have set forth their differences and the bases therefor in a joint stipulation re discovery disagreement. Counsel for all interested parties shall confer in advance of the filing of the motion or in advance of the hearing of the motion in a good faith effort to resolve the differences that are the subject of the motion. Counsel for the moving party or prospective moving party shall be responsible for arranging the conference, which shall be held at a time and place and in a manner mutually convenient to counsel. See L.R. 26-252.

(c) Stipulation re Discovery Disagreement. If the moving party is still dissatisfied after the conference of counsel, that party shall draft with the participation of the other interested parties, and shall file a document entitled "Stipulation re Discovery Disagreements." All parties who are concerned with the discovery motion shall assist in the preparation of, and shall sign the stipulation, which shall specify with particularity the following matters:

(1) The details of the conference or conferences;

(2) A statement of the nature of the case and its factual disputes insofar as they are pertinent to the matters to be decided and the issues to be determined at the hearing;

(3) The contentions of each party as to each contested issue, including a memorandum of each party's respective arguments concerning the issues in dispute and the legal authorities in support thereof. Each specific interrogatory, deposition question or other item objected to, or concerning which a protective order is sought, and the objection thereto, shall be reproduced in full. The respective arguments and supporting authorities of the parties shall be set forth immediately following each such objection.

When an objection is raised to a number of items or a general protective order is sought that is related to a number of specific items, the arguments and briefing need not be repeated. If a protective order is sought that is unrelated to specific, individual items, repetition of the original discovery document is not required. All arguments and briefing that would otherwise be included in a memorandum of points and authorities supporting or opposing the motion shall be included in this stipulation, and no separate briefing shall be filed.

(d) Failure to Meet or Obtain Stipulation. If counsel for the moving party is unable, after a good faith effort, to secure the cooperation of counsel for the opposing party in arranging the required conference, or in preparing and executing the required stipulation, counsel for the moving party may file and serve an affidavit so stating, setting forth the nature and extent of counsel's efforts to arrange the required conference or procure the required stipulation, the opposing counsel's responses or refusals to respond to those efforts, the issues to be determined at the hearing, and the moving party's contentions with regard to the issues, including any briefing in respect thereto. Refusal of any counsel to participate in a discovery conference, or refusal without good cause to execute the required stipulation, shall be grounds, in the discretion of the Court, for entry of an order adverse to the party represented by counsel so refusing or adverse to counsel. See L.R. 11-110.

(e) Exceptions from Required Stipulation re Discovery Disagreement. The foregoing requirement for a Stipulation re Discovery Disagreement shall not apply to the following situations: (1) when there has been a complete and total failure to respond to a discovery request or order, and (2) when the only relief sought by the motion is the imposition of sanctions. In either instance, the aggrieved party may bring a motion for relief for hearing on fourteen (14) days notice by personal service or seventeen (17) days notice by mail. The responding party shall file a response thereto not later than five (5) court days prior to the hearing date, accompanied by proof of personal service not less than five (5) court days preceding the hearing date or by proof of mailed service not less than eight (8) court days preceding the hearing date. The moving party may file and serve a reply thereto not less than three (3) court days prior to the hearing date.

(f) Notice Provisions. By reason of the notice provisions set forth in paragraphs (a) and (e) above, the provisions of L.R. 78-230 shall not apply to motions and hearings dealing with discovery matters.

RULE 38-201

DEMAND FOR JURY TRIAL

Where demand is made for a jury trial, it shall appear immediately following the title of the complaint or answer containing the demand, or on such other document as may be permitted by Fed. R. Civ. P. 38(b).

Any notation on the civil cover sheet, as described in L.R. 3-200, concerning whether a jury trial is or is not demanded, shall not constitute a demand for a jury trial under these Local Rules.

RULE 39-138

FILES AND RECORDS - EXHIBITS

(a) Custody and Withdrawal. All files and records of the Court shall remain in the custody of the Clerk. No file and no record, paper, or item belonging to the files of the Court shall be taken from the custody of the Clerk without a special order of a Judge and a receipt given by the party obtaining it, describing it and the date of its receipt, except as otherwise provided by this Rule.

(b) Sealing of Documents. Except as otherwise provided by statute or rule, documents may be sealed only upon written order of a Judge or Magistrate Judge. Court orders sealing documents are filed and maintained in the public case file and should not reveal the sealed information. A duplicate order is attached to the envelope containing the sealed documents. The case file shall reflect the date a document is ordered unsealed and by whom, and, if a document is resealed, the date and by whom.

(c) Custody of Exhibits. All exhibits, including models and diagrams marked for identification or introduced in evidence, upon the hearing of any action or motion, shall be delivered to the Clerk, who shall keep custody of the same, except as otherwise ordered by the Court. All exhibits received in evidence that are in the nature of narcotic drugs, legal or counterfeit money, firearms or contraband of any kind shall be entrusted to the custody of the arresting or investigative agency of the government pending disposition of the action and for any appeal period thereafter.

(d) Withdrawal of Civil Exhibits. In a civil action, after judgment has become final or upon the filing of a stipulation of the parties waiving the right of appeal, rehearing and a new trial, any party may withdraw any evidentiary exhibit originally produced by that party unless some other party or person files with the Clerk and serves on all other parties prior notice of a claim or entitlement to the exhibit, in which case the Clerk shall not deliver the exhibit, except with the written consent of all claimants, until the Court has determined the identity of the person entitled thereto.

(e) Withdrawal of Criminal Exhibits. Absent a stipulation of all parties, see L.R. 83-141, the Clerk shall maintain all exhibits during the pendency of the criminal trial and all appeals unless otherwise provided in these Rules. Following the spreading of mandate, the Clerk shall notify all parties of the availability of the exhibit for repossession by the party offering the exhibit in the absence of objection by another party. If no objection is lodged within thirty (30) days, the Clerk may return the exhibit to the party offering it on request. If no objection is lodged and the party offering the exhibit fails to recover it within ninety (90) days, the Clerk shall dispose of the exhibit.

(f) Disposition of Unclaimed Exhibits. If exhibits are not withdrawn within sixty (60) days after notice to the parties to claim the same, the Clerk may dispose of them as the Clerk may deem fit. See L.R. 6-136.

(g) Substitution of Copies. Unless there be some specific reason why original exhibits should be retained, the assigned Judge or Magistrate Judge may, upon stipulation or application, order them returned to the party to whom they belong upon the filing of a copy certified by the Clerk or approved by counsel for all parties concerned.

RULE 40-280

DILIGENCE - SETTING FOR PRETRIAL CONFERENCE OR FOR TRIAL

(a) Counsel's Duty of Diligence. All counsel shall proceed with reasonable diligence to take all steps necessary to bring an action to issue and readiness for pretrial conference and trial. The action shall be ready for trial on the date set by the Court.

(b) Motion to Set for Pretrial. Although ordinarily it is expected that the pretrial conference will be set at a status conference, any party who is ready to proceed to pretrial conference and trial may serve and file a motion to have the action set for pretrial conference or trial or both. The motion shall be accompanied by a Certificate of Readiness stating:

(1) The action is at issue as to all parties.

(2) The party has completed all desired depositions, other discovery and pretrial motions, except specified discovery or motions, if any. Reasons for any exceptions shall be given, together with the date of anticipated completion thereof.

(3) The party has met all obligations with respect to deposition and discovery requests or motions of other parties.

(4) The party is ready for pretrial conference and trial.

(c) Opposition and Reply re Motion to Set. Opposition to a motion to set an action for pretrial conference or trial and any reply shall be filed in accordance with L.R. 78-230. Opposition shall state with specificity the reasons for opposing the motion.

(d) Notice. Notice of every order setting an action for pretrial conference or trial, whether made pursuant to motion or sua sponte, shall be served by the Clerk upon all counsel.

RULE 43-140

AFFIDAVITS

(a) Requirements. An affidavit, see L.R. 1-101(2), submitted in support of any motion shall

(1) identify the affiant, the party or parties on whose behalf it is submitted, and the motion to which it pertains, see L.R. 7-132;

(2) be served on all other parties and filed with the motion, opposition or reply to which it relates, unless accompanied by an affidavit of counsel purporting to show good cause for the separate filing thereof; and

(3) identify and attach documents and exhibits offered in support of or in opposition to the motion, unless such documents and exhibits are already in the record and specifically referred to in the motion or opposition.

(b) Affidavits Referencing Depositions. When deposition testimony is referenced in or appended to an affidavit, the party filing the affidavit shall 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).

RULE 45-250

SUBPOENAS DUCES TECUM

(a) Subpoenas Duces Tecum. Responses to subpoenas duces tecum shall identify each category in the subpoena duces tecum as to which no documents are produced because no documents exist in the possession of the person subpoenaed and shall comply with Fed. R. Civ. P. 45(d)(2).

(b) Objections. Each objection to any subpoenas duces tecum shall include a statement of reasons. See Fed. R. Civ. P. 45(c)(2)(B).

(c) Service of Subpoenas Duces Tecum. Subpoenas duces tecum directed to parties or non-parties shall be served on all parties to the action. Fed. R. Civ. P. 45.

(d) Filing of Subpoenas Duces Tecum. Subpoenas duces tecum, responses and proofs of service thereof shall not be filed with the Clerk until there is a proceeding in which the request, response, or proof of service is at issue. When required in a proceeding, only that part of the subpoena duces tecum, response or proof of service which is in issue shall be filed.

RULE 47-161

GRAND AND PETIT TRIAL JURORS

The Plan for the Random Selection of Grand and Petit Trial Jurors, approved by this Court and the reviewing panel pursuant to the Jury Selection and Service Act of 1968 (Public Law 90-274) and filed in the Office of the Clerk governs the management of the jury selection process.

RULE 47-162

EXAMINATION AND CHALLENGES OF TRIAL JURY - CIVIL AND CRIMINAL

(a) Examination of Jurors. Examination of prospective jurors shall be by the Court subject to supplementation by counsel as provided by Fed. R. Civ. P. 47 and Fed. R. Crim. P. 24. Not less than three (3) days before commencement of the trial, counsel shall file two (2) copies of, and serve on all other counsel, any requested questions for voir dire examination touching upon unique or unusual aspects of the action. These requests may be reasonably supplemented by oral requests during voir dire examination to remedy omissions, to clarify, or to pursue lines of inquiry suggested by answers.

(b) Procedure. Counsel shall consult with the courtroom deputy clerk of the assigned trial Judge for procedures utilized by that Judge in the selection of a jury and in the exercise of peremptory challenges. See 28 U.S.C. § 1870; Fed. R. Civ. P. 47(b).

RULE 48-162

IMPANELMENT OF TRIAL JURY - CIVIL AND CRIMINAL

(a) Number of Jurors. In all instances in which a jury is demanded in civil actions, trial of the action shall be before a jury consisting of not fewer than six and not more than twelve members. See Fed. R. Civ. P. 48. Unless waived by the defendant in writing and in the presence of the Court, all criminal trials shall be before a jury consisting of twelve members, plus such alternates as may be impaneled.

(b) Procedure. Counsel shall consult with the courtroom deputy clerk of the assigned trial Judge for procedures utilized by that Judge in the impanelment of a jury.

RULE 50-291

MOTIONS FOR JUDGMENT AS A MATTER OF LAW

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 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. 78-230 shall apply to motions for judgment as a matter of law. See Fed. R. Civ. P. 50.

RULE 51-163

JURY INSTRUCTIONS AND VERDICTS - CIVIL AND CRIMINAL ACTIONS

(a) Lodging. Unless the Court otherwise orders or permits, requested jury instructions in civil and criminal actions shall be lodged with the Clerk 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 the necessity for the request arose in the course of trial and could not reasonably have been anticipated prior to trial from the pleadings, discovery or nature of the action and the request is presented as promptly as possible. See Fed. R. Civ. P. 51; Fed. R. Crim. P. 30.

(b) Form and Number. Three (3) copies of the instructions shall be lodged on 8-1/2" x 11" paper. The first two (2) copies (file copy and chamber's copy) shall be identical and shall contain each instruction written 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 third copy (jury copy) shall be lodged with a cover sheet. The cover sheet shall contain the appropriate caption (title, Court and cause) and an identification of the party presenting said instructions. The instructions submitted for jury use shall be each written on a separate page and shall be in the same order as the file copy instructions. As these instructions may be duplicated and passed along to the jury, the individual instruction 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 (BAJI), California Jury Instructions-Criminal (CALJIC) or Federal Jury Practice and Instructions (Civil and Criminal, Devitt & Blackmar), 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, the modification shall be specifically noted and explained on the file copy and the chamber's copy of the instructions.

(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. 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 prior to 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. After counsel have argued and the Court has instructed, the Court, pursuant to Fed. R. Civ. P. 51 or Fed. R. Crim. P. 30, will inquire as to whether counsel have any objections to the instructions as read. Counsel need not restate the objections placed on the record at the hearing provided for that purpose.

RULE 52-290

SETTLEMENT OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

(a) Preparation of Proposed Findings of Fact, Conclusions of Law. After a ruling requiring preparation of findings of fact and conclusions of law, the prevailing party shall, unless otherwise directed by the Court, prepare proposed findings of fact and conclusions of law.

(b) Procedure. If the proposed findings and conclusions are approved as to form by all parties, they shall be lodged with the Clerk who shall immediately present them to the Court. Alternatively, they may be lodged with the Clerk, with proof of service upon all parties, in which case the Clerk shall note the date of lodging thereon and shall hold the same for a period of seven (7) court days before presentation to the Court.

(c) Disapproval. Any party who disapproves the form of proposed findings or conclusions shall, within four (4) days after service of a copy thereof, file with the Clerk and serve a notice of disapproval, together with reasons therefor, and lodge and serve a proposed modification thereof.

RULE 54-292

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. 78-230.

(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 54-293

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. 54-292, but are governed by L.R. 78-230. 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;

(7) any time limitations imposed by the client or the circumstances;

(8) the amount of money, or the value of the rights involved, and the results obtained;

(9) the experience, reputation and ability of counsel;

(10) the "undesirability" of the action;

(11) the nature and length of the professional relationship between the attorney and the client;

(12) awards in similar actions; and

(13) such other matters as the Court may deem appropriate under the circumstances.

RULE 56-260

MOTIONS FOR SUMMARY JUDGMENT OR SUMMARY ADJUDICATION

(a) Motions for Summary Judgment or Summary Adjudication. Each motion for summary judgment or summary adjudication shall be accompanied by a "Statement of Undisputed Facts" which shall enumerate discretely each of the specific material facts relied upon in support of the motion and cite the particular portions of any pleading, affidavit, deposition, interrogatory answer, admission or other document relied upon to establish that fact. The moving party shall be responsible for the filing with the Court of all evidentiary documents cited in the moving papers.

(b) Opposition. Any party opposing a motion for summary judgment or summary adjudication shall reproduce the itemized facts in the Statement of Undisputed Facts and admit those facts which are undisputed and deny those which are disputed, including with each denial a citation to the particular portions of any pleading, affidavit, deposition, interrogatory answer, admission or other document relied upon in support of that denial. The opposing party may also file a concise "Statement of Disputed Facts," and the source thereof in the record, of all additional material facts as to which there is a genuine issue precluding summary judgment or adjudication. The opposing party shall be responsible for the filing with the Court of all evidentiary documents cited in the opposing papers. If a need for discovery is asserted as a basis for denial of the motion, the party opposing the motion shall provide a specification of the particular facts on which discovery is to be had or the issues on which discovery is necessary.

(c) Stipulated Facts. All interested parties may jointly file a stipulation setting forth a statement of stipulated facts to which all interested parties agree. As to any stipulated facts, the parties so stipulating may state that their stipulations are entered into only for the purposes of the motion for summary judgment and are not intended to be otherwise binding.

(d) Use of Affidavits. See Fed. R. Civ. P. 56(e); L.R. 43-140.

(e) Use of Depositions. See L.R. 5-134(e).

(f) Summary Adjudication. This Rule shall apply to motions for orders specifying material facts that appear without substantial controversy pursuant to Fed. R. Civ. P. 56(d), except that the proposed "Statement of Undisputed Facts" and the "Statement of Disputed Facts" shall be limited to the facts which the moving party asserts are without substantial controversy and the facts the opposing party contends are in dispute.

RULE 59-291

MOTIONS FOR NEW TRIAL

Motions for new trial 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 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. 78-230 shall apply to motions for new trial.

RULE 63-122

AUTHORITY OF ASSIGNED JUDGE AND EMERGENCIES

The Judge assigned to the action 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.

RULE 65-231

TEMPORARY RESTRAINING ORDER - PRELIMINARY INJUNCTION

(a) Temporary Restraining Orders. Except in the most extraordinary of circumstances, no temporary restraining order shall be granted in the absence of actual notice to the affected party and/or counsel, by telephone or other means, or a sufficient showing of efforts made to provide notice. Appropriate notice would inform the affected party and/or counsel of the intention to seek a temporary restraining order, the date and time for hearing to be requested of the Court, and the nature of the relief to be requested. Once a specific time and location has been set by the Court, additional notice of the time and location of the hearing shall be given.

(b) Timing of Application. In considering an application for a temporary restraining order, the Court will consider whether the applicant could have sought relief by motion for preliminary injunction at an earlier date without the necessity for seeking last-minute relief by application for temporary restraining order. Should the Court find that the applicant unduly delayed in seeking injunctive relief, the Court may conclude that the delay constitutes laches or contradicts the applicant's allegations of irreparable injury and may deny the application solely on either ground.

(c) Documents to be Filed. No hearing on a temporary restraining order will normally be set unless the following documents are provided to the Court and, unless impossible under the circumstances, to the affected parties or their counsel:

(1) a complaint,

(2) a motion for temporary restraining order,

(3) a brief on all relevant legal issues presented by the motion,

(4) an affidavit in support of the existence of an irreparable injury,

(5) an affidavit detailing the notice or efforts to effect notice to the affected parties or counsel or showing good cause why notice should not be given, see L.R. 43-140,

(6) a proposed temporary restraining order with a provision for a bond, see L.R. 65.1-151,

(7) a proposed order with blanks for fixing the time and date for hearing a motion for preliminary injunction, the date for the filing of responsive papers, the amount of the bond, if any, and the date and hour of issuance, and

(8) in all instances in which a temporary restraining order is requested ex parte, the proposed order shall further notify the affected party of the right to apply to the Court for modification or dissolution on two (2) court days notice by personal service or such other notice as the Court may allow. See Fed. R. Civ. P. 65(b); L.R. 6-136.

(d) Preliminary Injunction.

(1) Notice. See L.R. 6-142, 78-230.

(2) Accompanying Papers. All motions for preliminary injunction shall be accompanied by (i) briefs on all relevant legal issues to be presented by the motion, (ii) affidavits in support of the motion, including affidavits on the question of irreparable injury, and (iii) a proposed order with provision for bond. See L.R. 78-230, 65.1-151.

(3) Required Information. All parties shall inform the Court in their briefs of the following: (i) whether they desire to present oral testimony at the hearing, and (ii) an estimate of the amount of time they anticipate will be required for the hearing. The parties shall inform the Court and all other parties immediately upon learning of a change in the need for a preliminary injunction, the length of time the hearing will require, or other similar information.

(e) Modification or Dissolution. When a preliminary injunction or temporary restraining order has been issued, the affected party may apply to the Court for modification or dissolution of the injunction or order. Such application shall normally be accompanied by a brief on all relevant legal issues to be presented in its support and affidavits supporting modification or dissolution and detailing the notice to or efforts to notify the affected party or counsel.

(f) Actions Involving Real Property. An application for a preliminary injunction or a temporary restraining order to limit picketing, restrain real property encroachments, or protect easements shall depict by drawings, plot plans, photographs, or other appropriate means, or shall describe in detail the premises involved, including, if applicable, the length and width of the frontage on a street or alley, the width of sidewalks, and the number, size, and location of entrances.

RULE 65.1-151

SECURITY

(a) Scope of Rule. Whenever a security, bond, or undertaking is required by federal statute, the Federal Rules of Civil, Criminal or Appellate Procedure, or by order of the Court, and the form or amount thereof is not otherwise specified by statute, rule, or order, the amount and form shall be as provided by this Local Rule. See 18 U.S.C. § 3141 et seq., 31 U.S.C. § 9301 et seq.; Fed. R. App. P. 7, 8; Fed. R. Civ. P. 65.1; Fed. R. Crim. P. 40, 42, 46.

(b) Security for Costs. On its own motion or on motion of a party, the Court may at any time order a party to give security, bond or undertaking in such amount as the Court may determine to be appropriate. The provisions of Title 3A, part 2, of the California Code of Civil Procedure, relating to vexatious litigants, are hereby adopted as a procedural rule of this Court on the basis of which the Court may order the giving of security, bond or undertaking, although the power of the Court shall not be limited thereby.

(c) Bond for Writ of Attachment. See Cal. Civ. Proc. Code § 481.010 et seq.

(d) Supersedeas Bond. When required, a supersedeas bond shall be 125 percent of the amount of the judgment unless the Court otherwise orders. See Fed. R. Civ. P. 62.

(e) Form of Bond. A security, bond or undertaking shall be given, signed and acknowledged by the party offering it and by that party's surety. Every security, bond, undertaking or deposit instrument shall state the conditions of the obligation and shall contain a provision expressly subjecting it to all applicable federal statutes and rules.

(f) Corporate Surety. No security, bond or undertaking with corporate surety shall be accepted unless the corporate surety is in compliance with the provisions of 31 U.S.C. §§ 9304-06, and there is, either attached to the face of the security, bond or undertaking or on file with the Clerk, a duly authenticated power of attorney appointing the agents or officers executing such obligation to act on behalf of the corporate surety.

(g) Personal Surety. No security, bond or undertaking with personal surety in a civil matter shall be accepted unless it is accompanied by affidavits in the form prescribed by sections 995.510 and 995.520 of the California Code of Civil Procedure. No Clerk, Marshal or deputy marshal, member of the Bar, or other officer or employee of the Court will be accepted as surety in this Court, absent express Court approval. The Court may, in its discretion, require that more than one personal surety be obligated on the security, bond or undertaking.

(h) Cash, Negotiable Bonds of the United States and Property Bonds. In lieu of corporate or personal surety, a party may deposit with the Clerk the required amount of lawful money or negotiable bonds of the United States accompanied by a written instrument, to be approved by the Court, executed and acknowledged by the party, setting forth the conditions upon which the deposit is made, and the fact that the Clerk may collect or sell the obligations and apply the proceeds, or the cash deposited, in the case of default as provided in the bond. Where the true owner is other than the party making the deposit, the instrument shall so state and shall be executed and acknowledged by the true owner. Upon exoneration of the deposit, it shall be returned by the Clerk to the depositor or, if the depositor is other than the true owner, then to the latter. Any deposit of money or documents evidencing ownership of property shall be accompanied by an affidavit (accompanied by preliminary title report, litigation guarantee, or abstract from a title company, in the case of real property), that the property is unencumbered, or if encumbered, is encumbered in an amount specified, and that the property is of a specified value (assessed value, in the case of real property). See 31 U.S.C. § 9303; L.R. 67-150.

If personal property is provided as security, it shall be accompanied by a security agreement and a financing statement pertaining to said property, executed in conformity with the requirements of the California Commercial Code. If real property is provided as security, a trust deed naming the Clerk as beneficiary and describing said property shall be deposited with the Clerk.

(i) Submission to Jurisdiction: Agent for Service of Process. Notwithstanding any provision of a security agreement to the contrary, all sureties or depositors of security subject themselves to the jurisdiction of this Court, irrevocably appoint the Clerk as their agent on whom any papers affecting their liability may be served, and consent that their liability shall be joint and several, that judgment may be entered against them in accordance with this obligation simultaneously with judgment against their principals, and that execution may therefore issue against their property. Notwithstanding the appointment of the Clerk as agent for service of process, any person seeking judgment against any surety or depositor shall make a good faith effort to give actual notice to the surety or depositor of all actions or motions by which judgment is sought against the surety or depositor.

(j) Further Security or Justification of Personal Sureties. Upon reasonable notice to the party presenting the security, any other party for whose benefit it is presented may apply to the Court at any time for further or different security or for an order requiring personal sureties to establish the facts supporting their affidavits under sections 995.510 and 995.520 of the California Code of Civil Procedure.

RULE 66-232

RECEIVERS

(a) Definitions. For purposes of this Local Rule:

(1) "temporary receiver" shall mean a receiver appointed without notice or on less than the notice provided in L.R. 78-230 to the party sought to be subjected to the receivership, and

(2) "receiver" shall mean any receiver appointed either after the giving of (i) at least the notice of hearing upon the application for appointment of receiver required by L.R. 78-230, or (ii) such lesser notice of hearing on such application as may be agreed to by the party sought to be subjected to the receivership.

(b) Notice: Temporary Receiver. A temporary receiver shall not be appointed without notice to the party sought to be subjected to receivership except upon an appropriate showing of necessity and immediacy of potential harm. If a temporary receiver is appointed ex parte the party seeking and securing such appointment shall give notice forthwith of the temporary receiver's appointment, any terms and conditions pertaining thereto, and the date calendared for subsequent hearing on the question of continuance of the receivership.

(c) Continuance of Receivership. Upon appointment of a temporary receiver, the Court shall calendar a hearing on the continuation of the receivership. The determination whether to continue the receivership shall be made as set forth in subsection (d) below, and no weight shall be given to the fact that a temporary receiver was appointed.

(d) Appointment of a Receiver. A receiver may be appointed upon the notice set forth in subsection (a)(2). Motions for appointment of a receiver need not be preceded by a motion for appointment of a temporary receiver.

(e) Reports of Receivers.

(1) Unless otherwise ordered by the Court, at least one (1) day before the hearing provided in paragraph (c) the temporary receiver shall file and personally serve a summary report of the temporary receivership.

(2) At such time as the Court may direct, and at least once a year, a receiver shall file and serve a report which shall be heard with notice in accordance with L.R. 78-230 to all parties. The report shall contain (i) a summary of the operations of the receiver, (ii) an inventory of all the assets and their value, (iii) a schedule of all the receiver's receipts and disbursements, (iv) the receiver's recommendations for a continuation or discontinuation of the receivership and the reasons therefor, and (v) such other matters

as the Court may direct. At the hearing, the Court shall approve or disapprove the receiver's report and determine whether the receivership shall be continued.

(f) Notice of Hearings. Unless the Court otherwise orders, L.R. 78-230 shall apply to all applications by the receiver.

(g) Employment and Compensation of Attorneys, Accountants, and Investigators. A receiver shall not employ an attorney, accountant or investigator without first obtaining an order of the Court authorizing such employment, which order may set forth a tentative basis for computation of compensation. The actual compensation of such persons shall subsequently be fixed by the Court, after hearing, upon the applicant's affidavit setting forth in reasonable detail the nature of the services and the existence of any agreements concerning the amount of compensation to be paid.

(h) Deposit of Funds. A receiver shall deposit all funds received by him in a depository designated by the Court, entitled "Receiver's Account" together with the name and number of the action. See L.R. 67-150.

(i) Undertaking of Receiver. A receiver shall not act until a sufficient undertaking as determined by the Court is filed with the Clerk. See L.R. 65.1-151.

RULE 67-150

DEPOSITS OF REGISTRY FUNDS

(a) Deposits as of Right. Leave of court is hereby granted for the making of deposits into the registry of the Court in all interpleader actions and in all instances in which money is deposited in lieu of filing a bond and all deposits by a receiver appointed by order of the Court under L.R. 66-232. In these circumstances, a party is not required to seek specific leave of court prior to making the deposit. See generally 18 U.S.C. § 3141 et seq.; Fed. R. Civ. P. 67; Fed. R. Crim. P. 40, 42, 46.

(b) Other Deposits. In all other circumstances not encompassed within subsection (a), specific leave of Court is required prior to making a deposit into the registry of the Court. Leave of Court may be requested by stipulation of all parties who have appeared or by motion set on the regular calendar of the assigned Magistrate Judge in Sacramento or Fresno not less than three (3) court days from the date of filing and personal service thereof or not less than six (6) court days from the date of filing and mailed service thereof. No additional time for service by mail is permitted. See L.R. 6-136(a). A copy of any proposed order shall be delivered simultaneously to the Clerk or Chief Deputy Clerk for inspection pursuant to subsection (e) of this Rule. See L.R. 72-302(c)(6).

(c) Routine Placement of Deposit. In any instance in which money is deposited into the registry of the Court and no specific order is given as to the form or placement of the deposit, the deposit shall be placed in an interest-bearing account at such financial institutions as the Court may, by General Order, have designated as qualifying for the making of such deposits of registry funds and shall be deposited into one account unless the order specifically addresses that issue. All matters relating to the creation and administration of such account or accounts shall be governed by General Order.

(d) Special Placement of Deposit. In any action in which a deposit is made into the registry of the Court, a depositor or party may request that the money be placed in a particular type of account or in a particular financial institution or that other particular provisions govern the placement of the deposit. Such request may be made in accordance with the provisions of subsection (b) of this Rule.

(e) Order for Deposit - Interest-Bearing Account. Whenever a party seeks a court order for money to be deposited by the Clerk in an interest-bearing account, whether routine or special placement, the party shall personally deliver the order to the Clerk or Chief Deputy Clerk who will inspect the proposed order for proper form and content and compliance with the Rule prior to signature by the Judge or Magistrate Judge for whom the order is prepared. Such orders shall contain the following provision: **"Approved as to Form _____, Clerk, U.S. District Court."**

(f) Order Directing Investment of Funds by Clerk. Any order obtained by a party or parties in an action that directs the Clerk to invest funds deposited in the registry of the Court pursuant to 28 U.S.C. § 2041 into an interest-bearing account or instrument shall include the following:

(1) the amount to be invested;

(2) the name of the depository approved by the Treasurer of the United States as a depository in which funds may be deposited; and

(3) a designation of the type of account or instrument in which the funds shall be invested.

Upon approval by the Court of an order for the deposit of funds into an interest-bearing account, it shall be the further responsibility of counsel presenting the order to deliver a signed copy to the Clerk appointed pursuant to 28 U.S.C. § 751 or the Chief Deputy Clerk personally. Absent such personal service, the Clerk is relieved of any personal liability relating to compliance with the order.

(g) Order for Disbursement of Registry Funds. At such time as registry funds are to be disbursed, an Order for Disbursement shall be presented to the Judge or Magistrate Judge before whom the action is pending for approval and signature. The order shall contain specific language "directing the Clerk to disburse funds" to the parties or otherwise as specifically stated within the order.

(h) Registry Fund Fees. Beginning with deposits of funds with the Court on December 1, 1990, all funds invested -- including criminal bond money deposited at interest -- will be assessed a registry fee according to the schedule established by the Administrative Office of the United States Courts. A copy of the current schedule is available from the Clerk on request.

MAGISTRATE JUDGES' RULES

RULE 72-300

SCOPE OF MAGISTRATE JUDGES' RULES - GENERAL AUTHORITY

(a) General Applicability. Rules ending in 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). Proceedings before Magistrate Judges are also governed by the generally applicable Local Rules ending in 100 through 199 and such other Rules as may be applicable to the particular action.

(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 72-302

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) and Fed. R. Civ. P. 53 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 action (includes petty offenses and infractions), see Fed. R. Crim. P. 58; L.R. Crim 58-421;

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

(5) Receive indictments returned by the grand jury in accordance with Fed. R. Crim. P. 6(e)(4), 6(f);

(6) Conduct all proceedings contemplated by Fed. R. Crim. P. 3, 4, 5, 5.1, 9, 40, 41, 54 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 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 or letters of request;

(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 under 46 U.S.C. §§ 2302, 4311(d) and 12309(c);

(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. 67-150;

(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. 17-202(f);

(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 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 Judge. Notwithstanding any other provision of this Rule, a 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 72-303

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. 72-302. 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 calculated from the date of service of the ruling on the parties, see Fed. R. Civ. P. 6(a), (e); Fed. R. Crim. P. 45(a), (e), unless a different time is prescribed by the Magistrate Judge or the 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. 6-136. The assigned Judge may also reconsider any matter at any time sua sponte.

(e) Notice and Argument. L.R. 78-230 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 72-304

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. 72-302. Proposed findings and recommendations shall be served on all parties and filed with the Clerk.

(b) Objections. Within ten (10) court days 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 ten (10) court days after service of the objections. See L.R. 6-136.

(e) Notice and Argument. L.R. 78-230 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 73-301

TRIALS BY CONSENT

Upon the consent of the appearing parties, the Magistrate Judges at Sacramento and Fresno are specially designated 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. 73 and 28 U.S.C. § 636(a)(5) and (c). In such actions, L.R. 72-303 and L.R. 72-304 shall be inapplicable.

RULE 73-305

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. 1-101(5) and L.R. 1-101(21) do not apply to this subsection. See also 28 U.S.C. § 636(c). A Judge or Magistrate Judge may, at appropriate times, inform the parties of the options available under section 636(c). All such communication shall comply with the requirement of section 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).

RULE 77-121

THE CLERK OF THE DISTRICT COURT

(a) Locations. The Clerk of the District Court shall maintain offices at 650 Capitol Mall, Sacramento, California 95814, where the records of the United States District Court sitting in Sacramento shall be kept, and offices at 1130 "O" Street, Fresno, California 93721, where the records of the United States District Court sitting in Fresno shall be kept.

(b) Office Hours. The regular office hours of the Clerk at Sacramento and Fresno shall be from 8:30 a.m. to 4:30 p.m. each day except Saturdays, Sundays, legal holidays, and such other times so ordered by the Chief Judge. See Fed. R. Civ. P. 77. The Clerk may maintain dropboxes at the entrances to the United States Courthouses for the receipt of documents when the Clerk's Offices are not open. Deposit of documents in such dropboxes in full compliance with the posted instructions shall constitute delivery to the Clerk within the meaning of L.R. 5-134.

(c) Advance Payment of Fees. Except as required by law, or otherwise directed by the Court, the Clerk shall not file any paper, issue any process, or render any other service for which a fee is prescribed by statute or by the Judicial Conference of the United States unless the fee is prepaid. See 28 U.S.C. § 1914 et seq.

RULE 78-230

CIVIL MOTION CALENDAR AND PROCEDURE

(a) Motion Calendar. Each Judge and Magistrate Judge will maintain an individual motion calendar. Information as to the times and dates for calling each motion calendar may be obtained from the Clerk.

(b) Notice, Motion, Brief and Evidence. Except as otherwise provided in these Rules or as ordered or allowed by the Court, all motions shall be noticed on the motion calendar of the assigned Judge or Magistrate Judge. The moving party shall file with the Clerk in duplicate a notice of motion, motion, accompanying briefs, affidavits, if appropriate, and copies of all documentary evidence that the moving party intends to submit in support of the motion, together with proof of service thereof. The matter shall be set for hearing on the motion calendar of the Judge or Magistrate Judge to whom the action has been assigned or before whom the motion is to be heard, not less than twenty-eight (28) days after personal service and filing of the motion or not less than thirty-one (31) days after mailed service and filing of the motion. Motions defectively noticed shall be filed, but not set for hearing; the Clerk shall immediately notify the moving party of the defective notice and of the next available dates and times for proper notice, and the moving party shall file and serve a new notice of motion setting forth a proper time and date.

(c) Opposition and Non-Opposition. Opposition, if any, to the granting of the motion shall be in writing and shall be filed in duplicate with the Clerk not less than fourteen (14) days preceding the noticed (or continued) hearing date. Opposition shall be accompanied by proof of personal service on opposing counsel not less than fourteen (14) days preceding the hearing date or by proof of mailed service not less than seventeen (17) days preceding the hearing date. A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect, specifically designating the motion in question. No party will be entitled to be heard in opposition to a motion at oral arguments if written opposition to the motion has not been timely filed by that party.

(d) Reply. Not less than five (5) court days preceding the date of hearing, the moving party may serve and file in duplicate a reply to any opposition filed by a responding party.

(e) Related or Counter-Motions. Any counter-motion or other motion that a party may desire to make that is related to the general subject matter of the original motion shall be served and filed with the Clerk in the manner and on the date prescribed for the filing of opposition. In the event such counter-motion or other related motion is filed, the Court may continue the hearing on the original and all related motions so as to give all

parties reasonable opportunity to serve and file oppositions and replies to all pending motions.

(f) Calculation of Time Periods. The time periods fixed by this Rule shall supersede the time periods for service of notices of motions, affidavits, and other documents prescribed by Fed. R. Civ. P. 6(d). See generally L.R. 6-136.

(g) Continuances. Requests for continuances of hearings on the motion calendar, upon stipulation or otherwise, shall be made to the Judge or Magistrate Judge on whose calendar the matter is set, at least five (5) court days prior to the scheduled hearing date. All stipulations for continuance shall be submitted for approval to the Court. See L.R. 83-141, 6-142.

(h) Hearing and Oral Argument. Upon the call of the motion, the Court will hear appropriate and reasonable oral argument. Alternatively, the motion may be submitted upon the record and briefs on file if the parties stipulate thereto, or if the Court so orders, subject to the power of the Court to reopen the matter for further briefs or oral arguments or both. Whenever any of the parties believes that extended oral argument, more than 10 minutes per side or 20 minutes in the aggregate, will be required, that party shall notify the courtroom deputy clerk so that the hearing may be rescheduled if deemed appropriate by the Court.

(i) Use of Affidavits. Factual contentions involved in pretrial motions shall be initially presented and heard upon affidavits, except that the Court may in its discretion require or allow oral examination of witnesses. See L.R. 43-140.

(j) Failure to Appear. Absent notice of intent to submit the matter on the briefs, failure to appear may be deemed withdrawal of the motion or of opposition to the motion, in the discretion of the Court, or may result in the imposition of sanctions.

(k) Applications for Reconsideration. Whenever any motion has been granted or denied in whole or in part, and a subsequent motion for reconsideration is made upon the same or any alleged different set of facts, it shall be the duty of counsel to present to the Judge or Magistrate Judge to whom such subsequent motion is made an affidavit or brief, as appropriate, setting forth the material facts and circumstances surrounding each motion for which reconsideration is sought, including:

(1) when and to what Judge or Magistrate Judge the prior motion was made,

(2) what ruling, decision or order was made thereon, and

(3) what new or different facts or circumstances are claimed to exist which did not exist or were not shown upon such prior motion, or what other grounds exist for the motion.

(l) **Motions Before a Magistrate Judge.** Only those motions in matters specified in L.R. 72-301 and 72-302 shall be noticed, briefed, and argued before a Magistrate Judge. All other motions shall be noticed, briefed and argued before a District Judge unless the matter is specifically referred to a Magistrate Judge pursuant to L.R. 72-301 or 72-302(a).

(m) Motions in Prisoner Cases. All motions, except motions to dismiss for lack of prosecution, filed in cases wherein one party is incarcerated and proceeding in propria persona, shall be submitted upon the record without oral argument unless otherwise ordered by the Court. Such motions need not be noticed on the motion calendar. Opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Clerk by the responding party not more than eighteen (18) days, plus three (3) days for mailing, after the date of service of the motion. A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect, specifically designating the motion in question. Failure of the responding party to file written opposition or to file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion and may result in the imposition of sanctions. The moving party may, not more than five (5) court days after the opposition is served, plus three (3) days for mailing, serve and file a reply to the opposition. All such motions will be deemed submitted twenty-eight (28) days after the service of the motion or when the reply is filed, whichever comes first.

RULE 80-170

COURT REPORTERS AND COURT RECORDERS

Official reporting in this Court is governed by 28 U.S.C. § 753 and by such fee schedules and regulations promulgated by the Administrative Office of the United States Courts, General Orders, or other regulations as may from time to time be filed with the Clerk. Copies of such documents may be obtained from the Clerk. Each reporter shall be responsible for maintaining all records of reported proceedings before the Judge or Magistrate Judge to whom the reporter is assigned. When court proceedings are tape recorded, the official court recorder shall be responsible for maintaining the tape recordings.

RULE 81-190

PETITIONS FOR HABEAS CORPUS AND MOTIONS PURSUANT TO 28 U.S.C. § 2255

(a) Scope of this Rule. All petitions for writs of habeas corpus pursuant to 28 U.S.C. § 2254 and motions filed pursuant to 28 U.S.C. § 2255 shall be subject to the provisions of this Rule unless otherwise ordered by the Court.

(b) Form of Petitions and Motions. The petition or motion shall be printed in ink or typewritten, and signed under penalty of perjury, and, if presented in propria persona, upon the form and in accordance with the instructions approved by the Court. Copies of the forms and instructions shall be supplied by the Clerk upon request. In the event a petition or motion is submitted that is not in the proper form, the Clerk shall forthwith mail the proper form and instructions to the person submitting the petition or making the motion.

(c) Filing. Petitions and motions shall be addressed to the Clerk of the United States District Court for the Eastern District of California, 650 Capitol Mall, Sacramento, California 95814, or 1130 "O" Street, Fresno, California 93721, according to L.R. 3-120(b). Petitioners shall send to the Clerk an original and two copies of the completed petition or motion. No petition or motion shall be addressed to an individual Judge or Magistrate Judge.

(d) Assignment. Petitions shall be assigned by the Clerk pursuant to L.R. 63-122, provided that motions under 28 U.S.C. § 2255 shall, if possible, be assigned to the sentencing Judge or Magistrate Judge. If, in the same matter in this Court, the petitioner has previously filed a petition for relief or for a stay of enforcement, the new petition shall be assigned to the Judge or Magistrate Judge who considered the prior matter.

(e) Contents.

(1) All petitions by state prisoners shall state with specificity that all issues raised in the petition, either:

(A) have been raised before all state tribunals in which the issues could be heard, to the exhaustion of petitioner's state remedies; or

(B) have not been raised before all state tribunals in which the issues could be heard, in which case the petition shall also set forth all facts which justify the failure to exhaust state remedies.

(2) All petitions shall state whether or not petitioner has previously sought relief arising out of the same matter from this Court or any other federal court, together with the ruling and reasons given for denial of relief.

(3) In a capital case the petition shall set forth any scheduled execution date.

(f) Where Relief Granted. If relief is granted on a petition of a state prisoner, or if any stay of execution of state court judgment is issued by the Court, the Clerk shall forthwith notify the state authority having jurisdiction over the prisoner of the action taken.

RULE 81-191

SPECIAL REQUIREMENTS FOR HABEAS CORPUS PETITIONS INVOLVING THE DEATH PENALTY

(a) Applicability. This Rule shall govern the procedures for a first petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 in which a petitioner seeks relief from a judgment imposing the penalty of death. A subsequent filing relating to a particular petition may be deemed a first petition under these Rules if the original filing was not dismissed on the merits. The application of this Rule may be modified by the Judge or Magistrate Judge to whom the petition is assigned. These Rules shall supplement the Rules Governing § 2254 Cases and do not in any regard alter or supplant those rules.

(b) Notices from California Attorney General. The California Attorney General shall send to the Clerk (1) prompt notice whenever the California Supreme Court affirms a sentence of death; (2) at least once a month, a list of scheduled executions; and (3) at least once a month, a list of the death penalty appeals pending before the California Supreme Court.

(c) Notice from Petitioner's Counsel. Whenever counsel determines that a petition will be filed in this Court, counsel shall promptly file with the Clerk and serve on the California Attorney General a written notice of counsel's intention to file a petition. The notice shall state the name of the petitioner, the district in which the petitioner was convicted, the place of petitioner's incarceration, and the status of petitioner's state court proceedings. The notice is for the information of the Court only, and the failure to file the notice shall not preclude the filing of the petition.

(d) Counsel.

(1) Appointment of Counsel. Each indigent petitioner shall be represented by counsel unless petitioner has clearly elected to proceed pro se and the Court is satisfied, after hearing, that petitioner's election is intelligent, competent and voluntary. Unless petitioner is represented by retained counsel, counsel shall be appointed in every case at the earliest practicable time. A panel of attorneys qualified for appointment in death penalty cases will be certified by a selection board appointed by the Chief Judge. This board will consist of a federal defender, a member of the California Appellate Project (CAP), a member of the State Bar, and a representative of the state public defender.

When a death judgment is affirmed by the California Supreme Court and any subsequent proceedings in the state courts have concluded, California Appellate Project will forward to the selection board the name of state appellate counsel and, if counsel is willing to continue representation on federal habeas corpus, California Appellate Project's

evaluation of counsel's performance in the state courts, and recommendation on whether counsel should be appointed in federal court.

If state appellate counsel is available to continue representation into the federal courts, and counsel is deemed qualified to do so by the selection board, there is a presumption in favor of continued representation except when state appellate counsel was also counsel at trial.

In light of this presumption, it is expected that appointed counsel who is willing to continue representation and who has been certified by the selection board as qualified to do so, would ordinarily file a motion for appointment of counsel on behalf of his or her client together with the client's federal habeas corpus petition. If, however, counsel for any reason wishes to confirm appointment before preparing the petition, counsel may move for appointment as described above, before filing the petition.

If state appellate counsel is not available to represent petitioner on federal habeas corpus or if appointment of state appellate counsel would be inappropriate for any reason, the Court shall appoint counsel upon application of petitioner. The Clerk shall have available forms for such application. Counsel shall be appointed from the panel of qualified attorneys certified by the selection board. Either California Appellate Project or the selection board may suggest one or more counsel for appointment. The Court may also request suggestion from California Appellate Project or the selection board. If application for appointed counsel is made before a petition is filed, the application shall be assigned to a Judge and Magistrate Judge in the same manner that a petition would be assigned, and counsel shall be appointed by the Magistrate Judge. The Judge and Magistrate Judge so assigned shall be the Judge and Magistrate Judge assigned when counsel files a petition for writ of habeas corpus.

(2) Second Counsel. Appointment and compensation of second counsel shall be governed by Section 2.11 of Volume VII of the Guide to Judiciary Policies and Procedures, Appointment of Counsel in Criminal Cases.

(e) Filing. Petitions as to which venue lies in this District shall be filed in accordance with Local Rules 3-120 and 81-190. Petitions shall be filled in by printing or typewriting. In the alternative, the petition may be in a legible typewritten or written form which contains all of the information required by that form. All petitions (1) shall state whether petitioner has previously sought relief arising out of the same matter from this Court or any other federal court, together with the ruling and reasons given for denial of relief; (2) shall set forth any scheduled execution date; and (3) shall contain the wording in full caps and underscored "DEATH PENALTY CASE" directly under the case number on each pleading. An original and three (3) copies of the petition shall be filed by counsel for petitioner. A pro se petitioner need file only the original. No filing fee is required.

The Clerk will immediately notify the California Attorney General's Office when a petition is filed.

When a petition is filed by a petitioner who was convicted outside of this District, the Clerk will immediately advise the Clerk of the District in which the petitioner was convicted.

(f) Assignment to Judges. Notwithstanding the general assignment plan of this Court, petitions shall be assigned to Judges of the Court as follows: (1) the Clerk shall establish a separate category for these petitions, to be designated with the title "Capital Case"; (2) all active Judges of this Court shall participate in the assignments; (3) petitions in the Capital Case category shall be assigned blindly and randomly by the Clerk to each of the active Judges of the Court; (4) if the assigned Judge has filed a Certificate of Unavailability with the Clerk which is in effect on the date of the assignment, a new random assignment will be made to another Judge immediately; (5) if a petitioner has previously sought relief in this Court with respect to the same conviction, the petition will be assigned to the Judge who was assigned to the prior proceeding; and (6) pursuant to 28 U.S.C. § 636(b)(1)(B), and not inconsistent with law, Magistrate Judges may be designated by the Court to perform all duties under these Rules, including evidentiary hearings.

(g) Transfer of Venue. Subject to the provisions of 28 U.S.C. § 2241(d), it is the policy of this Court that a petition should be heard in the District in which petitioner was convicted rather than in the District of petitioner's present confinement.

If an order for the transfer of venue is made, the Judge will order a stay of execution which shall continue until such time as the transferee court acts upon the petition or the order of stay. The issuance of a stay in the transferee court shall be determined under paragraph (h) of this Rule.

(h) Stays of Execution.

(1) Stay Pending Final Disposition. Upon the filing of a habeas corpus petition, unless the petition is patently frivolous, the District Court shall issue a stay of execution pending final disposition of the matter.

(2) Temporary Stay for Appointment of Counsel. Where counsel in state court proceedings withdraws at the conclusion of the state court proceedings or is otherwise not available or qualified to proceed, the selection board will designate an attorney from the panel who will assist an indigent petitioner in filing pro se applications for appointment of counsel and for temporary stay of execution. Upon the filing of this application, the Court shall issue a temporary stay of execution and appoint counsel from the panel of attorneys certified for appointment. The temporary stay will remain in effect for forty-five (45) days unless extended by the Court.

(3) Temporary Stay for Preparation of the Petition. Where counsel new to the case is appointed, upon counsel's application for a temporary stay of execution accompanied by a specification of nonfrivolous issues to be raised in the petition, the

Court shall issue a temporary stay of execution unless no nonfrivolous issues are presented. The temporary stay will remain in effect for one hundred twenty (120) days to allow newly appointed counsel to prepare and file the petition. The temporary stay may be extended by the Court upon a subsequent showing of good cause.

(4) Temporary Stay for Transfer of Venue. (See paragraph (g).)

(5) Temporary Stay for Unexhausted Claims. If the petition indicates that there are unexhausted claims for which a state court remedy is still available, petitioner will be granted a sixty (60) day stay of execution in which to seek a further stay from the state court in order to litigate the unexhausted claims in state court. During the proceedings in state court, the proceedings on the petition will be stayed. After the state court proceedings have been completed, petitioner may amend the petition with respect to the newly exhausted claims.

(6) Stay Pending Appeal. If the petition is denied and a certificate of probable cause for appeal is issued, the Court will grant a stay of execution which will continue in effect until the court of appeals acts upon the appeal or the order of stay.

(7) Notice of Stay. Upon the granting of any stay of execution, the Clerk will immediately notify the warden of San Quentin Prison and the California Attorney General. The California Attorney General shall ensure that the Clerk has a twenty-four (24) hour telephone number to the warden.

(l) Procedures for Considering the Petition. Unless the Judge summarily dismisses the petition under Rule 4 of the Rules Governing § 2254 Cases, the following schedule and procedures shall apply subject to modification by the Court. Requests for enlargement of any time period in this Rule shall comply with the applicable Local Rules of the Court.

(1) Respondent shall as soon as practicable, but in any event on or before twenty (20) days from the date of service of the petition, lodge with the Court the following: (A) transcripts of the state trial court proceedings; (B) appellant's and respondent's briefs on direct appeal to the California Supreme Court, and the opinion or orders of that Court; (C) petitioner's and respondent's briefs in any state court habeas corpus proceedings, and all opinions, orders and transcripts of such proceedings; (D) copies of all pleadings, opinions and orders in any previous federal habeas corpus proceeding filed by petitioner which arose from the same conviction; and (E) an index of all materials described in paragraphs (A) through (D) above. Such materials are to be marked and numbered so that they can be uniformly cited. Respondent shall serve this index upon counsel for petitioner.

If any items identified in paragraphs (A) through (D) above are not available, respondent shall state when, if at all, such missing material can be lodged.

(2) If counsel for petitioner claims that respondent has not complied with the requirements of paragraph (1), or if counsel for petitioner does not have copies of all the documents lodged with the Court in writing, with a copy to respondent, counsel for petitioner shall immediately notify the Court in writing, with a copy to respondent. Copies of any missing documents will be provided to counsel for petitioner by the Court.

(3) Respondent shall file an answer to the petition with accompanying points and authorities within thirty (30) days from the date of service of the petition. Respondent shall include in the answer the matters defined in Rule 5 of the Rules Governing § 2254 Cases and shall attach any other relevant documents not already filed or lodged.

(4) Within thirty (30) days after respondent has filed the answer, petitioner may file a traverse.

(5) No discovery shall be had without leave of the Court.

(6) Any request for an evidentiary hearing by either party shall be made within fifteen (15) days from the filing of the traverse, or within fifteen (15) days from the expiration of the time for filing the traverse. The request shall include a specification of which factual issues require a hearing and a summary of what evidence petitioner proposes to offer. Any opposition to the request for an evidentiary hearing shall be made within fifteen (15) days from the filing of the request. The Court will then give due consideration to whether an evidentiary hearing will be held.

(j) Evidentiary Hearing. If an evidentiary hearing is held, the Court will order the preparation of a transcript of the hearing, which is to be immediately provided to petitioner and respondent for use in briefing and argument. Upon the preparation of the transcript, the Court may establish a reasonable schedule for further briefing and argument of the issues considered at the hearing.

(k) Rulings. The Court's rulings may be in the form of a written opinion which will be filed, or in the form of an oral opinion on the record in open court, which shall be promptly transcribed and filed.

The Clerk will immediately notify the warden of San Quentin Prison and the California Attorney General whenever relief is granted on a petition.

The Clerk will immediately notify the Clerk of the United States Court of Appeals for the Ninth Circuit by telephone of (1) the issuance of a final order denying or dismissing a petition without a certificate of probable cause for appeal, or (2) the denial of a stay of execution.

When a notice of appeal is filed, the Clerk will transmit the appropriate documents to the United States Court of Appeals for the Ninth Circuit immediately.

RULE 83-103

POLICY REGARDING WEAPONS IN THE COURTHOUSE AND COURTROOMS

(a) Prohibition on Unauthorized Weapons. Only duly authorized law enforcement officers shall be allowed to carry weapons in the United States Courthouses or any building housing a court of the United States within the Eastern District of California. Only the United States Marshal, deputy marshals and court security officers are authorized to carry weapons within the confines of the courtrooms, secured judicial corridors, and chambers of the Judges, Magistrate Judges, and Bankruptcy Judges. The United States Marshal is ordered to provide appropriate security to ensure against the introduction of unauthorized weapons or other dangerous weapons into the United States Courthouse, courtrooms, or any building housing a court of the United States and/or any grounds appurtenant to such building within the Eastern District of California.

(b) Authorization for Weapon Possession. In high security situations, or when the United States Marshal otherwise deems it appropriate, the United States Marshal may authorize a duly authorized law enforcement officer to carry a weapon in the courtroom, provided the law enforcement officer wears an identification badge issued by the United States Marshal. Any law enforcement officers so authorized to carry weapons within the courtroom shall immediately identify themselves to the United States Marshal and/or court security officer on duty within the courtroom ordered by the United States Marshal.

(c) Use of Weapons in Evidence. Prior to any weapon being introduced as evidence in a court proceeding, said weapon shall first be rendered inoperable to the satisfaction of the United States Marshal and appropriately marked as evidence. In all cases in which a weapon is to be introduced as evidence, that fact shall first be made known to the United States Marshal and/or court security officer on duty prior to the introduction of the weapon into the courtroom. At that time and place, the weapon shall be inspected by the United States Marshal and/or court security officer to ensure that it is in fact inoperable.

RULE 83-123

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;

(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; or

(4) for any other reasons, it would entail substantial duplication of labor if the actions were heard by different Judges or Magistrate Judges.

(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) 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. 83-123. See L.R. 11-110.

(e) Habeas Corpus Petitions. Related habeas corpus petitions are governed by L.R. 81-190(d) or L.R. 81-191(f)(5) as the case may be.

RULE 83-141

STIPULATIONS

(a) Form. Except stipulations entered into during the course of a deposition and set forth in the transcript thereof, stipulations shall be

(1) in writing, signed by all counsel or parties in propria persona who have appeared in the action and are affected by the stipulation, except as otherwise required by Fed. R. Civ. P. 41(a)(1), and filed, or

(2) made in open court and noted by the courtroom deputy clerk upon the minutes or by the court reporter in the notes, or

(3) recited in a pretrial or other court order.

Stipulations not in conformity with these requirements will not be recognized unless necessary to prevent manifest injustice.

(b) Order. Stipulations are not effective unless approved by the Court, except as otherwise provided in these Rules or in the Federal Rules of Civil, Criminal, or Appellate Procedure. A proposed order shall be submitted with a written stipulation and may consist of an endorsement on the stipulation of the words, "**IT IS SO ORDERED**," with spaces designated for the date and signature of the Judge or Magistrate Judge.

RULE 83-143

APPEALS FROM BANKRUPTCY COURT

(a) Motion for Leave to Appeal from Bankruptcy Court. All motions for leave to file an interlocutory appeal from the Bankruptcy Court to the District Court shall comply with Bankruptcy Rule 8003(a) and be addressed to the District Court. Compliance with Rule 8003(a)(3) requires a concise statement of (1) why the appeal is meritorious, and (2) why interlocutory review is appropriate. The appropriateness of interlocutory appeal should address: (a) whether further proceedings in the Bankruptcy Court will affect the scope of the order to be reviewed; (b) whether the order determines and seriously affects substantive rights; and (c) whether the denial of immediate review will cause irreparable harm to appellant.

(b) Determination of Reviewability. If a notice of appeal is filed from a judgment, order or decree of the Bankruptcy Court without a motion for leave to appeal, the District Court may partially remand the matter to the Bankruptcy Court for a recommendation concerning the finality of the subject judgment, order or decree. If the Bankruptcy Court advises the District Court that the subject judgment, order or decree is not final but interlocutory, the Bankruptcy Court shall make a recommendation to the District Court whether leave to appeal should be granted. In aid of the Bankruptcy Court's determination on such recommendations, the Bankruptcy Court may order the parties to the appeal to file briefs in support of finality or leave.

RULE 83-171

PUBLICATION

There is no official newspaper for the Court. In each instance in which publication of any document, notice or other matter is required or permitted, the Court shall designate by order the appropriate newspaper or other vehicle for publication. In seeking such designation, counsel shall file a written application for such an order which shall propose the place and manner of publication, setting forth such information as the language to be published, the frequency of publication, the reasons underlying selection of the proposed vehicle of publication, and all other relevant matters. A copy of such application and supporting documents shall be served on all other parties who have previously appeared in the action.

RULE 83-173

PHOTOGRAPHING, RECORDING OR BROADCASTING OF JUDICIAL PROCEEDINGS

(a) Prohibitions Imposed. All forms, means, and manner of taking photographs, tape recordings, broadcasting, or televising are prohibited in all courtrooms and the corridors adjacent thereto in the United States Courthouse Buildings during the course of, or in connection with, any judicial proceedings, whether the Court is actually in session or not.

(b) Permissible Reproduction. This Rule shall not prohibit recordings by a court reporter; provided, however, no court reporter or other person shall use or permit to be used any part of any recording of a Court proceeding on, or in connection with, any radio or television broadcast of any kind. The Court may, in appropriate circumstances, permit photographs to be taken or recordings to be made under such conditions as may be imposed.

RULE 83-180

ATTORNEYS

(a) Admission to the Bar of this Court. Admission to and continuing membership in the Bar of this Court are limited to attorneys who are active members in good standing of the State Bar of California.

Each applicant for admission shall present to the Clerk an affidavit petitioning for admission, stating both residence and office addresses, the Courts in which the applicant has been admitted to practice, the respective dates of admissions to those Courts, whether the applicant is active and in good standing in each, and whether the applicant has been or is being subjected to any disciplinary proceedings. Forms will be furnished by the Clerk.

The petition shall be accompanied by satisfactory proof that the applicant is an active member of the State Bar in California and shall include the State Bar number.

Upon qualification the applicant may be admitted, upon oral motion or without appearing, by signing the prescribed oath and paying the prescribed fee, together with any required assessment, which the Clerk shall place as directed by law with any excess credited to the Court's Nonappropriated Fund.

(b) Practice in this Court. Except as herein otherwise provided, only members of the Bar of this Court shall practice in this Court.

(1) Attorneys for the United States. An attorney who is not eligible for admission under subsection (a), but who is a member in good standing of and eligible to practice before, the Bar of any United States Court or of the highest Court of any State, or of any Territory or Insular Possession of the United States, may practice in this Court in any matter in which the attorney is employed or retained by the United States or its agencies. Attorneys so permitted to practice in this Court are subject to the jurisdiction of this Court with respect to their conduct to the same extent as members of the Bar of this Court.

(2) Pro Hac Vice. An attorney who is a member in good standing of, and eligible to practice before, the Bar of any United States Court or of the highest Court of any State, or of any Territory or Insular Possession of the United States, and who has been retained to appear in this Court may, upon written application and in the discretion of the Court, be permitted to appear and participate in a particular case. Unless authorized by the Constitution of the United States or an Act of Congress, an attorney is not eligible to practice pursuant to this subsection (b)(2) if any one or more of the following apply: (i) the attorney resides in California, (ii) the attorney is regularly employed in California, or (iii) the attorney is regularly engaged in professional activities in California.

The pro hac vice application shall be presented to the Clerk and shall state under penalty of perjury (i) the attorney's residence and office address, (ii) by what Courts the attorney has been admitted to practice and the dates of admissions, (iii) that the attorney is in good standing and eligible to practice in those Courts, (iv) that the attorney is not currently suspended or disbarred in any Court, and (v) if the attorney has concurrently or within the year preceding the current application made any other pro hac vice applications to this Court, the title and number of each action in which such application was made, the date of each application, and whether each application was granted. The attorney shall also designate in the application a member of the Bar of this Court with whom the Court and opposing counsel may readily communicate regarding that attorney's conduct of the action and upon whom papers shall also be served. The attorney shall submit with such application the name, address, telephone number and written consent of such designee.

The pro hac vice application shall also be accompanied by payment to the Clerk of any prescribed fee, together with any required assessment which the Clerk shall place as directed by law with any excess credited to the Court's Nonappropriated Fund. If the pro hac vice application is denied, the Court may refund any or all of the fee or assessment paid by the attorney. If the application is granted, the attorney is subject to the jurisdiction of the Court with respect to conduct to the same extent as a member of the Bar of this Court.

(3) Certified Students. See L.R. 83-181.

(4) Designated Officers, Agents or Employees.

(A) An officer, agent or employee of a federal agency or department may practice before the Magistrate Judges on criminal matters in this Court, whether or not that officer, agent or employee is an attorney, if that officer, agent or employee:

(i) has been assigned by the employing federal agency or department to appear as a prosecutor on its behalf,

(ii) has received four or more hours training from the United States Attorney's Office in the preceding twelve months,

(iii) has filed a designation in accordance with subdivision (B) of this Rule, and

(iv) is supervised by the United States Attorney's Office. Supervision by the United States Attorney's Office means that employees of that Office are available to answer questions of any such officer, agent, or employee.

(B) Designations shall be filed on a form provided by the Clerk of the Court which shall include a verification that the officer, agent, or employee has satisfied the requirements of this Rule. A designation is effective for twelve months. The officer,

agent, or employee shall file the designation either with the Clerk of the Court in Fresno, if the officer, agent, or employee anticipates appearing only before Magistrate Judges at locations in the counties specifically enumerated in L.R. 3-120(b), or with the Clerk of the Court in Sacramento in all other circumstances. After filing the designation with the Clerk of the Court in any calendar year, the officer, agent, or employee shall not appear before any particular Magistrate Judge without providing a copy of the designation to that Magistrate Judge.

(C) Officers, agents and employees so permitted to practice in this Court are subject to the jurisdiction of this Court with respect to their conduct to the same extent as members of the Bar of this Court.

(c) Notice of Change in Status. An attorney who is a member of the Bar of this Court or who has been permitted to practice in this Court under subsection (b) shall promptly notify the Court of any change in status in any other jurisdiction which would make the attorney ineligible for membership in the Bar of this Court or ineligible to practice in this Court. In the event an attorney appearing in this Court under subsection (b) is no longer eligible to practice in all other jurisdictions by reason of suspension for nonpayment of fees or enrollment as an inactive member, the attorney shall forthwith be suspended from practice before this Court without any order of Court until becoming eligible to practice in another jurisdiction.

(d) Penalty for Unauthorized Practice. The Court may order any person who practices before it in violation of this Rule to pay an appropriate penalty that the Clerk shall credit to the Court's Nonappropriated Fund. Payment of such sum shall be an additional condition of admission or reinstatement to the Bar of this Court or to practice in this Court.

(e) Standards of Professional Conduct. Every member of the Bar of this Court, and any attorney permitted to practice in this Court under subsection (b) shall become familiar with and comply with the standards of professional conduct required of members of the State Bar of California and contained in the State Bar Act, the Rules of Professional Conduct of the State Bar of California and decisions of any Court applicable thereto, which are hereby adopted as standards of professional conduct in this Court. In the absence of an applicable standard therein, the Model Code of Professional Responsibility of the American Bar Association may be considered guidance. No attorney admitted to practice before this Court shall engage in any conduct which degrades or impugns the integrity of the Court or in any manner interferes with the administration of justice.

RULE 83-181

CERTIFIED STUDENTS

(a) Definitions.

(1) "Certified Student" means a law student who has been certified by the Clerk pursuant to this Rule.

(2) "Dean" means the Dean or the Dean's specially designated representative at the law school in which the student is enrolled or from which the student has graduated.

(3) "Supervising Attorney" means an attorney admitted to the Bar of this Court who satisfies the requirements of subsection (e) of this Rule.

(4) "Chief Judge" means the Chief Judge or Acting Chief Judge or the senior active Judge sitting in the city other than that in which the Chief Judge sits, as the case may be.

(5) "Accredited law school" means a law school accredited by the State Bar of California or the American Bar Association. Upon application and a showing of good cause therefor, the Chief Judge shall have sole discretion to determine that a student from a law school not qualifying under the foregoing accreditation requirement may be a Certified Student under this Rule.

(b) Eligibility for Certification. To engage in the activities permitted under this Rule, a Certified Student must:

(1) either have successfully completed one year of full-time studies at an accredited law school or have passed the First Year Law Student's Examination, and

(2) be currently enrolled in an accredited law school in good academic standing, subject to the normal hiatus between quarters or semesters, or have graduated from an accredited law school but subject to the limitations of subsection (g)(4) of this Rule, and

(3) have either successfully completed or be currently enrolled in academic courses which provide training in both evidence and civil procedure, unless otherwise specifically ordered by the Chief Judge upon application on good cause shown, and

(4) have submitted an Application for Certification to the Clerk, and

(5) have received a Notice of Certification from the Clerk.

(c) Application for Certification. Law students shall apply for certification on a form to be furnished by and filed with the Clerk in Sacramento or Fresno accompanied by the prescribed filing fee. Applications for Certification shall provide for signatures and attestations as follows:

(1) Law student shall attest that

(A) they have read, are familiar with, and will abide by the Rules of Professional Conduct of the State Bar of California and these Local Rules;

(B) they meet all the requirements of subsection (b)(1), (2), and (3) of this Rule, or anticipate satisfaction of those requirements in the normal course of events; and

(C) they shall immediately notify the Clerk upon failing to meet the requirements of subsection (b)(1) or upon ceasing to meet the requirements of subsection (b)(2) of this Rule.

(2) Deans shall attest that

(A) they are the Deans or have been specifically designated by the Dean to administer the law school's practical training program;

(B) the law students meet the requirements of subsection (b)(1), (2) and (3) of this Rule or satisfaction of those requirements is anticipated in the normal course of events; and

(C) they have no knowledge of facts or information that might disqualify the law students from participation in the activities permitted by this Rule.

(3) Supervising Attorneys shall specify the period during which they will be responsible for and will supervise the law student and shall attest that each Supervising Attorney

(A) meets the requirements of subsection (e)(1) of this Rule, and

(B) has read, is familiar with, and will abide by and will assume full responsibility under the requirements of subsection (e)(2) through (8).

(d) Permitted Activities.

(1) A Certified Student may engage in the activities permitted hereunder only if the client on whose behalf the student is to act shall have approved in writing on a Consent Form available from the Clerk the performance of such acts by such Certified Student. The term "client" shall mean the individual client, the corporate officer or other similar individual authorized to act on behalf of a nongovernmental entity, or the

government attorney or other appropriate legal officer authorized to act on behalf of a government agency, as the case may be.

(2) Except as permitted in subsection (d)(3) of this Rule, a Certified Student may engage in the following activities on behalf of a nongovernmental client only with the approval and under the direct and immediate supervision and in the personal presence of the Supervising Attorney or the Supervising Attorney's designee:

(A) appearing at or taking depositions on behalf of the client, and

(B) appearing on behalf of the client in any trial, hearing, or other proceeding, before any Judge, Magistrate Judge, or special master of the United States District Court for the Eastern District of California, but only to the extent approved by such Judge, Magistrate Judge, or special master.

(3) A Certified Student may appear in any action on behalf of a government agency or on behalf of the Office of the Federal Defender in the prosecution or defense of misdemeanors, but only subject to approval by the Judge or Magistrate Judge presiding at hearing or trial in such action, without the personal appearance of the Supervising Attorney, but only if the Supervising Attorney or the Supervising Attorney's designee shall be available by telephone or otherwise to advise the Certified Student.

(4) A Certified Student may engage in the following acts on behalf of a government agency as a representative of that agency without the personal appearance of the Supervising Attorney, but only if the Supervising Attorney or the Supervising Attorney's designee is available by telephone or otherwise to advise the Certified Student:

(A) appearing at or taking depositions on behalf of the agency;

(B) appearing on behalf of the agency in any noncriminal trial hearing, or other proceeding, before any Judge, Magistrate Judge, or special master of the United States District Court for the Eastern District of California, but only to the extent approved by such Judge, Magistrate Judge, or special master;

(C) appearing in any proceeding in actions brought solely under 42 U.S.C. §§ 405(g) and 1395ff to review a final decision of the Secretary of Health and Human Services;

(D) appearing in any proceeding in actions brought to enforce Internal Revenue Service summonses filed pursuant to 26 U.S.C. §§ 7402(b) and 7604(a), and actions to quash administrative summonses filed pursuant to 26 U.S.C. § 7609(b)(2);

(E) appearing in any proceeding in actions to enforce collection on promissory notes involving federally insured loans and direct federal loans in which the prayer for relief is less than $25,000;

(F) appearing in any proceeding in actions to enforce cease and desist orders issued by the National Labor Relations Board, 29 U.S.C. § 301;

(G) appearing in any proceeding in actions to enforce civil penalties assessed under 46 U.S.C. §§ 2302, 4311(d), and 12309(c); and

(H) appearing in any proceeding in petitions for writs, or actions seeking relief under the Federal Civil Rights Act by incarcerated persons acting in propria persona.

(5) In all instances in which, under these Rules, a Certified Student is permitted to appear in any trial, hearing, or other proceeding before any Judge, Magistrate Judge, or special master of the United States District Court for the Eastern District of California, the Certified Student shall, as a condition to such appearance, cause the filing of the Consent Form or present the Consent Form for filing to the Judge, Magistrate Judge, or special master.

(6) Certified Students whose Supervising Attorneys are not governmental attorneys or attorneys acting full-time on behalf of the Office of the Federal Defender shall satisfy not only the requirements of this Rule, but also the requirements imposed by the State Bar of California Rules Governing the Practical Training of Law Students, as those Rules may be amended from time to time.

(7) Nothing in this Rule shall prevent a student, certified or uncertified, from performing any advisory or representational activity that a person who is not admitted to practice before the United States District Court for the Eastern District of California could perform.

(e) Supervising Attorney. The Supervising Attorney shall:

(1) be admitted to practice before the United States District Court for the Eastern District of California;

(2) supervise no more than five (5) Certified Students concurrently, provided, however, that this limitation on supervision may be modified by the Chief Judge upon written application and showing of good cause therefor;

(3) assume personal professional responsibility for any work performed by the Certified Student while under the attorney's supervision;

(4) assist and counsel with the Certified Student in the activities permitted under this Rule and review such activities with the Certified Student;

(5) read, approve, and sign any pleadings, briefs or other papers prepared by the Certified Student prior to the filing thereof, provided, however, that this requirement

shall not apply to amendments to accusatory pleadings nor to papers other than pleadings and briefs filed by a Certified Student whose Supervising Attorney is a member of the United States Attorney's Office, nor shall it apply to papers other than pleadings and briefs filed by a Certified Student whose Supervising Attorney is a member of the Federal Defender's Office and provided that this requirement shall not apply to pleadings and briefs filed in a Magistrate Judge's court in a county other than Sacramento or Fresno by a Certified Student whose Supervising Attorney is a member of the United States Attorney's Office and whose Supervising Attorney has approved the pleading or brief after hearing it read over the telephone and authorizing the filing thereof;

(6) provide the required supervision of the Certified Student for the activities listed in this Rule;

(7) assign full responsibility for supervision to another designated attorney qualified to serve as a Supervising Attorney under this Rule in any instance in which the Supervising Attorney is to be unavailable; and

(8) notify the Clerk promptly in writing whenever the attorney's supervision of the Certified Student will cease without a written substitution of another qualified Supervising Attorney being filed with the Clerk.

(f) Use of the Designation "Certified Student." A Certified Student may be designated as such on pleadings, briefs, letters written on the Supervising Attorney's letterhead and other documents on which the Certified Student has worked with or under the supervision and direction of the Supervising Attorney, by printing or typing the Certified Student's name thereon with the words "Certified Student" immediately thereunder.

(g) Duration of Certification. Certification shall commence with the issuance by the Clerk of a Notice of Certification and shall remain in effect for the period specified in the Notice of Certification unless sooner terminated by the earliest of the following occurrences, absent relief from such termination granted by the Chief Judge:

(1) the Supervising Attorney terminates supervision of the Certified Student without a written substitution of another qualified Supervising Attorney on a form provided by and filed with the Clerk;

(2) the Certified Student ceases to be enrolled in an accredited law school prior to graduation therefrom, excepting the normal hiatus between quarters or semesters;

(3) the Dean notifies the Clerk that the Certified Student should be disqualified from participation in the activities permitted by this Rule;

(4) the Certified Student fails to take or is notified of a failure to pass the first California General Bar Examination after the Certified Student's graduation from law school; or

(5) certification is withdrawn by the Chief Judge. Upon the happening of any of the occurrences listed in (1), (3) or (5), the Clerk shall send written Notice of Withdrawal of Certification to the Certified Student, the Supervising Attorney, and the Dean, which Notice shall set forth the reasons for the termination of Certified Student status.

(h) Rights Upon Withdrawal of Certification. In the event certification is withdrawn under subsection (g)(3) or (5), the termination shall be effective ten (10) court days from the date on which the Clerk mails the Notice of Withdrawal of Certification. See L.R. 6-136. Upon receipt of such Notice, the Certified Student may present a written request for a stay of the termination pending hearing, which the Chief Judge may allow only upon good cause shown. The Certified Student may contest the termination by a written request to the Chief Judge, presented within ten (10) court days of the mailing of the Notice of Withdrawal of Certification, for a hearing to show cause why certification should not be terminated. Hearing on such request shall be commenced within fourteen (14) calendar days following receipt of such request, unless the time for such hearing be extended by the Chief Judge upon a showing of good cause.

The Chief Judge may assign responsibility for the conduct of the proceedings under this subsection to any other Judge.

RULE 83-182

ATTORNEYS - APPEARANCE AND WITHDRAWAL

(a) Appearance as Attorney. No attorney may participate in any proceedings in an action unless the attorney has entered an appearance as attorney of record. The signing of a pleading or motion by an attorney constitutes an appearance by that attorney as an attorney of record in the action. The appearance may also be made by physically appearing at a Court hearing in the matter or by filing and serving on all parties a written statement that the attorney is representing a designated client or clients, giving the name, address and telephone number of the attorney and signed by the attorney. Appearances shall not be made in the name of a law firm alone.

(b) Withdrawal. Subject to the provisions of subsection (c), an attorney who has appeared may not withdraw leaving the client in propria persona without leave of Court upon noticed motion and written notice to the client and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. Withdrawal as attorney is governed by the Rules of Professional Conduct of the State Bar of California, and the attorney shall conform to the requirements of those Rules. The authority and duty of the attorney of record shall continue until relieved by order of the Court issued hereunder. Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit.

(c) Withdrawal Following Limited Appearance. Any attorney who has appeared on behalf of a party in an action solely for the purpose of contesting an application for a temporary restraining order or other preliminary injunctive relief may withdraw from that action within ten (10) days from the making of said appearance, or at such other time as the Court may determine, by filing a notice and affidavit that the attorney is no longer counsel of record for the party. Such application shall establish that the attorney has returned all documents and other items received in connection with the action and shall set forth the last known address and telephone number of the party.

(d) Change of Address. Each attorney appearing and each party appearing in propria persona is under a continuing duty to notify the Clerk and all other parties of any change of address or telephone number of the attorney or the party if appearing in propria persona. Absent such notice, service of documents at the prior address of the attorney or party shall be fully effective. Separate notice shall be filed with the Clerk and served on all parties in each action wherein an appearance has been made.

(e) Substitution of Attorneys. An attorney who has appeared in an action may substitute another attorney and thereby withdraw from the action by submitting a substitution of attorneys which shall set forth the full name and address of the new individual attorney and shall be signed by the withdrawing attorney, the new attorney, and

the client. All substitutions of attorneys shall require the approval of the Court, and the words **"IT IS SO ORDERED"** with spaces designated for the date and signature of the Judge affixed at the end of each substitution of attorneys.

(f) Local Co-Counsel. A Judge to whom an action is assigned has discretion in that action, and upon notice, to require an attorney appearing in this Court who maintains an office outside this District to designate a member of the Bar of this Court who does maintain an office within this District as co-counsel with the authority to act as attorney of record for all purposes. In such a case, the attorney shall file with such designation the address, telephone number and written consent of such designee.

RULE 83-183

PERSONS APPEARING IN PROPRIA PERSONA

(a) Rules Governing Appearance. Any individual who is representing himself or herself without an attorney must appear personally or by courtesy appearance by an attorney admitted to the Bar of this Court and may not delegate that duty to any other individual, including husband or wife, or any other party on the same side appearing without an attorney. Any individual representing himself or herself without an attorney is bound by the Federal Rules of Civil or Criminal Procedure and by these Local Rules. Failure to comply therewith may be ground for dismissal, judgment by default, or any other sanction appropriate under these Rules. A corporation or other entity may appear only by an attorney.

(b) Address Changes. A party, appearing in propria persona shall keep the Court and opposing parties advised as to his or her current address. If mail directed to a plaintiff in propria persona by the Clerk is returned by the U.S. Postal Service, and if such plaintiff fails to notify the Court and opposing parties within sixty (60) days thereafter of a current address, the Court may dismiss the action without prejudice for failure to prosecute.

RULE 83-184

DISCIPLINARY PROCEEDINGS AGAINST ATTORNEYS

(a) Discipline. In the event any attorney subject to these Rules engages in conduct which may warrant discipline or other sanctions, any Judge or Magistrate Judge may initiate proceedings for contempt under 18 U.S.C. § 401 or Fed. R. Crim. P. 42, or may, after reasonable notice and opportunity to show cause to the contrary, take any other appropriate disciplinary action against the attorney. In addition to or in lieu of the foregoing, the Judge or Magistrate Judge may refer the matter to the disciplinary body of any Court before which the attorney has been admitted to practice.

(b) Status - Suspension or Disbarment. When it appears to the Court that any member of its Bar or any attorney appearing pro hac vice has been suspended or disbarred from practice or convicted of a felony in any other court or has resigned from the Bar of any other court while warrant, investigation or proceedings for suspension or disbarment were pending, or has been guilty of conduct unbecoming a member of the Bar of the Court, or has violated the Rules of Professional Conduct of the State Bar of California, the attorney will be subject to suspension or disbarment by this Court. Upon notice mailed to the attorney's last known address, the attorney shall be afforded an opportunity to show cause within thirty (30) days why the attorney should not be suspended or disbarred from practice in this Court. Upon response to the order to show cause, and after hearing, if requested, or upon expiration of the thirty (30) days, if no response is made, the Court shall enter an appropriate order. See L.R. 6-136.

CRIMINAL RULES

RULE Crim 12-430

CRIMINAL MOTIONS AND PROCEDURES

(a) Motion Calendar. Each Judge and Magistrate Judge will maintain an individual motion calendar. Information as to the times and dates for calling each motion calendar may be obtained from the Clerk.

(b) Motion Procedures. Entries of pleas of guilty and motions to quash or dismiss an information or indictment, to suppress evidence, and to discover the identity of informants shall be heard by the assigned Judge. See L.R. 72-302(b)(1). All other pretrial matters in criminal actions shall be heard by the Magistrate Judge, L.R. 72-302(b)(1), , unless the assigned Judge elects to hear some or all of such matters in individual actions. See L.R. 72-302(e). Motions to be heard by the Magistrate Judge shall be filed separately from those to be heard by the Judge. Motions and accompanying documents shall conform to the requirements of the Federal Rules and these Local Rules. See, e.g., Fed. R. Crim. P. 47, 49; L.R. 7-130, 7-131, 7-132, 5-134, 43-140.

(c) Notice. Except as otherwise provided in these Rules or as ordered or allowed by the Court, all motions shall be noticed on the motion calendar of the assigned Judge or Magistrate Judge as may be appropriate depending on the character of the motion and the orders of the Court. The moving party shall file with the Clerk in duplicate a notice of motion, motion, accompanying brief, affidavits, if appropriate, and copies of all documentary evidence that the moving party intends to submit in support of the motion, together with proof of service thereof on all other parties. All pretrial motions shall be filed within twenty (20) calendar days after arraignment unless a different time is specifically prescribed by the Court. The moving party shall notice all pretrial motions for hearing on the regularly scheduled calendar of the assigned Judge or Magistrate Judge not less than fourteen (14) calendar days after the filing of the motion, and at least seven (7) court days prior to the date of trial confirmation if that date has been established.

(d) Opposition. The responding party shall file in duplicate and serve an opposition brief and any accompanying affidavits or documentary evidence on all other parties within seven (7) court days following personal service of the motion or ten (10) court days following mailed service of the motion. Opposition shall be accompanied by proof of service and the manner thereof. A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect, specifically designating the motion in question. No party will be entitled to be heard in opposition to a motion at oral argument if that party has not timely filed written opposition to the motion.

(e) Reply. The moving party may file in duplicate and serve a reply brief within three (3) court days following personal service of the opposition or three (3) court days following mailed service, but in no event less than three (3) days prior to the date of the hearing. The moving party controls the initial filing date of the motion and the amount of time available between the filing of the motion and the trial confirmation date, and will not be heard to complain that time for the reply brief was cut short due to the late filing of the motion.

(f) Extensions of Time. If a party is unable to comply with the foregoing schedule for the filing of motions, that party shall move the assigned Magistrate Judge for an extension of time specifically setting forth the basis for the requested extension. See L.R. 6-142. Such motion shall be made as soon as practicable but, in any event, not later than the last date set by the Court for the filing of motions.

(g) Calculation of Time Periods. The time periods fixed by this Rule shall supersede the time periods for service of notices of motion, affidavits, and other documents prescribed in Fed. R. Crim. P. 45(d), (e).

(h) Evidentiary Hearings. The notice of all motions and each response or opposition thereto shall contain a statement whether an evidentiary hearing is requested and an estimate of the time required for the presentation of evidence and/or arguments. The reply brief shall contain a re-estimate of the time or a statement that the original estimate is unchanged.

(i) Applications for Reconsideration. Whenever any motion has been granted or denied in whole or in part, and a subsequent motion for reconsideration is made upon the same or any alleged different set of facts, see L.R. 72-303(b), it shall be the duty of counsel to present to the Judge to whom such subsequent motion is made an affidavit or brief, as appropriate, setting forth the material facts and circumstances surrounding each motion for which reconsideration is sought, including:

(1) when and to what Judge or Magistrate Judge the prior motion was made,

(2) what ruling, decision or order was made thereon, and

(3) what new or different facts or circumstances are claimed to exist which did not exist or were not shown upon such prior motion or what other grounds exist for the motion.

(j) Appeal from Magistrate Judge's Rulings. An appeal from a final decision of the Magistrate Judge shall be served and filed within ten (10) court days after service of the Magistrate Judge's decision. See generally L.R. 72-303, 72-304. To the extent appropriate, the brief supporting the appeal shall contain the information prescribed in L.R. Crim 12-430(k).

RULE Crim 16-440

PRETRIAL DISCOVERY AND INSPECTION

Upon request of the defendant and unless otherwise ordered by the Court, all discovery required by Fed. R. Crim. P. 16(a)(1)(A), (B), (C), and (E) to be provided by the government shall be provided within ten (10) court days from the date of arraignment.

All discovery of reports of examination or tests, as provided for in Fed. R. Crim. P. 16(a)(1)(D), shall, when in possession of government counsel, be made in conformance with the preceding paragraph, and when not in government counsel's possession, as soon as reasonably possible after the expiration of the ten (10) court day period. In no event shall the government fail to disclose such reports at least five (5) court days prior to the trial confirmation/pretrial conference.

Unless otherwise ordered by the Court, all discovery required by Fed. R. Crim. P. 16(b), to be provided by the defendant shall be provided within twenty (20) court days from the request for such discovery.

The duty of the government and the defendant to provide discovery under this Rule is a continuing one. Upon failure to provide discovery and inspection as required by this Local Rule, the government or the defendant or counsel may be subject to sanctions as set forth in L.R. 11-110.

RULE Crim 17.1-430

CRIMINAL TRIAL SETTING PROCEDURES

(a) Trial, Trial Confirmation Dates. Except as otherwise provided in this Rule, the Magistrate Judge shall assign the trial, trial confirmation and/or pretrial conference dates at the time the defendant is arraigned. Each criminal action to be tried before a Judge shall be set for trial, and for trial confirmation and/or pretrial conference, in such manner and in accordance with such scheduling practices as the assigned Judge may prescribe.

(b) Complex Cases. Any party who believes the criminal action is unusual or complex within the meaning of 18 U.S.C. § 3161 shall so inform the Magistrate Judge at the time of arraignment. If the Magistrate Judge determines that the action is unusual or complex, the action shall be placed on the assigned Judge's next available criminal motion calendar for a status conference.

(c) Shortening and Extending Time. See L.R. 6-142.

RULE Crim 17.1-450

TRIAL CONFIRMATION

A trial confirmation hearing shall be calendared in each criminal action on a date approximately two (2) weeks prior to the scheduled trial date. The following persons shall appear at the trial confirmation hearing: the defendant, the defendant's attorney, and a prosecutor from the United States Attorney's Office who is familiar with the facts and has authority to take action. Prior to the trial confirmation hearing, the defendant's attorney shall have completed all work necessary for a determination of whether the defendant will go to trial or plead guilty. All defendants who elect to plead guilty shall be prepared to plead guilty before or at the trial confirmation hearing. See L.R. 16-160.

RULE Crim 18-402

INTRADISTRICT VENUE

(a) Commencement of Criminal Actions. All criminal actions and legal proceedings of every nature and kind cognizable by the United States District Court for the Eastern District of California arising in Calaveras, Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Stanislaus, Tulare and Tuolumne counties shall be commenced in the United States District Court sitting in Fresno, California. All criminal actions and legal proceedings of every nature and kind cognizable in the United States District Court for the Eastern District of California arising in Alpine, Amador, Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Mono, Nevada, Placer, Plumas, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sutter, Tehama, Trinity, Yolo and Yuba counties shall be commenced in Sacramento, California.

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

(c) Transfer. Whenever in any criminal action the Court finds upon its own motion, motion of any party, or stipulation that an action has not been commenced in the proper Court in accordance with these Local Rules, or for other good cause, the Judge may transfer the case to another Court within this District. Prior to any such transfer, the Court shall give due notice to counsel of record.

RULE Crim 32-460

DISCLOSURE OF PRESENTENCE REPORTS AND RELATED RECORDS

(a) Confidential Character of Presentence Reports and Related Records. The presentence reports, violation reports, and related documents to be offered in sentencing and violation hearings (collectively "presentence report") are confidential records of the United States District Court. Unless further disclosure is expressly authorized by order of the Court, 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 or violation hearing.

(b) Requests for Disclosure. Any applicant seeking an order authorizing further disclosure of a presentence report maintained by the probation office 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 officers are improper. The probation officer may seek instruction from the Court with respect to a request and may direct a person seeking release of records to petition the Court. No disclosure shall be made except upon an order issued by this Court.

(c) 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 five (5) weeks prior to the date set for sentencing hearing.

(d) Objections to the Report. Defense counsel shall discuss the presentence report with the defendant. Not less than three (3) weeks prior to 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.

(e) Submission to the Court. Not less than two (2) weeks prior to 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.

(f) Formal Objections to Report. Not less than one (1) calendar week prior to the sentencing hearing, counsel for the defendant and the government shall each file with the

Court and personally serve on each other and the probation officer, or hand-deliver to their offices, a concise memorandum of all objections and facts in dispute to be resolved by the Court. This service requirement is also satisfied by sending the memorandum by express mail or other overnight delivery eight (8) days prior to the hearing. 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 case. This requirement is not satisfied by submission of the written objections to the probation officer as set forth in paragraph (d) herein.

(g) 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 paragraph (d) and those relating to information contained in the presentence report that was not contained in the proposed presentence report.

(h) 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.

(i) 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 case 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.

RULE Crim 32-461

DISCLOSURE OF OTHER PROBATION RECORDS

(a) Confidential Character of Probation Records. The reports, probation supervision records, and other confidential records maintained by the probation office are confidential records of the United States District Court. Such records shall be disclosed only to the Court, unless further disclosure is authorized by order of the Court.

(b) Requests for Disclosure. Any applicant seeking an order authorizing further disclosure of confidential records maintained by the probation office 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 officers are improper. The probation officer may seek instruction from the Court with respect to a request and may direct the person seeking access to documents to petition the Court in writing for release of the records or documents. No disclosure shall be made except upon an order issued by this Court.

RULE Crim 35-480

RULE 35 MOTIONS - SERVICE

Motions and supporting documents filed pursuant to Fed. R. Crim. P. 35 shall be served on opposing counsel and the United States Probation Department. See L.R. 5-134(b). In calendaring and responding to a motion under Rule 35, counsel shall specify whether oral argument is desired. Failure to request oral argument shall result in submission on the written record.

RULE Crim 46-410

FIXED SUMS PAYABLE IN LIEU OF APPEARANCE

This Court has provided by General Order for the payment of a fixed sum in suitable misdemeanor actions in lieu of appearance. Acceptance and payment of such fixed sum shall terminate the action; however, a Magistrate Judge may fix a higher amount in the event that payment of the fixed sum is not timely made or otherwise under conditions set forth by General Order so long as the fixed sum does not exceed the maximum authorized fine.

Copies of General Orders referenced in this Rule are available on request from the Clerk.

RULE Crim 50-400

GENERAL RULES APPLICABLE IN CRIMINAL CASES AND PLAN FOR PROMPT DISPOSITION OF CRIMINAL CASES

(a) Applicability of General Rules. The general rules ending in 100 to 199 and 300 to 399 are fully applicable in criminal cases in the absence of a specific criminal rule directly on point.

(b) Adoption of Plan for Prompt Disposition of Criminal Cases. Pursuant to the requirements of Fed. R. Crim. P. 50(b), the Speedy Trial Act of 1974 (18 U.S.C. §§ 3161-3174), and the Federal Juvenile Delinquency Act (18 U.S.C. §§ 5036, 5037), the Court en banc has adopted a local plan establishing time limits and procedures for the prompt disposition of criminal actions. The Local Plan provides that "a copy of Section II shall be made available to practicing members of the Bar."

(c) Availability of Plan. Counsel may obtain a copy of Section II at the Clerk's Office. Counsel in criminal actions shall acquaint themselves with Section II of the Local Plan.

RULE Crim 58-420

REFERRAL OF MISDEMEANORS TO MAGISTRATE JUDGES

(a) Reference to a Magistrate Judge. All citations, violation notices, complaints, informations or indictments charging petty offenses or misdemeanors shall be referred by the Clerk directly to the appropriate Magistrate Judge.

(b) Court Reporters. A party requesting a court reporter must make such request sufficiently prior to trial to ensure the presence of a court reporter. See L.R. Crim 58-422.

RULE Crim 58-421

DISPOSITION OF MISDEMEANOR ACTIONS

(a) Authorization. Each Magistrate Judge is designated to try persons accused of misdemeanors and petty offenses and to sentence such persons upon conviction. See L.R. 72-302(b)(2).

(b) Pretrial and Post-Trial Matters. Except as set forth herein, the Magistrate Judge to whom a misdemeanor or petty offense action is assigned shall have the authority to hear and dispose of all pretrial or post-trial matters arising in that action.

(c) Jury Trials.

(1) Jury trials may be conducted only by the full or part-time Magistrate Judges assigned to Sacramento, Fresno and Yosemite.

(2) When a defendant requests a jury trial in an action pending before a Magistrate Judge without such jurisdiction, the Magistrate Judge shall transfer the action to Sacramento or Fresno for trial. See L.R. 3-120(h), Crim 18-402(a). The transfer shall divest the original Magistrate Judge of any further jurisdiction over the action.

(d) Presentence Reports. Each Magistrate Judge is authorized to direct the Probation Office to conduct a presentence investigation and to render a report as provided in Fed. R. Crim. P. 32 and L.R. Crim 32-460. Such requests by Magistrate Judges in misdemeanor petty offense actions shall be limited to those actions in which the Magistrate Judge determines that exceptional circumstances exist. See L.R. Crim 32-460.

RULE Crim 58-422

APPEAL FROM CONVICTION BY A MAGISTRATE JUDGE

(a) Notice of Appeal. A defendant who has been convicted in a trial by a Magistrate Judge may appeal to a Judge by proceeding in accordance with Fed. R. Crim. P. 58(g).

(b) Record. A transcript, if desired, shall be ordered as prescribed by Rule 10(b), Federal Rules of Appellate Procedure, except that, in the absence of a reporter, the transcript shall be prepared by the Clerk and one copy shall be served on each of the parties. Parties shall have ten (10) court days to object to any specific matter contained therein by filing and serving a written statement of grounds for the objection. If no party objects, the parties will be referred to the assigned Magistrate Judge who shall, within ten (10) court days after the referral, correct if necessary and certify the accuracy of the transcript.

Within thirty (30) days after a transcript has been ordered, the Clerk shall file the original and one copy of the transcript, as stipulated to by the parties or corrected and certified by the assigned Magistrate Judge. Upon such filing of the transcript, the record on appeal shall be deemed complete.

If no transcript is ordered within ten (10) court days after the notice of appeal is filed and served, the record on appeal shall be deemed complete without a transcript.

(c) Assignment to a Judge. The Clerk shall assign the appeal to a Judge in the same manner as any indictment or felony information. See L.R. 3-120, Appendix A.

(d) Notice of Hearing. After assignment, the Clerk shall promptly notify the parties of the date and time set for oral argument which shall not be less than sixty (60) nor more than ninety (90) days after the date of the notice. An earlier date may be set upon joint application of the parties to the assigned Judge.

(e) Time for Serving and Filing Briefs. Appellant's brief shall be served and filed in duplicate within twenty-one (21) days after service of the notice of hearing. Appellee's brief shall be served and filed in duplicate within twenty-one (21) days after the filing and service of the appellant's brief. See L.R. 6-136. Appellant may serve and file a reply brief within five (5) court days after service of the appellee's brief. These periods may be altered by the assigned Judge upon application of the parties or sua sponte. See L.R. 6-142.

RULE Crim 58-423

REFERRAL OF MISDEMEANORS AND PETTY OFFENSES TO THE DISTRICT COURT

The following procedure shall be observed in each instance in which a defendant charged with a misdemeanor or petty offense elects to be tried by a Judge pursuant to 18 U.S.C. § 3401:

(1) At the time of arraignment and bail setting in misdemeanor and petty offense actions, the Magistrate Judge will explain the defendant's right to trial by Magistrate Judge or Judge. If the defendant declines to be tried by a Magistrate Judge, the Magistrate Judge shall order the defendant to appear before a Judge at the date and time directed by the Clerk pursuant to summons.

(2) Upon a defendant's election to trial before a Judge, the Magistrate Judge shall forthwith inform the United States Attorney by written notice of the pendency of the action and the defendant's election, providing the United States Attorney copies of all documents theretofore filed in the action. The Magistrate Judge's responsibility in the action under Local Rules Crim 58-420, Crim 58-421 and Crim 58-422 shall thereupon terminate, but the Magistrate Judge may entertain a motion from the United States Attorney to dismiss the charged offense.

(3) Upon a defendant's election to trial before a Judge, the United States Attorney has discretion to determine whether the action shall proceed. The United States Attorney may file an information against the defendant. Upon election not to prosecute the action, the United States Attorney shall move the Magistrate Judge for dismissal and exoneration of bail, if bail has been posted. If the United States Attorney does not commence proceedings on the action or dismiss it within ninety (90) days after service of notice by the Magistrate Judge that the defendant has elected to be tried by a Judge, see L.R. 6-136, then the charge against the defendant shall be dismissed with prejudice on motion of the Court or the defendant.

(4) If the defendant electing trial before a Judge is in custody, the Magistrate Judge shall immediately notify the United States Attorney by telephone of the election and shall order the transportation of the defendant to the appropriate facility unless released from custody.

ADMIRALTY AND IN REM RULES

RULE A-500

TITLE AND SCOPE OF RULES

(a) Title. These are the Local Admiralty and In Rem Rules for the United States District Court for the Eastern District of California.

(b) Applicability. These Local Admiralty and In Rem Rules apply to maritime and admiralty proceedings as defined in Supplemental Rule A of the Federal Rules of Civil Procedure and to all in rem and quasi in rem proceedings referenced in Supplemental Rule A pending or filed in the United States District Court for the Eastern District of California. The General, Civil and Magistrate Judge's Local Rules ending in 100 through 399 of the United States District Court for the Eastern District of California also apply to all civil actions, including maritime and admiralty proceedings and in rem proceedings. See L.R. 1-100(b).

(c) Inconsistency With Other Local Rules. If a Local Rule ending in 100 through 399 is inconsistent with one of these Local Rules A-500 through A-599, these Rules shall control all proceedings within the scope of Supplemental Rule A. Local Rule 65.1-151 shall have no application to proceedings governed by the Supplemental Rules and these Local Admiralty and In Rem Rules.

RULE A-501

THE UNITED STATES MARSHAL

(a) Locations. The United States Marshal for the Eastern District of California maintains permanent offices at 650 Capitol Mall, Sacramento, California 95814, and at the United States Courthouse, 1130 "O" Street, Fresno, California 93721.

(b) Office Hours. The regular office hours of the Marshal at Sacramento and Fresno are from 8:00 a.m. to 4:30 p.m. each day except Saturdays, Sundays, and holidays.

(c) Emergency Telephone. In emergencies, the United States Marshal may be reached by telephone 24 hours a day at (916) 498-5615 in Sacramento and (209) 498-7205 in Fresno.

(d) Meaning of "Marshal." When used throughout these Local Admiralty and In Rem Rules, unless otherwise specified, the term "Marshal" means the United States Marshal appointed pursuant to 28 U.S.C. § 561, or a duly appointed deputy marshal, as the case may be.

RULE A-510

COMPLAINTS, ALLEGATIONS AND ACCOMPANYING AFFIDAVIT

(a) Caption. Every complaint filed as a Fed. R. Civ. P. 9(h) action shall set forth "In Admiralty" following the designation of the Court, in addition to the statement, if any, contained in the body of the complaint pursuant to Fed. R. Civ. P. 9(h). If the complaint contains one or more causes of action at law, it shall set forth "At Law and In Admiralty."

(b) Mandatory Allegations. Every complaint in Supplemental Rule B and C actions shall state the dollar amount of the debt, damages, or salvage for which the action is brought. This dollar amount shall also be stated in the process, together with a description of the nature of any other items of damage including any unliquidated items claimed, such as attorneys' fees. The defendant or claimant may post bond pursuant to Supplemental Rule E(5) based on such allegations. See L.R. 65.1-151, A-523.

(c) Mandatory Allegations in Salvage Actions. In salvage actions, the complaint shall state to the extent known or the estimated dollar value of the hull, cargo, freight, and other property salved, the dollar amount claimed, and the names of the principal salvers, and shall state that the action is instituted in their behalf and in behalf of all other persons interested or associated with them.

(d) Affidavit Showing Defendant's Absence. The affidavit accompanying the complaint as required by Supplemental Rule B shall state with particularity the efforts made to obtain in personam jurisdiction over the defendant within the District. L.R. 43-140. The phrase "not found within the district" in Supplemental Rule B(1) means that, in an in personam action, the defendant cannot be served with the summons and complaint as provided in Fed. R. Civ. P. 4.

RULE A-512

PROCESS GENERALLY

(a) Issuance of Summons. See L.R. 4-210(a).

(b) Proof of Service. See L.R. 4-210(b).

(c) Judicial Authorization for Arrest, Attachment or Garnishment. See Supplemental Rules B(1), C(3). Unless otherwise ordered, the review of complaints and accompanying papers provided for in Supplemental Rules B(1) and C(3) is conducted in the absence of the affiant party or attorney. The plaintiff shall lodge a form of order with the Clerk which, upon signature by the Court, will direct the arrest, attachment or garnishment.

(d) Issuance of Authorization by the Clerk. Process may be issued by the Clerk only when a plaintiff or attorney certifies by written affidavit filed with the Court, see L.R. 43-140, that specified exigent circumstances make review by the Court impracticable, but no such process shall be issued until every effort to secure judicial review has been pursued, including conducting a hearing by telephone conference.

(e) Use of State Procedures. When the plaintiff invokes a state procedure in order to attach or garnish under Fed. R. Civ. P. 4(n), the process of attachment or garnishment shall so state.

(f) Instructions to Marshal. If service of process is to be effected by the Marshal, see Supplemental Rules C(3) and E(4), the party who requires service shall state in writing that party's instructions to the Marshal on appropriate forms available from the Marshal's Office specifying information necessary to effect service. If the party does not wish the process to be served at the time of giving instructions, the party shall request that service of process be held in abeyance. In such a case, the Marshal has no responsibility to ensure that process is served at a later date absent further instruction.

(g) Seizure of Property Already in Custody of the United States. When property in the custody of an officer or employee of the United States is to be arrested or attached, the person effecting service shall deliver a copy of the complaint and warrant for arrest, order of the Court, or summons and process of attachment, to such officer or employee or, if such officer or employee is not found within the District, then to the custodian of the property within the District. The person effecting service shall notify such officer, employee, or custodian not to relinquish the property from custody until ordered to do so by the Court.

RULE A-513

PROMPT HEARING FOLLOWING ARREST, ATTACHMENT OR GARNISHMENT

Whenever property is arrested, attached or garnished, any person claiming an interest in the property shall be entitled to a prompt hearing before the Court on written notice to the party bringing the arrest, attachment or garnishment and to all other parties who have appeared in the action. The hearing shall be noticed and scheduled as is a hearing on a request for temporary restraining order. See L.R. 65-231. At the hearing, the party that obtained the arrest, attachment or garnishment shall show cause why the arrest, attachment or garnishment order should not be vacated forthwith and other appropriate relief granted. See Supplemental Rules B(1), C(3), and E(4)(f). This Rule shall not apply to those actions excepted in Supplemental Rule E(4)(f).

RULE A-520

SECURITY FOR COSTS

(a) Security for Costs in Supplemental Rule E Actions. In an action governed by Supplemental Rule E, a party may serve on all parties and file a motion for an order requiring the posting of security for costs or for an increase in the amount of security for costs previously posted. See L.R. 6-142, 78-230.

(b) Security for Costs in Supplemental Rule F Actions. The amount of the security for costs required by Supplemental Rule F(1) shall be $1000 unless a different amount is specifically set by the Court. Unless otherwise ordered by the Court, the security for costs may be combined with the security for value and interest, if such security is posted.

(c) Time of Posting Security. The $1000 security for costs required by Supplemental Rule F(1) and L.R. A-520(b) shall be posted prior to issuance of process and service of the complaint. Any party ordered to post security for costs in a Supplemental Rule E action or additional security in an action under Supplemental Rules E or F shall do so within four (4) court days after service of the order requiring its posting, unless a different time is specified by the Court. See L.R. 6-136.

(d) Election to Make Deposit in Lieu of Bond. See L.R. 67-150, 65.1-151.

(e) Sanction for Failure to Post Security. A party that fails to post security as required or as ordered may not participate further in the action except to seek relief from this Rule.

RULE A-521

DEPOSITS OF MARSHAL'S FEES AND EXPENSES

(a) Deposit Required Before Seizure. A party who seeks arrest, attachment or garnishment of property in an action governed by Supplemental Rule E shall deposit with the Marshal the sum estimated by the Marshal to be sufficient to pay the fees and expenses of arresting and keeping the property for at least ten (10) calendar days. The Marshal is not required to execute process of arrest, attachment or garnishment until such deposit is made. See 28 U.S.C. § 1921.

(b) Additional Deposits Required After Seizure. A party who has caused the Marshal to arrest, attach or garnish property shall advance additional sums from time to time as required by the Marshal to pay the fees and expenses of the Marshal until the property is released or disposed of as provided in Supplemental Rule E.

(c) Sanction for Failure to Make Deposit. Any party who fails to make a deposit when required by the Marshal may not participate further in the action except to seek relief from this Rule.

RULE A-522

INTERVENORS' CLAIMS

(a) Presentation of Claims. When a vessel or other property has been arrested, attached or garnished, and is in the custody of the Marshal or substitute custodian, anyone other than the party obtaining the original arrest, attachment or garnishment who has a claim against the vessel or other property shall present that claim by filing a complaint in intervention, rather than an original complaint, unless otherwise ordered by the Court.

(b) Intervenor's Arrest, Attachment or Garnishment. Upon satisfaction of Fed. R. Civ. P. 24, the intervenor may deliver a conformed copy of the complaint in intervention to the Marshal who shall deliver it to the custodian of the vessel or other property. In such a case, the intervenor shall thereafter be subject to the rights and obligations of a party originally arresting, attaching or garnishing the vessel or other property, and the vessel or other property shall stand arrested, attached or garnished by the intervenor as well as by the original arresting, attaching or garnishing party. The intervenor in such a case shall not be required to advance a security deposit to the Marshal as was required of the original arresting, attaching or garnishing party under L.R. A-521.

(c) Sharing of Marshal's Fees and Expenses. An intervenor who has delivered a conformed copy of the complaint in intervention to the Marshal shall owe a debt to the originally arresting, attaching or garnishing party which is enforceable on motion, consisting of the intervenor's share of the Marshal's fees and expenses in the proportion that the intervenor's claim bears to the sum of all the claims on which the vessel or other property has been arrested, attached or garnished.

(d) Intervenor's Obligation Upon Vacation of the Arrest, Attachment or Garnishment by the Original Party. If the originally arresting, attaching or garnishing party permits vacation of the arrest, attachment or garnishment, an intervenor who has delivered conformed copies of his complaint in intervention to the Marshal shall bear responsibility for the fees and expenses and shall deposit the sum estimated by the Marshal to be sufficient to pay fees and expenses for ten (10) calendar days within thirty-six (36) hours after notice from the Marshal requiring such deposit. Such notice may be given as soon as the Marshal learns that the originally arresting, attaching or garnishing party intends to permit vacation of the arrest, attachment or garnishment, and an intervenor's deposit received before the funds of the originally arresting, attaching or garnishing party are exhausted will be held for use upon exhaustion of such funds. If more than one complaint in intervention has been delivered to the Marshal, the intervenors shall step into the position of the originally arresting, attaching or garnishing party as provided herein in order of the delivery of their complaints in intervention to the Marshal. On the sharing of Marshal's fees and expenses among intervenors, see L.R. A-522(c).

RULE A-523

UNDERTAKINGS IN LIEU OF ARREST

If, before or after commencement of the action, all parties accept a written undertaking to respond on behalf of the vessel or other property sued in return for forgoing the arrest or stipulating to the release of the vessel or other property, the undertaking shall be filed with the Court and shall become a party in place of the vessel or other property sued and be deemed referred to under the name of the vessel or other property in any pleading, order, or judgment in the action.

RULE A-530

PUBLICATION OF NOTICE OF ACTION AND ARREST

(a) Content of Notice. The notice required by Supplemental Rule C(4) shall be published once in accordance with L.R. 83-171. See L.R. A-580. The notice shall contain the following:

(1) The Court, title and number of the action;

(2) The date of the arrest;

(3) The identity of the property arrested;

(4) The name, address and telephone number of the attorney for the plaintiff;

(5) A statement that claims of persons entitled to possession or claiming an interest pursuant to Supplemental Rule C(6) must be filed with the Clerk and served on the attorney for the plaintiff in accordance with and within the time specified in Supplemental Rule C(6) following the date of publication;

(6) A statement, first, that answers to the complaint must be filed and served in accordance with and within the time specified in Supplemental Rule C(6) following the date of publication and, second, that default may be entered and condemnation ordered in the absence thereof;

(7) A statement that applications for intervention under Fed. R. Civ. P. 24 by persons claiming maritime liens or other interests shall be filed with the Clerk and served on the attorney for the plaintiff in accordance with and within the time specified in Supplemental Rule C(6) for filing a claim following the date of publication;

(8) The name, address and telephone number of the Marshal; and

(9) Such other information as the Court may order.

(b) Filing of Proof of Publication. Plaintiff shall cause to be filed with the Clerk no later than thirty (30) days after the date of publication sworn proof of publication by or on behalf of the publisher of the newspaper in which notice was published, together with a copy of the proof of publication or reproduction thereof.

RULE A-540

DEFAULT IN ACTIONS IN REM

(a) Notice Required. A party seeking a default judgment in an action in rem shall show to the satisfaction of the Court that due notice of the action and arrest of the property has been given:

(1) By publication, see L.R. A-530;

(2) By personal service on the person having custody of the property;

(3) If the property is in the hands of a law enforcement officer, by personal service on the person having custody prior to its possession by law enforcement agency or officer; and

(4) By personal service or by certified mail, return receipt requested, to every other person who has not appeared in the action and is known to have an interest in the property; provided, however, that failure to give actual notice to such other person may be excused upon a satisfactory showing of diligent efforts to give such notice without success.

(b) Notice to Persons with Recorded Interests. In providing the notice required by the foregoing subsection (a)(3), the plaintiff shall satisfy the following requirements, provided, however, that such satisfaction shall not limit the obligation to give notice to any other persons known to have an interest.

(1) If the defendant property is a vessel documented under the laws of the United States, the party must obtain a current certificate of ownership from the United States Coast Guard and give notice to all persons named therein.

(2) If the defendant property is a vessel with an identifying number, the party must obtain information from the issuing authority and give notice to the persons named in the records of such authority.

(3) If the defendant property is of such character that there exists a registry of recorded property interests and/or security interests in the property (whether governmental or private), the party must obtain information from each such registry and give notice to the persons named in the records of each such registry.

(c) Evidence of Search for Recorded Interests. As part of the motion for default judgment, the moving party shall provide to the Court a copy of the United States Coast Guard certificate of ownership, any numbering identification obtained from any issuing

authority, and/or the information obtained from the private and/or governmental registries.

(d) Motion for Default Judgment. Upon a showing that no one has appeared to claim the property and give security, and that due notice of the action and arrest of the property has been given, a party may move for judgment at any time after the time for answer has expired. See L.R. 72-302(c)(19). If no one has appeared, the party may have an ex parte hearing before the Court and judgment without further notice. If any person has appeared and does not join in the motion for judgment, such person shall be given seven (7) court days notice of the motion, see L.R. 6-136; provided, however, that the Court can extend or shorten the time of the required notice on good cause. See L.R. 6-142.

RULE A-550

CUSTODY OF PROPERTY

(a) Safekeeping of Property When Seized. When a vessel, cargo or other property is seized, the Marshal shall take custody and arrange for adequate and necessary security for its safekeeping which may include, in the Marshal's discretion, the placing of keepers on or near the vessel. The Court may order the appointment of a facility or person as substitute custodian of the property in lieu of the Marshal on motion of any party or on its own motion. See L.R. A-550(c).

(b) Cargo Handling, Repairs and Movement of the Vessel. Upon arrest or attachment of the vessel, no cargo handling, repairs or movement of the vessel may be made without a Court order. The applicant for such an order shall give written notice to the Marshal and to all parties who have appeared prior to the application for such order, and the certificate of service of such notice shall be filed with the Clerk before application is made to the Court. For good cause shown, and upon proof of adequate insurance coverage to indemnify for any liability, the Court may direct the Marshal to allow the conduct of cargo handling, repairs, movement of the vessel or other operations on a vessel under arrest or attachment. Neither the United States nor the Marshal shall be liable for the consequence of the undertaking or continuation of any such activities during the arrest or attachment.

(c) Motion for Change in Arrangements. After a vessel, cargo or other property has been taken into custody by the Marshal, any party then appearing may move the Court to dispense with keepers or to remove or place the vessel, cargo or other property at a specified facility, to designate a substitute custodian, or for similar relief. The applicant for such an order shall obtain a hearing date from the courtroom deputy clerk for the assigned Judge or Magistrate Judge and thereupon give written notice of the motion to the Marshal and to all parties who have appeared. The moving papers shall establish the suitability of the substitute custodian and the existence of adequate insurance. At the hearing of the motion, the Court will determine whether such a facility or substitute custodian is capable of and will safely keep the vessel, cargo or other property. No hearing date need be obtained for an order to be made concurrently with the order authorizing the Marshal to take the vessel, cargo or other property into custody if the moving papers for that authority and for the substitute custodian are filed concurrently, satisfy the requirements stated herein and expressly declare in the caption that no hearing is requested.

(d) Insurance. The Marshal may order insurance to protect the Marshal, his deputies, keepers and substitute custodians from liability assumed in arresting and holding the vessel, cargo or other property and performing whatever services are undertaken to protect the vessel, cargo or other property and maintain the Court's custody. The party applying for arrest of the vessel, cargo or other property shall

reimburse the Marshal for premiums paid for the insurance and shall be an additional insured on the policy. The party applying for removal of the vessel, cargo or other property to another location, for designation of a substitute custodian or for other relief that will require an additional premium shall reimburse the Marshal therefor. The premiums charged for the liability insurance are taxable as administrative costs while the vessel, cargo or other property is in the custody of the Court.

(e) Claims by Suppliers for Payment of Charges. A person who furnishes services or supplies to a vessel, cargo or other property in custody who has not been paid and claims the right to payment as an expense of administration shall submit an invoice to the Court for approval in the form of a verified claim at any time before the vessel, cargo or other property is released or sold. See L.R. 43-140. The supplier must serve copies of the claim on the Marshal, substitute custodian if one has been appointed, and all parties appearing in the action. The Court may consider the claims individually or schedule a single hearing for all claims against the property.

RULE A-560

APPRAISAL

(a) Order for Appraisal. An order for appraisal of property so that security may be given or altered will be entered by the Clerk at the written request of any interested party. If the parties do not agree in writing on the selection of the appraiser, the Court will appoint the appraiser.

(b) Appraiser's Oath. The appraiser shall be sworn to the faithful and impartial discharge of duties before any federal or state officer authorized by law to administer oaths, and a copy of the oath shall be filed with the Clerk.

(c) Appraisal. The appraiser shall give two (2) court days personal notice or one (1) day mailed notice plus the three (3) days for mailing of the time and place of making the appraisal to the parties who have appeared in the action. The appraiser shall file the appraisal in writing with the Clerk as soon as it is completed and shall serve it on all parties.

(d) Cost of Appraisal. Absent stipulation of the parties or order of the Court to the contrary, the appraiser shall be paid by the party requesting the appraisal. Appraiser's fees shall thereafter be taxed as the Court orders.

RULE A-570

SALE OF PROPERTY

(a) Notice. Unless otherwise ordered upon a showing of urgency, impracticality or other good cause, or as provided by law, notice of the sale of property in an action in rem shall be published daily in accordance with L.R. 83-171 for a period of four (4) calendar days prior to the date of sale. See L.R. A-580.

(b) Payment of Bid. The person whose bid is accepted shall immediately pay the Marshal for deposit into the Court's registry either the full purchase price if the bid is no more than $1000 or a deposit of $1000 or 10 percent of the bid, whichever is greater, if the bid exceeds $1000. The bidder shall pay the balance of the purchase price within three (3) court days following the sale. If an objection to the sale is filed within that time, the bidder is excused from paying the balance of the purchase price until three (3) court days after the sale is confirmed. Payments to the Marshal shall be in cash, certified check or cashier's check. The Court may specify different terms in any order of sale.

(c) Penalty for Late Payment of Balance. A successful bidder who fails to pay the balance of the bid within the time allowed under these Rules or a different time specified by the Court shall also pay the Marshal the costs of keeping the property from the date payment of the balance was due to the date the bidder pays the balance and takes delivery of the property. Unless otherwise ordered by the Court, the Marshal shall refuse to release the property until this additional charge is paid.

(d) Penalty for Default in Payment of Balance. A successful bidder who fails to pay the balance of the bid within the time allowed is in default, and the Court may at any time thereafter order a sale to the second highest bidder or order a new sale as appropriate. Any sum deposited by the bidder in default shall be forfeited and applied to pay any additional costs incurred by the Marshal by reason of the forfeiture and default, including costs incident to resale. The balance of the deposit, if any, shall be retained in the registry subject to further order of the Court, and the Court shall be given written notice of its existence whenever the registry deposits are reviewed.

(e) Report of Sale by the Marshal. At the conclusion of the sale and no later than one (1) court day before payment of the balance is due, the Marshal shall forthwith file a written report with the Court of the fact of sale, the date thereof, the price obtained, the name and address of the successful bidder, and any other pertinent information.

(f) Time and Procedure for Objection to Sale. An interested person may object to the sale by filing a written objection with the Clerk within three (3) days following the sale, serving the objection on all parties, the successful bidder and the Marshal, and depositing a sum with the Marshal that is sufficient to pay the expense of keeping the property for at least six (6) court days. Service shall be in person or by an appropriate

overnight delivery method calculated to ensure delivery to the recipient within thirty (30) hours of transmittal. Payment of the required deposit to the Marshal shall be in cash, certified check, or cashier's check. The written objection must be endorsed by the Marshal with an acknowledgment of receipt prior to filing with the Clerk.

(g) Confirmation of Sale Without Motion. A sale shall stand confirmed as of course without any affirmative action by the Court unless (1) written objection is filed with the Clerk within the time allowed under these Rules, or (2) the purchaser is in default for failure to pay the balance due the Marshal. The purchaser in a sale so confirmed as of course shall present a form of order reflecting the confirmation of the sale for entry by the Clerk on or after the fifth day following the sale. The Marshal shall transfer title to the purchaser upon presentation of such order signed by the Clerk.

(h) Confirmation of Sale on Motion. If an objection has been filed or if the successful bidder is in default, the Marshal, the objector, the successful bidder, or a party may move the Court for relief. The motion will be heard summarily by the Court. The person seeking a hearing on such motion shall apply to the Court for an order fixing the date and time of the hearing and directing the manner of giving notice and shall give written notice of the motion to the Marshal, all parties, the successful bidder and the objector. The Court may confirm the sale, order a new sale, or grant such other relief as justice requires.

(i) Disposition of Deposits.

(1) Objection Sustained. If an objection is sustained, sums deposited by the successful bidder will be returned to the bidder forthwith. The sum deposited by the objector will be applied to pay the fees and expenses incurred by the Marshal in keeping the property until it is resold, and any balance remaining shall be returned to the objector. The objector will be reimbursed for the expense of keeping the property from the proceeds of a subsequent sale.

(2) Objection Overruled. If the objection is overruled, the sum deposited by the objector will be applied to pay the expense of keeping the property from the day the objection was filed until the day the sale is confirmed, and any balance remaining will be returned to the objector forthwith.

(j) Title to Property Sold. Failure of a party to give the required notice of the action and arrest of the vessel, cargo or other property or required notice of the sale may afford grounds for objecting to the sale but does not affect the title of a bona fide purchaser of the property without notice of the failure.

RULE A-580

PUBLICATION OF NOTICES

Every notice required to be published in a newspaper by any statute of the United States or any rule applying to admiralty and maritime proceedings, including the Supplemental Rules for Certain Admiralty and Maritime Claims and these Local Rules, shall be published in accordance with L.R. 83-171.

RULE A-590

RATE OF PREJUDGMENT INTEREST ALLOWED

Unless the Court directs otherwise, an award of prejudgment interest shall be computed at the rate authorized in 28 U.S.C. § 1961, providing for interest on judgments.

APPENDIX A

AUTOMATED CASE ASSIGNMENT PLAN

(a) Purpose. This Assignment Plan is adopted to set forth a method whereby actions are assigned in this District, in accordance with the provisions of 28 U.S.C. § 137. Civil and criminal cases shall be assigned at random by means of an Automated Case Assignment System. All proceedings hereunder shall be under the supervision of the Clerk.

(b) Assignment of Civil Actions. Upon the filing of the initial complaint or other document first filed in a civil action, the Clerk shall

(1) Mark the document "CIV;"

(2) Place on the document, following "CIV", a case number which shall be consecutive and prefixed by the letter "S" or "F" denoting whether the action is brought in Sacramento or Fresno, and a filing year number, i.e., the last two digits of the year in which the action is filed.

(c) Assignment of Criminal Actions. Upon the filing of the indictment, information, or other first document in a criminal action, the Clerk shall mark it as provided in paragraphs (b)(1) and (2), except that "CR" will be used instead of "CIV."

(d) Assignment of Miscellaneous Actions. Upon the filing of the first document in any action other than a civil action or a criminal action, the Clerk shall mark it as provided in paragraphs (b)(1) and (2), except that "Misc" will be used instead of "CIV."

(e) Assignment Procedure. The Clerk shall assign actions to a Judge sitting in Sacramento or Fresno, where the action is filed, in the following manner:

(1) There shall be a separate category for each of the following types of cases:

A. Sacramento:

1. Appeals (Magistrate Decision)
2. Bankruptcy
3. Civil Rights
4. Contract
5. Criminal 01 - 05 Defendants
6. Criminal 06 - 10 Defendants
7. Criminal 11 + Defendants
8. Criminal/Misdemeanor
9. Criminal/Petty Offense

10. Death Penalty/Capital Cases
11. Emergency/TRO
12. Federal Tax Suits
13. Forfeiture/Penalty
14. Labor
15. Magistrate Civil
16. Magistrate Death Penalty
17. Magistrate HHS
18. Magistrate Miscellaneous
19. Magistrate Prisoner
20. Miscellaneous
21. Other Statutes
22. Personal Injury
23. Personal Property
24. Prisoner Petitions
25. Property Rights
26. Real Property
27. Settlement Conferences
28. Settlement Conferences (MAG)
29. Social Security
30. XXFresno Pris Mag Assign

B. Fresno:

1. Death Penalty
2. Eight or More Defendants
3. Five - Seven Defendants
4. Fresno Criminal Misdemeanors
5. Fresno Judge Assignment - Civil
6. Fresno Mgst Assignment - Civil
7. Magistrate Prisoner
8. Miscellaneous Civil
9. One Defendant Only
10. Two - Four Defendants

(2) Each category or "deck" shall contain a number of "cards" signifying the name of each active Judge. The number of cards for each Judge shall be equal, except as may from time to time be determined by the Court.

(3) The "deck of cards" shall be automatically shuffled by the computer at the time the categories are filled and each time an assignment is made, so that the sequence of the Judge's names shall be random and secret.

(4) When the initial document is presented for filing and has been marked pursuant to paragraph (b), (c) or (d), the Clerk shall draw a Judge from the applicable category in the Automated Case Assignment System on the computer.

(5) Thereafter the Clerk shall proceed by stamping on the paper presented for filing the initials of the assigned Judge and Magistrate Judge, immediately after the case number placed on the document pursuant to paragraph (b), (c), and (d). The Clerk shall also stamp on the document the date of assignment and print the initials of the assigning Clerk. All subsequent papers filed in the action shall bear the designation "CIV," "CR," or "Misc" followed by initial letter "S" or "F," and the case number, followed by the initials of the assigned Judge, e.g., **"CIV. S-94-100-ABC" or "CIV. F-94-5001-ABC."**

(6) The assignment of each action shall be completed as each initial document is presented for filing and before the processing of the next action is begun.

(7) In emergency situations (in Sacramento) when counsel deems prompt action necessary and if the assigned Judge is absent or otherwise unable to hear the matter in time, the Clerk shall draw the name of another Judge in the manner hereinabove described from the category "Emergency Applications." The matter shall be returned to the calendar of the unavailable assigned Judge upon completion of the hearing on the emergency application.

(f) Reassignments.

No action, once assigned, shall be reassigned to any other Judge except as hereinafter provided:

(1) Actions may be reassigned between Judges on written order signed by the transferring and accepting Judges as approved by the Court.

(2) Actions may be assigned and reassigned by order of the Court to effectuate the related case rule. See L.R. 83-123.

(3) In the event the Judge to whom an action has been assigned files therein a statement of disqualification or is disqualified, the Court may make an order directing the Clerk to draw again for reassignment of the action to another Judge and to replace the name of the disqualified Judge in the Automated Case Assignment System.

(4) With the approval of the Court en banc, the Chief Judge may make such other assignments, reassignments or related orders as are conducive to the equitable division and just, efficient and economical determination of the business of the Court.

(5) At the time of each reassignment the Clerk shall make such appropriate adjustment in the Automated Case Assignment System as is necessary to balance the equal number of "cards" in each assignment category.

(g) Visiting Judges. Whenever a Judge has been assigned to serve as a visiting Judge in this Court, the Chief Judge shall, prior to the arrival of such Judge, make an order transferring to the visiting Judge from the other Judges those actions designated by them as available for transfer. Selection of actions for this purpose shall be made upon a basis equitable among all the Judges and after consultation with them.

(h) Review of Assignments. A Judge may request the Chief Judge to review an assignment or reassignment. If the Chief Judge requests such review, the Chief Judge shall designate another Judge to serve on the hearing of such request. A Judge affected by a ruling may have the ruling reviewed by the Court en banc.

(i) Assignment Reports.

(1) The Clerk shall maintain assignments in the Automated Case Assignment System which shall contain an account of all actions assigned to each of the Judges or to any visiting Judge and all reassignments among Judges.

(2) At the end of each month, the Clerk will prepare from the foregoing records for the Chief Judge (copy to each Judge) a report showing the number of actions assigned to and pending before each Judge and such other information as the Chief Judge may direct.

INDEX

FEDERAL RULES OF CRIMINAL PROCEDURE

FEDERAL RULES OF EVIDENCE

FEES

FILE