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CLERK, U. S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

IN RE:)
)
ADOPTION OF AMENDMENTS TO) **GENERAL ORDER NO. 385**
LOCAL RULES 16-240, 26-252, 30-250,)
33-250, 34-250, 36-250, and 37-251)
_____)

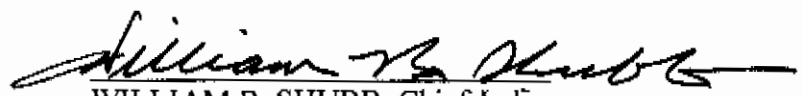
The Judges of the Eastern District of California hereby adopt the proposed changes to the attached rules: Rule 16-240, "Status Conference", Rule 26-252 "Discovery Limitations", Rule 30-250, "Depositions", Rule 33-250, "Interrogatories", Rule 34-250, "Production of Documents", Rule 36-250, "Requests for Admission", and Rule 37-251 "Motions Dealing with Discovery Matters".

IT IS HEREBY ORDERED that the attached changes are **effective December 18, 2000.**

IT IS SO ORDERED.

DATED: December 18, 2000.

FOR THE COURT:


WILLIAM B. SHUBB, Chief Judge
Eastern District of California

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) ***propriety of initial disclosures as contemplated by Fed. R. Civ. P. 26(a)(1), results of the initial discovery conference; anticipated or outstanding discovery, including the necessity for relief from discovery limits, and the control and scheduling of discovery, including deferral of discovery under Fed. R. Civ. P. 26(d), whether to hold further discovery conferences, 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 this District's Voluntary Dispute Resolution Program (VDRP), 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. *Except in those types of cases specifically exempted from initial disclosure by Fed. R. Civ. P. 26(a)(1)(E), the parties must submit reports to the court concerning their proposed discovery plan within 14 days after their discovery conference.* The Court may require the submission of preconference reports on some or all of the foregoing subjects. *See also* L. R. 16-271(d)(2).

(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.

(9) ***petitions for writs of habeas corpus by incarcerated persons.***

THIS LOCAL RULE WILL BE STRUCK IN ITS ENTIRETY.

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(e).~~

~~(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.~~

Subsection (c) will be deleted as the referenced rule will have been stricken.

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.~~

Subsection (d) will be deleted as the referenced rule will have been stricken.

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.~~

Subsection (d) will be deleted as the referenced rule will have been stricken.

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) **Gross-Reference.** On the number of requests for production of documents permitted, see L.R. 26-252.~~

Subsection (c) will be deleted as the referenced rule will have been stricken.

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, **including any motion to exceed discovery limitations or motion for protective order**, 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 **may** be dropped from the calendar without prejudice if the ~~stipulation~~ **joint statement** 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~~ **joint statement**, 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 Confering.** Except as hereinafter set forth, a motion made pursuant to Fed. R. Civ. P. 26 through 37, **including any motion to exceed discovery limitations or motion for protective order**, 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~~ **joint statement** 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) **Joint Statement ~~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~~ **Joint Statement** re Discovery Disagreements." All parties who are concerned with the discovery motion shall assist in the preparation of, and shall sign the ~~stipulation~~ **joint statement**, 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~~ **joint statement**, and no separate briefing shall be filed.

(d) **Failure to Meet or Obtain ~~Stipulation~~ Joint Statement.** 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~~ **joint statement**, 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~~ **joint statement**, 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-~~ **Joint statement**, 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~~ Joint Statement re Discovery Disagreement.** The foregoing requirement for a ~~Stipulation-~~ **Joint Statement 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.