

**FILED**

MAY 08 2002

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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

IN RE: )

ADOPTION OF AMENDMENTS )  
TO LOCAL RULES OF COURT )  
\_\_\_\_\_ )

GENERAL ORDER NO. 405

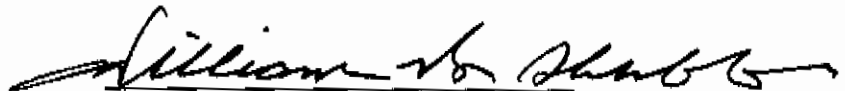
Good cause appearing.

In accordance with the provisions of General Order No. 191 (Guidelines for Implementing Amendments to the Local Rules of Court), the Judges of the Eastern District of California hereby adopt the attached amendments to Local Rules 5-134(a), 6-136(a), 67-150(b), 83-180(b)(4)(A)(ii), 83-181(h), 83-184(b), 78 230(b), (c), (k) and (m), 37-251(e), 16-270(b) and (d), 16-281(a)(1) and (b)(5), 73-305(a), Crim 12-430(d), (e) and (h), 32-460(f), A-560, and add Local Rule Crim 5-403, effective May 13, 2002.

IT IS SO ORDERED.

DATED: 5/8/2002

FOR THE COURT:



WILLIAM B. SHUBB, Chief Judge  
Eastern District of California

## LOCAL 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 transmitted 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 6-136**

### **CALCULATION OF TIME PERIODS**

(a) **Additional Time After Service.** 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 or by electronic means if permitted in accordance with Fed. R. Civ. P. 5(b) or Fed. R. Crim. P. 49. Whenever in these Local Rules a different time period is prescribed for an act depending on whether service is in person or by mail or electronic means, 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 or electronic means.

(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.

(d) **Computation of Time in Court Orders.** When a court order omits to specify whether the days prescribed or allowed are court or calendar days, then the provisions of Fed. R. Civ. P. 6(a) or Fed. R. Crim. P. 45(a) shall control to determine the calculation of the days prescribed or allowed.

## 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 or electronic service thereof. No additional time for service by mail or electronic means 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.

## **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 twenty-four 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 transmits 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 transmission 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 83-184

### 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 transmitted 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.



## 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 or electronic 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 or electronic 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,
- (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, and
- (4) why the facts or circumstances were not shown at the time of the prior motion.

**(l) Motions Before a Magistrate Judge.** Only those motions in matters specified in L.R. 72-303 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. 73-303 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 or electronic service, 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 or electronic service, 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 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 may be dropped from the calendar without prejudice if the 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 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 Conferring.** 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 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.

**(c) Joint Statement 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 "Joint Statement re Discovery Disagreements." All parties who are concerned with the discovery motion shall assist in the preparation of, and shall sign the 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 joint statement, and no separate briefing shall be filed.

**(d) Failure to Meet or Obtain 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 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 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 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 Joint Statement re Discovery Disagreement.** The foregoing requirement for a 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 or electronic means. 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 or electronic 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 hearing dealing with discovery matters.

## 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.**

**(1) Conferences Before Discovery Cutoff.** 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 act as Judge or Magistrate Judge in the action thereafter, the assigned Judge or Magistrate Judge shall not conduct the settlement conference.

**(2) Conferences After Discovery Cutoff.** Unless all the parties affirmatively request that the Judge or Magistrate Judge assigned to try the action participate in the conference and waive in writing any claim of disqualification on that basis to try the case thereafter, the Judge or Magistrate Judge assigned to try the action 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 Judge or Magistrate Judge assigned to try the action. 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 16-281**

### **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 or electronic means 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, and a



statement whether each such dispute should be resolved by motion in limine, briefed in the trial brief, or addressed in some other manner.

**(6) Special Factual Information in Certain Actions.** In addition to the facts and issues described in (3) through (5) 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 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 transmitted 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 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 or electronic 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 or electronic 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. *Counsel shall comply with L.R. 5-403 as to witnesses or parties requiring interpreter services.*

**(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(i).

## **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 or by electronic means 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 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 or electronic notice plus the three (3) days for service of notice 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.