

FILED
September 12, 2006
CLERK, US DISTRICT COURT
EASTERN DISTRICT OF
CALIFORNIA
D. Waggoner
DEPUTY CLERK

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

IN RE:)
)
IMMEDIATE ADOPTION OF LOCAL RULE)
CRIM 43-401 SHACKLING OF PRISONERS)
DURING COURT PROCEEDINGS; NOTICE)
AND REQUEST FOR COMMENT)
)
)
_____)

GENERAL ORDER NO. 449

Good cause appearing.

IT IS HEREBY ORDERED that the judges of the Eastern District find that there is an immediate need to adopt a Local Rule regarding shackling procedures for courts convened in the Sacramento and Fresno Courthouses. Pursuant to 28 U.S.C. §2071(e), this court adopts Local Rule CRIM 43-401, to be effective immediately (L.R. CRIM 43-401 and Findings Attached).

IT IS FURTHER ORDERED, pursuant to 28 U.S.C. §2071(e) and Federal Rule of Criminal Procedure 57, the Clerk of the Court is directed to provide public notice and the opportunity to comment on Local Rule CRIM 43-401 to the bar and public of the Eastern District. Thereafter, the bar and public will have forty-five (45) days to provide comment.

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Comments regarding Local Rule CRIM 43-401 shall be sent to:

United States District Court
Eastern District of California
Office of the Clerk
Attention: Local Rule Comments
501 I Street
Room 4-200
Sacramento, CA 95184

or, e-mailed to lrcomments@caed.uscourts.gov.

DATED: September 11, 2006.

FOR THE COURT:



DAVID F. LEVI
Chief United States District Judge

Attachments

RULE CRIM 43-401

SHACKLING OF PRISONERS DURING COURT PROCEEDINGS

(a) **Applicability.** This rule is applicable to the shackling of prisoners during court proceedings convened in the Sacramento and Fresno Courthouses.

(b) **Definition.** The term “**fully shackled**” means leg shackles, waist chains, and handcuffs.

The term “**long cause proceeding**” means a proceeding that is expected to last at least 30 minutes, such as an evidentiary hearing, and where the defendant will be seated at the defense table except when testifying.

(c) **Shackling.** Unless the judge presiding at the proceeding determines otherwise;

(1) At initial appearances, all defendants will be fully shackled.

(2) At all subsequent hearings, with the exception of a Rule 11 guilty plea or a long cause proceeding, detained defendants will be fully shackled.

(3) At Rule 11 proceedings, in which only a single defendant is appearing, a detained defendant shall be fully shackled except that the defendant shall be permitted the unshackled use of one hand, unless the Marshal recommends full shackling for particularized reasons, and the presiding judge agrees.

(4) In long cause proceedings, in which only a single defendant is appearing, a detained defendant shall be fully shackled except that the defendant shall be permitted the unshackled use of the defendant’s writing hand – unless the Marshal recommends full shackling for particularized reasons, and the presiding judge agrees – and shall remain seated at the defense table except when giving testimony.

(d) **Jury Proceedings.** This rule does not apply to trial proceedings at which a jury is being chosen or has been impaneled.

FINDINGS ¹

1. The United States Marshal for the Eastern District of California, who is responsible for the security of the courtroom, recommends full shackling of all detained defendants at all proceedings in order to assure the safety of all persons in the courtroom, including the judge, lawyers, interpreters, court personnel, defendants, and the public. The Marshal's reasons are provided in the attached memorandum. The court has considered the factual recitations of the U.S. Marshal and accepts the recommendation with the exception of Rule 11 proceedings and long cause proceedings. At Rule 11 proceedings, with a single defendant, the court considers that the safety considerations are outweighed by the need of defendant to examine the plea agreement, communicate with counsel by pointing to sections of a plea agreement, sign documents, and take an oath. At long cause proceedings, with a single defendant who is seated, the court considers that the safety considerations are outweighed by the defendant's need to take notes, examine exhibits, and communicate with counsel. In addition, a seated defendant presents less of a security threat. In Rule 11 and long cause matters the court will permit a single detained defendant to have one hand and arm unshackled. This permits considerable freedom of movement.
As to sentencings, the court accepts the recommendation of the Marshal that defendants be fully shackled. At this stage of the proceedings, the defendant stands convicted. There is also the risk of outbursts by defendants or family members during sentencings.
2. The Eastern District of California has a heavy criminal caseload. Criminal calendars frequently are lengthy and require the movement of many detained prisoners in and out of the courtroom.
3. Most criminal proceedings are brief such that the time in which a defendant is before the court fully shackled is minimal.

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¹ These findings are provided only as support for the court's adoption of Local Rule CRIM 43-401. These findings are not to be included in the Local Rules.

4. The alternatives to full shackling are not practical or would merely substitute the presence of much greater numbers of deputy marshals for physical restraints, with no significant increase in decorum or dignity for the defendant. The resources of the Marshal service in this district are finite. Unshackling all defendants for all proceedings would cause very considerable delays and would disrupt the operation not just of the calendar court but potentially of all other courtrooms due to the necessity to draw deputy marshal's from other courtrooms to provide the additional deputies necessary to assure security when defendants are unshackled.