

FILED

MAY 11 1978

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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

RE:)	
)	
DUTIES OF UNITED STATES)	
MAGISTRATES)	GENERAL ORDER NO. 76
)	
)	
)	
)	

General Order No. 34, adopted by this Court on April 30, 1971, and General Order No. 61 adopted by this Court on April 14, 1975 amending General Order No. 34, are hereby vacated. Local Rule 113 is hereby modified as set forth below. Local Rule 119(b) of this Court is hereby vacated. References to the Magistrate in Local Rule 119(c) - (e) are hereby deleted. Subdivisions (c), (d), and (e) are hereby redesignated (b), (c), and (d), respectively. Furthermore, Local Rule 125 as set forth below, pertaining to status conferences, is hereby adopted. Local Rules 300 ^{infra} through 306/pertaining to the duties of United States Magistrates in the Eastern District of California are hereby adopted:

RULE 300

MAGISTRATE'S AUTHORITY

Each Magistrate appointed by the Court shall exercise all powers and perform all duties conferred upon Magistrates by 28 U.S.C. §636(a) and issue warrants of removal pursuant to Federal Rules of Criminal Procedure, Rule 40. The powers and duties of the part-time Magistrates and the full-time Magistrate in Yosemite shall be limited to the

foregoing powers and any additional powers specifically designated to a particular Magistrate by a United States District Court Judge pursuant to Local Rule 304.

RULE 301

MAGISTRATE'S AUTHORITY IN NONDISPOSITIVE PRETRIAL MATTERS

In accordance with 28 U.S.C. §636(b)(1)(A), the Magistrates shall hear and determine all pretrial motions and other pretrial matters (other than those motions specified in Local Rule 302 infra) which are set out in Local Rule 305 or are specially designated by the District Court Judge. Rulings of the Magistrates shall be written, with copies served on all parties and the District Court. Rulings by the Magistrates shall be final if no appeal is taken to the District Court within five (5) days from the date of service of the ruling on the parties unless a different time is prescribed by the Magistrate or a Judge. A party wishing to appeal the Magistrate's ruling shall file with the Clerk of the Court and serve on all parties a written notice of appeal which shall specifically designate the order, or part thereof, appealed from and the basis for objection thereto. This notice shall be captioned "Appeal from Magistrate's Ruling." Opposition to the appeal shall be served and filed in the District Court within five (5) days after service of the notice of the appeal. The Judge of the District Court may also reconsider any matter sua sponte. The standard which the District Court shall use

on all such appeals is the "clearly erroneous or contrary to law" standard which is set out in 28 U.S.C. §636.

RULE 302

MAGISTRATE'S AUTHORITY IN DISPOSITIVE PRETRIAL MOTIONS
AND PRISONER CASES

In accordance with 28 U.S.C. §636(b)(1)(B) and (C), the Magistrates shall hear, conduct such evidentiary hearings as are necessary or appropriate, and submit to a Judge proposed findings of fact and recommendations for the disposition of the dispositive matters which are set out in Local Rule 305 or which are specifically designated by a District Court Judge.

The Magistrates shall file proposed findings and recommendations with the District Court, and copies shall forthwith be mailed to all parties. Within ten (10) days after being served with a copy, unless a different time is prescribed by the Magistrate or Judge, any party may serve and file written objections to such proposed findings and recommendations. Such a document shall be captioned "Objections to Magistrate's Proposed Findings and Recommendations." All such written objections shall specifically identify the portions of the proposed findings and/or recommendations to which objection is made and the basis for the objection. If objection is made to specific portions of any evidentiary proceeding, the party making such objection shall so indicate at the time of filing his objections and

shall forthwith cause a transcript of that portion of the record to be prepared and filed.

Replies to the objections shall be served and filed in the District Court within ten (10) days after service of the objections. The District Court Judge shall make a de novo determination of those specific portions to which objection is made and may accept, reject, or modify in whole or in part, the findings and/or recommendations made by the Magistrate in conformity with 28 U.S.C. §636(b) (1)(C). The District Court Judge, sua sponte, may also order further briefing, request further evidence, recall witnesses or recommit the matter to the Magistrate with instructions.

RULE 303

SPECIAL MASTER REFERENCES AND TRIALS BY CONSENT

(a) A Magistrate may serve as a special master subject to the procedures and limitations of 28 U.S.C. §636(b) (2), Rule 53 of the Federal Rules of Civil Procedure, and the provisions of Local Rule 119.

(b) Where the parties consent, and upon written order of the District Court Judge, the full-time Magistrates in Sacramento and Fresno may serve as special masters in any civil case without regard to the provisions of Rule 53(b) of the Federal Rules of Civil Procedure and try the issues of any civil case. The entry of final judgment in any civil

case, however, shall be made by a Judge of the Court, or at the direction of a Judge.

RULE 304

ASSIGNMENTS OF DUTIES TO MAGISTRATES

A Magistrate shall perform the duties authorized by 28 U.S.C. §636(b) upon specific designation by a Judge of the District Court or pursuant to a general order, or Local Rule 305. In performing such duties the Magistrate shall conform to the general procedural rules of this Court and the instructions of the Judge to whom the case is assigned.

RULE 305

MATTERS TO BE HEARD BY THE MAGISTRATE

(a) Pursuant to Local Rule 304, the following matters shall be heard by the full-time Magistrates in Fresno and Sacramento:

- (1) All discovery motions in civil cases;
- (2) All motions made in cases brought under the Social Security Act to review a final decision of the Secretary of Health, Education and Welfare;
- (3) All pretrial motions and other pretrial matters in criminal cases except motions to suppress, motions to discover the identity of an informant, and entry of pleas of guilty.

- (4) The dismissal calendar pursuant to Local Rule 117(a) and (b);
- (5) Pre-revocation hearings for defendants charged in districts other than the Eastern District of California with probation violations;
- (6) Applications for writs of entry in connection with the enforcement of Internal Revenue Service tax liens;
- (7) Motions for entry of default judgment under Federal Rule of Civil Procedure 55(b) (2);
- (8) Trials of persons accused of minor offenses committed within this district in accordance with 18 U.S.C. §3401, including the ordering of a presentence investigation report on any such person who is convicted or pleads guilty or nolo contendere, and the sentencing of such persons;
- (9) Removal proceedings and issuance of warrants of removal in accordance with Rule 40 of the Federal Rules of Criminal Procedure;
- (10) Extradition proceedings, in accordance with 18 U.S.C. §3184;
- (11) Supervision of proceedings conducted pursuant to letters rogatory, in accordance with 28 U.S.C. §1782;
- (12) Proceedings for the collection of civil

penalties of not more than \$200 assessed under the Federal Boat Safety Act of 1971, in accordance with 46 U.S.C. §1484(d);

(13) Examinations of judgment debtors, in accordance with Rule 69 of the Federal Rules of Civil Procedure;

(14) Review of petitions in civil commitment proceedings under Title III of the Narcotic Addict Rehabilitation Act.

(b) In addition to the foregoing the following matters shall be heard by the full-time Magistrate in Fresno:

(1) All pre-trial conferences, status conferences, and settlement conferences in civil cases;

(2) Pre-revocation hearings, within the Fresno division of the Eastern District, for defendants charged with probation violations;

(3) All of the following civil motions:

(A) motions to dismiss

(B) motions for judgment on the pleadings

(C) motions for summary judgment.

(c) All civil matters designated to be heard by a Magistrate pursuant to this Rule shall be noticed, briefed and argued before the Magistrate, in strict conformity to Local Rule 113.

(d) Except as otherwise provided by the Local Rules or any Order, all pretrial motions in Criminal cases shall be noticed, briefed and argued before the assigned Magistrate, at such times as the Magistrate may prescribe. All documents pertaining to such motions shall be filed with the Clerk of the District Court, with copies served on opposing parties and the assigned Magistrate.

(e) Notwithstanding any other provisions of this Rule, a District Court Judge, sua sponte only, may retain any matter otherwise routinely referred to the Magistrate.

RULE 306

ADDITIONAL PERMISSIBLE DUTIES

In addition to the foregoing a Magistrate may hear the matters listed in this Rule only upon specific designation of a District Court Judge. No party shall move the Court to have any of these additional matters assigned to the Magistrate. These matters shall only be assigned to the Magistrate by the District Court Judge, sua sponte.

(1) Receipt of Grand Jury returns, in accordance with Rule 6(f) Federal Rules of Criminal Procedure.

(2) Conduct of voir dire and selection of juries for District Court Judges.

(3) Acceptance of petit jury verdicts in civil cases in the absence or unavailability of the trial judge.

(4) Performance of any additional duty that is not inconsistent with the Constitution and laws of the United States.

RULE 113

CIVIL MOTION CALENDAR AND PROCEDURE

(a) Motion Calendar. Each Judge and Magistrate of the Court will maintain his or her individual Motion Calendar. Information as to the times and dates for calling each Motion Calendar may be obtained from the Clerk of the Court.

(b) Notice. Except as otherwise ordered or allowed by the Court or Magistrate, all motions (except those made in the course of a hearing or trial) shall be noticed on the Motion Calendar of the assigned Judge or Magistrate. Notice of Motion and accompanying points and authorities, together with proof of service thereof, shall be filed with the Clerk of the Court by the moving party and set for hearing not less than 28 days after service of notice. Motions defectively noticed shall be filed but not set for hearing, and in such event the Clerk shall immediately notify the moving party and all parties on whom the motion has been served that the motion has not been set for hearing.

(c) Opposition. Opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Clerk of the Court by the responding party not less than 14 days preceding the noticed (or continued) date of hearing. 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 heard in opposition

to a motion at oral arguments if written opposition to the motion has not been timely filed. Failure of the responding party to file written opposition with supporting brief or to file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of fines or other sanctions.

(d) Reply. The moving party may, not later than 7 days preceding the date of hearing, serve and file with the District Court a reply to any written opposition filed by the responding party.

(e) Form and Content. All motions, oppositions, and replies shall be in writing and shall:

(1) Comply with the provisions of Rule 7 of the Federal Rules of Civil Procedure;

(2) Contain the name of the party or parties on whose behalf presented, and the name, address, and telephone number of counsel for such party;

(3) Contain specific reference to each statute, administrative regulation, decision, court rule or other authority, and to each affidavit or counter-affidavit or portion of the record upon which the motion or opposition is based in whole or in part;

(f) Use of Affidavits. Factual contentions involved in pre-trial or post-trial motions shall be initially presented and heard upon affidavits, except that the Judge or Magistrate may in his or her discretion require or allow

oral examination of witnesses. Each affidavit shall:

- (1) Identify the affiant, the party or parties on whose behalf it is submitted, and the motion or application to which it pertains;
- (2) Be served and filed with the motion, opposition or reply to which it relates;
- (3) Contain only factual evidentiary matter, conform as far as possible with the requirements of Rule 56(e) of the Federal Rules of Civil Procedure, and avoid mere general conclusions or argument;
- (4) Specify the source and basis of any statement made upon information and belief and the reasons why it cannot be made upon personal knowledge;
- (5) Identify and authenticate documents and exhibits offered in support of the motion or opposition unless such documents and exhibits are already in the record and specifically referred to in the motion or opposition.

Affidavits failing to comply substantially with all of the foregoing requirements may be stricken in whole or in part by the Judge or Magistrate.

(g) Hearing and Oral Argument. Upon the call of the motion, the Judge or Magistrate 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 the Judge or Magistrate so orders, subject to the power of the Judge or Magistrate to reopen the matter for further briefs or oral argument or both.

Whenever any of the parties believes that extended oral argument (more than 20 minutes in the aggregate) will be required for both sides, that party shall notify the Clerk of the Court so that the hearing may be specially scheduled if deemed appropriate by the Judge or Magistrate.

(h) Related and Counter-Motions. Any counter-motion or other motion related to the general subject matter of the original motion which the responding party may desire to make shall be served and filed by him with the Clerk of the Court with his opposition (or at the time he would otherwise be required to file his opposition) to the original motion so that all related motions in the case can be heard and decided at the same time. In the event such counter-motion or other related motion is filed by the responding party, the Judge or Magistrate 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.

(i) Continuances. Requests for continuances of hearings on the Motion Calendar, upon stipulation or otherwise, shall be made to the District Court or Magistrate at least 5 court days prior to the scheduled hearing date. All stipulations for continuances shall be in writing and shall be submitted for approval to the Judge or Magistrate.

(j) Motions Before the Magistrate. Only those motions in matters specified in Local Rule 305(a) and (b) shall be noticed, briefed and argued before the Magistrate. All other motions shall be noticed, briefed and argued

before the District Court unless the matter is specially referred to the Magistrate pursuant to Local Rule 304.

(k) Sanctions. Failure of a party to conform substantially to the foregoing prescribed motion procedure may be deemed grounds for an order denying the privilege of oral argument to the defaulting party, or for an order denying or granting the motion, or for the imposition of any other sanctions the Judge or Magistrate deems appropriate, including the assessment of a fine.

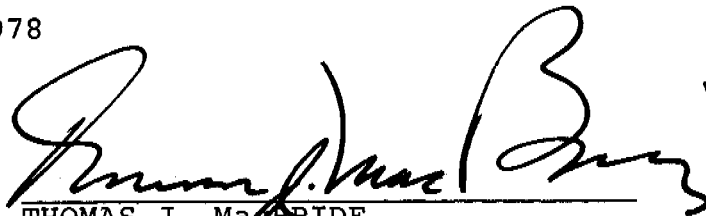
RULE 125

STATUS CONFERENCES

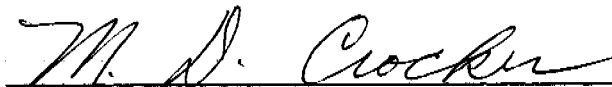
At any time after an action or proceeding has been filed, the assigned Judge or Magistrate may, with or without the written request of any party, order the holding of one or more status conferences. All parties receiving notice of the status conference shall attend in person or by counsel and shall be prepared to discuss such subjects as may be specified in the order noticing the status conference. Such subjects may include:

- (a) Service of process on parties not yet served;
- (b) Jurisdiction and venue;
- (c) Anticipated motions;
- (d) Anticipated or outstanding discovery;
- (e) Further proceedings, including setting dates for discovery cutoff, pretrial and trial;
- (f) Appropriateness of special procedures such as reference to a special master or Magistrate or the Judicial Panel on Multidistrict Litigation, or application of the Manual for Complex Litigation;
- (g) Modification of the standard pretrial procedures specified by these Rules because of the relative simplicity or complexity of the action or proceeding;
- (h) Prospects for settlement;
- (i) Any other matters which may be conducive to the just, efficient and economical determination of the action or proceeding.

DATED: April 25, 1978



THOMAS J. MacBRIDE
Chief United States District Judge



M. D. CROCKER
United States District Judge



PHILIP C. WILKINS
United States District Judge

This order shall be implemented effective June 1, 1978.