PROPOSED
LOCAL RULES
FOR
NOTICE AND
COMMENT

Comments due by December 31, 2021

REDLINED
LOCAL RULE
APPENDIX A

APPENDIX A

AUTOMATED CASE ASSIGNMENT PLAN

(l) **~~Direct Assignments.~~** Notwithstanding any other provision in Appendix A, ~~the Judges of this Court have agreed that the following actions shall be directly assigned as follows:~~ in actions other than those encompassed by subsections (j) and (k), cases shall be assigned as follows:

(1) Criminal actions arising from a wiretap search warrant shall be directly assigned to the Judge who was assigned the wiretap search warrant.

(2) Civil forfeiture actions arising from a criminal action shall be directly assigned to the Judge who was assigned to the criminal action. If the civil forfeiture action is filed prior to the criminal action, the Judge initially assigned the civil forfeiture action shall be directly assigned to the criminal action.

(3) All civil actions initiated by non-prisoner plaintiffs from Butte, Lassen, Modoc, Plumas, Shasta, Siskiyou, Tehama, and Trinity counties shall be directly assigned to the Magistrate Judge sitting in Redding. When initially assigned, some may be assigned to the Magistrate Judge only, as provided in subsection B. Except as provided in subsection B, ~~T~~the direct assignment of these cases would be for those purposes anticipated by these Rules, including resolution of discovery disputes, conducting of settlement conferences, and holding jury trials with consent of the parties.

(4) All civil actions where defendants reside in Inyo and Kern counties shall be directly assigned to the Magistrate Judge sitting in Bakersfield. When initially assigned, some may be assigned to the Magistrate Judge only, as provided in subsection B. Except as provided in subsection B, ~~T~~the direct assignment of these cases would be for those purposes anticipated by these Rules~~,~~ including resolution of discovery disputes, conducting of settlement conferences, and holding jury trials with consent of the parties.

(m) Notwithstanding any other provision of Appendix A, (and excluding those cases encompassed by subsections (j) and (k) above) when initially assigned, a percentage of civil cases as the Court from time-to-time determines by general order to be appropriate, shall be directly assigned to a Magistrate Judge only.

(1) The parties shall be given notice of their right to proceed before a Magistrate Judge pursuant to 28 U.S.C. 636(c). Such notice shall be transmitted by the Clerk to the plaintiff(s) as soon as practicable after the filing of the complaint, and the plaintiff shall transmit the notice to all other parties as an attachment to copies of the complaint and summons, when served. The

form entitled Consent to Assignment or Request for Reassignment shall be returned to the Clerk within 90 days from the date the action was filed.

(2) If executed Consent to Assignment or Request for Reassignment forms have not been returned as required by (1) above, the parties may be ordered to show cause why the forms have not been returned to the Clerk.

(3) If any party requests reassignment to a United States District Judge, the Clerk shall randomly assign a District Judge as presiding judge with the Magistrate Judge continuing to be assigned to the case to for those purposes anticipated by these Rules, including adjudication pursuant to 28 U.S.C. 636(b)(1)(A), B and (b)(3), and L.R. 302(c), as appropriate. Actions in which all parties have consented pursuant to 28 U.S.C. 636(c) shall remain assigned to the Magistrate Judge only.

PROPOSED

REDLINED
LOCAL RULES 135 & 101

RULE 135 (Fed. R. Civ. P. 5)

SERVICE OF DOCUMENTS DURING ACTION

(a) Service of Electronic Documents. "Service" as utilized in these Rules includes electronic service as set forth in the CM/ECF procedures in these Rules. "Notice of Electronic Filing" is a notice automatically generated by CM/ECF at the time a document is filed with the system. ~~When counsel have consented to electronic service, see L.R. 135(g),~~ tThis Notice will constitute automatic service of the document on all others ~~who have consented~~. This Notice will set forth the time of filing, the name of the parties and attorney(s) filing the document, the type of document, the text of the docket entry, the name of the parties and/or attorney(s) receiving the notice, and an electronic link (hyperlink) to the filed document that allows recipients to retrieve the document automatically. Service via this electronic Notice constitutes service pursuant to Fed. R. Civ. P. 5(b)(2)(E) and Fed. R. Crim. P. 49.

(b) Conventional Service. If persons are not registered for the CM/ECF system, e.g., prisoners or pro se parties, , ~~or have not consented to receive electronic service~~, the Notice will identify the persons who were not electronically served. Persons who were not electronically served must be conventionally served. ~~*Persons who are unregistered* or do~~ not consent ~~*may not rely on electronic service and must serve documents conventionally asotherwise provided by the Rules.*~~ Counsel shall serve these persons in accordance with the appropriate Federal Rules of Procedure.

(c) Proof of Service for Paper Documents. When service of any pleading, notice, motion, or other document required to be served is made, proof of such service shall be endorsed upon or affixed to the original of the document when it is lodged or filed. Except for ex parte matters, a paper document shall not be submitted for filing unless it is accompanied by a proof of service. Proof of service shall be under penalty of perjury and shall include the date, manner and place of service.

(d) Service Upon All Parties. Unless a party expressly waives service, copies of all documents submitted to the Court shall be served upon all parties to the action, except that no service need be made upon parties held in default for failure to appear unless the document involved asserts new or additional claims for relief against such defaulting parties. See Fed. R. Civ. P. 5(a).

(e) Service Upon Pro Se Party. Service of all documents authorized to be served in accordance with Fed. R. Civ. P. 5 or Fed. R. Crim. P. 49 shall be complete when served upon a party appearing in propria persona. See also Fed. R. Civ. P. 4.1.

(f) Service Upon Attorney. Service of all documents authorized to be served in accordance with Fed. R. Civ. P. 5 or Fed. R. Crim. P. 49 shall be complete when served

upon the attorney for the party, if the party has appeared and is represented by an attorney. When an attorney represents multiple parties, service of one copy of the document upon that attorney shall constitute service upon all parties represented by that attorney, unless the Court otherwise orders. Where multiple attorneys represent the same party or parties, service shall be made upon all such attorneys, unless the Court otherwise orders. See also Fed. R. Civ. P. 4.1.

(g) Attorney Registration for Electronic Filing. All attorneys who wish to file documents in the Eastern District of California must be admitted to practice or admitted to appear pro hac vice. Admission to practice in the Eastern District of California includes the requirement that the attorney complete an e-filing registration form and receive a username and password. Completion of the registration form will permit electronic filing of documents and~~, unless an attorney opts out,~~ will authorize acceptance of service by electronic means. To do this, an attorney must have a valid internet email address. After registration, attorneys will receive a unique user name and password. Registration enables an attorney to file documents electronically. The court registration name and password, when utilized for the electronic filing of documents, will serve as the party's signature for Fed. R. Civ. P. 11 purposes. See also L.R. 131. In conjunction with the court filing registration requirement, registration for PACER, see L.R. 135(g)(3), is also mandated in order to permit access to images of documents maintained within court electronic records.

(1) Consent to Service. ~~Unless an attorney opts out by designating such on the registration form, r~~Registration as a filing user constitutes: (1) consent to receive service electronically pursuant to Fed. R. Civ. P. 5(b)(2)(E) and Fed. R. Crim. P. 49 and waiver of the right to receive service by any other means; and (2) consent to making electronic service pursuant to Fed. R. Civ. P. 5(b)(2)(E) and Fed. R. Crim. P. 49 and waiver of the right to make service by any other means. This consent pertinent to Fed. R. Civ. P. 5 does **not** affect service of a summons and complaint pursuant to Fed.
R. Civ. P. 4, i.e., there is no electronic service of a complaint. The foregoing waiver of service and notice applies to notice of the entry of an order or judgment. Service by electronic means is complete upon transmission of the Notice of Electronic Filing.

~~**(2) Court Preference.** Although the Eastern District of California does not require attorneys to serve and/or accept service of documents by electronic means, the Court **strongly encourages** the use of this practice.~~

(2) ~~(3)~~ PACER Registration Required. Documents already on the Court's servers are accessed through the Public Access to Court Electronic Records ("PACER") Service Center. A PACER login is required in order to utilize CM/ECF to review documents,*in addition to*, the password issued by the Court for filing purposes. To register for PACER, a user must complete the online form or submit a registration form, available on the PACERwebsite (http://pacer.psc.uscourts.gov).

(3) ~~(4)~~ Credit Card Payment. All fees related to electronically-filed documents, e.g., complaint, should be paid by use of a credit card on the Court's secure servers. If credit card payment cannot be made, fees may be paid by check or money order;however, when payment of fees is required, the document will not be filed until payment is tendered.

RULE 101 (Fed. R. Civ. P. 1)

DEFINITIONS

~~"Consent to Service" is the authorization by an attorney or party to accept service during the course of an action by electronic means pursuant to Fed. R. Civ. P. 5(b)(2)(E) and Fed. R. Crim. P. 49. See L.R. 135(g).~~

"PACER Registration" is a separate requirement for e-filing along with e-filing registration. PACER registration allows users to view documents through the PACER (Public Access to Court Electronic Records) System, http://pacer.psc.uscourts.gov. See L.R. 135(g)(2)~~(3)~~.

PROPOSED

REDLINED
LOCAL RULE 173

RULE 173 (Fed. R. Civ. P. 83)

PHOTOGRAPHING, RECORDING OR BROADCASTING OF JUDICIAL PROCEEDINGS

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

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

(c) Audio Streaming Pilot Program. There is a limited exception to the ban on broadcasting district court proceedings as set forth in these rules for district and magistrate judges participating in an audio streaming pilot program established by the Judicial Conference of the United States in March 2020 (JCUS-MAR 2020, p. 9). The pilot seeks to study issues associated with livestreaming audio of certain civil proceedings with the consent of the parties to the proceeding. Any livestreaming of audio conducted pursuant to the pilot program must comply with the pilot guidelines issued by the Judicial Conference Committee on Court Administration and Case Management, pursuant to the pilot program (available at https://www.uscourts.gov/about-federal-courts/judicial-administration/district-court-audio-streaming-pilot#guidelines).

PROPOSED

NEW

LOCAL RULE 174

CIVIL ONLY

RULE 174 (Fed. R. Civ. P. 83)

APPEARANCE BY VIDEO TELECONFERENCING OR TELEPHONE

(a) Appearance By Video Teleconferencing.

(1) Attorneys may request permission from the Court to appear by video teleconferencing for pre-trial proceedings in all civil matters in lieu of appearing in person.

(2) For settlement conferences and VDRP proceedings, the party representatives and insurance company representatives may also request permission, to appear by video teleconferencing.

(b) Appearance By Telephone. The parties and attorneys without access to video teleconferencing may request permission to appear by telephone for pre-trial proceeding in all civil matters in lieu of appearing in person.

PROPOSED

NEW

LOCAL RULE 174

CRIMINAL ADDITIONS

RULE 174 (Fed. R. Civ. P. 83)

APPEARANCE BY VIDEO TELECONFERENCING OR TELEPHONE

(a) Appearance By Video Teleconferencing in Civil Cases.

(1) Unless otherwise ordered by the Court, attorneys may appear by video teleconferencing for pre-trial proceedings in all civil matters in lieu of appearing in person.

(2) For settlement conferences and VDRP proceedings, the party representatives and insurance company representatives may also appear by video teleconferencing unless otherwise order by the Court.

(b) Appearance By Telephone in Civil Cases. Unless otherwise ordered by the Court, parties and attorneys without access to video teleconferencing may request permission to appear by telephone for pre-trial proceeding in all civil matters in lieu of appearing in person.

(c) Virtual Appearance in Criminal Cases. Unless otherwise ordered by the Court, all appearances in criminal cases are to be in person.

(d) Virtual Testimony in Criminal Hearings. Upon the consent of all parties and agreement of the Magistrate Judge or Judge, any witness at any hearing other than a criminal jury trial may be permitted to testify virtually.

PROPOSED

REDLINED

LOCAL RULE 230

RULE 230 (Fed. R. Civ. P. 78)

CIVIL MOTION CALENDAR AND PROCEDURE

(a) **Motion Calendar.** Each Judge or Magistrate Judge maintains an individual motion calendar. Information as to the times and dates for each motion calendar may be obtained from the Clerk or the courtroom deputy clerk for the assigned Judge or Magistrate Judge.

(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 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. 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)~~ thirty-five (35) days after 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. See L.R. 135.

(c) **Opposition and Non-Opposition.** Opposition, if any, to the granting of the motion shall be in writing and shall be filed and served ~~not less~~ no later than fourteen (14) days ~~preceding the noticed (or continued) hearing date~~ after the motion was filed. 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 opposition to the motion has not been timely filed by that party. See L.R. 135. A failure to file a timely opposition may also be construed by the Court as a non-opposition to the motion.

(d) **Reply.** ~~Not less~~ No later than ~~seven (7)~~ ten (10) days ~~preceding the date of hearing~~ after the opposition was filed, the moving party may serve and file 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 in the manner and on the date prescribed for the filing of opposition. If a 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) **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 seven (7) days before the scheduled hearing date. All stipulations for continuance shall be submitted for approval to the Court. See L.R. 143, 144. Unless otherwise ordered by the Court, a continuance of a hearing does not extend the time for filing and serving an opposition to, or reply in support of, a motion.

(g) **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. Any party that believes that extended oral argument, more than 10 minutes per side or 20 minutes in the aggregate, will be required shall notify the courtroom deputy clerk so that the hearing may be rescheduled if deemed appropriate by the Court.

(h) **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. 142.

(i) **Failure to Appears.** 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.

(j) **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, counsel shall 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.

(k) **Motions Before a Magistrate Judge.** Only those motions in matters specified in L.R. 302 and 303 shall be noticed, briefed, and argued before a Magistrate Judge. All other motions shall be noticed, briefed, and argued before a Judge.

(l) **Motions in Prisoner Actions.** All motions, except motions to dismiss for lack of prosecution, filed in actions 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 served and filed by the responding party not more than twenty-one (21) days 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 an 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 ~~seven (7)~~ fourteen (14) days after the opposition has been filed in CM/ECF, serve and file a reply to the opposition. All such motions will be deemed submitted when the time to reply has expired.

(m) **Supplementary Material.** After a reply is filed, no additional memoranda, papers, or other materials may be filed without prior Court approval except:

(1) **Objection to Reply Evidence.** If new evidence has been submitted with the reply brief, the opposing party may file and serve, no later than seven (7) days after the reply is filed, an Objection to Reply Evidence stating its objections to the new evidence. The Objection to Reply Evidence may not include further argument on the motion.

(2) **Notice of Supplemental Authority.** Either party may file a notice of supplemental authority to bring the Court's attention to a relevant judicial opinion published after the date that party's opposition or reply was filed. The notice of supplemental authority may contain a citation to the new authority but may not contain additional argument on the motion.

PROPOSED
NEW
LOCAL RULE 233

RULE 233.

MOTIONS FOR ADMINISTRATIVE RELIEF

Miscellaneous administrative matters which require a Court order may be brought to the Court's attention through a motion for administrative relief. Examples of matters that such motions may address include motions to exceed applicable page limitations; requests to shorten time on a motion; requests to extend a response deadline; requests to alter a briefing schedule; or requests to alter a discovery schedule that does not affect dispositive motion filing dates, trial dates, or the final pre-trial conference.

(a) A motion for administrative relief:

(1) must be labeled as a motion for administrative relief;
(2) may not exceed 5 pages (excluding declarations and exhibits);
(3) must set forth specifically the action requested, the reasons supporting the request, and relevant background information (such as a description of any similar relief that has previously been granted);
(4) must be accompanied by a proposed order;
(5) must include a statement setting forth the position of all parties affected by the motion, or a statement explaining why such position could not be ascertained; and
(6) if manually filed, must be delivered with all attachments on all parties on the same day the motion is filed.

(b) Any non-moving party may file an opposition or supporting statement relating to a Motion for Administrative Relief within five (5) days after the motion has been filed. The opposition or supporting statement:

(1) may not exceed 5 pages (excluding declarations and exhibits);
(2) must set forth specifically the reasons for the opposition or supporting statement; and
(3) if manually filed, must be delivered to all other parties the same day it is filed.

(c) Unless otherwise ordered, a Motion for Administrative Relief is submitted on the day after the opposition is due for immediate action by the Court without hearing.

PROPOSED

REDLINED
LOCAL RULE 251

RULE 251 (Fed. R. Civ. P. 37)

MOTIONS DEALING WITH DISCOVERY MATTERS

(a) Hearing Regarding Discovery Disagreements. Except as provided in (e), a hearing of a motion pursuant to Fed. R. Civ. P. 26 through 37 and 45, including any motion to exceed discovery limitations or motion for protective order, may be had by the filing and service 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 and service. 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 Disagreement or an affidavit as set forth below is not filed at least ~~seven (7)~~ fourteen (14) days before 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 seven (7) days thereafter.

(b) Requirement of Conferring. Except as hereinafter set forth, a motion made pursuant to Fed. R. Civ. P. 26 through 37 and 45, 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 and file a document entitled "Joint Statement re Discovery Disagreement." 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 action and its factual disputes insofar as they are pertinent to the matters to be decided and the issues to be determined at the hearing; and

(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~~ any 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~~ that 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. 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, or (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. The responding party shall file a response thereto not later than seven (7) days before the hearing date. The moving party may file and serve a reply thereto not less than two (2) court days before the hearing date. L.R. 135.

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

(g) **Requests for Protective Orders.** When a party files a motion for a protective order in response to any discovery request, that party's obligation to respond to the discovery request is stayed pending resolution of the motion for a protective order.

PROPOSED

NEW

LOCAL RULE 261

RULE 261

PROCEDURE IN ACTIONS FOR REVIEW ON AN ADMINISTRATIVE RECORD IN NON-SOCIAL SECURITY CASES.

In actions, other than Social Security actions, which require the Court to review an administrative record, the following deadlines shall apply unless otherwise ordered.

(a) The defendant shall file the certified administrative record within 45 days of the filing of an Answer to the complaint.

(b) Within 45 days of service of the certified administrative record, plaintiff shall file a motion for summary judgment and any motion to supplement the administrative record. For administrative record cases, the parties need not file a statement of undisputed facts or a statement of disputed facts under Local Rule 260(a) or 260(b).

(c) Within 45 days after the filing of the plaintiff's motion(s) under (b), the defendant shall file any opposition and cross-motion for summary judgment.

(d) Within 15 days after the filing of the defendant's opposition and cross-motion, the plaintiff may file a reply and any opposition to the defendant's cross-motion.

(e) Within 15 days after the filing of the plaintiff's opposition to the defendant's cross-motion, the defendant may file a reply in support of its cross-motion for summary judgment.

(f) Unless the Court orders otherwise, the matter will be deemed submitted for decision under Local Rule 230(g) on the day after the last brief is due under this Rule.

PROPOSED

NEW

LOCAL RULE 428

RULE 428

VIRTUAL TESTIMONY

(a) Upon consent of all parties and agreement of the Magistrate Judge or Judge, any witness at any hearing other than a criminal jury trial may be permitted to testify virtually.

PROPOSED

NEW

LOCAL RULE 429

RULE 429 (18 U.S.C. § 3142(f))

BAIL REVIEW PROCEDURES

(a) Notice. A party moving to reopen a detention hearing pursuant to 18 U.S.C. § 3142(f) shall file a notice of motion and motion indicating what the new information or changed circumstance that the moving party intends to submit in support of the motion and attach as exhibits any documentation of the new information or changed circumstance. The motion shall not exceed five pages unless authorized by the Court. The moving party shall notice any motion to reopen a detention hearing on the regularly scheduled magistrate court duty calendar, at least seven days before the date of the hearing on the motion, unless a shorter schedule is ordered by the Court for good cause.

(b) Pretrial Services shall prepare a supplemental report for the bail review hearing.

(c) Any opposition shall be filed at least two days before the hearing date. The opposition shall not exceed five pages unless authorized by the Court.

PROPOSED

REDLINED

LOCAL RULE 430.1

RULE 430.1 (Fed. R. Crim. P. 12)

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 or the courtroom deputy clerk for the assigned Judge or Magistrate Judge.

(b) Motion Procedures. Entries of pleas of guilty and motions to quash or dismiss an information or indictment, to suppress evidence, to sever, and to discover the identity of informants shall be heard by the assigned Judge. See L.R. 302(b)(1). All other pretrial matters in criminal actions shall be heard by the Magistrate Judge, L.R. 302(b)(1), unless the assigned Judge elects to hear some or all of such matters in individual actions. See L.R. 302(d). 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 of Criminal Procedure and these Rules. See, e.g., Fed. R. Crim. P. 47, 49; L.R. 130, 131, 132, 134.

(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 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. All pretrial motions shall be filed within twenty-one (21) 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) days after the filing of the motion, and at least seven (7) days before the date of trial confirmation if that date has been established. See L.R. 135.~~ **Pretrial Motions.** Unless good cause is shown, all defenses, objections or requests pursuant to Fed. R. Crim. P. 12, which are capable of determination without the trial of the general issue, must be raised by pretrial motion and noticed for hearing on or before the deadline set by the assigned Judge or Magistrate Judge for hearing all pretrial motions. Pretrial motions shall be noticed in accordance with this rule.

(d) ~~**Opposition.** The responding party shall file and serve an opposition brief and any accompanying affidavits or documentary evidence on all other parties within seven (7) days. 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 an opposition to the motion. See L.R. 135.~~ **Notice.** Except as the assigned Judge directs or these criminal local rules require, all motions in criminal cases shall be filed, served and noticed in accordance with this rule. This rule does not

apply to motions during the course of trial or hearing, nor to motions for bail review. See LR 429.

(e) ~~**Reply.** The moving party may file and serve a reply brief within three (3) days following service of the opposition. 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. Time. All criminal motions filed pursuant to this rule must be filed in writing for hearing not less than 14 days after service of the motion or, if the Judge or Magistrate Judge specially sets a date for hearing, not less than 14 days before the date specially set. The time for filing may be shortened only with leave of Court for good cause shown.~~ **Time.** All criminal motions filed pursuant to this rule must be filed in writing for hearing not less than 14 days after service of the motion or, if the Judge or Magistrate Judge specially sets a date for hearing, not less than 14 days before the date specially set. The time for filing may be shortened only with leave of Court for good cause shown.

~~**(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. 144. 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.~~ **Opposition and Reply.** Any opposition to a noticed motion shall be served and filed within 7 days after the motion is filed. A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect. Any reply shall be served and filed not more than 4 days after the opposition is due. No party will be entitled to be heard in opposition to a motion at oral argument if that party has not timely filed an opposition to the motion. The time for filing an opposition or reply may be shortened only with leave of Court for good cause shown.

(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. 47.

(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~~ If a party desires an evidentiary hearing, that request must be stated specifically in the motion, along with 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. 403 as to witnesses or parties requiring interpreter services.*

(i) Motions 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. 303, it shall be the duty of counsel to present to the Judge or Magistrate Judge to whom such subsequent motion is made an affidavit or brief, as appropriate, setting forth the material facts and circumstances surrounding each motion for which reconsideration is sought, including:

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

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

(3) what new or different facts or circumstances are claimed to exist that 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 fourteen (14) days after the date of the decision. ~~service of the Magistrate Judge's decision concurrently with the required filing fee. See generally L.R. 303, 304.~~ To the extent appropriate, the brief supporting the appeal shall contain the information prescribed in (i).

PROPOSED

REDLINED
LOCAL RULE 460

RULE 460 (Fed. R. Crim.P. 32, 18 U.S.C. § 3153(c))

DISCLOSURE OF PRESENTENCE REPORTS, PRETRIAL SERVICES REPORTS AND RELATED RECORDS

(a) Confidential Character of Presentence Reports, Pretrial Services Reports, and Related Records. The presentence reports, pretrial services reports, violation reports, and related documents are confidential records of the United States District Court. Unless further disclosure is expressly authorized by order of the Court or this rule, 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, detention/release, or violation hearing.

(b) Requests for Disclosure. Any applicant seeking an order authorizing further disclosure of a presentence report or pretrial services report maintained by the probation or pretrial services offices 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 or pretrial services officers are improper. Except as provided in (c) below, no further disclosure shall be made except upon an order issued by the Court.

(c) Exceptions. Nothing in this rule is intended to prohibit probation or pretrial services from disclosing records without court order as is authorized by statute, regulation, or formalized national policy.

~~**(d) 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 thirty-five (35) days before the date set for sentencing hearing.~~

~~**(e) Objections to the Report.** Defense counsel shall discuss the presentence report with the defendant. Not less than twenty-eight (28) days before 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. After receipt of the objections, the probation officer shall conduct any further investigation and make any necessary revisions to the presentence report.~~

~~**(f) Submission to the Court.** Not less than twenty-one (21) days before 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.~~

(g) Formal Objections to Report. Not less than fourteen (14) days before the sentencing hearing, counsel for the defendant and the Government shall each file and serve on each other and the probation officer, a concise memorandum of all objections and facts in dispute to be resolved by the Court. 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 action. This requirement is not satisfied by submission of the written objections to the probation officer as set forth in (d).

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

(i) 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.

(j) 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 action 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.

CURRENT
LOCAL RULE 461

RULE 461 (Fed. R. Crim.P. 32, 18 U.S.C. § 3153(c))

DISCLOSURE OF OTHER PROBATION OR PRETRIAL SERVICES RECORDS

(a) Confidential Character of Probation or Pretrial Services Records. Probation or pretrial services records, maintained by the probation and pretrial services offices, are confidential records of the United States District Court. Such records shall be disclosed only to the Court, unless further disclosure is authorized by order of the Court or this rule.

(b) Requests for Disclosure. Any applicant seeking an order authorizing further disclosure of confidential records maintained by the probation or pretrial services offices 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 or pretrial services officers are improper. Except as provided in (c) below, no disclosure shall be made except upon an order issued by the Court.

(c) Exceptions. Nothing in this rule is intended to prohibit probation or pretrial services from disclosing records without court order as is authorized by statute, regulation, or formalized national policy.

PROPOSED

NEW

LOCAL RULE 461 TO REPLACE PREVIOUS RULE ENTIRELY

RULE 461

SENTENCING PROCEDURES

(a) 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 thirty-five (35) days before the date set for sentencing hearing.

(b) Informal Objections to the Report. Defense counsel shall discuss the presentence report with the defendant. Not less than twenty-eight (28) days before 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. After receipt of the objections, the probation officer shall conduct any further investigation and make any necessary revisions to the presentence report.

(c) Submission to the Court. Not less than twenty-one (21) days before 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.

(d) Formal Objections to Report. Not less than fourteen (14) days before the sentencing hearing, counsel for the defendant and the Government shall each file and serve on each other and the probation officer, all objections and facts in dispute to be resolved by the Court. The objections 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 action. This requirement is not satisfied by submission of the written objections to the probation officer as set forth in (b).

(e) 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 (b) and those relating to information contained in the presentence report that was not contained in the proposed presentence report.

(f) 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.

(g) Sentencing Memoranda. Before the date set for sentencing, any party may file a written sentencing memorandum indicating the specific sentence or range a party seeks, and whether any departure or variance is sought.

(h) 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 action 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.