UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

LOCAL RULES

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UNITED STATES DISTRICT COURT
Northern District of California

LOCAL RULES
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AVAILABILITY OF LOCAL RULES

The Local Rules of Practice of the Northern District of California, including amendments following publication, may be downloaded from the Court's Internet site: http://www.cand.uscourts.gov. Individuals or organizations wishing an additional copy of these local rules may obtain them, free of charge, during office hours from any office of the Clerk of Court. To obtain a copy by mail, send a written request, along with a stamped, self-addressed 10" X 14" envelope with $8.70 return postage to:

Local Rules
Clerk, U.S. District Court
450 Golden Gate Avenue
P.O. Box 36060
San Francisco, California 94102

UNITED STATES DISTRICT COURT
Northern District of California

DIRECTORY OF COURT LOCATIONS

Philip E. Burton Courthouse and Federal Building
450 Golden Gate Avenue
San Francisco, CA 94102
(415) 522-2000

SAN JOSE DIVISION
Robert F. Peckham Courthouse & Federal Building
280 South First Street
San Jose, CA 95113
(408) 535-5363

OAKLAND DIVISION
Oakland Courthouse & Federal Building
1301 Clay Street
Oakland, CA 94612
(510) 637-3530

United States Magistrate Judge
514 H Street
P.O. Box 1306
Eureka, CA 95502
(707) 445-3612

Clerk's Office Hours: 9:00 a.m.-4:00 p.m.

UNITED STATES BANKRUPTCY COURT
Northern District of California

DIVISION THREE
235 Pine Street, 19th Floor
P.O. Box 7341
San Francisco, CA 94120
(415) 268-2300

DIVISION ONE
United States Courthouse
99 South "E" Street
Santa Rosa, CA 95404
(707) 525-8520

DIVISION FOUR
1300 Clay Street, Room 300
P. O. Box 2070
Oakland, CA 94604
(510) 879-3600

DIVISION FIVE
Robert F. Peckham Courthouse and Federal Building
280 South First Street
San Jose, CA 95113
(408) 535-5118

Clerk's Office Hours: 9:00 a.m.-4:30 p.m.

UNITED STATES DISTRICT COURT
Northern District of California

PREAMBLE

The Local Rules of the United States District Court and United States Bankruptcy Court for the Northern District of California are promulgated under the authority of Title 28 United States Code Section 2071, Federal Rule of Civil Procedure 83, Federal Rule of Bankruptcy Procedure 9029 and Federal Rule of Criminal Procedure 57. The local rules were adopted June 28, 1995, effective September 1, 1995. The Bankruptcy Local Rules were last revised, effective August 1, 2010. Certain Civil Local Rules were last revised effective September 8, 2011. All other local rules were last revised effective December 1, 2009.

Chief Judge James Ware, Chief Judge
Richard W. Wieking, Clerk of Court

RULES COMMITTEE OF THE COURT

Judge Phyllis J. Hamilton, Chair

Judge Ronald M. Whyte
Judge Lucy H. Koh
Judge Claudia Wilken
Magistrate Judge Elizabeth D. Laporte
Magistrate Judge Donna M. Ryu

UNITED STATES DISTRICT COURT
Northern District of California

CIVIL LOCAL RULES

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CIVIL LOCAL RULES

1. TITLE; SCOPE; DEFINITIONS

1-1. Title

These are the Local Rules of Practice in Civil Proceedings before the United States District Court for the Northern District of California. They should be cited as "Civil L.R."

1-2. Scope, Purpose and Construction

(a) **Scope**. These local rules are promulgated pursuant to 28 U.S.C. § 2071 and F. R. Civ. P. 83. They apply to civil actions filed in this Court. The Court also has promulgated separate local rules in the following subject areas:

(1) Admiralty and Maritime;

(2) Alternative Dispute Resolution;

(3) Bankruptcy;

(4) Criminal Proceedings;

(5) Habeas Corpus Petitions; and

(6) Patent.

(b) **Supplement to Federal Rules**. These local rules supplement the applicable Federal Rules. They shall be construed so as to be consistent with the Federal Rules and to promote the just, efficient, speedy and economical determination of every action and proceeding.

1-3. Effective Date

These rules take effect on December 1, 2009. They govern civil cases filed on or after that date. For actions pending on December 1, 2009, if fewer than ten days remain to perform an act otherwise governed by these rules, the provisions of the local rules that were in effect on November 30, 2009, shall apply to that act.

1-4. Sanctions and Penalties for Noncompliance

Failure by counsel or a party to comply with any duly promulgated local rule or any Federal Rule may be a ground for imposition of any authorized sanction.

1-5. Definitions

(a) **Clerk**. "Clerk" refers to the Clerk or a Deputy Clerk of the Court.

(b) **Court**. Except where the context otherwise requires, the word "Court" refers to the United States District Court for the Northern District of California and to a Judge acting on behalf of that Court with respect to a matter within the Court's jurisdiction.

(c) **Day**. For computation of time under these local rules, "day" shall have the meaning given in F. R. Civ. P. 6(a).

(d) **Ex parte**. "Without other party." Ex parte means contact with the Court without the advance knowledge or contemporaneous participation of all other parties.

(e) **File**. "File" means delivery to and acceptance by the Clerk of a document which is approved for filing and which will be included in the official files of the Court and noted in the docket of the case. Under urgent circumstances and for good cause shown, Judges may accept documents for filing.

(f) **Fed. R. Civ. P**. "Fed. R. Civ. P." means the Federal Rules of Civil Procedure.

(g) **Fed. R. Crim. P**. "Fed. R. Crim. P." means the Federal Rules of Criminal Procedure.

(h) **Fed. R. App. P**. "Fed. R. App. P." means the Federal Rules of Appellate Procedure.

(i) **Federal Rule**. "Federal Rule" means any applicable Federal Rule.

(j) **General Orders**. "General Orders" are made by the Chief Judge or by the Court relating to Court administration. When the Court deems it appropriate, a General Order also may be used to promulgate modifications of these local rules. Such General Orders shall remain in effect until the rules are properly amended. No litigant may be sanctioned for violating a General Order unless the General Order is adopted by a Judge as a specific order in a particular case.

(k) **General Duty Judge**. The "General Duty Judge" is the Judge at each division or location of the Court designated by the Chief Judge to act for the Court in matters for which there is no assigned Judge, or when the assigned Judge is unavailable. The name of the Judge serving as General Duty Judge shall be made available by the office of the Clerk.

(l) **Judge**. Unless the context otherwise indicates, the term "Judge," or "assigned Judge" refers to any United States District Judge, any United States Bankruptcy Judge, or to any full-time or part-time United States Magistrate Judge.

(m) **Lodge**. When a statute, rule or order permits a document to be submitted to the Court but does not permit the document to be "filed" (e.g., settlement conference statement, deposition transcripts or a proposed trial exhibit), the document may be "lodged" with the Clerk's office. The Clerk will stamp the document "Received" and promptly deliver it to the Chambers of the Judge for whom the document is intended. A party who subsequently seeks to have a lodged document "filed" within the meaning of Civil L.R. 1-5(e) may move for an order directing that the document be included in the official files of the Court and in the docket of the case.

(n) **Meet and confer**. "Meet and confer" or "confer" means to communicate directly and discuss in good faith the issue(s) required under the particular Rule or order. Unless these Local Rules otherwise provide or a Judge otherwise orders, such communication may take place by telephone. The mere sending of a written, electronic, or voice-mail communication, however, does not satisfy a requirement to "meet and confer" or to "confer." Rather, this requirement can be satisfied only through direct dialogue and discussion – either in a face to face meeting or in a telephone conversation.

Commentary
See F. R. Civ. P. 26(f), as amended December 1, 2000.

(o) **Standing Orders of Individual Judges**. "Standing Orders" are orders by a Judge governing the conduct of a class or category of actions or proceedings assigned to that Judge. It is the policy of the Court to provide notice of any applicable Standing Orders to parties before they are subject to sanctions for violating such orders. Nothing in these local rules precludes a Judge from issuing Standing Orders to govern matters not covered by these local rules or by the Federal Rules.

(p) **Unavailability**. This Court is in continuous session. To the extent reasonably feasible, each active Judge of this Court will be available at his or her assigned courthouse during the normal hours of the Clerk of Court established pursuant to Civil L.R. 77-1. A Judge who will be absent from the District for one court day or more shall post a notice to that effect on the official calendar of the Court. If a Judge is unavailable, any motion or matter requesting immediate judicial determination shall be referred to the General Duty Judge at that courthouse. If the General Duty Judge is unavailable, the Clerk shall assign the matter to any available Judge at that courthouse or of this Court.

3. COMMENCEMENT AND ASSIGNMENT OF ACTION

3-1. Regular Session

The Court shall be in continuous session in the following locations: San Francisco Division, Oakland Division and San Jose Division. From time to time sessions may be held at other locations within the district as the Court may order.

3-2. Commencement and Assignment of Action

(a) **Civil Cover Sheet**. Every complaint, petition or other paper initiating a civil action must be filed with a completed civil cover sheet on a form approved by the Court.

Cross Reference

See Civil L.R. 3-6(c) *"Jury Demand; Marking of Civil Cover Sheet Insufficient;"*
Civil L.R. 3-7(a) *"Civil Cover Sheet Requirement in Private Securities Actions"*

(b) **Commencement of Action**. An action may be commenced within the meaning of Fed. R. Civ. P. 3 at any office of the Clerk for this district. After the matter has been assigned to a Judge, unless ordered or permitted otherwise, all subsequent filings must be made in the Office of the Clerk at the division or location where the assigned Judge maintains chambers. Paper filings in matters assigned to the Eureka division must be made in the San Francisco Office of the Clerk.

(c) **Assignment to a Division**. Pursuant to the Court's Assignment Plan, except for Intellectual Property Actions, Securities Class Actions and Capital and Noncapital Prisoner Petitions or Prisoner Civil Rights Actions, upon initial filing, all civil actions and proceedings for which this district is the proper venue shall be assigned by the Clerk to a Courthouse serving the county in which the action arises. A civil action arises in the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated. Actions in the excepted categories shall be assigned on a district-wide basis.

(d) **San Francisco and Oakland**. Except as provided in Civil L.R. 3-2(c), all civil actions which arise in the counties of Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo or Sonoma shall be assigned to the San Francisco Division or the Oakland Division.

(e) **San Jose**. Except as provided in Civil L.R. 3-2(c), all civil actions which arise in the counties of Santa Clara, Santa Cruz, San Benito or Monterey shall be assigned to the San Jose Division.

(f) **Eureka**. Except as provided in Civil L.R. 3-2(c), all civil actions which arise in the counties of Del Norte, Humboldt, Lake and Mendocino, except for cases not assigned to the magistrate judges pursuant to the Court's Assignment Plan, shall be assigned to the Eureka Division.

Cross Reference

See General Order No. 44, Assignment Plan.

(g) **Assignment of Action to the Eureka Division**. All cases assigned to the Eureka Division shall be assigned to the full-time magistrate judge presiding in that division. Such assignments are subject to the provisions of Civil L.R. 73 and require the consent

of the parties. Any case for which all parties do not consent will be reassigned to a district judge in one of the Bay Area divisions.

(h) **Transfer of Actions and Proceedings**. Whenever a Judge finds, upon the Judge's own motion or the motion of any party, that a civil action has not been assigned to the proper division within this district in accordance with this rule, or that the convenience of parties and witnesses and the interests of justice will be served by transferring the action to a different division within the district, the Judge may order such transfer, subject to the provisions of the Court's Assignment Plan.

3-3. Assignment of Action to a Judge

(a) **Assignment**. Immediately upon the filing of any civil action and its assignment to a division of the Court pursuant to Civil L.R. 3-2, the Clerk shall assign it to a Judge pursuant to the Assignment Plan of the Court. The Clerk may not make or change any assignment, except as provided in these local rules or in the Assignment Plan (General Order No. 44).

(b) **Multiple Filings**. Any single action filed in more than one division of this Court shall be transferred pursuant to Civil L.R. 3-2(f).

(c) **Refiled Action**. If any civil action or claim of a civil action is dismissed and is subsequently refiled, the refiling party must file a Motion to Consider Whether Cases Should be Related pursuant to Civil L.R. 3-12. Upon a determination by a Judge that an action or claim pending before him or her is covered by this Local Rule, that Judge may transfer the refiled action to the Judge originally assigned to the action which had been dismissed. Any party who files an action in multiple divisions or dismisses an action and subsequently refiles it for the purpose of obtaining an assignment in contravention of Civil L.R. 3-3(b) shall be subject to appropriate sanctions.

3-4. Papers Presented for Filing

(a) **First Page Requirements**. The first page of each paper presented for filing must set forth:

(1) The name, address, telephone number, facsimile ("fax") telephone number, e-mail address and state bar number of counsel (or, if pro se, the name, address, telephone number, fax telephone number and e-mail address of the party) presenting the paper for filing. This information must appear in the upper left hand corner and must indicate the party represented by name as well as that party's status in the litigation (i.e., plaintiff, defendant, etc.). In multiparty actions or proceedings, reference may be made to the signature page for the complete list of parties represented;

Cross Reference

See Civil L.R. 3-9 "Parties"; Civil L. R. 3-11 *"Failure to Notify of Address Change*;" and Civil L.R. 11-3(d) "*Appearances and Service on Local Co-Counsel*.

(2) If not proceeding pro se and if proceeding *pro hac vice* in conformity with Civil L.R. 11-3, following the information required in Civil L.R. 3-4(a)(1) the name, address, telephone and state bar number of the member of the bar of the Court who maintains an office within the State of California; and

(3) Commencing on the eighth line of the page (except where additional space is required for counsel identification) there must appear:

(A) The title of this Court, including the appropriate division or location;

(B) The title of the action;

(C) The case number of the action followed by the initials of the assigned District Judge or Magistrate Judge and, if applicable, the initials of the Magistrate Judge to whom the action is referred for discovery or other pretrial activity;

(D) A title describing the paper; and

(E) Any other matter required by Civil L.R. 3.

(4) Any complaint or Notice of Removal of Action seeking review of federal agency determinations in immigration cases, Privacy Act cases, or Administrative Procedure Act cases must include, under the title of the document, whichever of the following is applicable: "Immigration Case," "Privacy Act Case," or "Administrative Procedure Act Case."

(5) Presentation of Class Action. If any complaint, counterclaim or cross-claim is sought to be maintained as a class action, it must bear the legend "Class Action" on its first page below the title describing the paper as a complaint, counterclaim or cross-claim.

(b) **Caption for Consolidated Cases**. When filing papers in cases consolidated pursuant to Fed. R. Civ. P. 42, the caption of each paper must denote the lead case number above all consolidated case numbers. Duplicate originals, however, are not required for associated cases.

(c) **General Requirements:**

(1) Paper. Except for reporter transcripts, all papers presented for filing must be on top-centered, two-hole punched, 8-1/2 inch by 11 inch white opaque paper of original or recycled bond quality with numbered lines, and must be flat, unfolded (except where necessary for the presentation of exhibits), without back or cover, and firmly bound at the top.

(2) Written Text. Text must appear on one side only and must be double-spaced with no more than 28 lines per page, except for the identification of counsel, title of the case, footnotes and quotations. Typewritten text may be no less than standard pica or 12-point type in the Courier font or equivalent, spaced 10 characters per horizontal inch. Printed text, produced on a word processor or other computer, may be proportionally spaced, provided the type may not be smaller than 12-point standard font (e.g., Times New Roman). The text of footnotes and quotations must also conform to these font requirements.

(3) Identification of Paper. Except for exhibits, each paper filed with the Court must bear a footer on the lower margin of each page stating the title of the paper (e.g., "Complaint," "Defendant's Motion for Summary Judgment," etc.) or some clear and concise abbreviation. Once the Court assigns a case number to the action that case number must be included in the footer.

Commentary

When a case is first filed, the footer on each page of the complaint need only bear the title of the paper (e.g., "Complaint"); but after assignment of a case number on filing, that number must be included in footers on any subsequently prepared papers (e.g., "Defendant's Motion for Summary Judgment - C-95-90345 ABC.")

(d) Citation to Authorities. Unless otherwise directed by the assigned Judge, citation to authorities in any paper must include:

(1) In any citation to Acts of Congress, a parallel citation to the United States Code by title, section and date;

(2) In any citation to U.S. regulations, a citation to the Code of Federal Regulations by title and section, and the date of promulgation of the regulation;

(3) In any citation to a U.S. Supreme Court Case, a citation to United States Reports, Lawyers' Edition or Supreme Court Reporter must be used. If the case is not yet available in any of those formats but is available on electronic databases, citation must indicate the database, year and any screen or page numbers, if assigned;

(4) In any citation to other federal courts, unless an alternate reporting service is widely available, a citation to the Federal Reporter, Federal Supplement or Federal Rules Decisions must be used. If the case is not yet available in those formats but is available on electronic databases, citation must indicate the database, year and any screen or page numbers, if assigned; and

(5) In any citation to a state court, citations must include either the official reports or any official regional reporting service (e.g., West Publishing). If the case is not yet available in those formats but is available on electronic databases, citation must indicate the database, year and any screen or page numbers, if assigned.

(e) **Prohibition of Citation to Uncertified Opinion or Order**. Any order or opinion that is designated: "NOT FOR CITATION," pursuant to Civil L.R. 7-14 or pursuant to a similar rule of any other issuing court, may not be cited to this Court, either in written submissions or oral argument, except when relevant under the doctrines of law of the case, res judicata or collateral estoppel.

Cross Reference

See Civil L.R. 7-14 *"Designation 'Not For Citation'."* See also Ninth Circuit Court of Appeals Rule 36-3.

3-5. Jurisdictional Statement

(a) **Jurisdiction**. Each complaint, petition, counterclaim and cross-claim must include a separate paragraph entitled "Jurisdiction." The paragraph will identify the statutory or other basis for federal jurisdiction and the facts supporting such jurisdiction.

(b) **Intradistrict Assignment**. Each complaint or petition must include a paragraph entitled "Intradistrict Assignment." The paragraph must identify any basis for assignment to a particular location or division of the Court pursuant to Civil L.R. 3-2(c).

3-6. Jury Demand

(a) **Included in Pleading**. A party may demand a jury trial as provided in Fed. R. Civ. P. 38(b). When a demand for jury trial is included in a pleading, the demand must be set forth at the end of the pleading. When the demand is made by a party who is

represented by counsel, the pleading must be signed by the attorney for the party making the demand. In the caption of such pleading, immediately following the title of the pleading, the following must appear: "DEMAND FOR JURY TRIAL."

(b) **Marking of Civil Cover Sheet Insufficient**. Marking the civil cover sheet to indicate a demand for jury trial is not a sufficient demand to comply with this Local Rule.

Commentary
See Wall v. National Railroad Passenger Corp., 718 F.2d 906 (9th Cir. 1983).

3-7. Filing and Certification in Private Securities Actions

(a) **Civil Cover Sheet Notation Requirement**. If a complaint or other pleading contains a claim governed by the Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (1995), the following must be so noted in Block VI of the civil cover sheet: "Private Securities Litigation Reform Act."

Cross Reference
See Civil L.R. 23-1 *"Private Securities Actions."*

(b) **Certification by Filing Party Seeking to Serve as Lead Plaintiff**. Any person or group of persons filing a complaint and seeking to serve as lead plaintiff in a civil action containing a claim governed by the Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (1995), must serve and file with the initial pleading a certificate under penalty of perjury which contains the following averments:

(1) The party has reviewed the complaint and authorized its filing;

(2) The party did not engage in transactions in the securities which are the subject of the action at the direction of plaintiff's counsel or in order to participate in this or any other litigation under the securities laws of the United States;

(3) The party is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary;

(4) The party has made no transactions during the class period in the debt or equity securities that are the subject of the action except those set forth in the certificate (as used herein, "equity security" shall have the same meaning as that term has for purposes of section 16(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78p(a));

(5) The party has not, within the three years preceding the date of the certification, sought to serve or served as a representative party on behalf of a class in an action involving alleged violations of the federal securities laws, except as set forth in the certificate; and

(6) The party will not accept any payment for serving as representative on behalf of a class beyond the party's pro rata share of any recovery, unless ordered or approved by the Court pursuant to section 27(a)(4) of the Securities Act, 15 U.S.C. § 77z-1(a)(4), or section 21D(a)(4) of the Securities Exchange Act, 15 U.S.C. § 78u-4(a)(4).

(c) **Certification by Nonfiling Party Seeking to Serve as Lead Plaintiff.** Any party seeking to serve as lead plaintiff, but who does not also file a complaint, need not file the certification required in Civil L.R. 3-7(b), but must at the time of initial appearance state that the party has reviewed a complaint filed in the action and either:

(1) Adopts its allegations or, if not,

(2) Specifies the allegations the party intends to assert.

(d) **Certification by Lawyers Seeking to Serve as Class Counsel.** Each lawyer seeking to serve as class counsel in any civil action containing a cause of action governed by the Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (1995), must serve and file a certificate under penalty of perjury which either:

(1) Affirms that the lawyer does not directly own or otherwise have a beneficial interest in securities that are the subject of the action; or

(2) Sets forth with specificity the extent of any such ownership or interest and explains why that ownership or interest does not constitute a conflict of interest sufficient to disqualify the attorney from representing the class.

Cross Reference
See also Civil L.R. 23 "*Class Actions*."

3-8. Claim of Unconstitutionality

(a) **Federal Statute**. In any action in which the constitutionality of an Act of Congress is questioned and neither the United States nor any officer, agency or employee thereof is a party, counsel raising the question must file a notice of such claim with the assigned Judge (or, if no assignment has been made, the Chief Judge) and serve a copy of such notice on the United States Attorney for this district. The notice must identify the statute and describe the basis for the claim that it is unconstitutional. The party must file the notice with a certificate of service pursuant to Civil L.R. 5-6.

(b) **State Statute**. In any action in which the constitutionality of a state statute is questioned and neither the state nor an agency, officer or employee of the state is a party, counsel raising the question must file notice of such claim with the assigned Judge (or, if no assignment has been made, the Chief Judge) and serve a copy of such notice on the State Attorney General. The notice must identify the statute and describe the basis for the claim that it is unconstitutional. The party must file the notice with a certificate of service pursuant to Civil L.R. 5-6.

Cross Reference
See 28 U.S.C. § 2403.

3-9. Parties

(a) **Natural Person Appearing Pro Se**. Any party representing him or herself without an attorney must appear personally and may not delegate that duty to any other person who is not a member of the bar of this Court. A person representing him or herself without an attorney is bound by the Federal Rules, as well as by all applicable local rules. Sanctions (including default or dismissal) may be imposed for failure to comply with local rules.

Cross Reference
See Civil L.R. 11-1 "*The Bar of this Court.*"

(b) **Corporation or Other Entity.** A corporation, unincorporated association, partnership or other such entity may appear only through a member of the bar of this Court.

Cross Reference
See Civil L.R. 11-1 "*The Bar of this Court.*"

(c) **Government or Governmental Agency**. When these rules require an act be done personally by the party, and the party is a government or a governmental agency, the act must be done by a representative of the government or governmental agency who is knowledgeable about the facts of the case and the position of the government, and who has, to the greatest extent feasible, authority to do the required act.

Cross Reference
See Civil L.R. 11-2 "*Attorneys for the United States.*"
See also ADR L.R. 5-10(a)(2) and 6-9(a)(2).

3-10. Ex Parte Motion to Proceed In Forma Pauperis.

(a) **Motion to Proceed In Forma Pauperis**. At the commencement of an action, any person wishing the Court to authorize prosecution or defense of the action without payment of fees or security, pursuant to 28 United States Code § 1915, must submit, with the proposed complaint, an Ex Parte Motion to Proceed In Forma Pauperis, pursuant to Civil L.R. 7-11. The Clerk shall file the complaint, assign a case number and deliver a copy of the complaint and motion to the Chambers of the assigned Judge for determination.

(b) **Content of Motion**. The motion must contain:

(1) A request to proceed *in forma pauperis*;

(2) An affidavit or declaration under penalty of perjury providing the information required by Title 28 U.S.C. § 1915, on a form available at the Office of the Clerk and on the Court's Internet site, or an equivalent form; and

(3) A proposed order.

(c) **Determination of the Motion**. The Judge may grant the motion, grant the motion subject to partial payment of fees, costs or security, or deny the motion. If the motion is granted in part or denied, the order will state that the action is dismissed unless any outstanding fees, costs or security is paid within the time set in the order.

Commentary
If, during the pendency of an action, any person wishes to prosecute or defend an action *in forma pauperis*, the person must file an Administrative Motion to Proceed *in forma pauperis* pursuant to Civil L.R. 7-11.

3-11. Failure to Notify of Address Change

(a) **Duty to Notify**. An attorney or a party proceeding pro se whose address changes while an action is pending must promptly file with the Court and serve upon all opposing parties a Notice of Change of Address specifying the new address.

(b) **Dismissal Due to Failure**. The Court may, without prejudice, dismiss a complaint or strike an answer when:

(1) Mail directed to the attorney or pro se party by the Court has been returned to the Court as not deliverable; and

(2) The Court fails to receive within 60 days of this return a written communication from the attorney or pro se party indicating a current address.

3-12. Related Cases

(a) **Definition of Related Cases**. An action is related to another when:

(1) The actions concern substantially the same parties, property, transaction or event; and

(2) It appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges.

(b) **Administrative Motion to Consider Whether Cases Should be Related**. Whenever a party knows or learns that an action, filed in or removed to this district is (or the party believes that the action may be) related to an action which is or was pending in this District as defined in Civil L.R. 3-12(a), the party must promptly file in the earliest-filed case an Administrative Motion to Consider Whether Cases Should be Related, pursuant to Civil L.R. 7-11. In addition to complying with Civil L.R. 7-11, a copy of the motion, together with proof of service pursuant to Civil L.R. 5-6, must be served on all known parties to each apparently related action. A Chambers copy of the motion must be lodged with the assigned Judge in each apparently related case under Civil L.R. 5-1(b).

(c) **SuaSponte Judicial Referral for Purpose of Determining Relationship**. Whenever a Judge believes that a case pending before that Judge is related to another case, the Judge may refer the case to the Judge assigned to the earliest-filed case with a request that the Judge assigned to the earliest-filed case consider whether the cases are related. The referring Judge shall file and send a copy of the referral to all parties to all affected cases. The parties must file any response in opposition to or support of relating the cases pursuant to Civil L.R. 3-12(d). Alternatively, a Judge may order the parties to file a motion pursuant to Civil L.R. 3-12(b).

(d) **Content of Motion**. An Administrative Motion to Consider Whether Cases Should be Related must contain:

(1) The title and case number of each apparently related case;

(2) A brief statement of the relationship of the actions according to the criteria set forth in Civil L.R. 3-12(a).

(e) **Response to Motion**. Any opposition to or support of a Motion to Consider Whether Cases Should be Related must be filed in the earliest filed case pursuant to Civil L.R. 7-11. The opposition or statement of support must specifically address the issues in Civil L.R. 3-12(a) and (d) and be served on all parties and lodged with the Chambers of all Judges identified in the motion. If the motion identifies more than two potentially related cases, and a party contends that not all of the cases are related, the party must address whether any of the cases are related to one another.

(f) **Order Granting or Denying Relationship**. Upon a motion by a party or a referral by another Judge, after the time for filing support or opposition to the Motion to Consider Whether Cases Should Be Related has passed, the Judge in this District who is assigned to the earliest-filed case will decide if the cases are or are not related and will notify the Clerk, who, in turn, will notify the parties.

(1) Due to the need for parties and affected Judges to have a speedy determination of the motion or referral, the Judge assigned to the earliest-filed case shall act on the motion or referral within 14 days after the date

a response is due. If the Judge assigned to the earliest-filed case is not available for that period, the Clerk or counsel may bring the motion or referral to the General Duty Judge.

(2) If the Judge assigned to the earliest-filed case decides that the cases are not related, no change in case assignment will be made. In cases where there are more than two potentially related cases, the Clerk shall submit the order to the Judges assigned to the other cases in order of filing with a form of order to decide within 14 days if the cases are or are not related. If no Judge relates any of the remaining cases, no change in case assignment will be made.

(3) If any Judge decides that any of the cases are related, pursuant to the Assignment Plan, the Clerk shall reassign all related later-filed cases to that Judge and shall notify the parties and the affected Judges accordingly.

(g) **Effect of Order on Case Schedule**. The case management conference in any reassigned case will be rescheduled by the newly assigned Judge. The parties shall adjust the dates for the conference, disclosures and report required by Fed. R. Civ. P. 16 and 26 accordingly. Unless the assigned Judge otherwise orders, upon reassignment, any deadlines set by the ADR Local Rules remain in effect and any dates for hearing noticed motions are automatically vacated and must be renoticed by the moving party before the newly assigned Judge. For cases ordered related after the initial case management conference, unless the assigned Judge otherwise orders, any deadlines established in the case management order shall continue to govern, except for the trial date, which will be rescheduled by the assigned Judge.

3-13. Notice of Pendency of Other Action or Proceeding

(a) **Notice**. Whenever a party knows or learns that an action filed or removed to this district involves all or a material part of the same subject matter and all or substantially all of the same parties as another action which is pending in any other federal or state court, the party must promptly file with the Court in the action pending before this Court and serve all opposing parties in the action pending before this Court with a Notice of Pendency of Other Action or Proceeding.

(b) **Content of Notice**. A Notice of Pendency of Other Action or Proceeding must contain:

(1) A description of the other action;

(2) The title and location of the court in which the other action or proceeding is pending; and

(3) A brief statement of:

(A) The relationship of the other action to the action or proceeding pending in this district; and

(B) If the other action is pending in another U.S. District Court, whether transfer should be effected pursuant to 28 U.S.C. § 1407 (Multi District Litigation Procedures) or whether other coordination might avoid conflicts, conserve resources and promote an efficient determination of the action; or

(C) If the other action is pending before any state court, whether proceedings should be coordinated to avoid conflicts, conserve resources and promote an efficient determination of the action.

(c) **Procedure After Filing**. No later than 14 days after service of a Notice of Pendency of Other Action, any party may file with the Court a statement supporting or opposing the notice. Such statement will specifically address the issues in Civil L.R. 3-13(b).

(d) **Order**. After the time for filing support or opposition to the Notice of Pendency of Other Actions or Proceedings has passed, the Judge assigned to the case pending in this district may make appropriate orders.

3-14. Transfer of Action to Another District

An order transferring an action to another district shall become effective 14 days after it is filed, unless the order specifies a specific effective date.

3-15. Disqualification of Assigned Judge

Whenever an affidavit of bias or prejudice directed at a Judge of this Court is filed pursuant to 28 U.S.C. § 144, and the Judge has determined not to recuse him or herself and found that the affidavit is neither legally insufficient nor interposed for delay, the Judge shall refer the request for disqualification to the Clerk for random assignment to another Judge.

Commentary

Recusal under 28 U.S.C. § 455 is normally undertaken by a Judge *suasponte*. However, counsel may bring the issue to a Judge's attention by formal motion or raise it informally at a Case Management Conference or by a letter to the Judge, with a copy to the other parties in the case. This rule does not preclude a Judge from referring matters arising under 28 U.S.C. § 455 to the Clerk so that another Judge can determine disqualification. See also Civil L.R. 3-16.

3-16. Disclosure of Non-party Interested Entities or Persons

(a) **Policy**. So that Judges of this Court may evaluate any need for disqualification or recusal early in the course of any case, each party to any civil proceeding must file a "Certification of Interested Entities or Persons" pursuant to this Rule. The Rule does not apply to any governmental entity or its agencies.

(b) **Certification**. Upon making a first appearance in any proceeding in this Court, a party must file with the Clerk a "Certification of Interested Entities or Persons."

(1) The Certification must disclose any persons, associations of persons, firms, partnerships, corporations (including parent corporations), or other entities other than the parties themselves known by the party to have either: (i) a financial interest (of any kind) in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding.

(2) For purposes of this Rule, the terms "proceeding" and "financial interest" shall have the meaning assigned by 28 U.S.C. 455 (d)(1), (3) and (4), respectively.

(3) If a party has no disclosure to make pursuant to subparagraph (b)(1), that party must make a certification stating that no such interest is known other than that of the named parties to the action.

(c) **Form of Certification**. The Certification of Interested Entities or Persons must take the following form, as is appropriate to the proceeding:

(1) If there is an interest to be certified: "Pursuant to Civil L.R. 3-16, the undersigned certifies that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding: (List names and identify their connection and interest). Signature, Attorney of Record."

(2) If there is no interest to be certified: "Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report. Signature, Attorney of Record."

(3) Certification, pursuant to this subsection, must be filed as a separate document.

4. PROCESS: ISSUANCE AND SERVICE

4-1. Limitation on Service by Marshal

Except for service on behalf of the United States or as required by Fed. R. Civ. P. 4(c)(2), or unless the Court orders otherwise for good cause shown, service of summons in a civil action shall not be made by the United States Marshal.

Commentary

28 U.S.C. § 566(c) provides that the United States Marshal shall execute writs, process and orders issued under the authority of the United States.

4-2. Service of Supplementary Material

Along with the complaint and the summons or request for waiver of service, a party subject to Civil L.R. 16-2(a), (b), or (c), must serve the following Supplementary Material:

(a) A copy of the Order Setting Initial Case Management Conference and ADR deadlines issued pursuant to Civil L.R. 16-2(a), (b) or (c);

(b) Any pertinent Standing Orders of the assigned Judge;

(c) A copy of the assigned judge's order and instructions for the preparation of a Case Management Statement or, if none, the Court's form found at Appendix A, pursuant to Civil L.R. 16-10; and

(d) Except in cases assigned at the time of filing to a Magistrate Judge, a copy of the form allowing a party to consent to assignment of the case to a Magistrate Judge.

Commentary

The Clerk will provide the filing party with a copy of the Order Setting Initial Case Management Conference and ADR Deadlines, form for Consent to Assignment of the Case to a Magistrate Judge, form for preparation of the Case Management Statement, and any pertinent Standing Orders. The party must make copies of the schedules and forms for service. The Court's ADR processes and procedures are described in the handbook entitled "Dispute Resolution Procedures in the Northern District of California" on the Court's ADR Internet site, www.adr.cand.uscourts.gov. Limited printed copies of the ADR handbook are available from the Clerk's Office for parties in cases not subject to the Court's Electronic Case Filing program (ECF) under General Order 45.

5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

5-1. Filing Original and Submitting Chambers Copy

(a) **Filing Original**. Except as provided in Civil L.R. 5-2, the original of any document required to be filed by the Federal Rules or by these local rules, together with a certificate of service, must be delivered to the Office of the Clerk during regular hours (as defined in Civil L.R. 77-1(b)) in the courthouse in which the chambers of the Judge to whom the action has been assigned pursuant to Civil L.R. 3-3(a) are located. Certain documents may be filed after regular hours by depositing them in a drop-box pursuant to Civil L.R. 5-3. Filing by electronic means, pursuant to Civil L.R. 5-4, may be required in certain actions. The Clerk will provide notification of any such requirement.

(b) **Extra Copy for Chambers**. An extra copy of the document filed under Civil L.R. 5-1(a), marked by counsel as the copy for "Chambers," must be submitted at the same time to the Office of the Clerk in the courthouse in which the chambers of the Judge to whom the action has been assigned are located. If the matter has been assigned to a Magistrate Judge for hearing, an additional copy designated for delivery to the assigned Magistrate Judge must be delivered to the Office of the Clerk in the courthouse in which the chambers of the Magistrate Judge are located. If the matter has been assigned to the Eureka venue, the extra copy must be mailed to the chambers of the Eureka Magistrate Judge, P.O. Box 1306, Eureka California 95502.

Commentary

When a copy for chambers is delivered to the Office of the Clerk in conformity with Civil L.R. 5-1(b), counsel will be deemed to have complied with any order requiring delivery of that document to the chambers of the assigned Judge.

5-2. Facsimile Filings

(a) **Method of Filing**. In lieu of filing an original document pursuant to Civil L.R. 5-1(a), a party or a party's agent may file with the Court a facsimile ("fax") copy of the original document pursuant to this rule. For purposes of this rule, any fax filing agency shall be regarded as an agent of the filing party, not an agent of the Court. Also for purposes of this rule, the image of the original manual signature appearing on a fax copy filed pursuant to this rule shall constitute an original signature for all court purposes.

(b) **Procedures**. Fax copies may be filed as follows:

(1) The fax copy is <u>not</u> transmitted directly to the Clerk by electronic or telephonic means;

(2) The fax copy is delivered to the Office of the Clerk at the location of the chambers of the Judge to whom the case has been assigned pursuant to Civil L.R. 3-3(a);

(3) The fax copy complies with the requirements of Civil L.R. 3-4; and

(4) The fax copy is accompanied by a certificate of service, as well as an additional copy of the document marked as a copy for "Chambers" (and if the matter has been assigned to a Magistrate Judge for hearing, an additional copy designated for delivery to the chambers of the assigned Magistrate Judge).

(c) **Disposition of the Original Document**. The following procedures shall govern disposition of the original document whenever a fax copy is filed pursuant to Civil L.R. 5-2(b):

(1) The original signed document shall not be substituted into the Court's records, except upon Court order;

(2) Any party filing a fax copy of a document must maintain the original transmitted document and the transmission record of that document until the conclusion of the case, including any applicable appeal period. A transmission record for purposes of this rule is a paper printed by the facsimile machine upon which the original document was transmitted. The record must state the telephone number of the receiving machine, the number of pages sent, the transmission time and an indication that no error in transmission occurred.

(3) Upon request by a party or the Court, the filing party must provide for review the original transmitted document from which a fax copy was produced.

5-3. Drop Box Filings

(a) **Documents Which May Be Filed**. Most documents to be filed pursuant to Civil L.R. 5-1(a) may be deposited in a Clerk's Office drop box, subject to the following:

(1) Any papers in support of or in opposition to a matter scheduled for hearing within 7 days of filing may not be filed through use of a drop box;

(2) Initial pleadings or petitions to be filed prior to the assignment of a Judge may be deposited for filing in a drop box at any courthouse of the district -- and any applicable filing fee must be included, with payment only in the form of a check;

(3) Except for documents covered by (a)(1), above, after regular hours of the Clerk's Office a document to be filed pursuant to Civil L.R. 5-1(a) may be filed by deposit in the Clerk's Office drop box at the courthouse in which the Chambers of the assigned Judge are located.

(b) **Drop Box Locations and Availability**. The Court will maintain drop boxes at each division of the Clerk's Office. The Clerk will regulate the hours during which materials may be filed through use of a drop box.

Commentary

Questions regarding availability and use of the drop box should be directed to the Clerk. The Clerk has set the following schedule for location and availability of drop boxes:

Drop Box Location	Availability	Restrictions
Clerk's Office Entrance 16th Floor 450 Golden Gate Avenue San Francisco	Before 9:00 a.m. and After 4:00 p.m.	Federal Building closed to public after 6:00 p.m. and before 6:00 a.m. on weekdays, and all weekends and federal holidays.
Courthouse Lobby 1st Floor 1301 Clay Street Oakland	Before 9:00 a.m. and After 4:00 p.m.	Federal Building closed to public after 5:00 p.m. and before 7:00 a.m., and on weekends and federal holidays.

Drop Box Location	Availability	Restrictions
Clerk's Office Entrance 2nd Floor 280 South 1st Street San Jose	Before 9:00 a.m. and After 4:00 p.m.	Federal Building closed to public after 5:00 p.m. and before 7:30 a.m., and on weekends and federal holidays.

(c) **Filing Date of Drop Box Documents**. Before deposit of a document for filing in a drop box, the back side of the last page of the document must be stamped "Received" using the device available at the drop box.

(1) The document will be marked by the Clerk as "Filed" on the same date indicated by the "Received" stamp, except when the "Received" date is a weekend or Court holiday, in which case it will be marked as "Filed" on the first day following the weekend or Court holiday.

(2) Where the back side of the last page of the document has not been stamped "Received" with the device available at the drop box, the Clerk will mark the document as "Filed" on the day the Clerk emptied the drop box of the document.

Commentary

Questions regarding availability and use of the drop box should be directed to the Clerk. The Clerk's Office policy is to empty and lock the drop box at the beginning of each day when the Clerk's Office opens. When the Clerk's Office closes, the drop box is reopened so that it may be used again for filing.

5-4. Electronic Case Filings

Pursuant to Fed. R. Civ. P. 5(d)(3), the Clerk will accept in certain actions documents filed, signed or verified by electronic means that are consistent with General Order No. 45, "Electronic Case Filing." A document filed by electronic means in compliance with this Local Rule constitutes a written document for the purposes of applying these Local Rules and the Federal Rules of Civil Procedure. The Clerk will provide notification in any case in which documents must be filed electronically.

Commentary

General Orders for the Northern District of California may be obtained at the following Internet site: http://www.cand.uscourts.gov.Requests for a printed version of General Order No. 45 should be addressed to: Guidelines for Electronic Case Filing, Clerk, U.S. District Court, 450 Golden Gate Avenue, San Francisco, CA 94102. Please enclose a stamped, self-addressed return envelope bearing first class postage.

5-5. Manner of Service

(a) **Cases Not Subject to Electronic Case Filing**. Whenever, by Court order or under these local rules, a pleading or other paper must be "served" upon the attorney for a party or the party by a certain date or time, the serving party must comply with one of the following procedures on or before the due date:

(1) The pleading or paper must be actually delivered to the receiving attorney or party within the meaning of Fed. R. Civ. P. 5(b) on or before the due date. Delivery to a party may be made by private or commercial delivery service or electronically, such as by facsimile transmission or electronic mail; or

(2) If the serving party elects to send the pleading or paper by mail, 3 days are added to the time in which any party must respond, as permitted by Fed. R. Civ. P. 6(d).

Service by mail may not be used if a Local Rule requires delivery of a pleading or paper.

(b) **Cases Subject to Electronic Case Filing**. In cases subject to the Local Rules or General Orders of this Court regarding Electronic Case Filing, all pleadings and papers must be electronically served in accordance with those Rules or General Orders.

Cross Reference

See General Order No. 45, "Electronic Case Filing Guidelines Sec. IX."

In cases subject to electronic case filing, motion papers are filed and served simultaneously. No additional time for response to papers is added for mailing.

5-6. Certificate of Service

(a) **Form**. Whenever any pleading or other paper presented for filing is required (or permitted by any rule or other provision of law) to be served upon any party or person, it must bear or have attached to it:

(1) An acknowledgment of service by the person served; or

(2) Certificate of service stating the date, place and manner of service and the names street address or electronic address of the persons served, certified by the person who made service, pursuant to 28 U.S.C. §1746.

(b) **Sanction for Failure to Provide Certificate**. Failure to provide an acknowledgment or certificate of service shall not be a ground for the Clerk refusing to file a paper or pleading. However, any such document may be disregarded by the Judge if an adverse party timely objects on the ground of lack of service.

Cross Reference

See Fed. R. Civ. P. 4(d).

Commentary

Pursuant to General Order No. 45, parties are not required to include a certificate or acknowledgment of service upon registered ECF users when a document is filed electronically. Notification to those parties will be provided by the court's electronic filing system.

6. TIME

6-1. Enlarging or Shortening Time

(a) **When Stipulation Permissible Without Court Order**. Parties may stipulate in writing, without a Court order, to extend the time within which to answer or otherwise respond to the complaint, or to enlarge or shorten the time in matters not required to be filed or lodged with the Court, provided the change will not alter the date of any event or any deadline already fixed by Court order. Such stipulations shall be promptly filed pursuant to Civil L.R. 5.

(b) **When Court Order Necessary to Change Time**. A Court order is required for any enlargement or shortening of time that alters an event or deadline already fixed by Court order or that involves papers required to be filed or lodged with the Court (other than an initial response to the complaint). A request for a Court order enlarging or shortening time may be made by written stipulation pursuant to Civil L.R. 6-2 or motion pursuant to Civil L.R. 6-3. Any stipulated request or motion which affects a hearing or proceeding on the Court's calendar must be filed no later than 14 days before the scheduled event.

6-2. Stipulated Request for Order Changing Time

(a) **Form and Content**. The parties may file a stipulation, conforming to Civil L.R. 7-12, requesting an order changing time that would affect the date of an event or deadline already fixed by Court order, or that would accelerate or extend time frames set in the Local Rules or in the Federal Rules. The stipulated request must be accompanied by a declaration that:

(1) Sets forth with particularity, the reasons for the requested enlargement or shortening of time;

(2) Discloses all previous time modifications in the case, whether by stipulation or Court order; and

(3) Describes the effect the requested time modification would have on the schedule for the case.

(b) **Action by the Court**. After receiving a stipulated request under this Rule, the Judge may grant, deny or modify the requested time change.

6-3. Motion to Change Time

(a) **Form and Content**. A motion to enlarge or shorten time may be no more than 5 pages in length and must be accompanied by a proposed order and by a declaration that:

(1) Sets forth with particularity, the reasons for the requested enlargement or shortening of time;

(2) Describes the efforts the party has made to obtain a stipulation to the time change;

(3) Identifies the substantial harm or prejudice that would occur if the Court did not change the time; and

(4) If the motion is to shorten time for the Court to hear a motion:

(i) Describes the moving party's compliance with Civil L.R. 37-1(a), where applicable, and

(ii) Describes the nature of the underlying dispute that would be addressed in the motion and briefly summarizes the position each party had taken.

(5) Discloses all previous time modifications in the case, whether by stipulation or Court order;

(6) Describes the effect the requested time modification would have on the schedule for the case.

(b) **Delivery of Motion to Other Parties**. A party filing a motion to enlarge or shorten time must deliver a copy of the motion, proposed order and supporting declaration to all other parties on the day the motion is filed.

Cross Reference

See Civil L. R. 5-5(a)(2) *"Manner of Service,"* regarding time and methods for "delivery" of pleadings and papers.

(c) **Opposition to Motion to Change Time**. Unless otherwise ordered, a party who opposes a motion to enlarge or shorten time must file an opposition not to exceed 5 pages, accompanied by a declaration setting forth the basis for opposition, no later than 4 days after receiving the motion. The objecting party must deliver a copy of its opposition to all parties on the day the opposition is filed.

Cross Reference

See Civil L. R. 5-5(a)(2) "Manner of Service," regarding time and methods for "delivery" of pleadings and papers.

(d) **Action by the Court**. After receiving a motion to enlarge or shorten time and any opposition, the Judge may grant, deny, modify the requested time change or schedule the matter for additional briefing or a hearing.

7. MOTION PRACTICE

7-1. Motions

(a) **Types of Motions**. Any written request to the Court for an order must be presented by one of the following means:

(1) Duly noticed motion pursuant to Civil L.R. 7-2;

(2) A motion to enlarge or shorten time pursuant to Civil L.R. 6-1;

(3) When authorized, an *ex parte* motion pursuant to Civil L.R. 7-10;

(4) When applicable, a motion for administrative relief pursuant to Civil L.R. 7-11; or

(5) Stipulation of the affected parties pursuant to Civil L.R. 7-12.

(6) Motions regarding Orders or Recommendations of a Magistrate Judge pursuant to Civil L.R. 72-2 or 72-3.

(b) **To Whom Motions Made**. Motions must be directed to the Judge to whom the action is assigned, except as that Judge may otherwise order. In the Judge's discretion, or upon request by counsel and with the Judge's approval, a motion may be determined without oral argument or by telephone conference call.

(c) **Unassigned Case or Judge Unavailable**. A motion may be presented to the General Duty Judge or, if unavailable, to the Chief Judge or Acting Chief Judge when:

(1) The assigned Judge is unavailable as defined in Civil L.R. 1-5(p) and an emergency requires prompt action; or

(2) An order is necessary before an action can be filed.

7-2. Notice and Supporting Papers

(a) **Time**. Except as otherwise ordered or permitted by the assigned Judge or these Local Rules, and except for motions made during the course of a trial or hearing, all motions must be filed, served and noticed in writing on the motion calendar of the assigned Judge for hearing not less than 35 days after service of the motion.

Cross Reference

See Civil L. R. 5-5 *"Manner of Service,"* regarding time and methods for service of pleadings and papers.

(b) **Form**. In one filed document not exceeding 25 pages in length, a motion must contain:

(1) On the first page in the space opposite the caption and below the case number, the noticed hearing date and time;

(2) In the first paragraph, notice of the motion including date and time of hearing;

(3) In the second paragraph, a concise statement of what relief or Court action the movant seeks; and

(4) In the succeeding paragraphs, the points and authorities in support of the motion -- in compliance with Civil L.R. 7-4(a).

(c) **Proposed Order**. Unless excused by the Judge who will hear the motion, each motion must be accompanied by a proposed order.

(d) **Affidavits or Declarations**. Each motion must be accompanied by affidavits or declarations pursuant to Civil L.R. 7-5.

Commentary

The time periods set forth in Civil L.R. 7-2 and 7-3 regarding notice, response and reply to motions are minimum time periods. For complex motions, parties are encouraged to stipulate to or seek a Court order establishing a longer notice period with correspondingly longer periods for response or reply. See Civil L.R. 1-4 and 1-5.

7-3. Opposition; Reply; Supplementary Material

(a) **Opposition**. Any opposition to a motion must be served and filed not more than 14 days after the motion is served and filed. The opposition may include a proposed order, affidavits or declarations, as well as a brief or memorandum under Civil L.R. 7-4. Any evidentiary and procedural objections to the motion must be contained within the brief or memorandum. Pursuant to Civil L.R. 7-4(b), such briefs or memoranda may not exceed 25 pages of text.

Cross Reference

See Civil L. R. 5-5 *"Manner of Service,"* regarding time and methods for service of pleadings and papers.

In cases subject to electronic case filing, motions are filed and served simultaneously. The opposition must be filed and served not more than 14 days after the motion is served and filed. No additional time is added for mailing.

(b) **Statement of Nonopposition**. If the party against whom the motion is directed does not oppose the motion, that party must file with the Court a Statement of Nonopposition within the time for filing and serving any opposition.

(c) **Reply**. Any reply to an opposition must be served and filed by the moving party not more than 7 days after the opposition is served and filed. The reply may include affidavits or declarations, as well as a supplemental brief or memorandum under Civil L.R. 7-4. Any evidentiary and procedural objections to the opposition must be contained within the reply brief or memorandum. Pursuant to Civil L.R. 7-4(b), the reply brief or memorandum may not exceed 15 pages of text.

Cross Reference

See Civil L. R. 5-5 "Manner of Service," regarding time and methods for service of pleadings and papers.

In cases subject to electronic case filing, oppositions to motions are filed and served simultaneously. The reply must be served and filed not more than 7 days after the opposition is served and filed. No additional time is added for mailing.

(d) **Supplementary Material**. Once a reply is filed, no additional memoranda, papers or letters may be filed without prior Court approval, except as follows:

(1) If new evidence has been submitted in the reply, the opposing party may file within 7 days after the reply is filed, an Objection to Reply Evidence, which may not exceed 5 pages of text, stating its objections to the new evidence, which may not include further argument on the motion.

(2) Before the noticed hearing date, counsel may bring to the Court's attention a relevant judicial opinion published after the date the opposition or reply was filed

by serving and filing a Statement of Recent Decision, containing a citation to and providing a copy of the new opinion–without argument.

7-4. Brief or Memorandum of Points and Authorities

(a) **Content**. In addition to complying with the applicable provisions of Civil L.R. 3-4, a brief or memorandum of points and authorities filed in support, opposition or reply to a motion must contain:

(1) On the first page in the space opposite the caption and below the case number, the noticed hearing date and time;

(2) If in excess of 10 pages, a table of contents and a table of authorities;

(3) A statement of the issues to be decided;

(4) A succinct statement of the relevant facts; and

(5) Argument by the party, citing pertinent authorities.

(b) **Length**. Unless the Court expressly orders otherwise pursuant to a party's request made prior to the due date, briefs or memoranda filed with opposition papers may not exceed 25 pages of text and the reply brief or memorandum may not exceed 15 pages of text.

Cross Reference

See Civil L.R. 7-11 regarding request to exceed page limitations.

Commentary

Although Civil L.R. 7-4(b) limits briefs to 25 pages of text, counsel should not consider this a minimum as well as a maximum limit. Briefs with less than 25 pages of text may be excessive in length for the nature of the issues addressed.

7-5. Affidavit or Declaration

(a) **Affidavit or Declaration Required**. Factual contentions made in support of or in opposition to any motion must be supported by an affidavit or declaration and by appropriate references to the record. Extracts from depositions, interrogatory answers, requests for admission and other evidentiary matters must be appropriately authenticated by an affidavit or declaration.

(b) **Form**. An affidavit or declarations may contain only facts, must conform as much as possible to the requirements of Fed. R. Civ. P. 56(e), and must avoid conclusions and argument. Any statement made upon information or belief must specify the basis therefor. An affidavit or declaration not in compliance with this rule may be stricken in whole or in part.

7-6. Oral Testimony Concerning Motion

No oral testimony will be received in connection with any motion, unless otherwise ordered by the assigned Judge.

7-7. Continuance of Hearing or Withdrawal of Motion

(a) **Before Opposition is Filed**. Except for cases where the Court has issued a Temporary Restraining Order, a party who has filed a motion may file a notice continuing the originally noticed hearing date for that motion to a later date if:

(1) No opposition has been filed; and

(2) The notice of continuance is filed prior to the date on which the opposition is due pursuant to Civil L.R. 7-3(a).

(b) **After Opposition is Filed**. After an opposition to a motion has been filed, the noticed hearing date may be continued to a subsequent date as follows:

(1) When parties affected by the motion have not previously stipulated to continue the hearing date, unless the hearing date has been reserved with or specially set by the Judge, the parties affected by the motion may stipulate in writing pursuant to Civil L.R. 6-1(a) to continue the hearing date; or

(2) Upon order of the assigned Judge.

(c) **Responsibility for Being Informed of Hearing Date**. Counsel are responsible for being informed of the hearing date on a motion.

(d) **Effect on Time for Filing Opposition or Reply**. Unless otherwise ordered by the Court, the continuance of the hearing of a motion does not extend the time for filing and serving the opposing papers or reply papers.

Cross Reference

See Civil L. R. 5-5 *"Manner of Service,"* regarding time and methods for service of pleadings and papers.

(e) **Withdrawal**. Within 7 days after service of an opposition, the moving party may file and serve a notice of withdrawal of the motion. Upon the filing of a timely withdrawal, the motion will be taken off-calendar. Otherwise, the Court may proceed to decide the motion.

7-8. Motions for Sanctions -- Form and Timing

Any motion for sanctions, regardless of the sources of authority invoked, must comply with the following:

(a) The motion must be separately filed and the date for hearing must be set in conformance with Civil L.R. 7-2;

(b) The form of the motion must comply with Civil L.R. 7-2;

(c) The motion must comply with any applicable Fed. R. Civ. P. and must be made as soon as practicable after the filing party learns of the circumstances that it alleges make the motion appropriate; and

(d) Unless otherwise ordered by the Court, no motion for sanctions may be served and filed more than 14 days after entry of judgment by the District Court.

7-9. Motion for Reconsideration

(a) **Leave of Court Requirement**. Before the entry of a judgment adjudicating all of the claims and the rights and liabilities of all the parties in a case, any party may make a motion before a Judge requesting that the Judge grant the party leave to file a motion for reconsideration of any interlocutory order made by that Judge on any ground set forth in Civil L.R. 7-9 (b). No party may notice a motion for reconsideration without first obtaining leave of Court to file the motion.

Cross Reference

See Fed. R. Civ. P. 54(b) regarding discretion of Court to reconsider its orders prior to entry of final judgment.

Commentary

This local rule does not apply to motions for reconsideration of a Magistrate Judge's order pursuant to 28 U.S.C. § 636(b)(1)(A). See Civil L.R. 72.

(b) **Form and Content of Motion for Leave**. A motion for leave to file a motion for reconsideration must be made in accordance with the requirements of Civil L.R. 7-9. The moving party must specifically show:

(1) That at the time of the motion for leave, a material difference in fact or law exists from that which was presented to the Court before entry of the interlocutory order for which reconsideration is sought. The party also must show that in the exercise of reasonable diligence the party applying for reconsideration did not know such fact or law at the time of the interlocutory order; or

(2) The emergence of new material facts or a change of law occurring after the time of such order; or

(3) A manifest failure by the Court to consider material facts or dispositive legal arguments which were presented to the Court before such interlocutory order.

(c) **Prohibition Against Repetition of Argument**. No motion for leave to file a motion for reconsideration may repeat any oral or written argument made by the applying party in support of or in opposition to the interlocutory order which the party now seeks to have reconsidered. Any party who violates this restriction shall be subject to appropriate sanctions.

(d) **Determination of Motion**. Unless otherwise ordered by the assigned Judge, no response need be filed and no hearing will be held concerning a motion for leave to file a motion to reconsider. If the judge decides to order the filing of additional papers or that the matter warrants a hearing, the judge will fix an appropriate schedule.

7-10. Ex Parte Motions

Unless otherwise ordered by the assigned Judge, a party may file an *ex parte* motion, that is, a motion filed without notice to opposing party, only if a statute, Federal Rule, local rule or Standing Order authorizes the filing of an *ex parte* motion in the circumstances and the party has complied with the applicable provisions allowing the party to approach the Court on an *ex parte* basis. The motion must include a citation to the statute, rule or order which permits the use of an *ex parte* motion to obtain the relief sought.

Cross Reference

See, e.g., Civil L.R. 65-1 "*Temporary Restraining Orders.*"

7-11. Motion for Administrative Relief

The Court recognizes that during the course of case proceedings a party may require a Court order with respect to miscellaneous administrative matters, not otherwise governed by a federal statute, Federal or local rule or standing order of the assigned judge. These motions would include matters such as motions to exceed otherwise applicable page limitations or motions to file documents under seal, for example.

(a) **Form and Content of Motions**. A motion for an order concerning a miscellaneous administrative matter may not exceed 5 pages (not counting declarations and exhibits), must set forth specifically the action requested and the reasons supporting the motion and must be accompanied by a proposed order and by either a stipulation under Civil L.R. 7-12 or by a declaration that explains why a stipulation could not be obtained. The moving party must deliver the motion and all attachments to all other parties on the same day as the motion is filed.

Cross Reference

See Civil L. R. 5-5(a)(2) *"Manner of Service,"* regarding time and methods for delivery of pleadings and papers.

(b) **Opposition to or Support for Motion for Administrative Relief**. Any opposition to or support for a Motion for Administrative Relief may not exceed 5 pages (not counting declarations and exhibits), must set forth succinctly the reasons, must be accompanied by a proposed order, and must be filed no later than 4 days after the motion has been filed. The opposition or support and all attachments to it must be delivered to all other parties the same day it is filed.

Cross Reference

See Civil L. R. 5-5(a)(2) "Manner of Service," regarding time and methods for delivery of pleadings and papers.

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

7-12. Stipulations

Every stipulation requesting judicial action must be in writing signed by all affected parties or their counsel. A proposed form of order may be submitted with the stipulation and may consist of an endorsement on the stipulation of the words, "PURSUANT TO STIPULATION, IT IS SO ORDERED," with spaces designated for the date and the signature of the Judge.

7-13. Notice Regarding Submitted Matters

Whenever any motion or other matter has been under submission for more than 120 days, a party, individually or jointly with another party, may file with the Court pursuant to Civil L.R. 5-1 a notice that the matter remains under submission. If judicial action is not taken, subsequent notices may be filed at the expiration of each 120-day period thereafter until a ruling is made.

Commentary

This rule does not preclude a party from filing an earlier notice if it is warranted by the nature of the matter under submission (e.g., motion for extraordinary relief).

7-14. Designation Not for Citation

It is within the sole discretion of the issuing Judge to determine whether an order or opinion issued by that Judge shall not be citable. Any order or opinion which the issuing Judge determines shall not be citable shall bear in the caption before the title of the Court "NOT FOR CITATION."

Cross-Reference

See Civil L.R. 3-4(e) *"Prohibition of Citation to Uncertified Opinion or Order."*

10. FORM OF PAPERS

10-1. Amended Pleadings

Any party filing or moving to file an amended pleading must reproduce the entire proposed pleading and may not incorporate any part of a prior pleading by reference.

11. ATTORNEYS

11-1. The Bar of this Court

(a) **Members of the Bar**. Except as provided in Civil L.R. 11-2, 11-3 and 11-9, only members of the bar of this Court may practice in this Court. The bar of this Court consists of attorneys of good moral character who are active members in good standing of the bar of this Court prior to the effective date of these local rules and those attorneys who are admitted to membership after the effective date.

(b) **Eligibility for Membership**. After the effective date of these rules an applicant for admission to membership in the bar of this Court must be an attorney who is an active member in good standing of the State Bar of California.

(c) **Procedure for Admission**. Each applicant for admission must present to the Clerk a sworn petition for admission in the form prescribed by the Court. The petition must be accompanied by a certified copy of certificate of membership in the State Bar of California. Prior to admission to the bar of this Court, an attorney must certify:

(1) Knowledge of the contents of the Federal Rules of Civil and Criminal Procedure and Evidence, the Rules of the United States Court of Appeals for the Ninth Circuit and the Local Rules of this Court;

(2) Familiarity with the Alternative Dispute Resolution Programs of this Court; and

(3) Understanding and commitment to abide by the Standards of Professional Conduct of this Court set forth in Civil L.R. 11-4.

(d) **Admission Fees**. Each attorney admitted to practice before this Court under this Local Rule must pay to the Clerk the fee fixed by the Judicial Conference of the United States, together with an assessment in an amount to be set by the Court. The assessment will be placed in the Court Non-Appropriated Fund for library, educational and other appropriate uses.

(e) **Admission**. Upon signing the prescribed oath and paying the prescribed fees, the applicant may be admitted to the bar of the Court by the Clerk or a Judge, upon verification of the applicant's qualifications.

(f) **Certificate of Good Standing**. A member of the bar of this Court, who is in good standing, may obtain a Certificate of Good Standing by presenting a written request to the Clerk and paying the prescribed fee.

11-2. Attorneys for the United States

Attorneys employed or retained by the United States government or any of its agencies may practice in this Court in all actions or proceedings within the scope of their employment or retention by the United States.

11-3. *Pro Hac Vice*

(a) **Application**. An attorney who is not a member of the bar of this Court may apply to appear *pro hac vice* in a particular action in this district by filing a written application on oath certifying the following:

(1) That he or she is an active member in good standing of the bar of a United States Court or of the highest court of another State or the District of Columbia, specifying such bar;

(2) That he or she agrees to abide by the Standards of Professional Conduct set forth in Civil L.R. 11-4, and to become familiar with the Local Rules and Alternative Dispute Resolution Programs of this Court;

(3) That an attorney, identified by name, who is a member of the bar of this Court in good standing and who maintains an office within the State of California, is designated as co-counsel.

(b) **Disqualification from pro hac vice appearance**. Unless authorized by an Act of Congress or by an order of the assigned judge, an applicant is not eligible for permission to practice *pro hac vice* if the applicant:

(1) Resides in the State of California; or

(2) Is regularly engaged in the practice of law in the State of California. This disqualification shall not be applicable if the *pro hac vice* applicant (i) has been a resident of California for less than one year; (ii) has registered with, and completed all required applications for admission to, the State Bar of California; and

(3) Has officially registered to take or is awaiting his or her results from the California State Bar exam.

(c) **Approval**. The Clerk shall present the application to the assigned judge for approval. The assigned judge shall have discretion to accept or reject the application.

(d) **Admission Fee**. Each attorney requesting to be admitted to practice under Civil L.R. 11-3 must pay to the Clerk a fee in an amount to be set by the Court. The assessment will be placed in the Court's Non-Appropriated Fund for library, educational, and other appropriate uses. If the Judge rejects the application, the attorney, upon request, shall have the fee refunded.

(e) **Appearances and Service on Local Co-Counsel**. All papers filed by the attorney must indicate appearance *pro hac vice*. Service of papers on and communications with local co-counsel designated pursuant to Civil L.R. 11-3(a)(3) shall constitute notice to the party.

11-4. Standards of Professional Conduct

(a) **Duties and Responsibilities**. Every member of the bar of this Court and any attorney permitted to practice in this Court under Civil L.R. 11 must:

(1) Be familiar and comply with the standards of professional conduct required of members of the State Bar of California;

(2) Comply with the Local Rules of this Court;

(3) Maintain respect due to courts of justice and judicial officers;

(4) Practice with the honesty, care, and decorum required for the fair and efficient administration of justice;

(5) Discharge his or her obligations to his or her client and the Court; and

(6) Assist those in need of counsel when requested by the Court.

Commentary

The California Standards of Professional Conduct are contained in the State Bar Act, the Rules of Professional Conduct of the State Bar of California, and decisions of any court

applicable thereto.

(b) **Prohibition Against Bias**. The practice of law before this Court must be free from prejudice and bias. Treatment free of bias must be accorded all other attorneys, litigants, judicial officers, jurors and support personnel. Any violation of this policy should be brought to the attention of the Clerk or any Judge for action under Civ. L.R. 11-6.

(c) **Prohibition against *Ex Parte* Communication**. Except as otherwise provided by law, these Local Rules or otherwise ordered by the Court, attorneys or parties to any action must refrain from making telephone calls or writing letters or sending copies of communications between counsel to the assigned Judge or the Judge's law clerks or otherwise communicating with a Judge or the Judge's staff regarding a pending matter, without prior notice to opposing counsel.

Commentary

This rule is not intended to prohibit communications with a Courtroom Deputy Clerk regarding scheduling.

11-5. Withdrawal from Case

(a) **Order Permitting Withdrawal**. Counsel may not withdraw from an action until relieved by order of Court after written notice has been given reasonably in advance to the client and to all other parties who have appeared in the case.

(b) **Conditional Withdrawal**. When withdrawal by an attorney from an action is not accompanied by simultaneous appearance of substitute counsel or agreement of the party to appear pro se, leave to withdraw may be subject to the condition that papers may continue to be served on counsel for forwarding purposes (or on the Clerk, if the Court so directs), unless and until the client appears by other counsel or pro se. When this condition is imposed, counsel must notify the party of this condition. Any filed consent by the party to counsel's withdrawal under these circumstances must include acknowledgment of this condition.

11-6. Discipline

(a) **General**. In the event that a Judge has cause to believe that an attorney has engaged in unprofessional conduct, the Judge may do any or all of the following:

(1) Initiate proceedings for civil or criminal contempt under Title 18 of the United States Code and Rule 42 of the Federal Rules of Criminal Procedure;

(2) Impose other appropriate sanctions;

(3) Refer the matter to the appropriate disciplinary authority of the state or jurisdiction in which the attorney is licensed to practice;

(4) Refer the matter to the Court's Standing Committee on Professional Conduct; or

(5) Refer the matter to the Chief Judge for her or him to consider whether to issue an order to show cause under Civ. L.R. 11-7.

(b) **"Attorney" Defined**. For purposes of Civil L.R. 11-6, the term "attorney" may include law corporations and partnerships, when the alleged conduct occurs in the course and scope of employment by the corporation or partnership, and includes attorneys admitted to practice in this Court *pro hac vice* pursuant to Civil Local Rule 11-3.

(c) **Standing Committee on Professional Conduct**. The Court will appoint as Special Masters for Disciplinary Proceedings pending before the Court, a Standing Committee on Professional Conduct consisting of seven members of the bar and designate one of the members to serve as Chair of the Committee. The members of the Committee shall continue in office for a period of 4 years. Members shall serve staggered terms, with four of the first appointees serving for 2 years and three members serving for 4 years.

(d) **Discipline Oversight Committee**. The Chief Judge shall appoint three (3) or more Judges to a Discipline Oversight Committee which shall oversee the administration of this Local Rule.

11-7. Reciprocal Discipline and Discipline Following Felony Conviction

(a) **Notice**. Any attorney admitted to practice in this Court who is convicted of a felony, suspended, disbarred or placed on disciplinary probation by any court, or who resigns from the bar of any court with an investigation into allegations of unprofessional conduct pending, must give notice to the Clerk in writing within 14 days of such event.

(b) **Order to Show Cause**. Unless referred to the Standing Committee on Professional Conduct, matters subject to reciprocal discipline on the grounds listed in paragraph (a) above shall be handled as follows:

(1) In such matters, the Chief Judge shall issue an order to the attorney that he or she show cause why the attorney should not be disbarred, suspended, placed on disciplinary probation or otherwise disciplined.

(2) If no response is received to an order to show cause within 28 days of mailing, the Chief Judge shall make an independent review of the record of the other proceedings to determine that there was no deprivation of due process, sufficient proof of misconduct, and that no grave injustice would result from the imposition of discipline. The Chief Judge shall issue an appropriate order.

(3) An attorney who wishes to contest reciprocal discipline must file with the Court a timely response to the order to show cause. The Chief Judge may then act on the matter, assign it to another judge or refer it to the Standing Committee on Professional Conduct for recommendation.

(4) An attorney disbarred, suspended or placed on disciplinary probation under the reciprocal discipline provisions of this rule may seek reinstatement upon completion of the period of suspension, disbarment or disciplinary probation by filing a petition with the Clerk, together with proof of any reinstatement by the reciprocal jurisdiction. An attorney disbarred by reason of a felony conviction may not petition for reinstatement until at least one year after entry of the disbarment order.

(c) **Matters Referred to the Standing Committee**. Unless otherwise directed by the Court, the Standing Committee on Professional Conduct shall investigate any charge or information, referred in writing by a Judge of this Court, that any member of the bar of this Court or any attorney permitted to practice in this Court has engaged in unprofessional conduct in connection with an action in this district, in accordance with the following procedure:

(1) Each matter referred shall be assigned an appropriate number by the Clerk, who shall maintain a file under seal. At the written request of the Standing Committee, the Chief Judge (or in a matter referred by the Chief Judge, the

General Duty Judge) may direct the issuance of subpoenas and subpoenas ducestecum.

(2) Investigations shall be conducted informally as the Standing Committee deems advisable. Investigations shall be confidential unless the Discipline Oversight Committee, upon application by the Standing Committee on Professional Conduct or the attorney, concludes that there is a compelling reason to make the matter public. The Standing Committee may finally resolve any referred matter informally, short of formal discipline, as it deems appropriate, and must provide a report of its investigation and any resolution to the referring judge. Records shall be maintained as directed by the Discipline Oversight Committee.

(3) All final actions of the Standing Committee require a majority vote. However, the Standing Committee may organize itself and conduct its affairs by subcommittees of one or more members as it deems advisable. If a majority of the members determine that public reprimand, suspension, disbarment, or other formal discipline is warranted, and the respondent attorney does not consent, the Standing Committee shall institute a disciplinary proceeding by filing with the Clerk a sealed petition that identifies specifically the alleged misconduct. Upon the filing of the petition, the proceeding shall be assigned to a Judge, other than the referring Judge, in the same manner as any other civil action or proceeding. Unless otherwise directed by the assigned judge, the proceeding shall then be presented by a member of the Standing Committee. The presenting attorney will be paid out-of-pocket expenses from court funds.

(4) The Judge to whom the proceeding is assigned shall issue an order to show cause setting a date for hearing, addressed to the respondent attorney, requiring the attorney to appear and show cause why he or she should not be disciplined as prayed for in the petition. The order shall direct that a copy thereof, together with a copy of the petition, be served on the respondent in a manner permitted by Fed. R. Civ. P. 5(b) not less than 35 days in advance of the date specified for hearing. Any response must be filed at least 21 days in advance of the date specified for hearing. Thereafter, the matter shall proceed in accordance with the Federal Rules of Civil Procedure and this Court's Civil Rules as to discovery, motion practice, pretrial and trial as in other civil actions. Written findings of fact and an order based thereon shall be filed by the Judge when dismissing the proceeding or when imposing discipline.

(5) Except with respect to reciprocal discipline pursuant to subparagraph (a) of this Local Rule, any order of disbarment or suspension from practice for more than one year shall be reviewable by a panel of three Judges of this Court designated by the Chief Judge, upon petition filed by the respondent within 14 days of filing of the order. Discipline is not stayed during such a review, absent contrary order from the panel or the ordering judge. Review by any such panel shall be de novo as to matters of law and under the substantial evidence standard as to matters of fact. This provision does not apply to revocation of permission to practice *pro hac vice*.

(6) The Clerk shall give prompt notice of any order of discipline imposed pursuant to this Local Rule to the disciplinary body of the court(s) before which the respondent attorney has been admitted to practice.

(d) **Costs**. Any discipline or other resolution imposed under this Local Rule may include an order that the respondent attorney pay costs of prosecution, including out-of-pocket expenses of the presenting attorney.

Cross Reference
See Fed. R. Civ. P. 11(c), 16(f), 37.

11-8. Sanctions for Unauthorized Practice

A person who exercises, or pretends to be entitled to exercise, any of the privileges of membership in the bar of this Court, when that person is not entitled to avail themselves of such membership privileges, shall be subject to sanctions or other punishment, including a finding of contempt.

11-9. Student Practice

(a) **Permission to Appear**. With the approval of the assigned Judge, a certified law student who complies with these Local Rules and acts under the supervision of a member of the bar of this Court may engage in the permitted activities set forth in this Local Rule.

(b) **Permitted Activities**. With respect to a matter pending before this Court, a certified law student may:

(1) Negotiate for and on behalf of the client or appear at Alternative Dispute Resolution (ADR) proceedings, provided that the activity is conducted under the general supervision of a supervising attorney;

(2) Appear on behalf of a client in the trial of a misdemeanor or petty offense, provided the appearance is under the general supervision of a supervising attorney who is immediately available to attend the proceeding if the Judge decides to require the presence of the supervising attorney and, if the client is a criminal defendant, the client has filed a consent with the Court; and

(3) Appear on behalf of a client in any other proceeding or public trial, provided the appearance is under the direct and immediate supervision of a supervising attorney, who is present during the proceedings.

(c) **Requirements for Eligibility**. To be eligible to engage in the permitted activities, a law student must submit to the Clerk:

(1) An application for certification on a form established for that purpose by the Court. The Clerk is authorized to issue a certificate of eligibility;

(2) A copy of a Notice of Student Certification or Recertification from the State Bar of California, or a certificate from the registrar or dean of a law school accredited by the American Bar Association or the State Bar of California that the law student has completed at least one-third of the graduation requirements and is continuing study at the law school, (or, if a recent graduate of the law school, that the applicant has registered to take or is awaiting results of the California State Bar Examination). The certification may be withdrawn at any time by the registrar or dean by providing notice to that effect to the Court; and

(3) Certification from a member of the bar of this Court that he or she will serve as a supervising attorney for the law student. The certification may be withdrawn at any time by a supervising attorney by providing notice to that effect to the Court.

(d) **Requirements of Supervising Attorney**. A supervising attorney must:

(1) Be admitted or otherwise permitted to practice before this Court;

(2) Sign all documents to be filed by the student with the Court;

(3) Assume professional responsibility for the student's work in matters before the Court; and

(4) Assist and counsel the student in the preparation of the student's work in matters before the Court.

(e) **Termination of Privilege**. The privilege of a law student to appear before this Court under this rule may be terminated by the Court at any time in the discretion of the Court, without the necessity to show cause.

16. CASE MANAGEMENT AND PRETRIAL CONFERENCES

16-1. Definitions

"Scheduling," "discovery," or "status" conferences under Fed. R. Civ. P. 16 and 26 shall be designated as "case management conferences" in this Court. All statements, proposed orders, or other documents prepared in connection with such conferences must be referred to as such.

16-2. Order Setting Initial Case Management Conference

(a) **Issuance and Service of Order**. Except in categories of cases excluded under the Federal Rules of Civil Procedure, or these Local Rules or orders of this Court, when an action is filed the Court shall issue to the filing party an Order Setting Initial Case Management Conference and ADR Deadlines. The Order shall set the date for the Initial Case Management Conference -- which shall be on the first date available on the assigned Judge's calendar that is not less than 90 days after the action was filed, and shall specify the deadline for filing the ADR Certification required by Civil L.R. 16-8(b) and either a Stipulation Selecting an ADR Process or a Notice of Need for ADR Phone Conference as required by Civil L.R. 16-8 (c) and ADR L.R. 3-5(c). A copy of this Order must be served by the plaintiff on each defendant, along with the supplementary materials specified by Civil L.R. 4-2.

(b) **Case Management Schedule in Removed Cases**. When a case is removed from a state court to this Court, upon the filing of the notice of removal the Court shall issue to the removing party an Order Setting Initial Case Management Conference, as described in subsection (a), above. The removing party must serve the other parties in the case with a copy of the Order and the supplementary materials specified in Civil L.R. 4-2. Unless ordered otherwise by the Court, the filing of a motion for remand does not relieve the parties of any obligations under this rule.

(c) **Case Management Schedule in Transferred Cases**. When a civil action is transferred to this district, the Court shall issue to the plaintiff an Order Setting Initial Case Management Conference, as described in subsection (a), above. The plaintiff must serve the other parties in the case with a copy of the Order and the pertinent supplementary materials specified in Civil L.R. 4-2.

(d) **Relief from Case Management Schedule**. By serving and filing a motion with the assigned judge pursuant to Civil L.R. 7, a party, including a party added later in the case, may seek relief from an obligation imposed by Fed. R. Civ. P. 16 or 26 or the Order Setting Initial Case Management Conference. The motion must:

(1) Describe the circumstances which support the request;

(2) Affirm that counsel for the moving party has conferred with all other counsel in an effort to reach agreement about the matter and, for each other party, report whether that party supports or opposes the request for relief;

(3) Be accompanied by a proposed revised case management schedule; and

(4) If applicable, indicate any changes required in the ADR process or schedule in the case.

(e) **Limitation on Stipulations**. Any stipulation that would vary the date of a Case Management Conference shall have no effect unless approved by the assigned Judge before the date set for the conference. Any stipulation must comply with Civil L.R. 7-12.

16-3. Lead Trial Counsel Required to Confer

Unless otherwise ordered, the conferring and planning that is mandated by Fed. R. Civ. P. 26(f) and by ADR Local Rule 3-5 must be done by lead trial counsel for each party.

16-4. Procedure in Bankruptcy Appeals

Appeals from the United States Bankruptcy Court to the United States District Court are governed by the Federal Rules of Bankruptcy Procedure and the Bankruptcy Local Rules of this district.

Cross Reference

See Fed. R. Bankr. P. 8001 through 8020 and B.L.R. 8001-1 through 8011-1.

16-5. Procedure in Actions for Review on an Administrative Record

In actions for District Court review on an administrative record, the defendant must serve and file an answer, together with a certified copy of the transcript of the administrative record, within 90 days of receipt of service of the summons and complaint. Within 28 days of receipt of defendant's answer, plaintiff must file a motion for summary judgment pursuant to Civil L.R. 7-2 and Fed. R. Civ. P. 56. Defendant must serve and file any opposition or counter-motion within 28 days of service of plaintiff's motion. Plaintiff may serve and file a reply within 14 days after service of defendant's opposition or counter-motion. Unless the Court orders otherwise, upon the conclusion of this briefing schedule, the matter will be deemed submitted for decision by the District Court without oral argument.

16-6. Procedure in U.S. Debt Collection Cases

These cases shall proceed as follows:

(a) **Identification**. The first page of the complaint must identify the action by using the words "Debt Collection Case;"

(b) **Assignment**. Upon filing the complaint, the matter will be assigned to a Magistrate Judge for all pre-trial proceedings; and

(c) **Collection Proceedings**. If the United States files an application under the Federal Debt Collection Procedures Act, either pre-judgment or post-judgment, such matter will be assigned to a Magistrate Judge.

16-7. Procedure in Other Exempt Cases

Unless otherwise provided in these local rules, in categories of cases that are exempted by Fed. R. Civ. P. 26(a)(1)(B) from the initial disclosure requirements of Fed. R. Civ. P. 26(a)(1), promptly after the commencement of the action the assigned judge will schedule a Case Management Conference or issue a case management order without such conference. Discovery shall proceed in such cases only at the time, and to the extent, authorized by the Judge in the case management order.

16-8. Alternative Dispute Resolution (ADR) in the Northern District

(a) **District Policy Regarding ADR**. It is the policy of this Court to assist parties involved in civil litigation to resolve their disputes in a just, timely and cost-effective manner. The Court has created and makes available its own Alternative Dispute Resolution

(ADR) programs for which it has promulgated local rules. The Court also encourages civil litigants to consider use of ADR programs operated by private entities. At any time after an action has been filed, the Court on its own initiative or at the request of one or more parties may refer the case to one of the Court's ADR programs, or to a judicially hosted settlement conference.

Cross Reference

See ADR L.R. 1-2 "*Purpose and Scope*;" ADR L.R. 2-3 "*Referral to ADR Program*." The Court's ADR processes and procedures are described on the Court's ADR Internet site: www.adr.cand.uscourts.gov .

(b) **ADR Certification**. In cases assigned to the ADR Multi-Option Program, unless otherwise ordered, no later than the date specified in the Order Setting Initial Case Management Conference and ADR Deadlines, counsel and client must sign, serve and file an ADR Certification. The certification must be made on a form established for this purpose by the Court and in conformity with the instructions approved by the Court. Separate Certifications may be filed by each party. If the client is a government or governmental agency, the certificate must be signed by a person who meets the requirements of Civil L.R. 3-9(c). Counsel and client must certify that both have:

(1) Read the handbook entitled "*Dispute Resolution Procedures in the Northern District of California*" on the ADR Internet site, www.adr.cand.uscourts.gov;\\CANDSF\DATA\USERS\WILLSONM\Training\Chambers\www.adr.cand.uscourts.gov

(2) Discussed the available dispute resolution options provided by the Court and private entities; and

(3) Considered whether their case might benefit from any of the available dispute resolution options.

Cross Reference

See ADR L.R. 3-5 "*Selecting an ADR Process*."

Commentary

Certification forms are available on the Court's ADR Internet site www.adr.cand.uscourts.gov and the ECF Website www.ecf.cand.uscourts.gov.Limited printed copies of the handbook entitled "Dispute Resolution Procedures in the Northern District of California" are available from the Clerk's Office for parties in cases not subject to the Court's Electronic Case Filing program (ECF) under General Order 45.

(c) **Stipulation to ADR Process or Notice of Need for ADR Telephone Conference**. In cases assigned to the ADR Multi-Option Program, unless otherwise ordered, no later than the date specified in the Order Setting Initial Case Management Conference and ADR Deadlines, counsel must file, in addition to the ADR Certification, either a "Stipulation and (Proposed) Order Selecting ADR Process" or a "Notice of Need for ADR Phone Conference" on a form established by the Court.

(1) Stipulation. If the parties agree to participate in a Court-sponsored non-binding arbitration, ENE or mediation, or in private ADR, they must file a form Stipulation and Proposed Order selecting an ADR process.

(2) Notice of Need for ADR Phone Conference. If the parties are unable to agree on an ADR process, or if the parties believe that an early settlement conference with a Magistrate Judge is appreciably more likely to meet their needs than any other form of ADR, they must file a Notice of Need for ADR Phone Conference.

Cross Reference

See ADR L.R. 3-5 "*Selecting an ADR Process*" and ADR L.R. 3-5(d) *"Selection Through ADR Phone Conference."*

Commentary

Because of the many other duties assigned to Magistrate Judges, the Court refers only a limited number of cases to Magistrate Judges for early settlement conferences. Forms for "Stipulation to an ADR Process" and "Notice of Need for ADR Telephone Conference" are available on the Court's ADR Internet site www.adr.cand.uscourts.govand the ECF Internet site www.ecf.cand.uscourts.govand in the Appendix to these Local Rules. Limited printed copies are available from the Clerk's Office for parties in cases not subject to the Court's Electronic Case Filing program (ECF) under General Order 45.

16-9. Case Management Statement and Proposed Order

(a) **Joint or Separate Case Management Statement**. Unless otherwise ordered, no later than the date specified in Fed. R. Civ. P. 26(f), counsel must file a Joint Case Management Statement addressing all of the topics set forth in the Standing Order for All Judges of the Northern District of California – Contents of Joint Case Management Statement, which can be found on the Court's website located at http://www.cand.uscourts.gov. If one or more of the parties is not represented by counsel, the parties may file separate case management statements. If a party is unable, despite reasonable efforts, to obtain the cooperation of another party in the preparation of a joint statement, the complying party may file a separate case management statement, accompanied by a declaration describing the conduct of the uncooperative party which prevented the preparation of a joint statement. Separate statements must also address all of the topics set forth in the Standing Order referenced above.

(b) **Case Management Statement in Class Action**. Any party seeking to maintain a case as a class action must include in the Case Management Statement required by Civil L.R. 16-9(a) the following additional information:

(1) The specific paragraphs of Fed. R. Civ. P. 23 under which the action is maintainable as a class action;

(2) A description of the class or classes in whose behalf the action is brought;

(3) Facts showing that the party is entitled to maintain the action under Fed. R. Civ. P. 23(a) and (b); and

(4) A proposed date for the Court to consider whether the case can be maintained as a class action.

16-10. Case Management Conference

(a) **Initial Case Management Conference**. Unless otherwise ordered, no later than the date specified in the Order Setting Initial Case Management Conference, the Court will conduct an initial Case Management Conference. The assigned District Judge may designate a Magistrate Judge to conduct the initial Case Management Conference and, subject to 28 U.S.C. § 636, other pretrial proceedings in the case. Unless excused by the Judge, lead trial counsel for each party must attend the initial Case Management Conference. Requests to participate in the conference by telephone must be filed and served at least 7 days before the conference or in accordance with the Standing Orders of the assigned Judge.

(b) **Case Management Orders**. After a Case Management Conference, the Judge will enter a Case Management Order or sign the Joint Case Management Statement and Proposed Order submitted by the parties. This order will comply with Fed. R. Civ. P. 16(b) and will identify the principal issues in the case, establish deadlines for joining parties and amending pleadings, identify and set the date for filing any motions that should be considered early in the pretrial period, establish a disclosure and discovery plan, set appropriate limits on discovery and refer the case to ADR unless such a referral would be inappropriate. In addition, in the initial Case Management Order or in any subsequent case management order, the Court may establish deadlines for:

(1) Commencement and completion of any ADR proceedings;

(2) Disclosure of proposed expert or other opinion witnesses pursuant to Fed. R. Civ. P. 26(a)(2), as well as supplementation of such disclosures;

(3) Conclusion of pretrial discovery and disclosure;

(4) Hearing pretrial motions;

(5) Counsel to meet and confer to prepare joint final pretrial conference statement and proposed order and coordinated submission of trial exhibits and other material;

(6) Filing joint final pretrial conference statement and proposed order;

(7) Lodging exhibits and other trial material, including copies of all exhibits to be offered and all schedules, summaries, diagrams and charts to be used at the trial other than for impeachment or rebuttal. Each proposed exhibit must be premarked for identification. Upon request, a party must make the original or the underlying documents of any exhibit available for inspection and copying;

(8) Serving and filing briefs on all significant disputed issues of law, including procedural and evidentiary issues;

(9) In jury cases, serving and filing requested voir dire questions, jury instructions, and forms of verdict; or in court cases, serving and filing proposed findings of fact and conclusions of law;

(10) Serving and filing statements designating excerpts from depositions (specifying the witness and page and line references), from interrogatory answers and from responses to requests for admission to be offered at the trial other than for impeachment or rebuttal;

(11) A date by which parties objecting to receipt into evidence of any proposed testimony or exhibit must advise and confer with the opposing party with respect to resolving such objection;

(12) A final pretrial conference and any necessary Court hearing to consider unresolved objections to proposed testimony or exhibits;

(13) A trial date and schedule;

(14) Determination of whether the case will be maintained as a class action; and

(15) Any other activities appropriate in the management of the case, including use of procedures set forth in the Manual for Complex Litigation.

(c) **Subsequent Case Management Conferences**. Pursuant to Fed. R. Civ. P. 16, the assigned Judge or Magistrate Judge may, suasponte or in response to a stipulated request or motion, schedule subsequent case management conferences during the pendency of an action. Each party must be represented at such subsequent case

management conferences by counsel having authority with respect to matters under consideration.

(d) **Subsequent Case Management Statements**. Unless otherwise ordered, no fewer than 7 days before any subsequent case management conference, the parties must file a Joint Case Management Statement, reporting progress or changes since the last statement was filed and making proposals for the remainder of the case development process. Such statements must report the parties' views about whether using some form of ADR would be appropriate.

Commentary

See Appendix B to these Local Rules for sample form. See also "Forms" link on the Court's Internet site, located at http://www.cand.uscourts.gov.

23. CLASS ACTIONS

23-1. Private Securities Actions

(a) **Filing and Serving Required Notices**. Not later than 21 days after filing the complaint in any action governed by the Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (1995), the party filing that complaint and seeking to serve as lead plaintiff must serve and file a copy of any notice required by the Act.

Cross Reference

See Civil L.R. 3-7 *"Civil Cover Sheet and Certification in Private Securities Actions."*

(b) **Motion to Serve as Lead Plaintiff**. Not later than 60 days after publication of the notices referred to in Civil L.R. 23-1(a), any party seeking to serve as lead plaintiff must serve and file a motion to do so. The motion must set forth whether the party claims entitlement to the presumption set forth in section 27(a)(3)(B)(iii)(I) of the Securities Act or section 21D(a)(3)(B)(iii)(I) of the Securities Exchange Act or that the presumption is rebutted and the reasons therefor.

Cross Reference

See Civil L. R. 5-5 *"Manner of Service,"* regarding time and methods for service of pleadings and papers.

Commentary

A "*Model Stipulation and Proposed Consolidation Order for Securities Fraud Class Actions*" is available from the Clerk in civil actions containing a claim governed by the Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (1995), and is part of the materials provided to the filing party for service on all parties in the action pursuant to Civil L.R. 4-2. See also "Forms" link on the Court's Internet site, located at http://www.cand.uscourts.gov

23-2. Electronic Posting of Certain Documents Filed in Private Securities Actions

(a) **Electronic Posting**. All postable documents, as defined in subsection (b) of this rule, required to be filed pursuant to Civil L.R. 5-1 in any private civil action containing a claim governed by the Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (1995), must be timely posted at a Designated Internet Site. The party or other person filing such document is responsible for timely posting.

(b) **Postable Documents**. For purposes of this Rule, "postable documents" means:

(1) Any pleading specified in Fed. R. Civ. P. 7(a);

(2) Any briefs, declarations or affidavits filed pursuant to Fed. R. Civ. P. 12, 41 or 56;

(3) Any briefs, declarations or affidavits relating to certification of a class pursuant to Fed. R. Civ. P. 23;

(4) Any briefs, declarations or affidavits relating to designation of a lead plaintiff pursuant to 15 U.S.C. §§ 77z-1(a)(3) or 78u-4(a)(3);

(5) Any report, statement, declaration or affidavit of an expert witness designated to testify, whether filed pursuant to Fed. R. Civ. P. 26(a)(2)(B), or otherwise;

(6) Any pretrial conference statement pursuant to Civil L.R. 16-10, pretrial briefs or motions in limine;

(7) Any filing concerning approval of a settlement of the action; and

(8) Any filing concerning any request for attorney fees or costs.

(9) Provided however, that no person shall be required by this Rule to post any:

A. Document which is filed under seal with the written consent of the Court, whether pursuant to a pre-existing written confidentiality order, or otherwise; or

B. Exhibits, appendixes or other attachments to documents otherwise required to be posted; or

C. Briefs, declarations or affidavits which are not available in electronic form in the possession, custody or control of the person filing the document, or such person's counsel, agents, consultants or employees.

(c) **Timely Posting**. A postable document shall be deemed timely posted at a Designated Internet Site in accordance with subsection (a) of this rule if, on the day the document is filed with this Court:

(1) An electronic form of the filing, prepared in any commonly used word processing format, is forwarded to a Designated Internet Site by electronic transmission, e-mail, physical delivery of a diskette, or any other means acceptable to that Designated Internet Site, provided that such electronic delivery occurs by means reasonably calculated to result in delivery by the third day following the filing; and

(2) The certificate of service required by Civil L.R. 5-6 states that service in compliance with this rule has been accomplished to a Designated Internet Site that is identified by its physical and electronic addresses.

(d) **Designated Internet Site**. "Designated Internet Site" for purposes of this rule means an Internet site that:

(1) Is accessible at no cost to all members of the public who are otherwise able to access the Internet through commonly used web browsers;

(2) Charges no fee to any party, intervenor, amicus or other person subject to the provisions of this rule;

(3) Places no restrictions on any person's ability to copy or to download, free of charge, any materials posted on the site pursuant to the requirements of this rule;

(4) Maintains and responsibly operates a notification feature whereby any member of the public can request to receive e-mail notification, at no charge, of any posting of materials to the Designated Internet Site;

(5) Undertakes to post on its site within two days of receipt of the electronic copy all filings forwarded to it;

(6) Undertakes to provide e-mail notification within one day of receipt of the electronic copy to all other Designated Internet Sites informing them of the posting of any materials related to securities class action litigation;

(7) Maintains and publicizes a physical address to which the United States Postal Service or other commonly used delivery services can make physical delivery of documents, and/or diskettes, an Internet address in the form of an operational Uniform Resource Location ("URL"), and an e-mail address to which persons

subject to paragraph (a) of this rule can transmit electronic copies of documents subject to the posting requirement of this rule;

(8) Undertakes to disclose prominently the URLs, physical addresses, and facsimile numbers of all other Designated Internet Sites known to it; and

(9) Submits to the Secretary of the Securities and Exchange Commission (the "Secretary") a statement signed by a member of the bar that: identifies the Designated Internet Site through its URL; provides the name, address, telephone number, facsimile number and e-mail address of one or more persons responsible for operation of the site; and attests that the site satisfies the requirements of the rule and that it will promptly notify the Secretary should it cease to be a Designated Internet Site.

(e) **Suspension of Posting Requirements**. Compliance with this rule is not required for any document filed at any time during which no Designated Internet Site is operational.

Cross Reference

See Civil L.R. 3-7 *"Civil Cover Sheet and Certification in Private Securities Actions."*

Commentary

The Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (1995), (the "Reform Act") contains several provisions designed to disseminate broadly to investors information relating to the initiation and settlement of class action securities fraud litigation in the federal courts. See, e.g., 15 U.S.C. §§ 77z-1(a)(3)(A), 77z-1(a)(7), 78u-4(a)(3)(A), 78u-4(a)(7). The legislative history of that Act makes clear that Congress intended that litigants also make use of "electronic or computer services" to notify class members. H.R. Conf. Rep. 369, 104th Cong., 1st Sess. 34 (1995).

Notification to class members traditionally involves a combination of mailings and newspaper advertisements that are expensive, employ small type, convey little substantive information and that may be difficult for members of the class to locate. The rapid growth of Internet technology provides a valuable means whereby extensive amounts of information can be communicated at low cost to all actual or potential members of a class, as well as to other members of the public. Consistent with Congressional intent to promote the use of "electronic or computer services", this rule seeks to employ Internet technology to disseminate broadly information related to class action securities fraud litigation.

Civil L.R. 23-2 is designed to capitalize on the potentially substantial benefits of the Internet for class members, counsel, and the Court while imposing de minimis costs. Compliance is simple and inexpensive: it is accomplished by sending an e-mail copy or a diskette of a filing that already exists on a word processor to a Designated Internet Site which charges no fee for the services it renders. The rule specifically does not require that counsel create electronic versions of filings, attachments, exhibits, or other materials that do not already exist in readily accessible machine-readable form. Posting to a Designated Internet Site is not a substitute for other applicable filing requirements.

The benefits of Internet access to these documents are several. Clients will be able easily to monitor developments in litigation pursued on their behalf. Courts and counsel will be able to observe litigation developments over a broader span of disputes and thereby become better informed with regard to emerging issues in this complex area of the law. With addition of full text search engines to the data contained in Designated Internet Sites, courts, litigants, and class members alike will be able to search efficiently the most significant filings in class action securities fraud litigation for issues and facts relevant to their analyses. Search tools now limited to the analysis of judicial decisions will thus become applicable to the record in a case itself.

Links to Designated Internet Sites may be found at the following Internet address:
http://securities.stanford.edu

The Court recognizes the novel nature of this posting requirement. The Court therefore proposes to adopt the rule on a temporary basis and will regularly review its operation and any difficulties that may arise.

26. GENERAL PROVISIONS GOVERNING DISCOVERY

26-1. Custodian of Discovery Documents

The party propounding interrogatories, requests for production of documents, or requests for admission must retain the original of the discovery request and the original response. That party shall be the custodian of these materials. Fed. R. Civ. P. 30(f) identifies the custodian of the original transcript or recording of a deposition.

Commentary

Counsel should consider stipulating to sharing diskettes or other computer-readable copies of discovery requests, such as interrogatories and requests for production of documents, as well as responses to such requests, to save costs and to facilitate expeditious pretrial discovery.

30. DEPOSITIONS

30-1. Required Consultation Regarding Scheduling

For the convenience of witnesses, counsel and parties, before noticing a deposition of a party or witness affiliated with a party, the noticing party must confer about the scheduling of the deposition with opposing counsel or, if the party is pro se, the party. A party noticing a deposition of a witness who is not a party or affiliated with a party must also meet and confer about scheduling, but may do so after serving the nonparty witness with a subpoena.

30-2. Numbering of Deposition Pages and Exhibits

(a) **Sequential Numbering of Pages**. The pages of the deposition of a single witness, even if taken at different times, must be numbered sequentially.

(b) **Sequential Numbering of Exhibits**. Documents identified as exhibits during the course of depositions and at trial must be numbered and organized as follows:

(1) At the outset of the case, counsel must meet and confer regarding the sequential numbering system that will be used for exhibits throughout the litigation, including trial.

(2) If the pages of an exhibit are not numbered internally and it is necessary to identify pages of an exhibit, then each page must receive a page number designation preceded by the exhibit number (e.g., Exhibit 100-2, 100-3, 100-4).

(3) To the extent practicable, any exhibit which is an exact duplicate of an exhibit previously numbered must bear the same exhibit number regardless of which party is using the exhibit. Any version of any exhibit which is not an exact duplicate must be marked and treated as a different exhibit, bearing a different exhibit number.

(4) In addition to exhibit numbers, documents may bear other numbers or letters used by the parties for internal control purposes.

33. INTERROGATORIES

33-1. Form of Answers and Objections

Answers and objections to interrogatories must set forth each question in full before each answer or objection.

33-2. Demands that a Party Set Forth the Basis for a Denial of a Requested Admission

A demand that a party set forth the basis for a denial of an admission requested under Fed. R. Civ. P. 36 will be treated as a separate discovery request (an interrogatory) and is allowable only to the extent that a party is entitled to propound additional interrogatories.

Cross Reference

To the same effect, see Civil L.R. 36-2.

Commentary

Under Fed. R. Civ. P. 36, a party is not required to set forth the basis for an unqualified denial.

33-3. Motions for Leave to Propound More Interrogatories Than Permitted by Fed. R. Civ. P. 33

A motion for leave to propound more interrogatories than permitted by Fed. R. Civ. P. 33 must be accompanied by a memorandum which sets forth each proposed additional interrogatory and explains in detail why it is necessary to propound the additional questions.

34. PRODUCTION OF DOCUMENTS AND THINGS

34-1. Form of Responses to Requests for Production

A response to a request for production or inspection made pursuant to Fed. R. Civ. P. 34(a) must set forth each request in full before each response or objection.

36. REQUESTS FOR ADMISSION

36-1. Form of Responses to Requests for Admission

Responses to requests for admission must set forth each request in full before each response or objection.

36-2. Demands that a Party Set Forth the Basis for a Denial of a Requested Admission

A demand that a party set forth the basis for a denial of a requested admission will be treated as a separate discovery request (an interrogatory) and is allowable only to the extent that a party is entitled to propound additional interrogatories.

Cross Reference

To the same effect, see Civil L.R. 33-2.

Commentary

Under Fed. R. Civ. P. 36, a party is not required to set forth the basis for an unqualified denial.

37. MOTIONS TO COMPEL DISCLOSURE OR DISCOVERYOR FOR SANCTIONS

37-1. Procedures for Resolving Disputes

(a) **Conference Between Counsel Required**. The Court will not entertain a request or a motion to resolve a disclosure or discovery dispute unless, pursuant to Fed. R. Civ. P. 37, counsel have previously conferred for the purpose of attempting to resolve all disputed issues. If counsel for the moving party seeks to arrange such a conference and opposing counsel refuses or fails to confer, the Judge may impose an appropriate sanction, which may include an order requiring payment of all reasonable expenses, including attorney's fees, caused by the refusal or failure to confer.

(b) **Requests for Intervention During a Discovery Event**. If a dispute arises during a discovery event the parties must attempt to resolve the matter without judicial intervention by conferring in good faith. If good faith negotiations between the parties fail to resolve the matter, and if disposition of the dispute during the discovery event likely would result in substantial savings of expense or time, counsel or a party may contact the chambers of the assigned District Judge or Magistrate Judge to ask if the Judge is available to address the problem through a telephone conference during the discovery event.

37-2. Form of Motions to Compel

In addition to complying with applicable provisions of Civil L.R. 7, a motion to compel further responses to discovery requests must set forth each request in full, followed immediately by the objections and/or responses thereto. For each such request, the moving papers must detail the basis for the party's contention that it is entitled to the requested discovery and must show how the proportionality and other requirements of Fed. R. Civ. P. 26(b)(2) are satisfied.

37-3. Discovery Cut-Off; Deadline to File Motions to Compel

Unless otherwise ordered, as used in any order of this Court or in these Local Rules, a "discovery cut-off" is the date by which all responses to written discovery are due and by which all depositions must be concluded.

Where the Court has set a single discovery cut-off for both fact and expert discovery, no motions to compel discovery may be filed more than 7 days after the discovery cut-off.

Where the Court has set separate deadlines for fact and expert discovery, no motions to compel fact discovery may be filed more than 7 days after the fact discovery cut-off, and no motions to compel expert discovery may be filed more than 7 days after the expert discovery cut-off.

Discovery requests that call for responses or depositions after the applicable discovery cut-off are not enforceable, except by order of the Court for good cause shown.

Cross Reference
See Civil L.R. 37 *"Compelling Discovery or Disclosure."*

Commentary

Counsel should initiate discovery requests and notice depositions sufficiently in advance of the cut-off date to comply with this local rule.

37-4. Motions for Sanctions under Fed. R. Civ. P. 37

When, in connection with a dispute about disclosure or discovery, a party moves for an award of attorney fees or other form of sanction under Fed. R. Civ. P. 37, the motion must:

(a) Comply with Civil L.R. 7-8 and Civil L.R. 7-2; and

(b) Be accompanied by competent declarations which:

(1) Set forth the facts and circumstances that support the motion;

(2) Describe in detail the efforts made by the moving party to secure compliance without intervention by the Court; and

(3) If attorney fees or other costs or expenses are requested, itemize with particularity the otherwise unnecessary expenses, including attorney fees, directly caused by the alleged violation or breach, and set forth an appropriate justification for any attorney-fee hourly rate claimed.

40. TRIAL

40-1. Continuance of Trial Date; Sanctions for Failure to Proceed

No continuance of a scheduled trial date will be granted except by order of the Court issued in response to a motion made in accordance with the provisions of Civil L.R. 7. Failure of a party to proceed with the trial on the scheduled trial date may result in the imposition of appropriate sanctions, including dismissal or entry of default. Jury costs may be assessed as sanctions against a party or the party's attorney for failure to proceed with a scheduled trial or failure to provide the Court with timely written notice of a settlement.

Commentary

Counsel should consult any Standing Orders issued by the assigned Judge with respect to the conduct of trial. Such orders are available from the Clerk.

54. COSTS

54-1. Filing of Bill of Costs

(a) **Time for Filing and Content**. No later than 14 days after entry of judgment or order under which costs may be claimed, a prevailing party claiming taxable costs must serve and file a bill of costs. The bill must state separately and specifically each item of taxable costs claimed. It must be supported by an affidavit, pursuant to 28 U.S.C. §1924, that the costs are correctly stated, were necessarily incurred, and are allowable by law. Appropriate documentation to support each item claimed must be attached to the bill of costs.

Cross Reference

See Civil L. R. 5-5 *"Manner of Service,"* regarding time and methods for service of pleadings and papers.

(b) **Effect of Service**. Service of bill of costs shall constitute notice pursuant to Fed. R. Civ. P. 54(d), of a request for taxation of costs by the Clerk.

(c) **Waiver of Costs**. Any party who fails to file a bill of costs within the time period provided by this rule will be deemed to have waived costs.

Commentary

The 14-day time period set by this rule is inapplicable where the statute authorizing costs establishes a different time deadline, (e.g., 28 U.S.C. § 2412(d)(1)(B) setting 30 days from final judgment as time limit to file for fees under Equal Access to Justice Act).

54-2. Objections to Bill of Costs

(a) **Time for Filing Objections**. Within 14 days after service by any party of its bill of costs, the party against whom costs are claimed must serve and file any specific objections to any item of cost claimed in the bill, succinctly setting forth the grounds of each objection.

(b) **Meet and Confer Requirement**. Any objections filed under this Local Rule must contain a representation that counsel met and conferred in an effort to resolve disagreement about the taxable costs claimed in the bill, or that the objecting party made a good faith effort to arrange such a conference.

54-3. Standards for Taxing Costs

(a) **Fees for Filing and Service of Process**

(1) The Clerk's filing fee is allowable if paid by the claimant.

(2) Fees of the marshal as set forth in 28 U.S.C. § 1921 are allowable to the extent actually incurred. Fees for service of process by someone other than the marshal acting pursuant to Fed. R. Civ. P. 4(c), are allowable to the extent reasonably required and actually incurred.

(b) **Reporters' Transcripts**

(1) The cost of transcripts necessarily obtained for an appeal is allowable.

(2) The cost of a transcript of a statement by a Judge from the bench which is to be reduced to a formal order prepared by counsel is allowable.

(3) The cost of other transcripts is not normally allowable unless, before it is incurred, it is approved by a Judge or stipulated to be recoverable by counsel.

(c) **Depositions**

(1) The cost of an original and one copy of any deposition (including videotaped depositions) taken for any purpose in connection with the case is allowable.

(2) The expenses of counsel for attending depositions are not allowable.

(3) The cost of reproducing exhibits to depositions is allowable if the cost of the deposition is allowable.

(4) Notary fees incurred in connection with taking depositions are allowable.

(5) The attendance fee of a reporter when a witness fails to appear is allowable if the claimant made use of available process to compel the attendance of the witness.

(d) **Reproduction and Exemplification**

(1) The cost of reproducing and certifying or exemplifying government records used for any purpose in the case is allowable.

(2) The cost of reproducing disclosure or formal discovery documents when used for any purpose in the case is allowable.

(3) The cost of reproducing copies of motions, pleadings, notices, and other routine case papers is not allowable.

(4) The cost of reproducing trial exhibits is allowable to the extent that a Judge requires copies to be provided.

(5) The cost of preparing charts, diagrams, videotapes and other visual aids to be used as exhibits is allowable if such exhibits are reasonably necessary to assist the jury or the Court in understanding the issues at the trial.

(e) **Witness Expenses**. Per diem, subsistence and mileage payments for witnesses are allowable to the extent reasonably necessary and provided for by 28 U.S.C. § 1821. No other witness expenses, including fees for expert witnesses, are allowable.

(f) **Fees for Masters and Receivers**. Fees to masters and receivers are allowable.

(g) **Costs on Appeal**. Such other costs, not heretofore provided for, authorized under Rule 39, Federal Rules of Appellate Procedure, are allowable.

(h) **Costs of Bonds and Security**. Premiums on undertaking bonds and costs of providing security required by law, by order of a Judge, or otherwise necessarily incurred are allowable.

54-4. Determination of Taxable Costs

(a) **Supplemental Documentation**. The Clerk may require and consider further affidavits and documentation as necessary to determine allowable costs.

(b) **Taxation of Costs**. No sooner than 14 days after a bill of costs has been filed, the Clerk shall tax costs after considering any objections filed pursuant to Civil L.R. 54-2. Costs shall be taxed in conformity with 28 U.S.C. §§ 1920 and 1923, Civil L.R. 54-3, and all other applicable statutes. On the bill of costs or in a separate notice, the Clerk

shall indicate which, if any of the claimed costs are allowed and against whom such costs are allowed. The Clerk shall serve copies of the notice taxing costs on all parties on the day in which costs are taxed.

54-5. Motion for Attorney's Fees

(a) **Time for Filing Motion**. Unless otherwise ordered by the Court after a stipulation to enlarge time under Civil L.R. 6-2 or a motion under Civil L.R. 6-3, motions for awards of attorney's fees by the Court must be served and filed within 14 days of entry of judgment by the District Court. Filing an appeal from the judgment does not extend the time for filing a motion. Counsel for the respective parties must meet and confer for the purpose of resolving all disputed issues relating to attorney's fees before making a motion for award of attorney's fees.

Commentary

A short time period of only 14 days from the entry of judgment for filing a motion for attorney's fees is set by Fed. R. Civ. P. 54(d)(2)(B). Counsel who desire to seek an order extending the time to file such a motion, either by stipulation (See Civil L.R. 6-2) or by motion (See Civil L.R. 6-3), are advised to seek such an order as expeditiously as practicable.

(b) **Form of Motion**. Unless otherwise ordered, the motion for attorney fees must be supported by declarations or affidavits containing the following information:

(1) A statement that counsel have met and conferred for the purpose of attempting to resolve any disputes with respect to the motion or a statement that no conference was held, with certification that the applying attorney made a good faith effort to arrange such a conference, setting forth the reason the conference was not held; and

(2) A statement of the services rendered by each person for whose services fees are claimed together with a summary of the time spent by each person, and a statement describing the manner in which time records were maintained. Depending on the circumstances, the Court may require production of an abstract of or the contemporary time records for inspection, including *in camera* inspection, as the Judge deems appropriate; and

(3) A brief description of relevant qualifications and experience and a statement of the customary hourly charges of each such person or of comparable prevailing hourly rates or other indication of value of the services.

56. SUMMARY JUDGMENT

56-1. Notice of Motion

Motions for summary judgment or summary adjudication and opposition to such motions must be noticed as provided in Civil L.R. 7-2 and 7-3.

56-2. Separate or Joint Statement of Undisputed Facts

(a) **No Separate Statement Allowed Without Court Order**. Unless required by the assigned Judge, no separate statement of undisputed facts or joint statement of undisputed facts shall be submitted.

(b) **Procedure if Joint Statement Ordered**. If the assigned Judge orders the submission of a joint statement of undisputed facts, the parties shall confer and submit, on or before a date set by the assigned Judge, a joint statement of undisputed facts. If the nonmoving party refuses to join in the statement, the moving party will nevertheless be permitted to file the motion, accompanied by a separate declaration of counsel explaining why a joint statement was not filed. Whether or not sanctions should be imposed for failure to file a joint statement of undisputed facts is a matter within the discretion of the assigned Judge.

56-3. Issues Deemed Established

Statements contained in an order of the Court denying a motion for summary judgment or summary adjudication shall not constitute issues deemed established for purposes of the trial of the case, unless the Court so specifies.

58. ENTRY OF JUDGMENT

58-1. Entry of Judgment in Private Securities Actions

In any private action subject to section 27(c)(1) of the Securities Act, 15 U.S.C. § 77z-1(c)(1), and section 21D(c)(1) of the Securities Exchange Act, 15 U.S.C. § 78u-4(c)(1), the findings required thereunder shall be entered by separate order; until entry of such order, the Clerk shall not enter judgment in the action.

65. INJUNCTIONS

65-1. Temporary Restraining Orders

(a) **Documentation Required**. An *ex parte* motion for a temporary restraining order must be accompanied by:

(1) A copy of the complaint;

(2) A separate memorandum of points and authorities in support of the motion;

(3) The proposed temporary restraining order; and

(4) Such other documents in support of the motion which the party wishes the Court to consider.

(b) **Notice to Opposition of Ex Parte Motion**. Unless relieved by order of a Judge for good cause shown, on or before the day of an ex parte motion for a temporary restraining order, counsel applying for the temporary restraining order must deliver notice of such motion to opposing counsel or party.

Cross Reference

See Civil L. R. 5-5(a)(2) *"Manner of Service,"* regarding time and methods for delivery of pleadings and papers.

(c) **Form of Temporary Restraining Order**. No temporary restraining order will be issued except with an order to show cause fixing the time for hearing a motion for a preliminary injunction, which shall be scheduled pursuant to Fed. R. Civ. P. 65(b). Proposed orders submitted under this Rule must provide a place for the Judge to fix the time within which the restraining order and all supporting pleadings and papers must be served upon the adverse party of any opposing papers.

65-2. Motion for Preliminary Injunction

Motions for preliminary injunctions unaccompanied by a temporary restraining order are governed by Civil L.R. 7-2.

65.1. SECURITY

65.1-1. Security

(a) **When Required**. Upon demand of any party, where authorized by law and for good cause shown, the Court may require any party to furnish security for costs which can be awarded against such party in an amount and on such terms as the Court deems appropriate.

(b) **Qualifications of Surety**. Every bond must have as surety either:

(1) A corporation authorized by the Secretary of the Treasury of the United States to act as surety on official bonds under 31 U.S.C. §§ 9301-9306;

(2) A corporation authorized to act as surety under the laws of the State of California;

(3) Two natural persons, who are residents of the Northern District of California, each of whom separately own real or personal property not exempt from execution within the district. (The total value of these two persons' property should be sufficient to justify the full amount of the suretyship); or

(4) A cash deposit of the required amount made with the Clerk and filed with a bond signed by the principals.

(c) **Court Officer as Surety**. No Clerk, marshal or other employee of the Court may be surety on any bond or other undertaking in this Court. No member of the bar appearing for a party in any pending action, may be surety on any bond or other undertaking in that action. However, cash deposits on bonds may be made by members of the bar on certification that the funds are the property of a specified person who has signed as surety on the bond. Upon exoneration of the bond, such monies shall be returned to the owner and not to the attorney.

(d) **Examination of Surety**. Any party may apply for an order requiring any opposing party to show cause why it should not be required to furnish further or different security, or to require the justification of personal sureties.

66. PREJUDGMENT REMEDIES

66-1. Appointment of Receiver

(a) **Time for Motion**. A motion for the appointment of a receiver in a case may be made after the complaint has been filed and the summons issued.

(b) **Temporary Receiver**. A temporary receiver may be appointed with less notice than required by Civil L.R. 7-2 or, in accordance with the requirements and limitations of Fed. R. Civ. P. 65(b), without notice to the party sought to be subjected to a receivership or to creditors.

(c) **Permanent Receiver**. Concurrent with the appointment of a temporary receiver or upon motion noticed in accordance with the requirements of Civil L.R. 7-2, the Judge may, upon a proper showing, issue an order to show cause, requiring the parties and the creditors to show cause why a permanent receiver should not be appointed.

(d) **Parties to be Notified**. Within 7 days of the issuance of the order to show cause, the defendant must provide to the temporary receiver or, if no temporary receiver has been appointed, to the plaintiff, a list of the defendant's creditors, and their addresses. Not less than 14 days before the hearing on the order to show cause, notice of the hearing must be mailed to the listed creditors by the temporary receiver, or, if none, by the plaintiff.

(e) **Bond**. The Court may require any appointed receiver to furnish a bond in such amount as the Court deems reasonable.

66-2. Employment of Attorneys, Accountants or Investigators

The receiver may not employ an attorney, accountant or investigator without a Court order. The compensation of all such employees shall be fixed by the Court.

66-3. Motion for Fees

All motions for fees for services rendered in connection with a receivership must set forth in reasonable detail the nature of the services. The motion must include as an exhibit an itemized record of time spent and services rendered and will be heard in open Court.

66-4. Deposit of Funds

A receiver must deposit all funds received in the institution selected by the Court as its designated depository pursuant to 28 U.S.C. § 2041, entitling the account with the name and number of the action. At the end of each month, the receiver must deliver to the Clerk a statement of account and the canceled checks.

66-5. Reports

Within 30 days of appointment, a permanent receiver must serve and file with the Court a verified report and petition for instructions. The report and petition must contain a summary of the operations of the receiver, an inventory of the assets and their appraised value, a schedule of all receipts and disbursements, and a list of all creditors, their addresses and the amounts of their claims. The petition must contain the receiver's recommendation as to the continuance of the receivership and reasons therefor. At the hearing, the Judge will

determine whether the receivership will be continued and, if so, will fix the time for future reports of the receiver.

66-6. Notice of Hearings

The receiver must give all interested parties notice of the time and place of hearings of the following in accordance with Civil L.R. 7-2:

(a) Petitions for instructions;

(b) Petitions for the payment of dividends to creditors;

(c) Petitions for confirmation of sales of property;

(d) Reports of the receiver;

(e) Motions for fees of the receiver or of any attorney, accountant or investigator, the notice to state the services performed and the fee requested; and

(f) Motions for discharge of the receiver.

72. MAGISTRATE JUDGES; PRETRIAL ORDERS

72-1. Powers of Magistrate Judge

Each Magistrate Judge appointed by the Court is authorized to exercise all powers and perform all duties conferred upon Magistrate Judges by 28 U.S.C. § 636, by the local rules of this Court and by any written order of a District Judge designating a Magistrate Judge to perform specific statutorily authorized duties in a particular action.

72-2. Motion for Relief from Nondispositive Pretrial Order of Magistrate Judge

Any objection filed pursuant to Fed. R. Civ. P. 72(a) and 28 U.S.C. § 636(b)(1)(A) must be made as a "Motion for Relief from Nondispositive Pretrial Order of Magistrate Judge." The motion must specifically identify the portion of the magistrate judge's order to which objection is made and the reasons and authority therefor. The motion may not exceed 5 pages (not counting declarations and exhibits), and must set forth specifically the portions of the Magistrate Judges findings, recommendation or report to which an objection is made, the action requested and the reasons supporting the motion and must be accompanied by a proposed order. The moving party must deliver the motion and all attachments to all other parties on the same day that the motion is filed. Unless otherwise ordered by the assigned District Judge, no response need be filed and no hearing will be held concerning the motion. The District Judge may deny the motion by written order at any time, but may not grant it without first giving the opposing party an opportunity to respond. If no order denying the motion or setting a briefing schedule is made within 14 days of filing the motion, the motion shall be deemed denied. The Clerk shall notify parties when a motion has been deemed denied.

72-3. Motion for De Novo Determination of Dispositive Matter Referred to Magistrate Judge

(a) **Form of Motion and Response**. Any objection filed pursuant to Fed. R. Civ. P. 72(b) and 28 U.S.C. § 636(b)(1)(B) must be made as a "Motion for De Novo Determination of Dispositive Matter Referred to Magistrate Judge." The motion must be made pursuant to Civil L.R. 7-2 and must specifically identify the portions of the Magistrate Judge's findings, recommendation or report to which objection is made and the reasons and authority therefor.

(b) **Associated Administrative Motions**. At the time a party files a motion under Civil L. R. 72-3(a) or a response, the party may accompany it with a separately filed motion for "Administrative Motion to Augment the Record" or an "Administrative Motion for an Evidentiary Hearing." Any associated administrative motion must be made in accordance with Civil L.R. 7-11.

(c) **Ruling on Motion Limited to Record before Magistrate Judge**. Except when the Court grants a motion under Civil L.R. 72-3(b), the Court's review and determination of a motion filed pursuant to Civil L.R. 72-3(a) shall be upon the record of the proceedings before the Magistrate Judge.

Commentary

Procedures governing review of a pretrial order by a Magistrate Judge on matters not dispositive of a claim or defense are governed by Fed. R. Civ. P. 72(a) and 28 U.S.C. § 636(b)(1)(A). Procedures governing consideration of a Magistrate Judge's findings, report and recommendations on pretrial matters dispositive of a claim or defense are governed by Fed. R. Civ. P. 72(b) and 28 U.S.C. § 636(b)(1)(B) & (C).

73. MAGISTRATE JUDGES; TRIAL BY CONSENT

73-1. Time for Consent to Magistrate Judge

(a) **Cases Initially Assigned to a Magistrate Judge**. In cases that are initially assigned to a magistrate judge, unless the magistrate judge has set a different deadline in an individual case:

(1) Parties must either file written consent to the jurisdiction of the magistrate judge, or request reassignment to a district judge, by the deadline for filing the initial case management conference statement.

(2) If a motion that cannot be heard by the magistrate judge without the consent of the parties, pursuant to 28 U.S.C. § 636(c), is filed prior to the initial case management conference, the parties must either file written consent to the jurisdiction of the magistrate judge, or request reassignment to a district judge, no later than 7 days after the motion is filed.

(b) **Cases Initially Assigned to a District Judge**. In cases that are assigned to a district judge, the parties may consent at any time to the Court reassigning the case to a magistrate judge for all purposes, including entry of final judgment, pursuant to 28 U.S.C. § 636(c).

77. DISTRICT COURT AND CLERK

77-1. Locations and Hours

(a) **Locations**

(1) The Office of the Clerk of this Court which serves the San Francisco Courthouse is located at 450 Golden Gate Avenue, San Francisco, California 94102.

(2) The Office of the Clerk of this Court which serves the Oakland Courthouse is located at 1301 Clay Street, Oakland, California 94612.

(3) The Office of the Clerk of this Court which serves the San Jose Courthouse is located at 280 South First Street, San Jose, California 95113.

(b) **Hours**. The regular hours of the Offices of the Clerk are from 9:00 a.m. to 4:00 p.m. each day except Saturdays, Sundays, and Court holidays.

Commentary

See Civil L.R. 5-3 regarding after-hours drop box filing.

77-2. Orders Grantable by Clerk

The Clerk is authorized to sign and enter orders specifically allowed to be signed by the Clerk under the Federal Rules of Civil Procedure and these local rules. In addition, the Clerk may sign and enter the following orders without further direction of a Judge:

(a) Orders specifically appointing persons to serve process in accordance with Fed. R. Civ. P. 4;

(b) Orders on consent noting satisfaction of a judgment, providing for the payment of money, withdrawing stipulations, annulling bonds, exonerating sureties or setting aside a default;

(c) Orders of dismissal on consent, with or without prejudice, except in cases to which Fed. R. Civ. P. 23, 23.1, or 66 apply;

(d) Orders establishing a schedule for case management in accordance with Civil L.R. 16;

(e) Orders relating or reassigning cases on behalf of the Executive Committee; and

(f) Orders taxing costs pursuant to Civil L.R. 54-4.

Cross Reference

See ADR L.R. 4-11(d) "*Nonbinding Arbitration; Entry of Judgment on Award.*"

77-3. Photography and Public Broadcasting

Unless allowed by a Judge or a Magistrate Judge with respect to his or her own chambers or assigned courtroom for ceremonial purposes or for participation in a pilot or other project authorized by the Judicial Council of the Ninth Circuit or the Judicial Conference of the United States, the taking of photographs, public broadcasting or televising, or recording for those purposes in the courtroom or its environs, in connection with any judicial proceeding, is prohibited. Electronic transmittal of courtroom proceedings and presentation of evidence within the confines of the courthouse is permitted, if authorized by the Judge or Magistrate Judge. The term "environs," as used in this rule, means all floors on which chambers, courtrooms or on which Offices of the Clerk are located, with the exception of any space

specifically designated as a Press Room. Nothing in this rule is intended to restrict the use of electronic means to receive or present evidence during Court proceedings.

77-4. Official Notices

The following media are designated by this Court as its official means of giving public notice of calendars, General Orders, employment opportunities, policies, proposed modifications of these local rules or any matter requiring public notice. The Court may designate any one or a combination of these media for purposes of giving notice as it deems appropriate:

(a) **Bulletin Board**. A bulletin board for posting of official notices shall be located at the Office of the Clerk at each courthouse of this district.

(b) **Internet Site**. The Internet site, located at http://www.cand.uscourts.gov, is designated as the district's official Internet site and may be used for the posting of official notices.

(c) **Newspapers**. The following newspapers are designated as official newspapers of the Court for the posting of official notices:

(1) The Recorder; or

(2) The San Francisco Daily Journal; or

(3) The San Jose Post-Record, for matters pending in the San Jose Division, in addition to the newspapers listed in subparagraphs (1) and (2); or

(4) The Times Standard, for matters pending before a Judge sitting in Eureka.

77-5. Security of the Court

The Court, or any Judge, may from time to time make such orders or impose such requirements as may be reasonably necessary to assure the security of the Court and of all persons in attendance.

77-6. Weapons in the Courthouse and Courtroom

(a) **Prohibition on Unauthorized Weapons**. Only the United States Marshal, Deputy Marshals and Court Security Officers are authorized to carry weapons within the confines of the courthouse, courtrooms, secured judicial corridors, and chambers of the Court. When the United States Marshal deems it appropriate, upon notice to any affected Judge, the Marshal may authorize duly authorized law enforcement officers to carry weapons in the courthouse or courtroom.

(b) **Use of Weapons as Evidence**. In all cases in which a weapon is to be introduced as evidence, before bringing the weapon into a courtroom, the United States Marshal or Court Security Officer on duty must be notified. Before a weapon is brought into a courtroom, it must be inspected by the United States Marshal or Court Security Officer to ensure that it is inoperable, appropriately marked as evidence and the assigned Judge notified

77-7. Court Library

The Court maintains a law library primarily for the use of Judges and personnel of the Court. In addition, attorneys admitted to practice in this Court may use the library where circumstances require for actions or proceedings pending in the Court. The library is

operated in accordance with such rules and regulations as the Court may from time to time adopt.

77-8. Complaints Against Judges

Pursuant to 28 U.S.C. § 372(c), any person alleging that a Judge of this Court has engaged in conduct prejudicial to the effective and expeditious administration of the business of the Court or alleging that a Judge is unable to discharge all of the duties of office by reason of mental or physical disability may file with the Clerk of the Court of Appeals for the Ninth Circuit a written complaint containing a brief statement of the facts constituting such conduct. The Clerk of this Court must supply to any person wishing to file such a complaint:

(a) A copy of the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability;

(b) A copy of the complaint form required by Rule 2(a), Ninth Circuit Judicial Council Rules for Complaints of Judicial Misconduct to be used for filing such a complaint; and

(c) A pre-addressed envelope to the Clerk of the Ninth Circuit Court of Appeals, marked "Complaint of Misconduct and/or Disability" pursuant to Rule 2(h), Rules of Judicial Council of Ninth Circuit Governing Complaints of Misconduct.

79. BOOKS AND RECORDS KEPT BY THE CLERK

79-1. Transcript and Designation of Record on Appeal

If a party orders a transcript, in accordance with and within the time provided by Fed. R. App. P. 10(b) and fails to make satisfactory arrangements for payment of such transcript with the court reporter at or before the time of ordering such transcript, the court reporter must promptly notify the Clerk and such party. Within 14 days after receipt of such notice from the court reporter, the party ordering a transcript must make satisfactory arrangements for payment. The reporters' transcript must be filed within 28 days of the date such arrangements have been made. Failure to make satisfactory arrangements for payment within the time specified shall be certified by the Clerk of the Court to the Court of Appeals for the Ninth Circuit as a failure by the party to comply with Fed. R. App. P. 10(b)(4).

Cross Reference
See Ninth Circuit Rule 10-3 "*Ordering the Reporter's Transcript*."

79-2. Exclusions from Record on Appeal

The Clerk will not include in the record on appeal the following items unless their inclusion is specifically requested in writing and supported by a brief statement of the reason therefor:

(a) Summons and returns;

(b) Subpoenas and returns;

(c) Routine procedural motions and orders, such as motions for extensions of or shortening time; and

(d) Routine procedural notices.

79-3. Files; Custody and Withdrawal

All files of the Court shall remain in the custody of the Clerk and no record or paper belonging to the files of the Court may be taken from the custody of the Clerk without a special order of a Judge and a proper receipt signed by the person obtaining the record or paper. No such order will be made except in extraordinary circumstances.

79-4. Custody and Disposition of Exhibits and Transcripts

(a) **Custody of Exhibits During Trial or Evidentiary Hearing**. Unless the Court directs otherwise, each exhibit admitted into evidence during a trial or other evidentiary proceeding shall be held in the custody of the Clerk.

(b) **Removal of Exhibits Upon Conclusion of Proceeding**. At the conclusion of a proceeding in this Court, any exhibit placed in the custody of the Clerk pursuant to Civil L.R. 79-4(a) must be removed by the party which submitted it into evidence. Unless otherwise permitted by the Court, no exhibit may be removed earlier than:

(1) 14 days after expiration of the time for filing a notice of appeal, if no notice of appeal is filed in the proceeding by any party; or

(2) 14 days after a mandate issues from the Court of Appeals, if an appeal was taken by any party to the proceeding.

(c) **Disposition of Unclaimed Exhibits**. Unless otherwise directed by the Court, the Clerk may destroy or otherwise dispose of exhibits not reclaimed within 21 days after the time set for removal under this rule.

79-5. Filing Documents Under Seal

(a) **Specific Court Order Required**. No document may be filed under seal, i.e., closed to inspection by the public, except pursuant to a Court order that authorizes the sealing of the particular document, or portions thereof. A sealing order may issue only upon a request that establishes that the document, or portions thereof is privileged or protectable as a trade secret or otherwise entitled to protection under the law, [hereinafter referred to as "sealable."] The request must be narrowly tailored to seek sealing only of sealable material, and must conform with Civil L.R. 79-5(b) or (c). A stipulation, or a blanket protective order that allows a party to designate documents as sealable, will not suffice to allow the filing of documents under seal. Ordinarily, more than one copy of a particular document should not be submitted for filing under seal in a case.

Commentary

As a public forum, the Court has a policy of providing to the public full access to papers filed in the Office of the Clerk. The Court recognizes that, in some cases, the Court must consider confidential information. In other cases, law or regulation requires a document to be filed under seal, e.g., a False Claims Act complaint. This rule governs requests to file under seal documents or things, whether pleadings, memoranda, declarations, documentary evidence or other evidence. Proposed protective orders, in which parties establish a procedure for designating and exchanging confidential information, must incorporate the procedures set forth in this rule if, in the course of proceedings in the case, a party proposes to submit sealable information to the Judge. This rule is designed to ensure that the assigned Judge receives in chambers a confidential copy of the unredacted and complete document, annotated to identify which portions are sealable, that a separate unredacted and sealed copy is maintained for appellate review, and that a public copy is filed and available for public review that has the minimum redactions necessary to protect sealable information.

(b) **Request to File Entire Document Under Seal**. Counsel seeking to file an entire document under seal must:

(1) File and serve an Administrative Motion to File Under Seal, in conformance with Civil L.R. 7-11, accompanied by a declaration establishing that the entire document is sealable;

(2) Lodge with the Clerk and serve a proposed order sealing the document;

(3) Lodge with the Clerk and serve the entire document, contained in an 8 ½- inch by 11-inch sealed envelope or other suitable sealed container, with a cover sheet affixed to the envelope or container, setting out the information required by Civil L.R. 3-4(a) and (b) and prominently displaying the notation: "DOCUMENT SUBMITTED UNDER SEAL";

(4) Lodge with the Clerk for delivery to the Judge's chambers a second copy of the entire document, in an identical labeled envelope or container.

(c) **Request to File a Portion of a Document Under Seal**. If only a portion of a document is sealable, counsel seeking to file that portion of the document under seal must:

(1) File and serve an Administrative Motion to File Under Seal, in conformance with Civil L.R. 7-11, accompanied by a declaration establishing that a portion of the document is sealable;

(2) Lodge with the Clerk and serve a proposed order that is narrowly tailored to seal only the portion of the document which is claimed to be sealable;

(3) Lodge with the Clerk and serve the entire document, contained in an 8 ½- inch by 11-inch sealed envelope or other suitable sealed container, with a cover sheet affixed to the envelope or container, setting out the information required by Civil L.R. 3-4(a) and (b) and prominently displaying the notation: "DOCUMENT SUBMITTED UNDER SEAL." The sealable portions of the document must be identified by notations or highlighting within the text;

(4) Lodge with the Clerk for delivery to the Judge's chambers a second copy of the entire document, in an identical labeled envelope or container, with the sealable portions identified;

(5) Lodge with the Clerk and serve a redacted version of the document that can be filed in the public record if the Court grants the sealing order.

Commentary

The Clerk shall stamp the sealed envelope or container containing the lodged document, and any redacted version, as received on the date submitted. Upon receipt of an order to file the lodged document under seal, the Clerk shall file-stamp the sealed envelope or container containing the document, the document, and any redacted version of the document as of the date it was originally lodged with the Court, rather than as of the date that the Court approved its filing under seal. Away from public view, the Clerk shall remove the item from the envelope, place a dated file-stamp on the original document, enter it on the docket, and place the document in a sealed folder which shall be maintained in a secure location at the courthouse of the assigned Judge or at the national Archives and Records Administration or other Court-designated depository. The Clerk will file any redacted version of the document in the public record.

(d) **Filing a Document Designated Confidential by Another Party**. If a party wishes to file a document that has been designated confidential by another party pursuant to a protective order, or if a party wishes to refer in a memorandum or other filing to information so designated by another party, the submitting party must file and serve an Administrative Motion for a sealing order and lodge the document, memorandum or other filing in accordance with this rule. If only a portion of the document, memorandum or other filing is sealable, the submitting party must also lodge with the Court a redacted version of the document, memorandum or other filing to be placed in the public record if the Court approves the requested sealing order. Within 7 days thereafter, the designating party must file with the Court and serve a declaration establishing that the designated information is sealable, and must lodge and serve a narrowly tailored proposed sealing order, or must withdraw the designation of confidentiality. If the designating party does not file its responsive declaration as required by this subsection, the document or proposed filing will be made part of the public record.

(e) **Request Denied**. If a request to file under seal is denied in part or in full, neither the lodged document nor any proposed redacted version will be filed. The Clerk will notify the submitting party, hold the lodged document for three days for the submitting party to retrieve it, and thereafter, if it is not retrieved, dispose of it. If the request is denied in full, the submitting party may retain the document and not make it part of the record in the case, or, within 4 days, re-submit the document for filing in the public

record. If the request is denied in part and granted in part, the party may resubmit the document in a manner that conforms to the Court's order and this rule.

(f) **Effect of Seal**. Unless otherwise ordered by the Court, any document filed under seal shall be kept from public inspection, including inspection by attorneys and parties to the action, during the pendency of the case. Any document filed under seal in a civil case shall be open to public inspection without further action by the Court 10 years from the date the case is closed. However, a party that submitted documents that the Court placed under seal in a case may, upon showing good cause at the conclusion of the case, seek an order that would continue the seal until a specific date beyond the 10 years provided by this rule. Nothing in this rule is intended to affect the normal records destruction policy of the United States Courts. The chambers copy of sealed documents will be disposed of in accordance with the assigned Judge's discretion. Ordinarily these copies will be recycled, not shredded, unless special arrangements are made.

83. AMENDMENT OF THE LOCAL RULES

83-1. Method of Amendment

The local rules of this Court may be modified or amended by a majority vote of the active Judges of the Court in accordance with the procedures set forth in this rule. Any proposed substantive modification or amendment of these local rules must be submitted to a Local Rules Advisory Committee for its review, except that amendments for form, style, grammar or consistency may be made without submission to an Advisory Committee.

83-2. Advisory Committee on Rules

(a) **Appointment.** Pursuant to 28 U.S.C. § 2077(b), the Chief Judge shall appoint members of a Local Rules Advisory Committee to serve such terms as the Chief Judge shall designate.

(b) **Purpose**. The Local Rules Advisory Committee shall elect a chair, who shall convene the committee for purposes of making a report and recommendation to the Court with respect to the following matters:

(1) The consistency of the local rules of the Court with the United States Constitution, Acts of Congress, the Federal Rules, General Orders of the Court and Standing Orders of Judges of the Court;

(2) Modification of the local rules of the Court;

(3) Matters referred by the Chief Judge pursuant to Civil L.R. 83-3; and

(4) Means to facilitate understanding of the local rules by the bar and the public.

(c) **Action by the Court**. Upon receipt of the report of the Local Rules Advisory Committee, the Court shall consider the report and take such action as the Court deems appropriate.

(d) **Submission of Report to Judicial Council**. Pursuant to Fed. R. Civ. P. 83, the Chief Judge shall submit any report by the Advisory Committee to the Judicial Council of the Ninth Circuit, together with a report which indicates the Court's disposition of the issues addressed in the report.

83-3. Procedure for Public Comment on Local Rules

(a) **Publication**. Before becoming effective, any proposed substantive modification of the local rules shall be subject to public comment in accordance with Fed. R. Civ. P. 83.

(b) **Public Submissions**. Any person may submit written suggestions for amendments to the local rules. Such suggestions shall be directed to the Chief Judge, who shall refer the matter to the Local Rules Advisory Committee for consideration. Upon such referral, the Local Rules Advisory Committee shall acknowledge receipt of the suggestion to the author and evaluate it in accordance with Civil L.R. 83-2.

Commentary

The 1985 Notes of the Advisory Committee on Rules suggests that in appropriate circumstances, the requirement in Fed. R. Civ. P. 83 that proposed rules be subject to notice and public comment can be "accomplished through the mechanism of an 'Advisory Committee' . . ." on Rules for the district.

UNITED STATES DISTRICT COURT
Northern District of California

ADMIRALTY AND MARITIME LOCAL RULES

Table of Contents

1. TITLE AND SCOPE OF RULES

1-1. Title

These are the Local Rules of Practice in Admiralty and Maritime Claims before the United States District Court for the Northern District of California. They should be cited as "Admir. L.R. ___."

1-2. Scope

These admiralty local rules apply only to civil proceedings that are governed by the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure ("Fed. R. Civ. P. Supp."): maritime attachment and garnishment; actions *in rem*; possessory, petitory and partition actions; actions for exoneration from or limitation of liability; and, with respect to Fed. R. Civ. P. Supp. G, to statutory condemnation and forfeiture proceedings analogous to maritime actions *in rem*. The Federal Rules of Civil Procedure and the civil local rules of this court are also applicable in these proceedings, but to the extent that the civil local rules are inconsistent with these admiralty local rules, these admiralty local rules govern.

Cross Reference

See Fed. R. Civ. P. Supp. A, G.

Commentary

Fed. R. Civ. P. Supp. G, which governs statutory condemnation and forfeiture proceedings analogous to maritime actions *in rem*, took effect on December 1, 2006. *See* Admir. L.R. 12, *infra*. Prior to enactment of Fed. R. Civ. P. Supp. G, statutory condemnation and civil forfeitures procedures were interspersed amongst other Supplemental Admiralty Rules, particularly Fed. R. Civ. P. Supp. C. The effort to create Fed. R. Civ. P. Supp. G resulted from a desire to formulate a comprehensive rule governing civil forfeiture procedures, to consolidate those procedures in a single rule to the extent possible, and to avoid confusion with the admiralty and maritime procedures contained in Fed. R. Civ. P. Supp. A through F.

2. PLEADING IN ADMIRALTY AND MARITIME PROCEEDINGS

2-1. Verification of Pleadings

Verification of every pleading, statement of right or interest, or other paper as required by Fed. R. Civ. P. Supp. B, C, D, and G shall be upon oath or solemn affirmation, or in the form provided by 28 U.S.C. § 1746, by a party or by an authorized officer of a corporate party. If no party or authorized corporate officer is present within the district, verification of a complaint may be made by an agent, attorney in fact, or attorney of record, who shall state the sources of the knowledge, information and belief contained in the complaint; declare that the document verified is true to the best of that knowledge, information, and belief; state why verification is not made by the party or an authorized corporate officer; and state that the affiant is authorized to so verify. A verification not made by a party or authorized corporate officer will be deemed to have been made by the party as if verified personally. If the verification was not made by a party or authorized corporate officer, any interested party may move, with or without requesting a stay, for the personal oath of a party or an authorized corporate officer, which shall be procured by commission or as otherwise ordered.

Cross Reference
See 28 U.S.C. § 1746.

2-2. Itemized Demand for Judgment

The demand for judgment in every complaint filed under Fed. R. Civ. P. Supp. B or C, except a demand for a salvage award, shall allege the dollar amount of the debt or damages for which the action was commenced. The demand for judgment shall also allege the nature of other items of damage. The amount of the special bond posted under Fed. R. Civ. P. Supp. E(5)(a) may be based upon these allegations.

Cross Reference
See Fed. R. Civ. P. Supp. B, C, E(5)(a).

2-3. Affidavit that Defendant is not Found within the District

The affidavit required by Fed. R. Civ. P. Supp. B(1) to accompany the complaint seeking a money judgment shall describe the efforts made by and on behalf of plaintiff to find the defendant within the district.

Cross Reference
See Fed. R. Civ. P. Supp. B(1).

2-4. Use of State Procedures

When the plaintiff invokes a state procedure in order to attach or garnish as permitted by the Federal Rules of Civil Procedure or Fed. R. Civ. P. Supp. B(1)(e), the process of attachment or garnishment shall identify the state law upon which the attachment or garnishment is based.

Cross Reference
See Fed. R. Civ. P. 64, Fed. R. Civ. P. Supp. B(1)(e).

3. JUDICIAL AUTHORIZATION AND PROCESS

3-1. Review by Judge

(a) Authorization to Issue Process. Before the clerk will issue a summons and process of arrest, attachment or garnishment to any party, including intervenors, under Fed. R. Civ. P. Supp. B and C, the pleadings, the affidavit required by Fed. R. Civ. P. Supp. B and accompanying supporting papers must be reviewed by a judge, as defined in Civil L.R. 1-5(l). If the judge finds the conditions set forth in Fed. R. Civ. P. Supp. B or C exist, the judge shall authorize the clerk to issue appropriate process. Supplemental process or alias process may thereafter be issued by the clerk upon application without further order of the court.

Cross Reference
See Fed. R. Civ. P. Supp. B, C.

(b) Exigent Circumstances. If the plaintiff or his attorney certifies by affidavit submitted to the clerk that exigent circumstances make review impracticable, the clerk shall issue a summons and warrant of arrest or process of attachment and garnishment.

Cross Reference
See Fed. R. Civ. P. Supp. B, C.

(c) Personal Appearance. Unless otherwise required by the judge, the review by the judge will not require the presence of the applicant or its attorney but shall be based upon the pleadings and other papers submitted on behalf of that party.

(d) Order. Upon approving the application for arrest, attachment or garnishment, the judge will issue an order to the clerk authorizing the clerk to issue an order for arrest, attachment or garnishment. The proposed form of order authorizing the arrest, attachment or garnishment, and the order of arrest, attachment or garnishment shall be submitted with the other documents for review.

(e) Request for Review. Except in case of exigent circumstances, application for review shall be made by filing a Notice of Request for Review in Accordance with Fed. R. Civ. P. Supp. B or C with the clerk and stating therein the process sought and any time requirements within which the request must be reviewed. The clerk shall contact the judge to whom the matter is assigned to arrange for the necessary review. It will be the duty of the applicant to ensure that the application has been reviewed, and upon approval, presented to the clerk for issuance of the appropriate order.

3-2. When Assigned Judge Unavailable

If the judge to whom a case under these admiralty local rules has been assigned is not available, as defined in Civil L.R. 1-5(n), any matter pertaining to arrest, attachment, garnishment, security or release may be presented to any other judge in the district without reassigning the case.

3-3. Return Date

In an action under Fed. R. Civ. P. Supp. D, a judge may order that the claim and answer be filed on a date earlier than 21 days after arrest. The order may also set a date for expedited hearing of the action.

3-4. Process Held in Abeyance

If a party does not wish the process to be issued at the time of filing the action, the party shall request that issuance of process be held in abeyance. It will not be the responsibility of the clerk or the marshal to ensure that process is issued at a later date.

Cross Reference
See Fed. R. Civ. P. Supp. E(3)(b).

4. ATTACHMENT, GARNISHMENT AND ARREST OF PROPERTY

4-1. Order to Show Cause Regarding Intangible Property

The summons issued pursuant to Fed. R. Civ. P. Supp. C(3) shall direct the person having control of intangible property to show cause, no later than 14 days after service, why the intangible property should not be delivered to the court to abide the judgment. Pursuant to *ex parte* motion made under Civil L.R. 7-11, for good cause shown, a judge may lengthen or shorten the time. Service of the summons has the effect of an arrest of the intangible property and brings it within the control of the court. The person who is served may deliver or pay over to the marshal the intangible property proceeded against to the extent sufficient to satisfy the plaintiff's claim. If such delivery or payment is made, the person served is excused from the duty to show cause. Claimants Persons asserting a right of possession or any ownership interest in the property may show cause as provided in Fed. R. Civ. P. Supp. C(6) why the property should not be delivered to or retained by the court.

Cross Reference
See Fed. R. Civ. P. Supp. C, Fed. R. Civ. P. 6(a).

4-2. Notice of Action and Arrest

(a) Publication. The public notice specified by Fed. R. Civ. P. Supp.C(4) shall be published once in a newspaper named in Civil L.R. 77-4, and plaintiff's attorney shall file a copy of the notice as it was published with the clerk. The notice shall contain:

(1) The court, title, and number of the action;

(2) The date of the arrest;

(3) The identity of the property arrested;

(4) The name, address, and telephone number of the attorney for plaintiff;

(5) A statement that any person who asserts a right of possession or any ownership interest in the property pursuant to Fed. R. Civ. P. Supp. C(6) must file a verified statement of right or interest within 14 days of the execution of process or within the period specified by court order;

(6) A statement that any person required to file a verified statement of right or interest must also file and serve an answer to the complaint within 21days after filing the statement of interest or right, and that otherwise, default may be entered and condemnation ordered;

(7) A statement that applications for intervention under Fed. R. Civ. P. 24 by persons claiming maritime liens or other interests against the property shall be filed within the time fixed by the court; and

(8) The name, address, and telephone number of the marshal.

(b) Filing of Proof of Publication. No later than thirty 30 days after the date of publication, plaintiff shall cause to be filed with the clerk sworn proof of publication by or on behalf of the publisher of the newspaper in which notice was published, together with a copy of the publication or reproduction thereof.

Cross Reference
See Fed. R. Civ. P. Supp. C(3), Fed. R. Civ. P. 6(a).

4-3. Service by Marshal--When Required

Only a marshal shall arrest or attach a vessel or tangible property aboard a vessel. If other tangible or intangible property is the subject of the action, the clerk may deliver the warrant to a marshal, a person or organization contracted with by the United States, a person specially appointed by the court for that purpose, or, if the action is brought by the United States, any officer or employee of the United States.

Cross Reference
See Fed. R. Civ. P.Supp. B(1)(d)(i), C(3)(b).

4-4. Instructions to the Marshal

The party who requests a warrant of arrest or process of attachment or garnishment shall provide instructions to the marshal or the person authorized to serve the warrant pursuant to Admir. L.R. 4-3.

4-5. Property in Possession of United States Officer

When the property to be attached or arrested is in the custody of an employee or officer of the United States, the marshal will deliver a copy of the complaint and warrant of arrest or summons and process of attachment or garnishment to that officer or employee if present, and otherwise to the custodian of the property. The marshal will instruct the officer, employee or custodian to retain custody of the property until ordered to do otherwise by a judge.

4-6. Security Deposit for Arrest or Attachment of Vessels

The first party who seeks arrest or attachment of a vessel or property aboard a vessel shall deposit with the marshal the sum estimated by the marshal to be sufficient to cover the expenses of the marshal including, but not limited to, dockage, keepers, maintenance and insurance for at least 14 days. The marshal is not required to execute process until the deposit is made. The party shall advance additional sums from time to time as requested to cover the marshal's estimated expenses until the property is released or disposed of as provided in Fed. R. Civ. P. Supp. E.

4-7. Undertakings in Lieu of Arrest

If, before or after commencement of suit, plaintiff accepts any written undertaking to respond on behalf of the vessel or other property sued in return for foregoing its arrest or stipulating to the release of such vessel or other property, the undertaking shall become a defendant in place of the vessel or other property sued and be deemed referred to under the name of the vessel or other property in any pleading, order or judgment in the action referred to in the undertaking.

The preceding shall apply to any such undertaking, subject to its own terms and whether or not it complies with Civil L. R. 65.1-1 and has been approved by a judge or clerk.

Cross Reference
See Fed. R. Civ. P. Supp. E(5).

4-8. Adversary Hearing

The adversary hearing following arrest or attachment or garnishment that is called for in Fed. R. Civ. P.Supp. E(4)(f) shall be conducted upon 3 court days written notice to plaintiff, unless otherwise ordered. This local rule shall have no application to suits for seamen's wages when process is issued upon a certification of sufficient cause filed pursuant to Title 46, U.S.C. §§ 603 and 604 or to action by the United States for forfeitures.

Cross Reference
See Fed. R. Civ. P.Supp. E(4)(f), Fed. R. Civ. P. 6(a).

5. DEFENSE; LIMITATION OF LIABILITY

5-1. Deposit of Security for Costs

The amount of security for costs under Fed. R. Civ. P. Supp. F(1) shall be $1,000 unless otherwise ordered, and may be combined with the security for value and interest.

5-2. Order of Proof at Trial

Where the vessel interests seeking statutory limitation of liability have raised the statutory defense by way of answer or complaint, the plaintiff in the former or the damage claimant in the latter shall proceed with its proof first, as is normal at civil trials.

6. JUDGMENT, DEFAULT AND DEFAULT JUDGMENT

6-1. Default in Action *In Rem*

(a) Notice Required. A party seeking a default judgment in an action *in rem* must show that due notice of the action and arrest of the property has been given:

(1) In actions subject to Fed. R. Civ. P. Supp. G:

i. Through execution of process in accordance with Fed. R. Civ. P. Supp. G(3); and

ii. In accordance with Fed. R. Civ. P. Supp. G(4).

(2) In actions not subject to Fed. R. Civ. P. Supp. G:

i. By publication as required in Fed. R. Civ. P. Supp. C(4);

ii. By service upon the master or other person having custody of the property; and

iii. By service under Fed. R. Civ. P. 5(b) upon every other person who has not appeared in the action and is known to have an interest in the property.

(b) Persons with Recorded Interests.

(1) In actions subject to Fed. R. Civ. P. Supp. G:

i. In accordance with Fed. R. Civ. P. Supp. G(4).

(2) In actions not subject to Fed. R. Civ. P. Supp. G:

i. If the defendant property is a vessel documented under the laws of the United States, plaintiff must attempt to notify all persons named in the United States Coast Guard Certificate of Ownership;

ii. If the defendant property is a vessel numbered as provided in the Federal Boat Safety Act, plaintiff must attempt to notify the persons named in the records of the issuing authority;

iii. If the defendant property is of such character that there exists a governmental registry of recorded property interests or security interests in the property, the plaintiff must attempt to notify all persons named in the records of each such registry.

(c) Failure to Give Notice. Failure to give notice as provided by this local rule shall be grounds for setting aside the default under applicable rules, but shall not affect title to property sold pursuant to order of sale or judgment.

6-2. Entry of Default and Default Judgment

After the time for filing an answer has expired, the plaintiff may apply for entry of default under Fed. R. Civ. P. 55(a). Judgment may be entered under Fed. R. Civ. P. 55(b) at any time after default has been entered. Default will be entered upon a showing that:

(a) In actions subject to Fed. R. Civ. P. Supp. G:

(1) Notice has been given as required by Admir. L.R. 6-1(a)(1) and (b)(1);

(2) No one has filed timely and responsive pleadings pursuant to the requirements of Fed. R. Civ. P. Supp. G(5).

(b) In actions not subject to Fed. R. Civ. P. Supp. G:

(1) Notice has been given as required by Admir. L.R. 6-1(a)(2) and (b)(2);

(2) The time to answer has expired; and

(3) No one has filed a verified statement of right of possession or ownership interest in the property.

6-3. Rate of Prejudgment Interest Allowed

Unless a judge directs otherwise or as provided by statute, prejudgment interest shall be awarded at the rate authorized in 28 U.S.C. § 1961, providing for interest on judgments.

Cross Reference

See Fed. R. Civ. P. 55, Fed. R. Civ. P. Supp. C and G.

7. SECURITY

7-1. Security for Costs

In an action under the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, a party may move upon notice to all parties for an order to compel an adverse party to post security for costs with the clerk pursuant to Fed. R. Civ. P. Supp. E(2)(b). Unless otherwise ordered, the amount of security shall be $1,000. The party so ordered shall post the security within 7 days after the order is entered. A party who fails to post security when due may not participate further in the proceedings. A party may move for an order increasing the amount of security for costs.

Cross Reference
See Fed. R. Civ. P. Supp. E.

7-2. Appraisal

An order for appraisal of property so that security may be given or altered will be entered by the clerk at the request of any interested party. If the parties do not agree in writing upon an appraiser, a judge will appoint the appraiser. The appraiser shall be sworn to the faithful and impartial discharge of the appraiser's duties before any federal or state officer authorized by law to administer oaths. The appraiser shall give one day's notice of the time and place of making the appraisal to counsel of record. The appraiser shall promptly file the appraisal with the clerk and serve it upon counsel of record. The appraiser's fee will be paid by the moving party, unless otherwise ordered or agreed. The appraiser's fee is a taxable cost of the action.

Cross Reference
See Fed. R. Civ. P. Supp. E(5), Fed. R. Civ. P. Supp. F(7).

8. INTERVENTION

8-1. Intervenor's Lien or Other Non-Possessory or Non-Ownership Claim in Admiralty and Maritime Cases

(a) Filing of Intervening Complaint. When a vessel or other property has been arrested, attached or garnished in an action filed pursuant to Fed. R. Civ. P. Supp. B, C(6), or D, and the vessel or property is in the hands of the marshal or custodian substituted therefore, anyone having a lien or other non-possessory or non-ownership based claim against the vessel or property is required to present said claim by filing an intervening complaint, and not by filing an original complaint, unless otherwise ordered by a judge. The clerk shall promptly deliver a conformed copy of the complaint in intervention and the intervener's warrant of arrest or process of attachment or garnishment to the marshal, who shall deliver the same to the vessel or custodian of the property. Interveners shall thereafter be subject to the rights and obligations of parties, and the vessel or property shall stand arrested, attached or garnished by the intervener. An intervener shall not be required to advance a security deposit to the marshal.

(b) Sharing Marshal's Fees and Expenses. An intervener shall owe a debt to the first plaintiff, enforceable on motion, consisting of the intervener's share of the marshal's fees and expenses in the proportion that the intervener's claim bears to the sum of all the claims. If a party plaintiff permits vacation of an arrest, attachment or garnishment, remaining plaintiffs share the responsibility to the marshal for fees and expenses in proportion to the remaining claims and for the duration of the marshal's custody because of each claim.

9. CUSTODY SALE AND RELEASE OF PROPERTY

9-1. Custody of Property

(a) Safekeeping of Property. When a vessel, cargo or other property is brought into the marshal's custody by arrest or attachment, the marshal shall arrange for adequate safekeeping, which may include the placing of keepers on or near the vessel. A substitute custodian in place of the marshal may be appointed by order of the court.

(b) Insurance. The marshal may procure insurance to protect the marshal, deputies, keepers and substitute custodians, from liabilities assumed in arresting and holding the vessel, cargo or other property, and in performing whatever services may be undertaken to protect the vessel, cargo or other property, and to maintain the court's custody. The party who applies for removal of the vessel, cargo or other property to another location, for designation of a substitute custodian, or for other relief that will require an additional premium, shall reimburse the marshal therefor. The premiums charged for the liability insurance are taxable as administrative costs while the vessel, cargo or other property is in custody of the court.

(c) Vessel Operations. Following arrest or attachment of a vessel, no cargo handling, repairs or movement may be made without an order of court. The applicant for such an order shall give notice to the marshal and to all parties of record. Upon proof of adequate insurance coverage of the applicant to indemnify the marshal for his or her liability, the court may direct the marshal to permit cargo handling, repairs, movement of the vessel or other operations. Before or after the marshal has taken custody of a vessel, cargo or other property, any party of record may move for an order to dispense with keepers or to remove or place the vessel, cargo or other property at a specified facility, to designate a substitute custodian, or for similar relief. Notice of the motion shall be given to the marshal and to all parties of record. The judge will require that adequate insurance on the property will be maintained by the successor to the marshal, before issuing the order to change arrangements.

(d) Claims by Suppliers for Payment of Charges. A person who furnishes supplies or services to a vessel, cargo or other property in custody of the court who has not been paid and claims the right to payment as an expense of administration shall file an invoice with the clerk in the form of a verified claim at any time before the vessel, cargo or other property is released or sold. The supplier must serve copies of the claim on the marshal, substitute custodian if one has been appointed, and all parties of record. The court may consider the claims individually or schedule a single hearing for all claims.

9-2. Sale of Property in Actions Not Subject to Fed. R. Civ. P. Supp. G

(a) Notice. Notice of sale of arrested or attached property shall be published in one or more newspapers to be specified in the order for sale. Unless otherwise ordered by a judge upon a showing of urgency or impracticality or unless otherwise provided by law, such notice shall be published for at least 6 consecutive publication days before the date of sale.

(b) Payment of Bid. Unless otherwise provided in the order, in all public auction sales by the marshal under orders of sale in admiralty and maritime claims, the marshal shall require of the last and highest bidder at the sale a minimum deposit in cash, certified check or cashier's check, of the full purchase price if it does not exceed $1,000, and otherwise $1,000 or ten percent of the bid, whichever is greater. The balance, if any, of the purchase price shall be paid in cash, certified check or cashier's check before confirmation of the sale or within 3 court days of the dismissal of any opposition which may have been filed. Notwithstanding the above, a plaintiff or intervening plaintiff foreclosing a properly recorded preferred mortgage on, or other valid security interest in the vessel may bid, without payment of cash, certified check or cashier's check, up to the total amount of the secured indebtedness as established by affidavit filed and served by that party on all other parties no later than 14 days prior to the date of sale.

(c) Report and Confirmation. At the conclusion of the sale, the marshal shall forthwith file a written report to the court of the fact of sale, the price obtained and the name and address of the buyer. The clerk of the court shall endorse upon such report the time and date of its filing. If within 3 court days no written objection is filed, the sale shall stand confirmed as of course, without the necessity of any affirmative action thereon by the court and the clerk upon request shall so state to the marshal in writing; except that no sale shall stand confirmed until the buyer has complied fully with the terms of his purchase. If no opposition to the sale is filed, the expenses of keeping the property pending confirmation of sale shall be charged against the party bearing expenses before the sale (subject to taxation as costs), except that if confirmation is delayed by the purchaser's failure to pay any balance which is due on the price, the cost of keeping the property subsequent to the 3-day period hereinabove specified shall be borne by the purchaser.

(d) Penalty for Late Payment of Balance. A successful bidder who fails to pay the balance of the bid within the time allowed under these local rules or a different time specified by the court shall also pay the marshal the costs of keeping the property from the date payment of the balance was due to the date the bidder pays the balance and takes delivery of the property. Unless otherwise ordered by the court, the marshal shall refuse to release the property until this additional charge is paid.

(e) Penalty for Default in Payment of Balance. A successful bidder who fails to pay the balance of the bid within the time allowed is in default and the court may at any time thereafter order a sale to the second highest bidder or order a new sale as appropriate. Any sum deposited by the bidder in default shall be applied to pay any additional costs incurred by the marshal by reason of the default including costs incident to resale. The balance of the deposit, if any, shall be retained in the registry subject to further order of the court, and the court shall be given written notice of its existence whenever the registry deposits are reviewed.

(f) Opposition to Sale. A party filing an opposition to the sale, whether seeking the reception of a higher bid or a new public sale by the marshal, shall give prompt notice to all other parties and to the purchaser. Such party shall also prior to filing an opposition, secure the marshal's endorsement upon it acknowledging deposit with the marshal of the necessary expense of keeping the property for at least 7 days. Pending the court's determination of the opposition, such party shall also advance any further expense at such times and in such amounts as the marshal shall request, or as the court orders upon application of the marshal or the opposing party. Such expense may later be subject to

taxation as costs. In the event of failure to make such advance, the opposition shall fail without necessity for affirmative action thereon by the court. If the opposition fails, the expense of keeping the property during its pendency shall be borne by the party filing the opposition.

(g) Disposition of Deposits.

(1) **Objection Sustained.** If an objection is sustained, sums deposited by the successful bidder will be returned to the bidder forthwith. The sum deposited by the objector will be applied to pay the fees and expenses incurred by the marshal in keeping the property until it is resold, and any balance remaining shall be returned to the objector. The objector will be reimbursed for the expense of keeping the property from the proceeds of a subsequent sale.

(2) **Objection Overruled.** If the objection is overruled, the sum deposited by the objector will be applied to pay the expense of keeping the property from the day the objection was filed until the day the sale is confirmed, and any balance remaining will be returned to the objector forthwith.

Cross Reference

See Fed. R. Civ. P. Supp. E, Fed. R. Civ. P. 6(a).

10. DESERTING SEAMAN CASES

10-1. Service

Upon filing a verified petition for return of wages deposited in the registry of the court by a Coast Guard official to whom the duties of shipping commissioner have been delegated pursuant to the provisions of 46 U.S.C. § 11505, a copy of the petition shall be served forthwith on the United States Attorney and a copy mailed to the Attorney General of the United States, after which a sworn return of such service and mailing shall be filed.

10-2. Time to Plead

The United States has 21 days after receipt of a copy of the petition by the United States Attorney in which to file its responsive pleading and claim.

11. DECEASED SEAMEN

11-1. Receipt of Money, Property or Wages

When the court receives the money, property or wages of a deceased seaman, pursuant to 46 U.S.C. § 10705-10707, the clerk of the court shall receive any cash or check and perform an inventory of the money, property or wages. The next of kin of the deceased seaman may claim the money, property or wages by filing with the clerk a Kinsman's Petition for Wages and Effects of Deceased Seaman.

11-2. Disposition of Unclaimed Money, Property or Wages

If a claim for the money, property or wages of a deceased seaman has not been substantiated and allowed 6 years after receipt of the money, property or wages, or if, 6 years after its receipt it appears to the court that no claim will have to be satisfied, any property shall be sold; and the money, wages and proceeds from the sale shall be deposited by the clerk in the United States Treasury fund for unclaimed monies.

12. FORFEITURE ACTIONS IN REM

12-1. Scope

Civil forfeiture actions in rem arising from a federal statute shall proceed pursuant to Fed. R. Civ. P. Supp. G.

Cross Reference
See Fed. R. Civ. P. Supp. G.

UNITED STATES DISTRICT COURT
Northern District of California

ADR LOCAL RULES

Table of Contents

1. PURPOSE AND SCOPE OF RULES

1-1. Title

These are the Local Rules for Alternative Dispute Resolution in the United States District Court for the Northern District of California. They should be referred to as "ADR L.R. ___."

1-2. Purpose and Scope

(a) **Purpose**. The Court recognizes that full, formal litigation of claims can impose large economic burdens on parties and can delay resolution of disputes for considerable periods. The Court also recognizes that sometimes an alternative dispute resolution procedure can improve the quality of justice by improving the parties' clarity of understanding of their case, their access to evidence, and their satisfaction with the process and result. The Court adopts these ADR Local Rules to make available to litigants a broad range of court-sponsored ADR processes to provide quicker, less expensive and potentially more satisfying alternatives to continuing litigation without impairing the quality of justice or the right to trial. The Court offers diverse ADR services to enable parties to use the ADR process that promises to deliver the greatest benefits to their particular case. In administering these Local Rules and the ADR program, the Court will take appropriate steps to assure that no referral to ADR results in imposing on any party an unfair or unreasonable economic burden.

Commentary

The Alternative Dispute Resolution Act of 1998, 28 U.S.C. Sections 651-658, requires each federal district court to authorize by local rule the use of at least one ADR process in all civil actions. In accordance with § 651(c), the Court has examined the effectiveness of its ADR programs and has adopted improvements consistent with the Act.

(b) **Scope**. These ADR Local Rules are effective December 1, 2009, and shall govern actions pending or commenced on or after that date. These rules supplement the Civil Local Rules of the Court and, except as otherwise indicated, apply to all civil actions filed in this Court. Cases subject to these ADR Local rules also remain subject to the other local rules of the Court.

(c) **Magistrate Judges Consent Cases**. In cases in which the parties have consented to jurisdiction by a Magistrate Judge under 28 U.S.C. § 636(c), the Magistrate Judge shall have the full scope of powers that these ADR local rules confer on District Judges, including the authority to refer cases to ADR programs and to grant relief from the requirements of these ADR local rules.

2. GENERAL PROVISIONS

2-1. ADR Unit

(a) **Staff and Responsibilities**. The ADR Unit shall consist of a Director of ADR Programs and such attorneys, case administrators and support personnel as the Court may authorize. The ADR Director and legal staff shall be attorneys with expertise in ADR procedures. The ADR Unit shall be responsible for designing, implementing, administering and evaluating the Court's ADR Programs. These responsibilities extend to educating litigants, lawyers, Judges, and Court staff about the ADR Program and rules. In addition, the ADR Unit shall be responsible for overseeing, screening and training neutrals to serve in the Court's ADR programs. The ADR Director and legal staff also serve as neutrals in selected cases.

(b) **ADR Internet Site and Handbook**. The ADR Unit's Internet site, located at www.adr.cand.uscourts.gov, contains information about the Court's ADR processes and their comparative benefits, answers to frequently asked questions, various forms approved by the Court, and information about becoming a neutral in the Court's programs.

(c) **Contacting the ADR Unit**. The address, phone and fax numbers, and e-mail address of the ADR Unit are:

U.S. District Court-ADR Unit
450 Golden Gate Avenue, 16th Floor
San Francisco, CA 94102

Telephone: (415) 522-2199
Telephone for ADR Telephone Conferences only: (415) 522-4603
Fax: (415) 522-4112
E-Mail: ADR@cand.uscourts.gov

Commentary
The Court encourages litigants and counsel to consult the ADR Internet site and to contact the ADR Unit to discuss the suitability of ADR options for their cases or for assistance in tailoring an ADR process to a specific case.

2-2. ADR Magistrate Judge

The Court shall designate one of its magistrate judges as the ADR Magistrate Judge. The ADR Magistrate Judge is responsible for overseeing the ADR Unit, consulting with the ADR Director and legal staff on matters of policy, program design and evaluation, education, training and administration. The ADR Magistrate Judge shall rule on all requests to be excused from appearing in person at arbitration, ENE and mediation sessions, and shall hear and determine all complaints alleging violations of these ADR local rules. When necessary, the Chief District Judge will appoint another Magistrate Judge of this Court to perform, temporarily, the duties of the ADR Magistrate Judge.

2-3. Referral to ADR Program by Stipulation, Motion or Order

Subject to pertinent jurisdictional and resource constraints, a case may be referred to a Court ADR process by order of the assigned Judge following a stipulation by all parties, by motion of

a party under Civil L.R. 7, or on the Judge's initiative. A stipulation and proposed order selecting an ADR process must (1) designate the specific ADR process the parties have selected, (2) specify the time frame within which the ADR process will be completed, and (3) set forth any other information the parties would like the Court to know. The parties may use the form provided by the Court.

Commentary

A form stipulation and proposed is available on the ADR Internet site: www.adr.cand.uscourts.gov and in the Appendix to these Local Rules. Limited printed copies are available from the Clerk's Office for parties in cases not subject to the Court's Electronic Case Filing program (ECF) under General Order 45.

Cross Reference

See ADR L.R. 3-4 for Court ADR Processes and ADR L.R. 4-2, 5-2 and 6-2 for eligible cases.

2-4. Violation of the ADR Local Rules

(a) Informal Resolution. Without prejudice to the use of more formal procedures set forth in sections (b) and (c) below, a complaint alleging that any person or party, including the neutral, has materially violated any of the ADR local rules other than ADRL.R. 7 (pertaining to judicially hosted settlement conferences) may be presented informally to the ADR Director, or to such legal staff as the Director may designate, who will attempt to resolve the matter to the satisfaction of all concerned.

(b) Reporting Violation

(1) **Complaints Alleging Material Violations**. A formal complaint alleging that any person or party, including the neutral, has materially violated any of the ADR local rules other than ADR L.R. 7 (pertaining to judicially hosted settlement conferences) must be presented in writing (not electronically) directly to the ADR Magistrate Judge. Such a letter of complaint must be accompanied by a competent declaration. Copies of the letter of complaint and declaration must be sent contemporaneously to all other parties, the neutral (if a neutral has been appointed) and the ADR Unit. The letter of complaint and declaration must be marked "Confidential-Not to be Filed" and must neither be filed nor disclosed to the assigned Judge.

(2) **Report by Neutral**. An arbitrator, evaluator, or mediator who perceives a material violation of these ADR local rules shall make a written report directly to the ADR Magistrate Judge and contemporaneously provide copies to all counsel and to the ADR Unit. Such report must be marked "Confidential-Not to be Filed" and must neither be filed nor disclosed to the assigned Judge.

(c) Proceeding in Response to Complaint or Report of Violation and Sanctions. If, upon receiving an appropriately presented and supported complaint or report of a material violation of these ADR local rules, the ADR Magistrate Judge determines that the matter warrants further proceedings, the ADR Magistrate Judge may refer the matter to the ADR Director to explore the possibility of resolving the complaint informally in accordance with section (a) above. If no such referral is made, or if the matter is not resolved informally, the ADR Magistrate Judge shall take appropriate action. The ADR Magistrate Judge may issue an order to show cause why sanctions should not be imposed. Any such sanctions proceedings shall be conducted on the record but under seal. The

ADR Magistrate Judge will afford all interested parties an opportunity to be heard before deciding whether to impose sanctions. Any objections to the ADR Magistrate Judge's order resolving the sanctions issue must be made by motion under Civil L.R. 7 before the General Duty Judge, unless the General Duty Judge is the assigned Judge, in which case the objections shall be made to the Chief Judge. Any such objection shall be marked "Confidential-Not to be Filed" and must be delivered directly to the appropriate Judge within 14 days of the filing of the ADR Magistrate Judge's order resolving the sanctions issue. Such objection shall not be filed or disclosed to the assigned Judge, and shall be served immediately on the ADR Magistrate Judge, all other counsel, the neutral and the ADR unit.

Commentary

The Court encourages parties to use the informal resolution procedure set forth in ADR L.R. 2-4(a) prior to submitting a formal complaint. Under *Zambrano v. City of Tustin*, 885 F.2d 1473 (9th Cir. 1989),the district court may impose fee shifting sanctions for a violation of a local rule only on a finding of bad faith, willfulness, recklessness, or gross negligence.

2-5. Neutrals

(a) Panel. The ADR Unit shall maintain a panel of neutrals serving in the Court's ADR programs. Neutrals will be selected from time to time by the Court from applications submitted by lawyers willing to serve or by other persons as set forth in section (b)(3) below. The legal staff of the ADR Unit may serve as neutrals.

(b) Qualifications and Training. Each lawyer serving as a neutral in a Court ADR program must be a member of the bar of this Court or a member of the faculty of an accredited law school and must successfully complete initial and periodic training as required by the Court. Additional minimum requirements for serving on the Court's panel of neutrals, which the Court may modify in individual circumstances for good cause, are as follows:

(1) **Arbitrators**. Arbitrators must have been admitted to the practice of law for at least 10 years and must have:

(A) For not less than five years, committed 50% or more of their professional time to matters involving litigation; or

(B) Substantial experience serving as a neutral in dispute resolution proceedings.

(2) **ENE Evaluators**. Evaluators must have been admitted to the practice of law for at least 15 years and have considerable experience with civil litigation in federal court. Evaluators must also have substantial expertise in the subject matter of the cases assigned to them and must have the temperament and training to listen well, facilitate communication across party lines and, if called upon, assist the parties with settlement negotiations.

(3) **Mediators**. Generally, mediators must have been admitted to the practice of law for at least 7 years and must be knowledgeable about civil litigation in federal court. Mediators shall have strong mediation process skills and the temperament and training to listen well, facilitate communication across party lines and assist the parties with settlement negotiations. Mediators who are not lawyers may also be selected to serve on the Court's panel of mediators if they have appropriate professional credentials in another discipline and are knowledgeable about civil

litigation in federal court. A non-lawyer mediator may be appointed to a case only with the consent of the parties.

(c) Oath. Persons serving as neutrals in any of the Court's ADR programs must take the oath or affirmation prescribed in 28 U.S.C. § 453.

(d) Disqualification of Neutrals

(1) **Applicable Standards.** No person may serve as a neutral in a case in a Court ADR program in violation of:

(A) the standards set forth in 28 U.S.C. § 455, or

(B) any applicable standard of professional responsibility or rule of professional conduct, or

(C) other guidelines adopted by the Court concerning disqualification of neutrals.

(2) **Mandatory Disqualification and Notice of Recusal**. A prospective neutral who discovers a circumstance requiring disqualification must immediately notify the parties and the ADR Unit in writing. The parties may not waive a basis for disqualification that is described in 28 U.S.C. Section 455 (b).

(3) **Disclosure and Waiver of Non-Mandatory Grounds for Disqualification**. If a prospective neutral discovers a circumstance that would not compel disqualification under an applicable standard of professional responsibility or rule of professional conduct or other guideline, or under § 455(b), but that might be covered by § 455 (a), the neutral shall promptly disclose that circumstance to all counsel in writing, as well as the ADR Unit. A party who has an objection to the neutral based upon an allegation that the neutral has a conflict of interest must present this objection in writing to the ADR Unit within 7 days of learning the source of the potential conflict or shall be deemed to have waived objection.

(4) **Objections Not Based on Disclosures by Neutral**. Within 7 days of learning the identity of a proposed neutral, a party who objects to service by that neutral must deliver to the ADR Unit and to all other counsel a writing that specifies the bases for the objection. The ADR Director shall determine whether the proposed neutral will serve or whether another neutral should be appointed. Appeal from such a determination must be made directly to the ADR Magistrate Judge within 7 days of the notice of the ADR Director's determination.

(e) Immunities. All persons serving as neutrals in any of the Court's ADR programs are performing quasi-judicial functions and are entitled to the immunities and protections that the law accords to persons serving in such capacity.

2-6. Evaluation of ADR Programs

Congress has mandated that the Court's ADR programs be evaluated. Neutrals, counsel and clients must promptly respond to any inquiries or questionnaires from persons authorized by the Court to evaluate the programs. Responses to such inquiries will be used for research and monitoring purposes only and the sources of specific information will not be disclosed to the assigned Judge or in any report.

3. ADR MULTI-OPTION PROGRAM

3-1. Purpose

The ADR Multi-Option Program is designed to encourage litigants in a broad range of cases to use ADR and to provide parties with sophisticated assistance in identifying the ADR process that is best suited to their particular case.

3-2. Summary Description

Litigants in certain cases designated when the complaint or notice of removal is filed are presumptively required to participate in one non-binding ADR process offered by the Court (Arbitration, Early Neutral Evaluation, or Mediation) or, with the assigned Judge's permission, may substitute an ADR process offered by a private provider. Unless they have stipulated to an ADR process by the date set forth in the Order Setting Initial Case Management Conference and ADR Deadlines, counsel with appropriate authority must participate in a joint phone conference with the legal staff of the ADR Unit to consider the suitability of the ADR options for their case. When litigants have not stipulated to an ADR process before the Case Management Conference, the assigned Judge will discuss the ADR options with counsel at that conference. If the parties cannot agree on a process before the end of the Case Management Conference, the Judge will select one of the ADR processes offered by the Court, or may refer the case to a settlement conference hosted by a Magistrate Judge, unless persuaded that no ADR process is likely to deliver benefits to the parties sufficient to justify the resources consumed by its use.

Cross Reference
See Case Management Conference provisions of Civil L.R. 16.

3-3. Assignment to ADR Multi-Option Program

(a) Automatic Assignment. Appropriate civil cases may be assigned to the ADR Multi-Option Program by the Clerk when the complaint or notice of removal is filed. Notice of such assignment will be given in the Order Setting Initial Case Management Conference and ADR Deadlines issued under Civil L.R. 16-2.

(b) By Stipulation, Motion or Order. Cases not assigned at filing may be assigned to the ADR Multi-Option Program, or to a specific ADR process, by order of the assigned Judge following a stipulation by all parties, on motion by a party under Civil L.R. 7, or on the Judge's initiative.

(c) Relief from Automatic Referral. Any party whose case has been referred automatically to the ADR Multi-Option Program may file with the assigned Judge a motion for relief from automatic referral under Civil L.R. 7.

3-4. ADR Options

(a) Court-Sponsored ADR Processes. The Court-sponsored ADR options for cases assigned to the ADR Multi-Option Program include:

(1) Non-binding Arbitration;

(2) Early Neutral Evaluation (ENE); and

(3) Mediation.

(b) **Private ADR.** A private ADR procedure may be substituted for a Court program if the parties so stipulate and the assigned Judge approves. Private ADR proceedings, however, are not subject to the enforcement, immunity or other provisions of the ADR Local Rules.

(c) **Early Settlement Conference with a Magistrate Judge.** A case may be referred to a settlement conference only by order of the assigned Judge.

Commentary

Because of the many other duties assigned to Magistrate Judges, the Court refers only a limited number of cases to Magistrate Judges for early settlement conferences.

Cross Reference

See ADR L.R. 3-5(c)(2).

3-5. Selecting an ADR Process

(a) Meet and Confer to Select ADR Process. In cases assigned to the ADR Multi-Option Program, as soon as feasible after filing or removal and no later than the deadline to meet and confer, counsel must confer to attempt to agree on an ADR process.

(b) ADR Certification. In cases assigned to the ADR Multi-Option Program, unless otherwise ordered, no later than the date specified in the Order Setting Initial Case Management Conference and ADR Deadlines, counsel and client must sign, serve and file an ADR Certification and shall provide a copy to the ADR Unit. The certification must be filed on a form established for that purpose by the Court and in conformity with the instructions approved by the Court. Separate certifications may be filed by each party. If the client is a government or government agency, the certificate shall be signed by a person who meets the requirements of Civil L.R. 3-9(c). Counsel and client must certify that both have:

(1) Read the handbook entitled "Dispute Resolution Procedures in the Northern District of California" on the Court's ADR Internet site www.adr.cand.uscourts.gov;

(2) Discussed the available dispute resolution options provided by the Court and private entities; and

(3) Considered whether their case might benefit from any of the available dispute resolution options.

Commentary

Certification forms are available on the Court's ADR Internet site www.adr.cand.uscourts.gov and the ECF Website www.ecf.cand.uscourts.gov.Limited printed copies of the handbook entitled "Dispute Resolution Procedures in the Northern District of California" are available from the Clerk's Office for parties in cases not subject to the Court's Electronic Case Filing program (ECF) under General Order 45.

(c) Stipulation to ADR Process or Notice of Need for ADR Telephone Conference. In cases assigned to the ADR Multi-Option Program, unless otherwise ordered, no later than the date specified in the Order Setting Initial Case Management Conference and ADR Deadlines, counsel must file, in addition to the ADR Certification, either a "Stipulation

and (Proposed) Order Selecting ADR Process" or a "Notice of Need for ADR Phone Conference" on a form established by the Court.

(1) **Stipulation.** If the parties agree to participate in a Court-sponsored non-binding arbitration, ENE or mediation, or in private ADR, they must file a form Stipulation and Proposed Order selecting an ADR process.

(2) **Notice of Need for ADR Phone Conference.** If the parties are unable to agree on an ADR process, or if the parties believe that an early settlement conference with a Magistrate Judge is appreciably more likely to meet their needs than any other form of ADR, they must file a Notice of Need for ADR Phone Conference.

Commentary

Because of the many other duties assigned to Magistrate Judges, the Court refers only a limited number of cases to Magistrate Judges for early settlement conferences. Forms for "Stipulation to an ADR Process" and "Notice of Need for ADR Telephone Conference" are available on the Court's ADR Internet site www.adr.cand.uscourts.govand the ECF Internet site www.ecf.cand.uscourts.govand in the Appendix to these Local Rules. Limited printed copies are available from the Clerk's Office for parties in cases not subject to the Court's Electronic Case Filing program (ECF) under General Order 45.

(d) Selection Through ADR Phone Conference. In cases assigned to the ADR Multi-Option Program where the parties have filed a Notice of Need for ADR Phone Conference, counsel are required to participate in a joint ADR Phone Conference at a time designated by the Court. During the phone conference, a member of the ADR legal staff will help counsel identify the ADR process that is likely to benefit their particular case the most. The following procedures shall apply to the ADR Phone Conference:

(1) **Participants**. Counsel who will be primarily responsible for handling the trial of the matter must participate in the conference. Clients and their insurance carriers may participate as well. Counsel may request an in-person ADR conference at the Court in lieu of the phone conference by calling the ADR Unit.

(2) **Placing the Conference Call**. Counsel for the first-listed plaintiff in the case caption must arrange for and place the phone conference by calling all other counsel and then the ADR phone conference number, (415) 522-4603, at the appointed time. The Court will reserve one-half hour for each such conference call.

(3) **Preparation**. Before the phone conference, counsel must review with their clients these ADR Local Rules, the handbook entitled Dispute Resolution Procedures in the Northern District of California on the Court's ADR Internet site at www.adr.cand.uscourts.gov. Limited printed copies of the handbook are available from the Clerk's Office for parties in cases not subject to the Court's Electronic Case Filing program (ECF) under General Order 45.

(4) **Request to Continue the ADR Phone Conference**. Requests to continue the ADR Phone Conference must be directed to the ADR Unit at (415) 522-4205.

(5) **Stipulation Following ADR Phone Conference.** Parties who stipulate to an ADR process after the phone conference may do so on a form provided by the Court pursuant to ADR L.R. 3-5(c) or in their Case Management Statement, or may file a separate stipulation and proposed order pursuant to ADR L.R. 2-3.

(e) Selection at Case Management Conference

(1) **Consideration of ADR Processes**. If the parties have not stipulated to a particular ADR process before the Case Management Conference, the assigned Judge will discuss with the parties the selection of an option at that conference. The ADR legal staff ordinarily will have recommended to the assigned judge a specific ADR process for the case or that the case be exempted from referral to an ADR process.

(2) **Selection by Stipulation or Order**. If the parties agree to a particular ADR process at the Case Management Conference and the assigned Judge approves, the Judge will issue an order referring the case to that process. If the parties do not agree to an ADR process, and the Judge deems it appropriate, he or she will select one of the Court ADR processes (non-binding arbitration, subject to statutory jurisdictional constraints; ENE; or mediation) and issue an order referring the case to that process. Alternatively, the Judge may issue an order referring the case to an early settlement conference.

(3) **Exemption.** If the parties persuade the Judge at the Case Management Conference that no ADR process is likely to deliver benefits to the parties sufficient to justify the resources consumed by its use, the Judge will exempt the case from participating in any ADR process.

Commentary

Forms for ADR Certification, Stipulation to an ADR Process and Notice of Need for ADR Telephone Conference are available on the Court's ADR Internet site: www.adr.cand.uscourts.gov,the ECF Internet site www.ecf.cand.uscourts.govand in the Appendix to these Local Rules. Limited printed copies are available from the Clerk's Office for parties in cases not subject to the Court's Electronic Case Filing program (ECF) under General Order 45.

3-6. Timing of ADR Process in the ADR Multi-Option Program

Unless otherwise ordered, the ADR session must be held within 90 days after the entry of an order referring the case to a specific ADR process.

Cross-Reference

See ADR L.R. 4-4, 5-4, and 6-4.

4. NON-BINDING ARBITRATION

4-1. Description

Arbitration under this local rule is an adjudicative process in which an arbitrator or a panel of three arbitrators issues a non-binding judgment ("award" or "decision") on the merits after an expedited, adversarial hearing. Either party may reject the non-binding award or decision and request a trial *denovo*. An arbitration occurs earlier in the life of a case than a trial and is less formal and less expensive. Because testimony is taken under oath and is subject to cross-examination, arbitration can be especially useful in cases that turn on credibility of witnesses. Arbitrators do not facilitate settlement discussions.

4-2. Eligible Cases

In conformance with 28 USC Section 654, and subject to the availability of an arbitrator with subject matter expertise, appropriate civil cases may be referred to arbitration by order of the assigned Judge following a written stipulation by all parties, on motion by a party under Civil L.R. 7, or the Judge's initiative.

4-3. Arbitrators

(a) Appointment. After entry of an order referring the case to arbitration, the ADR Unit will appoint from the Court's panel an arbitrator who has expertise in the subject matter of the lawsuit, is available during the appropriate period and has no apparent conflict of interest. The Court will notify the parties of the appointment. If the parties jointly request, the Court will appoint a panel of three arbitrators and will designate the person to serve as the panel's presiding arbitrator. The rules governing conflicts of interest and the procedure for objecting to an arbitrator on that basis are set forth in ADR L.R. 2-5(d).

(b) Compensation. Arbitrators shall be paid by the Court $250 per day or portion of each day of hearing in which they serve as a single arbitrator or $150 for each day or portion of each day in which they serve as a member of a panel of three. No party may offer or give the arbitrator(s) any gift.

(c) Payment and Reimbursement. When filing an award or decision, arbitrators must submit a voucher on the form prescribed by the Clerk for payment of compensation and for reimbursement of any reasonable transportation expenses necessarily incurred in the performance of duties under this Rule. No reimbursement will be made for any other expenses.

4-4. Timing and Scheduling the Hearing

(a) Scheduling by Arbitrator. Promptly after being appointed to a case, the arbitrator(s) must arrange for the pre-session phone conference under ADR L.R. 4-7 and, after consulting with all parties, must fix the date and place for the arbitration within the deadline fixed by the assigned judge, or if no such deadline is fixed, within 90 days after the entry of order referring the case to arbitration. Counsel must respond promptly to and cooperate fully with the arbitrator(s) with respect to scheduling the pre-session phone conference and the arbitration hearing. If the case is resolved before the hearing date, or if due to an emergency a participant cannot attend the arbitration, counsel must notify the arbitrator and the ADR Unit immediately upon learning of such settlement or emergency.

(b) Place and Time. The hearing may be held at any location within the Northern District of California selected by the arbitrator(s), including a room at a federal courthouse, if available. In selecting the location, the arbitrator(s) shall consider the convenience of the parties and witnesses. Unless the parties and the arbitrator(s) agree otherwise, the hearing shall be held during normal business hours.

4-5. Requests to Extend Deadline

(a) Motion Required. Requests for extension of the deadline for conducting an arbitration hearing must be made no later than 14 days before the hearing is to be held and must be directed to the assigned Judge, in a motion under Civil L.R. 7, with a copy to the other parties, the arbitrator(s) and the ADR Unit.

(b) Content of Motion. Such motion must:

(1) Detail the considerations that support the request;

(2) Indicate whether the other parties concur in or object to the request; and

(3) Be accompanied by a proposed order setting forth a new deadline by which the arbitration hearing must be held.

4-6. *Ex Parte* Contact Prohibited

Except with respect to scheduling matters, there shall be no *ex parte* communications between parties or counsel and an arbitrator.

4-7. Telephone Conference Before Arbitration

The arbitrator(s) shall schedule a brief joint telephone conference with counsel before the arbitration to discuss matters such as the scheduling of the arbitration, the procedures to be followed, whether supplemental written material should be submitted, which witnesses will attend, how testimony will be presented, including expert testimony, and whether and how the arbitration will be recorded.

4-8. Written Arbitration Statements

(a) Time for Submission. No later than 7 days before the arbitration session, each party must submit directly to the arbitrator(s), and must serve on all other parties, a written Arbitration Statement.

(b) Prohibition against Filing. The statements must not be filed and the assigned Judge shall not have access to them.

(c) Content of Statement. The statements must be concise and must:

(1) Summarize the claims and defenses;

(2) Identify the significant contested factual and legal issues, citing authority on the questions of law;

(3) Identify proposed witnesses; and

(4) Identify, by name and title or status, the person(s) with decision-making authority, who, in addition to counsel, will attend the arbitration as representative(s) of the party.

(d) Modification of Requirement by Arbitrator(s). After jointly consulting counsel for all parties, the arbitrator(s) may modify or dispense with the requirements for the written Arbitration Statements.

4-9. Attendance at Arbitration

(a) Parties. Each party shall attend the arbitration hearing unless excused under paragraph (d), below. This requirement reflects the Court's view that principal values of arbitration include affording litigants an opportunity to articulate their positions and to hear, first hand, both their opponent's version of the matters in dispute and a neutral assessment of the merits of the case.

(1) **Corporation or Other Entity.** A party other than a natural person (e.g., a corporation or an association) satisfies this attendance requirement if represented by a person (other than outside counsel) who is knowledgeable about the facts of the case.

(2) **Government Entity.** A party that is a government or governmental agency, in addition to counsel, must send a representative knowledgeable about the facts of the case and the governmental unit's position. If the action is brought by the government on behalf of one or more individuals, at least one such individual also must attend.

(b) Counsel. Each party must be accompanied at the arbitration session by the lawyer who will be primarily responsible for handling the trial of the matter.

(c) Request to be Excused. A person who is required to attend an arbitration hearing may be excused from attending in person only after a showing that personal attendance would impose an extraordinary or otherwise unjustifiable hardship. A person seeking to be excused must submit, no fewer than 14 days before the date set for the arbitration, a letter to the ADR Magistrate Judge, simultaneously copying the ADR Unit, all other counsel and the arbitrator(s). The letter must:

(1) Set forth with specificity all considerations that support the request;

(2) State realistically the amount in controversy in the case;

(3) Indicate whether the other party or parties join in or object to the request; and

(4) Be accompanied by a proposed order.

(d) Participation by Telephone. A person excused from attending an arbitration in person must be available to participate by telephone.

4-10. Authority of Arbitrators and Procedures at Arbitration

(a) Authority of Arbitrators. Subject to the provisions of these ADR local rules, arbitrators shall be authorized to:

(1) Administer oaths and affirmations;

(2) Make reasonable rulings as are necessary for the fair and efficient conduct of the hearing; and

(3) Make awards.

(b) Prohibition on Facilitating Settlement Discussions. Arbitrators are not authorized to facilitate settlement discussions. If the parties desire assistance with settlement, the parties or arbitrator(s) may request that the case be referred to mediation, ENE, or a settlement conference.

(c) Presumption against Bifurcation. Except in extraordinary circumstances, the arbitrator(s) shall not bifurcate the arbitration.

(d) Quorum. Where a panel of three arbitrators has been named, any two members of a panel shall constitute a quorum, but the concurrence of a majority of the entire panel shall be required for any action or decision by the panel, unless the parties stipulate otherwise.

(e) Testimony.

(1) **Subpoenas**. Attendance of witnesses and production of documents may be compelled in accordance with Fed. R. Civ. P. 45.

(2) **Oath and Cross-examination**. All testimony shall be taken under oath or affirmation and shall be subject to such reasonable cross-examination as the circumstances warrant.

(3) **Evidence**. In receiving evidence, the arbitrator(s) shall be guided by the Federal Rules of Evidence, but shall not thereby be precluded from receiving evidence which the arbitrator(s) consider(s) relevant and trustworthy and which is not privileged.

(f) Transcript or Recording. A party may cause a transcript or recording of the proceedings to be made but must provide a copy to any other party who requests it and who agrees to pay the reasonable costs of having a copy made.

(g) Default of Party. The unexcused absence of a party shall not be a ground for continuance, but damages shall be awarded against an absent party only upon presentation of proof thereof satisfactory to the arbitrator(s).

4-11. Award and Judgment

(a) Form of Award. After an arbitration under this Rule, the arbitrator(s) must make an award which must state clearly and concisely the name or names of the prevailing party or parties and the party or parties against which it is rendered, and the precise amount of money, if any, awarded. The award may, at the discretion of the arbitrator(s), include a statement of reasons for the decision. The award must be in writing and (unless the parties stipulate otherwise) be signed by the arbitrator or by at least two members of a panel. No arbitrator shall participate in the award without having attended the hearing. Costs within the meaning of Fed. R. Civ. P. 54 and Civil L.R. 54 may be assessed by the arbitrator(s) as part of an arbitration award.

(b) Filing and Serving the Award. Within 14 days after the arbitration hearing is concluded, the arbitrator(s) must file the award with the Clerk in an unsealed envelope

with a cover sheet stating: "Arbitration Award to be filed under seal pursuant to ADR L.R. 4-11--not to be forwarded to the Assigned Judge." The cover sheet also shall list the case caption, case number and name(s) of the arbitrator, but shall not specify the content of the award. The Clerk shall promptly serve copies of the arbitration award on the parties. In addition, immediately after receiving a copy of the arbitration award, the party that prevailed in the arbitration must serve a copy of the award on the other parties and must promptly file proof of said service under Civil L.R. 5, but must not attach a copy of the award.

(c) Sealing of Award. Each filed arbitration award shall promptly be sealed by the Clerk. The award shall not be disclosed to any Judge who might be assigned to the case until the Court has entered final judgment in the action or the action has been otherwise terminated, except as necessary to assess costs or prepare the report required by Section 903(b) of the Judicial Improvements and Access to Justice Act.

(d) Entry of Judgment on Award. If no party has filed a demand for trial *de novo* (or a notice of appeal, which shall be treated as a demand for trial *de novo*) within 30 days of notice of the filing of the arbitration award, the Clerk shall enter judgment on the arbitration award in accordance with Fed. R. Civ. P. 58. A judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the Court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.

4-12. Trial *De Novo*

(a) Time for Demand. If any party files and serves a demand for trial *de novo* within 30 days of notice of the filing of the arbitration award, no judgment thereon shall be entered by the Clerk and the action shall proceed in the normal manner before the assigned Judge. Failure to file and serve a demand for trial *de novo* within this 30-day period waives the right to trial *de novo*.

(b) Limitation on Admission of Evidence. At the trial *de novo* the Court shall not admit any evidence indicating that there has been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding, unless:

(1) The evidence would otherwise be admissible in the trial under the Federal Rules of Evidence, or

(2) The parties have otherwise stipulated.

(c) Award Not to be Attached. A party filing a demand for a trial *de novo* must not attach the arbitration award.

4-13. Stipulation to Binding Arbitration

At any time before the arbitration hearing, the parties may stipulate in writing to waive their rights to request a trial *de novo* pursuant to ADR L.R. 4-12. Such stipulation must be submitted to the assigned Judge for approval and must be filed. In the event of such stipulation, judgment shall be entered on the arbitration award pursuant to ADR L.R. 4-11(d).

4-14. Federal Arbitration Act Presumptively Inapplicable

Nothing in these ADR Local Rules limits any party's right to agree to arbitrate any dispute, regardless of the amount, pursuant to Title 9, United States Code, or any other provision of law.

5. EARLY NEUTRAL EVALUATION

5-1. Description

In Early Neutral Evaluation (ENE) the parties and their counsel, in a confidential session, make compact presentations of their claims and defenses, including key evidence as developed at that juncture, and receive a non-binding evaluation by an experienced neutral lawyer with subject matter expertise. The evaluator also helps identify areas of agreement, offers case-planning suggestions and, if requested by the parties, settlement assistance.

5-2. Eligible Cases

Subject to the availability of administrative resources and of an evaluator with subject matter expertise, appropriate civil cases may be referred to ENE by order of the assigned Judge following a stipulation by all parties, on motion by a party under Civil L.R. 7, or on the Judge's initiative.

5-3. Evaluators

(a) Appointment. After entry of an order referring a case to ENE, the ADR Unit will appoint from the Court's panel an evaluator who has expertise in the subject matter of the lawsuit, is available during the appropriate period and has no apparent conflict of interest. The Court will notify the parties of the appointment. The rules governing conflicts of interest and the procedure for objecting to an evaluator on that basis are set forth in ADR L.R. 2-5(d).

(b) Compensation. ENE evaluators shall volunteer their preparation time and the first four hours in an ENE session. After four hours in an ENE session, the evaluator may (1) continue to volunteer his or her time or (2) give the parties the option of either concluding the procedure or paying the evaluator for additional time at an hourly rate of $300. The ENE procedure will continue only if all parties and the evaluator agree. After eight hours in one or more ENE sessions, if all parties agree, the evaluator may charge his or her hourly rate or such other rate that all parties agree to pay. In special circumstances for complex cases requiring substantial preparation time, the parties and the evaluator may make other arrangements with the approval of the ADR legal staff. No party may offer or give the evaluator any gift.

(c) Payment. All terms and conditions of payment must be clearly communicated to the parties. The parties may agree to pay the fee in other than equal portions. The parties must pay the evaluator directly, or the evaluator's law firm or employer, as directed by the evaluator. On a questionnaire form provided by the Court, the evaluator shall promptly report to the ADR Unit the amount of any payment received.

Commentary

Preparation by the evaluator for the typical ENE session ordinarily should not exceed two to three hours. If more substantial preparation by the evaluator is desired, the parties may discuss appropriate alternative payment arrangements with the evaluator under ADR L.R. 5-3(b).

5-4. Timing and Scheduling the ENE Session

(a) Scheduling by Evaluator. Promptly after being appointed to a case, the evaluator must arrange for the pre-session phone conference under ADR L.R. 5-7 and, after consulting with all parties, must fix the date and place of the ENE session within the deadlines set by paragraph (b) below, or the order referring the case to ENE. Counsel must respond promptly to and cooperate fully with the evaluator with respect to scheduling the pre-session phone conference and the ENE session.

(b) Deadline for Conducting Session. Unless otherwise ordered, the ENE session must be held within 90 days after the entry of the order referring the case to ENE.

5-5. Requests to Extend Deadline

(a) Motion Required. Requests for extension of the deadline for conducting an ENE session must be made no later than 14 days before the session is to be held and must be directed to the assigned Judge, in a motion or stipulation and proposed order under Civil L.R. 7, with a copy to the other parties, the evaluator (if appointed) and the ADR Unit.

(b) Content of Motion. Such motion must:

(1) Detail the considerations that support the request;

(2) Indicate whether the other parties concur in or object to the request; and

(3) Be accompanied by a proposed order setting forth a new deadline by which the ENE session shall be held.

5-6. Ex Parte Contact Prohibited

Except with respect to scheduling matters, there shall be no *ex parte* communications between parties or counsel and the evaluator, including private caucuses to discuss settlement, until after the evaluator has committed his or her evaluation to writing and all parties have agreed that *ex parte* communications with the evaluator may occur.

5-7. Telephone Conference Before ENE Session

The evaluator shall schedule a brief joint telephone conference before the ENE session with counsel who will attend the ENE session to discuss matters such as the scheduling of the ENE session, the procedures to be followed, the nature of the case, the content of the written ENE statements, and which client representatives will attend.

Commentary

If more than one pre-session phone conference is conducted, all counsel do not necessarily need to participate in every call but the lead counsel who will attend the ENE session must participate in at least one pre-session phone conference. See ADR L.R. 5-10(b).

5-8. Written ENE Statements

(a) Time for Submission. No later than 7 days before the first ENE session, each party must submit directly to the evaluator, and must serve on all other parties, a written ENE Statement.

(b) Prohibition Against Filing. The statements constitute confidential information as defined in ADR L.R. 5-12, must not be filed and the assigned Judge shall not have access to them.

(c) Content of Statement. The statements must be concise, may include any information that may be useful to the evaluator, and must, unless otherwise directed by the evaluator:

(1) Identify, by name and title or status:

(A) The person(s) with decision-making authority, who, in addition to counsel, will attend the ENE session as representative(s) of the party, and

(B) Persons connected with a party opponent (including an insurer representative) whose presence might substantially improve the utility of the ENE session or the prospects for settlement;

(2) Describe briefly the substance of the suit, addressing the party's views of the key liability issues and damages and discussing the key evidence;

(3) Address whether there are legal or factual issues whose early resolution would reduce significantly the scope of the dispute or contribute to settlement negotiations;

(4) Identify the discovery that is necessary to equip the parties for meaningful settlement negotiations; and

(5) Include copies of documents out of which the suit arose (e.g., contracts), or whose availability would materially advance the purposes of the evaluation session, (e.g., medical reports or documents by which special damages might be determined).

5-9. Special Provisions for Patent, Copyright, or Trademark Cases

Unless otherwise directed by the evaluator, the following provisions apply to the written ENE statements submitted under ADR L.R. 5-8.

(a) Patent Cases. When a claim in a case alleges infringement of a utility patent, or when a party seeks a declaratory judgment that a utility patent is not infringed, is invalid, or is unenforceable, each party must attach to its written ENE statement a copy of each document the party has been required to generate (by the date the written ENE statements are due) under Patent L.R. 3-1, 3-3, or 3-5(a), or under any case-specific order modifying the requirements of these provisions of the Patent Local Rules. A party whose duty has arisen only under Patent L.R. 3-5(a) may satisfy the requirements hereby imposed by attaching to its written ENE statement a copy of documents it was required to generate under Patent L.R. 3-3.

(b) Copyright Cases. To the extent then known or readily available and feasible, a party who bases a claim on copyright must include as exhibits the copyright registration (or, if there is no relevant copyright registration yet, the relevant copyright application) and one or more demonstrative exemplars of the copying and infringement. Such party must also present whatever direct or indirect evidence it has of copying, and shall indicate whether it intends to elect statutory or actual damages. Each party in a copyright case who is accused of infringing shall set forth in its written statement the dollar volume of sales of

and profits from the allegedly infringing works that it and any entities for which it is legally responsible have made.

(c) **Trademark Cases**. To the extent then known or readily available and feasible, a party who bases a claim on trademark or trade dress infringement, or on other unfair competition, must include as an exhibit its registration, if any, exemplars of both its use of its mark and use of the allegedly infringing mark, both including a description or representation of the goods or services on or in connection with which the marks are used, and any evidence it has of actual confusion. If "secondary meaning" is in issue, such a party must also describe the nature and extent of the advertising it has done with its mark and the volume of goods it has sold under its mark. Both parties must describe in their evaluation statements how the consuming public is exposed to their respective marks and goods or services, including, if available, photographic or other demonstrative evidence. Each party in a trademark or unfair competition case who is accused of infringement must set forth the dollar volume of sales of and profits from goods or services bearing the allegedly infringing mark.

5-10. Attendance at Session

(a) **Parties**. All named parties and their counsel are required to attend the ENE session in person unless excused under paragraph (d), below. This requirement reflects the Court's view that the principal values of ENE include affording litigants opportunities to articulate directly to other parties and a neutral their positions and interests and to hear, first hand, both their opponent's version of the matters in dispute and a neutral assessment of the merits of the case and the relative strengths of each party's legal positions.

(1) **Corporation or Other Non-Governmental Entity.** A party other than a natural person (e.g., a corporation or an association) satisfies this attendance requirement if represented by a person (other than outside counsel) who has final authority to settle and who is knowledgeable about the facts of the case. If final authority to settle is vested only in a governing board, claims committee, or equivalent body and cannot be delegated to a representative, an entity must disclose (in writing or electronically) this fact to all other parties and the evaluator at least 14 days before the ENE session will occur. This required disclosure must identify the board, committee, body, or persons in whom final settlement authority is vested. In this instance the party must send the person (in addition to counsel of record) who has, to the greatest extent feasible, authority to recommend a settlement, and who is knowledgeable about the facts of the case, the entity's position, and the procedures and policies under which the entity decides whether to accept proposed settlements.

(2) **Government Entity.** A unit or agency of government satisfies this attendance requirement if represented by a person (in addition to counsel of record) who has, to the greatest extent feasible, authority to settle, and who is knowledgeable about the facts of the case, the governmental unit's position, and the procedures and policies under which the governmental unit decides whether to accept proposed settlements. If the action is brought by the government on behalf of one or more individuals, at least one such individual also must attend.

(b) **Counsel**. Each party must be accompanied at the ENE session by the lawyer who will be primarily responsible for handling the trial of the matter.

(c) Insurers. Insurer representatives are required to attend in person unless excused under paragraph (d), below, if their agreement would be necessary to achieve a settlement.

(d) Request to be Excused. A person who is required to attend an ENE session may be excused from attending in person only after a showing that personal attendance would impose an extraordinary or otherwise unjustifiable hardship. A person seeking to be excused must submit, no fewer than 14 days before the date set for the session, a letter to the ADR Magistrate Judge, simultaneously copying the ADR Unit, all counsel and the evaluator. The letter must:

(1) Set forth all considerations that support the request;

(2) State realistically the amount in controversy in the case;

(3) Indicate whether the other party or parties join in or object to the request, and

(4) Be accompanied by a proposed order.

The request may not be filed or disclosed to the assigned judge.

(e) Opposing a Request to be Excused or Seeking to Compel Attendance by an Appropriate Party Representative.

(1) A party who opposes another party's request to be excused from attending in person an ENE session may submit to the ADR Magistrate Judge, within 4 days of receiving a copy of the request, a letter setting forth all grounds for the opposition. Such a letter must be served simultaneously on the ADR Unit, all other parties, and the evaluator - and may not be filed or disclosed to the assigned judge.

(2) A party who alleges that another party will not be represented at an ENE session by an appropriate representative may submit to the ADR Magistrate Judge, as far in advance of the session as practicable, a letter setting forth the bases for this allegation, along with a proposed order. Within 4 days of receiving a copy of such a letter, the party so challenged may submit to the ADR Magistrate Judge a responsive letter. Such letters must be served simultaneously on the ADR Unit, all other parties, and the evaluator - and may not be filed or disclosed to the assigned judge.

(f) Participation by Telephone. A person excused from appearing in person at an ENE session must be available to participate by telephone for the duration of the session or until excused by the neutral.

Commentary

Ordinarily, a corporation or other entity, including a governmental entity or an insurer, satisfies the attendance requirement by sending a person or persons who can agree to a settlement without the necessity of gaining approval from anyone else. Exceptions to this general practice must be disclosed and addressed in advance of the session.

5-11. Procedure at ENE Session

(a) Components of ENE Session. The evaluator shall:

(1) Permit each party (through counsel or otherwise), orally and through documents or other media, to present its claims or defenses and to describe the principal evidence on which they are based;

(2) Help the parties identify areas of agreement and, where feasible, enter stipulations;

(3) Assess the relative strengths and weaknesses of the parties' contentions and evidence, and explain carefully the reasoning that supports these assessments;

(4) Estimate, where feasible, the likelihood of liability and the dollar range of damages;

(5) Help the parties devise a plan for sharing the important information and/or conducting the key discovery that will equip them as expeditiously as possible to enter meaningful settlement discussions or to position the case for disposition by other means;

(6) Help the parties assess litigation costs realistically; and

(7) If the parties are interested, help them, through private caucusing or otherwise, explore the possibility of settling the case;

(8) Determine whether some form of follow up to the session would contribute to the case development process or to settlement.

(b) Process Rules. The session shall be informal. Rules of evidence shall not apply. There shall be no formal examination or cross-examination of witnesses and no recording of the presentations or discussion shall be made.

(c) Evaluation and Settlement Discussions. If all parties agree, they may proceed to discuss settlement after the evaluation has been written but before it is presented. The evaluation must be presented orally on demand by any party. Copies of the written evaluation may be provided to the parties at the discretion of the evaluator. The parties also may agree to discuss settlement after the evaluation has been presented.

5-12. Confidentiality

(a) Confidential Treatment. Except as provided in subdivision (b) of this local rule, this court, the evaluator, all counsel and parties, and any other persons attending the ENE session shall treat as "confidential information" the contents of the written ENE Statements, anything that happened or was said, any position taken, and any view of the merits of the case expressed by any participant in connection with any ENE session. "Confidential information" shall not be:

(1) disclosed to anyone not involved in the litigation;

(2) disclosed to the assigned judge; or

(3) used for any purpose, including impeachment, in any pending or future proceeding in this court.

(b) Limited Exceptions to Confidentiality. This rule does not prohibit:

(1) disclosures as may be stipulated by all parties and the evaluator;

(2) disclosures as may be stipulated by all parties, without the consent of the evaluator, for use in a subsequent confidential ADR or settlement proceeding;

(3) a report to or an inquiry by the ADR Magistrate Judge pursuant to ADR L.R. 2-4 regarding a possible violation of the ADR Local Rules;

(4) the evaluator from discussing the ENE session with the court's ADR staff, who shall maintain the confidentiality of the ENE session;

(5) any participant or the evaluator from responding to an appropriate request for information duly made by persons authorized by the court to monitor or evaluate the court's ADR program in accordance with ADR L.R. 2-6; or

(6) disclosures as are otherwise required by law.

(c) Confidentiality Agreement. The evaluator may ask the parties and all person attending the ENE session to sign a confidentiality agreement on a form provided by the court.

Commentary

Ordinarily, as with mediation, anything that happened or was said in connection with an ENE session is confidential. *See, e.g.*, Fed. R. Evid. 408; *Folb v. Motion Picture Industry Pension & Health Plans*, 16 Fed. R. Civ. P. Supp. 2d 1164 (C.D. Cal. 1998); Cal. Evid. Code Sections 703.5 and 1115-1128; *Simmons v. Ghaderi*, __Cal.4th__(Calif. Supreme Ct., July 21, 2008, S147858)*; Rojas v. Superior Court*, 33 Cal. 4th 407 (2004); *Foxgate Homeowner's Assn. v. Bramalea California, Inc*., 26 Cal. 4th 1 (2001). The law may provide some limited circumstances in which the need for disclosure outweighs the importance of protecting the confidentiality of an ENE session. *E.g.*, threats of death or substantial bodily injury (*see* Or. Rev. Stat. Section 36.220(6)); use of mediation to commit a felony (*see* Colo. Rev. Stat. Section 13-22-307); right to effective cross examination in a quasi-criminal proceeding (*see Rinaker v. Superior Court*, 62 Cal.App.4th 155 (3d Dist. 1998); lawyer duty to report misconduct (*see In re Waller*, 573 A.2d 780 (D.C. App. 1990); need to prevent manifest injustice (*see* Ohio Rev. Code Section 2317.023(c)(4); *see also* Uniform Mediation Act, Section 6 (2001). Accordingly, after application of legal tests which are appropriately sensitive to the policies supporting the confidentiality of ENE proceedings, the court may consider whether the interest in ENE confidentiality outweighs the asserted need for disclosure. *See* amended opinion in *Olam v. Congress Mortgage Company*, 68 Fed. R. Civ. P. Supp. 2d 1110 (N.D. Cal. 1999). Nothing in this commentary is intended to imply that, absent truly exigent circumstances, confidential matters may be disclosed without prior approval by the court.

5-13. Follow Up

(a) Discussion at Close of ENE. At the close of the ENE session, the evaluator and the parties shall discuss whether it would be beneficial to schedule any follow up to the session.

(b) Follow Up the Evaluator May Order. The evaluator may order these kinds of follow up without stipulation:

(1) Responses to settlement offers or demands;

(2) A focused telephone conference;

(3) Exchanges of letters between counsel addressing specified legal or factual issues; or

(4) Written or telephonic reports to the evaluator, e.g., describing how discovery or other events occurring after the ENE session have affected a party's analysis of the case or position with respect to settlement.

(c) Stipulation to Follow Up Session. With the consent of all parties, the evaluator may schedule one or more follow up ENE sessions that may include additional evaluation, settlement discussions, or case development planning.

(d) Limitations on Authority of Evaluator. Evaluators have no authority to compel parties to conduct or respond to discovery or to file motions. Nor do evaluators have authority to determine what the issues in any case are, to impose limits on parties' pretrial activities, or to impose sanctions.

5-14. Certification of Session

Within 14 days of the close of each ENE session, and on the form Certification of Session provided by the Court, the evaluator must report to the ADR Unit: the date of the session, whether any follow up is scheduled, and whether the case settled in whole or in part. The ADR Unit will file the certification.

6. MEDIATION

6-1. Description

Mediation is a flexible, non-binding, confidential process in which a neutral person (the mediator) facilitates settlement negotiations. The mediator improves communication across party lines, helps parties articulate their interests and understand those of their opponent, probes the strengths and weaknesses of each party's legal positions, identifies areas of agreement and helps generate options for a mutually agreeable resolution to the dispute. The mediator generally does not give an overall evaluation of the case. A hallmark of mediation is its capacity to expand traditional settlement discussion and broaden resolution options, often by exploring litigant needs and interests that may be formally independent of the legal issues in controversy.

6-2. Eligible Cases

Subject to the availability of administrative resources and of a suitable mediator, appropriate civil cases may be referred to mediation by order of the assigned Judge following a stipulation by all parties, on motion by a party under Civil L.R. 7, or on the Judge's initiative.

6-3. Mediators

(a) **Appointment**. After entry of an order referring a case to mediation, the ADR Unit will appoint from the Court's panel a mediator who is available during the appropriate period and has no apparent conflict of interest. The Court will notify the parties of the appointment. The rules governing conflicts of interest and the procedure for objecting to a mediator on that basis are set forth in ADR L.R. 2-5(d).

(b) **Standards of Conduct**. Mediators on the Court’s panel agree to adhere to applicable standards of professional conduct as may be officially adopted by the Court.

(c) **Compensation**. Mediators shall volunteer their preparation time and the first four hours in a mediation. After four hours of mediation, the mediator may (1) continue to volunteer his or her time or (2) give the parties the option of either concluding the procedure or paying the mediator for additional time at an hourly rate of $300. The procedure will continue only if all parties and the mediator agree. After eight hours in one or more mediation sessions, if all parties agree, the mediator may charge his or her hourly rate or such other rate that all parties agree to pay. In special circumstances for complex cases requiring substantial preparation time, the parties and the mediator may make other arrangements with the approval of the ADR legal staff. No party may offer or give the mediator any gift.

(d) **Payment**. All terms and conditions of payment must be clearly communicated to the parties. The parties may agree to pay the fee in other than equal portions. The parties must pay the mediator directly, or the mediator’s law firm or employer, as directed by the mediator. On a form questionnaire provided by the Court, the mediator must promptly report to the ADR Unit the amount of any payment received.

Commentary

Preparation by the mediator for the typical mediation session ordinarily should not exceed two to three hours. If more substantial preparation by the mediator is desired, the parties may discuss appropriate alternative payment arrangements with the mediator under ADR L.R. 6-3(c).

6-4. Timing and Scheduling the Mediation

(a) **Scheduling by Mediator**. Promptly after being appointed to a case, the mediator must arrange for the pre-mediation conference under ADR L.R. 6-6 and, after consulting with all parties, must fix the date and place of the mediation within the deadlines set by paragraph (b) below, or the order referring the case to mediation. Counsel must respond promptly to and cooperate fully with the mediator with respect to scheduling the pre-session phone conference and the mediation session.

(b) **Deadline for Conducting Mediation**. Unless otherwise ordered, the mediation must be held within 90 days after the entry of the order referring the case to mediation.

6-5. Request To Extend the Deadline

(a) **Motion Required**. Requests for extension of the deadline for conducting a mediation must be made no later than 14 days before the session is to be held and must be directed to the assigned Judge, in a motion or stipulation and proposed order under Civil L.R. 7, with a copy to the other parties, the mediator (if appointed) and the ADR Unit.

(b) **Content of Motion**. Such motion must:

(1) Detail the considerations that support the request;

(2) Indicate whether the other parties concur in or object to the request; and

(3) Be accompanied by a proposed order setting forth a new deadline by which the mediation shall be held.

6-6. Telephone Conference Before Mediation

The mediator shall schedule a brief joint telephone conference before the mediation session with counsel who will attend the mediation session to discuss matters such as the scheduling of the mediation, the procedures to be followed, the nature of the case, the content of the written mediation statements, and which client representatives will attend.

Commentary

If more than one pre-session phone conference is conducted, all counsel do not necessarily need to participate in every call but the lead counsel who will attend the mediation session must participate in at least one pre-session phone conference. *See* ADR L.R. 6-10(b).

6-7. Written Mediation Statements

(a) **Time for Submission**. No later than 7 days before the first mediation session, each party must submit directly to the mediator, and must serve on all other parties, a written Mediation Statement.

(b) Prohibition Against Filing. The statements constitute confidential information as defined in ADR L.R. 6-12, must not be filed and the assigned Judge shall not have access to them.

(c) Content of Statement. The statements must be concise, may include any information that may be useful to the mediator, and must, unless otherwise directed by the mediator:

(1) Identify, by name and title or status:

(A) The person(s) with decision-making authority, who, in addition to counsel, will attend the mediation as representative(s) of the party, and

(B) Persons connected with a party opponent (including an insurer representative) whose presence might substantially improve the utility of the mediation or the prospects for settlement;

(2) Describe briefly the substance of the suit, addressing the party's views of the key liability issues and damages and discussing the key evidence;

(3) Identify the discovery or motions that promise to contribute most to equipping the parties for meaningful settlement negotiations;

(4) Except to the extent prohibited by applicable laws of privilege or by these local rules, describe the history and current status of any settlement negotiations;

(5) Provide additional information about any needs, interests or other considerations not described elsewhere in the statement that might be pertinent to settlement; and

(6) Include copies of documents likely to make the mediation more productive or to materially advance settlement prospects.

Commentary

Ordinarily, parties should be able to include in their mediation statements a description of the history and status of any settlement negotiations. An exception may exist for negotiations held during a prior mediation or ENE session, if all parties do not agree to the disclosure of these negotiations. *See* ADR L.R. 5-12, 6-12. Such prohibitions are distinct from rules prohibiting the admission into evidence of settlement offers and demands which ordinarily would not prevent inclusion of the settlement history in a mediation statement. *See, e.g.*, Fed. R. Evid. 408.

6-8. Special Provisions for Patent, Copyright, or Trademark Cases

Unless otherwise directed by the mediator, the following provisions apply to the written mediation statements submitted under ADR L.R. 6-7.

(a) Patent Cases. When a claim in a case alleges infringement of a utility patent, or when a party seeks a declaratory judgment that a utility patent is not infringed, is invalid, or is unenforceable, each party must attach to its written mediation statement a copy of each document the party has been required to generate (by the date the written mediation statements are due) under Patent L.R. 3-1, 3-3, or 3-5(a), or under any case-specific order modifying the requirements of these provisions of the Patent Local Rules. A party whose duty has arisen only under Patent L.R. 3-5(a) may satisfy the requirements hereby imposed by attaching to its written Mediation statement a copy of documents it was required to generate under Patent L.R. 3-3.

(b) Copyright Cases. To the extent then known or readily available and feasible, a party who bases a claim on copyright must include as exhibits the copyright registration (or, if there is no relevant copyright registration yet, the relevant copyright application) and one or more demonstrative exemplars of the copying and infringement. Such party must also present whatever direct or indirect evidence it has of copying, and shall indicate whether it intends to elect statutory or actual damages. Each party in a copyright case who is accused of infringing shall set forth in its written statement the dollar volume of sales of and profits from the allegedly infringing works that it and any entities for which it is legally responsible have made.

(c) Trademark Cases. To the extent then known or readily available and feasible, a party who bases a claim on trademark or trade dress infringement, or on other unfair competition, must include as an exhibit its registration, if any, exemplars of both its use of its mark and use of the allegedly infringing mark, both including a description or representation of the goods or services on or in connection with which the marks are used, and any evidence it has of actual confusion. If "secondary meaning" is in issue, such a party must also describe the nature and extent of the advertising it has done with its mark and the volume of goods it has sold under its mark. Both parties must describe in their mediation statements how the consuming public is exposed to their respective marks and goods or services, including, if available, photographic or other demonstrative evidence. Each party in a trademark or unfair competition case who is accused of infringement must set forth the dollar volume of sales of and profits from goods or services bearing the allegedly infringing mark.

6-9. Contact with Mediator Before the Mediation

Before the mediation, the mediator may ask each party to submit only to the mediator an additional confidential written statement or may discuss the case in confidence with a lawyer by telephone. Confidential mediation statements may address such matters as the party's views about his/her own interests, the interests of the other side, analysis of the best and worst alternatives to a negotiated settlement, the strengths and weaknesses of the legal case, and an estimated budget to litigate the case. The mediator must not disclose any party's confidential communication without permission.

6-10. Attendance at Session

(a) Parties. All named parties and their counsel are required to attend the mediation in person unless excused under paragraph (d), below. This requirement reflects the Court's view that the principal values of mediation include affording litigants opportunities to articulate directly to the other parties and a neutral their positions and interests and to hear, first hand, their opponent's version of the matters in dispute. Mediation also enables parties to search directly with their opponents for mutually agreeable solutions.

(1) **Corporation or Other Non-Governmental Entity.** A party other than a natural person (e.g., a corporation or an association) satisfies this attendance requirement if represented by a person (other than outside counsel) who has final authority to settle and who is knowledgeable about the facts of the case. If final authority to settle is vested only in a governing board, claims committee, or equivalent body and cannot be delegated to a representative, an entity must disclose (in writing or electronically) this fact to all other parties and the mediator at least 14 days before the mediation session will occur. This required disclosure must identify the board,

body, or persons in whom final settlement authority is vested. In this instance the party must send the person (in addition to counsel of record) who has, to the greatest extent feasible, authority to recommend a settlement, and who is knowledgeable about the facts of the case, the entity's position, and the procedures and policies under which the entity decides whether to accept proposed settlements.

(2) **Government Entity.** A unit or agency of government satisfies this attendance requirement if represented by a person (in addition to counsel of record) who has, to the greatest extent feasible, authority to settle, and who is knowledgeable about the facts of the case, the governmental unit's position, and the procedures and policies under which the governmental unit decides whether to accept proposed settlements. If the action is brought by the government on behalf of one or more individuals, at least one such individual also must attend.

(b) Counsel. Each party must be accompanied at the mediation by the lawyer who will be primarily responsible for handling the trial of the matter.

(c) Insurers. Insurer representatives are required to attend in person unless excused under paragraph (d), below, if their agreement would be necessary to achieve a settlement.

(d) Request to be Excused. A person who is required to attend a mediation may be excused from attending in person only after a showing that personal attendance would impose an extraordinary or otherwise unjustifiable hardship. A person seeking to be excused must submit, no fewer than 14 days before the date set for the mediation, a letter to the ADR Magistrate Judge, simultaneously copying the ADR unit, all counsel and the mediator. The letter must:

(1) Set forth all considerations that support the request;

(2) State realistically the amount in controversy in the case;

(3) Indicate whether the other party or parties join in or object to the request, and

(4) Be accompanied by a proposed order.

The request may not be filed or disclosed to the assigned judge.

(e) Opposing a Request to be Excused or Seeking to Compel Attendance by an Appropriate Party Representative

(1) A party who opposes another party's request to be excused from attending in person a mediation session may submit to the ADR Magistrate Judge, within 4 days of receiving a copy of the request, a letter setting forth all grounds for the opposition. Such a letter must be served simultaneously on the ADR Unit, all other parties, and the mediator - and may not be filed or disclosed to the assigned judge.

(2) A party who alleges that another party will not be represented at a mediation session by an appropriate representative may submit to the ADR Magistrate Judge, as far in advance of the session as practicable, a letter setting forth the bases for this allegation, along with a proposed order. Within 4 days of receiving a copy of such a letter, the party so challenged may submit to the ADR Magistrate Judge a responsive letter. Such letters must be served simultaneously on the ADR Unit, all other parties, and the mediator - and may not be filed or disclosed to the assigned judge.

(f) Participation by Telephone. A person excused from appearing in person at a mediation must be available to participate by telephone for the duration of the session or until excused by the neutral.

Commentary

Ordinarily, a corporation or other entity, including a governmental entity or an insurer, satisfies the attendance requirement by sending a person or persons who can agree to a settlement without the necessity of gaining approval from anyone else. Exceptions to this general practice must be disclosed and addressed in advance of the session.

6-11. Procedure at Mediation

(a) Procedure. The mediation shall be informal. Mediators shall have discretion to structure the mediation so as to maximize the benefits of the process.

(b) Separate Caucuses. The mediator may hold separate, private caucuses with each side or each lawyer or, if the parties agree, with the clients only. The mediator may not disclose communications made during such a caucus to another party or counsel without the consent of the party who made the communication.

6-12. Confidentiality

(a) Confidential Treatment. Except as provided in subdivision (b) of this local rule, this court, the mediator, all counsel and parties, and any other persons attending the mediation shall treat as "confidential information" the contents of the written Mediation Statements, anything that happened or was said, any position taken, and any view of the merits of the case expressed by any participant in connection with any mediation. "Confidential information" shall not be:

(1) disclosed to anyone not involved in the litigation;

(2) disclosed to the assigned judge; or

(3) used for any purpose, including impeachment, in any pending or future proceeding in this court.

(b) Limited Exceptions to Confidentiality. This rule does not prohibit:

(1) disclosures as may be stipulated by all parties and the mediator;

(2) disclosures as may be stipulated by all parties, without the consent of the mediator, for use in a subsequent confidential ADR or settlement proceeding;

(3) a report to or an inquiry by the ADR Magistrate Judge pursuant to ADR L.R. 2-4 regarding a possible violation of the ADR Local Rules;

(4) the mediator from discussing the mediation with the court's ADR staff, who shall maintain the confidentiality of the mediation;

(5) any participant or the mediator from responding to an appropriate request for information duly made by persons authorized by the court to monitor or evaluate the court's ADR program in accordance with ADR L.R. 2-6; or

(6) disclosures as are otherwise required by law.

(c) Confidentiality Agreement. The mediator may ask the parties and all persons attending the mediation to sign a confidentiality agreement on a form provided by the court.

Commentary

Ordinarily, anything that happened or was said in connection with a mediation is confidential. *See, e.g.*, Fed. R. Evid. 408; *Folbv. Motion Picture Industry Pension & Health Plans*, 16 Fed. R. Civ. P. Supp. 2d 1164 (C.D. Cal. 1998); Cal. Evid. Code Sections 703.5 and 1115-1128; *Simmons v. Ghaderi,* __Cal.4th__(Calif. Supreme Ct., July 21, 2008, S147858)*; Rojas v. Superior Court*, 33 Cal.4th 407 (2004); *Foxgate Homeowner's Assn. v. Bramalea California, Inc*., 26 Cal.4th 1 (2001). The law may provide some limited circumstances in which the need for disclosure outweighs the importance of protecting the confidentiality of a mediation. *E.g.*, threats of death or substantial bodily injury (*see* Or. Rev. Stat. Section 36.220(6)); use of mediation to commit a felony (*see* Colo. Rev. Stat. Section 13-22-307); right to effective cross examination in a quasi-criminal proceeding (*see Rinaker v. Superior Court*, 62 Cal.App.4th 155 (3d Dist. 1998); lawyer duty to report misconduct (*see In re Waller*, 573 A.2d 780 (D.C. App. 1990); need to prevent manifest injustice (*see* Ohio Rev. Code Section 2317.023(c)(4); *see also* Uniform Mediation Act, Section 6 (2001). Accordingly, after application of legal tests which are appropriately sensitive to the policies supporting the confidentiality of mediation proceedings, the court may consider whether the interest in mediation confidentiality outweighs the asserted need for disclosure. *See* amended opinion in *Olam v. Congress Mortgage Company*, 68 Fed. R. Civ. P. Supp. 2d 1110 (N.D. Cal. 1999). Nothing in this commentary is intended to imply that, absent truly exigent circumstances, confidential matters may be disclosed without prior approval by the court.

6-13. Follow Up

At the close of the mediation session, the mediator and the parties shall jointly determine whether it would be appropriate to schedule some type of follow up. Such follow up could include, but need not be limited to, written or telephonic reports that the parties might make to one another or to the mediator, exchange of specified kinds of information, or another mediation session.

6-14. Certification of Session

Within 14 days of the close of each mediation session and on the form Certification of Session provided by the Court, the mediator must report to the ADR Unit: the date the session was held, whether the case settled in whole or in part, and whether any follow up is scheduled. The ADR Unit will file the certification.

7. SETTLEMENT CONFERENCES

7-1. Description

In a settlement conference, a judicial officer, usually a Magistrate Judge, facilitates the parties' efforts to negotiate a settlement. Some settlement Judges use mediation techniques in the settlement conference to improve communication among the parties, probe barriers to settlement, and assist in formulating resolutions. A settlement Judge might articulate views about the merits of the case or the relative strengths and weaknesses of the parties' legal positions.

7-2. Referral to a Settlement Conference

The Court may refer a case to a settlement conference on its own initiative, on the request of a party, or upon stipulation of the parties. A settlement conference generally will be conducted by a Magistrate Judge, but in some limited circumstances may be conducted by a District Judge. Upon written stipulation of all parties, the assigned Judge, in the exercise of his or her discretion, may conduct a settlement conference.

Commentary

The Court limits the number of cases referred to Magistrate Judges for early settlement conferences.

Cross Reference

See ADR L.R. 3-5(c)(2) "Notice of Need for ADR Phone Conference."

7-3. Request of a Party

For cases assigned to the ADR Multi-Option Program, at any time after the ADR phone conference, a party may file with the assigned Judge a request for a settlement conference, pursuant to Civil L.R. 7. In all other cases, a party may file such a request at any time after the action has been commenced. The parties may stipulate to a preference for one or more particular Magistrate Judges or District Judges. The Court will attempt to honor the preference, subject to intra-division needs and the availability of the Magistrate Judges and District Judges.

7-4. Directives from the Settlement Judge

Within any constraints fixed by the referring Judge, the settlement Judge shall notify the parties of the time and date of the settlement conference. The settlement Judge also shall notify the parties of his or her requirements for pre-conference submissions and for attendance at the settlement conference. The settlement Judge may order parties to attend. Unless the settlement Judge otherwise specifies, "attendance" at a settlement conference is governed by the following:

(a) Corporation or Other Non-Governmental Entity. A party other than a natural person (e.g., a corporation or an association) satisfies this attendance requirement if represented by a person (other than outside counsel) who has final authority to settle and who is knowledgeable about the facts of the case. If final authority to settle is vested only in a governing board, claims committee, or equivalent body and cannot be delegated to a representative, an entity must disclose (in writing or electronically) this fact to all other parties and the settlement judge at least 14 days before the settlement conference will occur. This required disclosure must identify the board, body, or persons in whom final

settlement authority is vested. In this instance the party must send the person (in addition to counsel of record) who has, to the greatest extent feasible, authority to recommend a settlement, and who is knowledgeable about the facts of the case, the entity's position, and the procedures and policies under which the entity decides whether to accept proposed settlements.

(b) Government Entity. A unit or agency of government satisfies this attendance requirement if represented by a person (in addition to counsel of record) who has, to the greatest extent feasible, authority to settle, and who is knowledgeable about the facts of the case, the governmental unit's position, and the procedures and policies under which the governmental unit decides whether to accept proposed settlements. If the action is brought by the government on behalf of one or more individuals, at least one such individual also must attend.

(c) Insurers. Unless excused by the settlement Judge, insurer representatives are required to attend in person if their agreement would be necessary to achieve a settlement.

Commentary

Ordinarily, a corporation or other entity, including a governmental entity or an insurer, satisfies the attendance requirement by sending a person or persons who can agree to a settlement without the necessity of gaining approval from anyone else. Exceptions to this general practice must be disclosed and addressed in advance of the settlement conference.

7-5. Settlement Conference Confidentiality

(a) Confidential Treatment. Except as provided by a case-specific order entered in advance of the settlement conference or in subdivision (b) of this local rule, this court, the settlement judge, all counsel and parties, and any other persons attending the settlement conference shall treat as "confidential information" the contents of any written settlement conference statements, anything that happened or was said, any position taken, and any view of the merits of the case expressed by any participant in connection with any settlement conference. "Confidential information" shall not be:

(1) disclosed to anyone not involved in the litigation;

(2) disclosed to the assigned judge; or

(3) used for any purpose, including impeachment, in any pending or future proceeding in this court.

(b) Limited Exceptions to Confidentiality. This rule does not prohibit:

(1) disclosures as may be stipulated by all parties;

(2) any participant or the settlement judge from responding to an appropriate request for information duly made by persons authorized by the court to monitor or evaluate the court's ADR program in accordance with ADR L.R. 2-6; or

(3) disclosures as are necessary to preserve the court's capacity to enforce lawful orders or to discipline contumacious conduct, or as are otherwise required by law.

Commentary

It is the established practice in this district that a settlement judge does not, formally or informally, disclose to the assigned judge the substance of any settlement discussions.

8. OTHER ADR PROCESSES

8-1. Other Court ADR Processes

(a) **Non-binding Summary Bench or Jury Trial**. A summary bench or jury trial is a flexible, non-binding process designed to promote settlement in complex, trial-ready cases headed for protracted trials. The process provides litigants and their counsel with an advisory verdict after a short hearing in which the evidence may be presented in condensed form, usually by counsel and sometimes through witnesses. This procedure, as ordinarily structured, provides the litigants an opportunity to ask questions and hear the reactions of the Judge or jury. The Judge's or jury's nonbinding verdict and reactions to the legal and factual arguments are used as bases for subsequent settlement negotiations. Parties considering a non-binding summary trial are encouraged to contact the ADR Unit for assistance in structuring a summary trial tailored to their case.

(b) **Special Masters**. The Court may appoint special masters to serve a wide variety of functions, including, but not limited to: discovery manager, fact finder or host of settlement negotiations. The Court may refer a case to a special master on its own initiative, on the request of a party, or upon stipulation of the parties. The precise roles and responsibilities of the special master shall be defined in the case specific order of reference. Generally the parties pay the special master's fees.

8-2. Private ADR

There are numerous private sector providers of ADR services including arbitration, mediation, fact-finding, neutral evaluation and private judging. Private providers may be lawyers, law professors, retired Judges or other professionals with expertise in dispute resolution techniques. Virtually all private sector providers charge fees for their services. The Court does not ordinarily refer cases to private providers except on the stipulation of the parties. The assigned Judge will take appropriate steps to assure that a referral to private ADR does not result in an imposition on any party of an unfair or unreasonable economic burden.

Commentary

Private ADR proceedings are not subject to the enforcement, immunity, or other provisions of the ADR Local Rules. See ADR L.R. 3-4(b).

UNITED STATES DISTRICT COURT
Northern District of California

HABEAS CORPUS LOCAL RULES

Table of Contents

2254-1. Title

These are the Local Rules of Practice which govern petitions for writs of habeas corpus filed in the United States District Court for the Northern District of California pursuant to 28 U.S.C. § 2254. They should be cited as "Habeas L.R." These rules are effective December 1, 2009 and shall govern *habeas corpus* actions pending or commenced on or after that date.

These rules are intended to supplement the "Rules Governing Section 2254 Cases in the United States District Courts." The Civil Local Rules of this Court are also applicable in these proceedings, except to the extent that they are inconsistent with these Habeas Corpus Local Rules. The application of these rules to a particular petition may be modified by the Judge to whom the petition is assigned.

I. HABEAS CORPUS PETITIONS IN NON-CAPITAL CASES

2254-2. Scope

Habeas L.R. 2254-2 to 2254-10 shall apply to a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in a noncapital case, that is a petition attacking something other than a judgment imposing a penalty of death.

2254-3. Filing Petition

(a) Venue. The following noncapital petitions for writs of habeas corpus shall be filed in this District:

(1) Petitions challenging the lawfulness of a conviction or sentence for which the petitioner was convicted and sentenced in the following counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz and Sonoma; or

(2) Petitions challenging the manner in which the sentence is being executed, such as loss of good time credits, where the petitioner is confined in an institution located in a county listed in Habeas L.R. 2254-3(a)(1) at the time the petition is filed.

(b) Transfer of Venue. If a petition is filed in this District which does not conform to Habeas L.R. 2254-3(a), venue shall be transferred to:

(1) The district of conviction or sentencing if the petition is challenging the conviction or sentence; or

(2) The district of confinement if the petition is challenging the manner in which the sentence is being executed.

(c) Place for Filing. Noncapital petitions as to which venue lies in this District shall be filed in San Francisco.

(d) Form and Content. Noncapital petitions shall be filed on a form supplied by the Clerk, and shall be filled in by printing or typewriting. In the alternative, the

petition may be in a typewritten, word-processed or other legible written form which contains all of the information required by the Court's form.

(e) Pro Se Petitions. Noncapital petitions filed by persons who are appearing *pro se* shall be on a form established for that purpose by the Court and shall be completed in conformity with the instructions approved by the Court. Copies of the forms, instructions and pertinent provisions of these Habeas Corpus Local Rules shall be supplied to *pro se* petitioners by the Clerk upon request or upon the filing of papers which appear to be a request by a person appearing *pro se* for relief which should be presented by a petition for habeas corpus pursuant to 28 U.S.C. § 2254.

(f) Requests to Proceed In Forma *Pauperis*. Persons seeking leave to proceed *in forma pauperis* must complete the application established for that purpose by the Court. Copies of the application form, instructions and pertinent provisions of the local rules shall be supplied to *in forma pauperis* applicants by the Clerk upon request or upon the filing of papers which appear to be a request by a person to proceed *in forma pauperis*. The Clerk shall refer a completed application to the assigned Judge for determination.

(g) Number of Copies. An original and one copy of the petition shall be filed by a petitioner represented by counsel. A *pro se* petitioner need only file the original.

2254-4. Assignment to Judges

(a) Assignment to District Judge. The assignment of noncapital habeas corpus petitions to a Judge shall be made in accordance with the provisions of the Assignment Plan of the Court.

(b) Assignment to Magistrate Judge. Pursuant to 28 U.S.C. § 636(b)(1)(B), a Magistrate Judge may be designated by the Court to perform all duties under these rules.

2254-5. Discovery

No discovery pursuant to Fed. R. Civ. P. 26-37 shall be conducted with respect to a petition for writ of habeas corpus in noncapital cases without leave of the Court.

2254-6. Briefing Schedule

(a) Schedule. Unless the Judge summarily dismisses the petition under Rule 4 of the Rules Governing § 2254 Cases, the schedule and procedure set forth in this Rule shall apply, subject to modification by the assigned Judge. Requests for enlargement of any time period in this rule shall comply with the applicable Civil Local Rules for enlargement of time.

Cross Reference
See Civil L.R. 6 "Time."

(b) Answer to Petition. After the Court orders a response to the petition, within 60 days of service of a noncapital petition, the respondent shall serve and file:

(1) An answer to the petition with accompanying points and authorities;

(2) The matters defined in Rule 5 of the Rules Governing § 2254 Cases;

(3) Portions of the trial and appellate record that are relevant to a determination of the issues presented by the petition which have not been previously filed; and

(4) Certificate of service, pursuant to Civil L.R. 5-4.

(c) Traverse. Within 30 days after the respondent has filed the answer, the petitioner may serve and file a traverse.

2254-7. Evidentiary Hearing

(a) Request for Evidentiary Hearing. A request for an evidentiary hearing by either party shall be made within 14 days from the filing of the traverse, or within 14 days from the expiration of the time for filing the traverse. The request shall include a specification of which factual issues require a hearing and a summary of what evidence the party proposes to offer. An opposition to the request for an evidentiary hearing shall be made within 14 days from the filing of the request. Any reply shall be filed within 7 days from the filing of the opposition. The Court will then give due consideration to whether an evidentiary hearing will be held.

(b) Transcript of Evidentiary Hearing. If an evidentiary hearing is held and any party orders a transcript, the transcript will be prepared and immediately provided to the petitioner and to the respondent for use in such briefing and argument as the Court may order. Upon the preparation of the transcript, the Court may establish a reasonable schedule for further briefing and argument of the issues considered at the hearing.

2254-8. Oral Argument

(a) Request for Oral Argument. A request for an oral argument by either party shall be made within 14 days from the filing of the traverse, or within 14 days from the expiration of the time for filing the traverse or, if an evidentiary hearing is granted, within 14 days after a decision of the Court with respect to the subject matter of the evidentiary hearing. The request shall include a specification of the issues to be addressed at the argument.

(b) Notice of Hearing. Upon request of a party, the Court, in its discretion, may set the matter down for oral argument. Within 30 days after an evidentiary hearing or within 30 days after the Court has denied a request for an evidentiary hearing, the assigned Judge shall notify the parties whether the Court will hear oral argument and the date of the hearing or whether the matter shall be submitted for decision without oral argument.

2254-9. Rulings

The Court's rulings shall be in the form of a written opinion which will be filed. The Clerk shall serve the parties with a copy of the ruling pursuant to Fed. R. Civ. P. 77(d).

II. HABEAS CORPUS PETITIONS IN CAPITAL CASES

2254-20. Applicability

Habeas L.R. 2254-20 *etsequentia* shall govern the procedures for a first petition for a writ of habeas corpus filed in this District under chapter 153 of Title 28 of the U.S. Code in which the petitioner seeks relief from a judgment imposing a penalty of death. A subsequent filing may be deemed a first petition under this Rule if the original filing was not dismissed on the merits.

2254-21. Notices From California Attorney General

The California Attorney General shall send to the Clerk the following reports:

(a) **Monthly Report**.Monthly, the Attorney General shall send a list of all scheduled executions in California and a list of death penalty cases emanating from state trial courts in the Northern District that have been affirmed on appeal by the California Supreme Court, or that have been orally argued before the California Supreme Court and are awaiting decision.

(b) **Quarterly Report**. The Attorney General shall send to the Clerk quarterly a list of all death penalty cases in California that have been affirmed on appeal.

2254-22. Venue

(a) **Policy Statement**. Subject to the provisions of 28 U.S.C. § 2241(d), it is the policy of this Court that a petition for writ of habeas corpus in a capital case should be heard in the district in which the petitioner was convicted, rather than in the district of the petitioner's present confinement.

(b) **Venue in the District**. A capital habeas corpus proceeding is properly commenced in this District if the petitioner challenges the lawfulness of a conviction and death sentence imposed in the following counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz and Sonoma.

(c) **Transfer of Venue.**If a proceeding is commenced in this District which does not conform to Habeas L.R. 2254-22(a) and (b) the Clerk shall immediately advise the Clerk of the Court of the district of conviction and shall present the matter to the General Duty Judge for an order transferring the matter to the district of conviction. The Clerk shall also prepare a proposed temporary stay order pursuant to Habeas L.R. 2254-24(b).

2254-23. Commencement of Proceedings

(a) **Place of Filing**. The first paper or pleading with respect to relief from a judgment imposing a penalty of death for which venue lies in this district shall be filed in the Office of the Clerk at the San Francisco Courthouse. All subsequent papers or pleadings shall be filed in the Office of the Clerk at the courthouse where the assigned Judge maintains his or her chambers.

(b) First Paper or Pleading. The first paper or pleading may be either an application for appointment of counsel or a petition for writ of habeas corpus. The Clerk will have available forms for the application for appointment of counsel. A sample form is set forth in the Appendix to these Local Rules. In addition to other matters appropriate to the nature of the first paper or pleading filed pursuant to Habeas L.R. 2254-23(b), the first paper or pleading shall:

(1) Identify by case number any applications for relief with respect to the same matter which the petitioner has filed in any federal court; and

(2) Set forth any scheduled execution date.

(c) Service on the Respondent. An attorney representing a party filing a first paper or pleading in a capital habeas corpus proceeding shall serve a copy of the paper or pleading on the California Attorney General pursuant to Civil L.R. 5-3. When a first paper or pleading is filed by a person who is not represented by an attorney, the Clerk shall promptly serve the Attorney General with a copy of that paper or pleading.

(d) Filing Fee. Concurrently with the filing of the initial pleading, or if the filing is made on an emergency basis, then as soon thereafter as reasonably practicable, the petitioner either shall pay the $5 statutory filing fee or shall submit a completed *in forma pauperis* application. Civil L.R. 3-10 shall govern proceedings with respect to the application.

(e) Assignment to a Judge. After commencement of a proceeding involving a request for a writ of habeas corpus in which it appears that venue is proper in this District, the Clerk shall assign or reassign the matter to a Judge in accordance with the Assignment Plan of the Court.

2254-24. Stays of Execution

(a) Stay Pending Final Disposition. Upon the filing of a first paper or pleading by a petitioner who was convicted and sentenced to death in this District, unless the pleading is patently frivolous, the Judge will order a stay of execution pending final disposition of the proceedings in this Court.

(b) Temporary Stay for Transfer of Venue. When a first paper or pleading is filed by a petitioner who was convicted and sentenced to death in another district, the Clerk shall include a proposed order staying execution with the order presented to a Judge pursuant Habeas L. R. 2254-22(c). The signed stay of execution shall remain in effect until the transferee court acts on it.

(c) Stay Pending Appeal. If the Court dismisses or denies the petition and issues a certificate of probable cause for appeal or a certificate of appealability, the Court will grant a stay of execution which shall remain in effect until the United States Court of Appeals for the Ninth Circuit acts upon the appeal or the order of stay.

(d) Notice of Stay. Upon the granting of any stay of execution, the Clerk will immediately notify the Warden of San Quentin Prison and the Attorney General. The Attorney General shall ensure that the Clerk has a twenty-four hour telephone number to the Warden.

2254-25. Counsel

(a) In General. Each petitioner in a proceeding for a writ of habeas corpus in a capital case shall be represented by counsel unless the petitioner has clearly elected to proceed *pro se* and the assigned Judge is satisfied, after a hearing, that the petitioner's election is intelligent and voluntary.

(b) Appointment and Compensation. Unless the petitioner is represented by retained counsel or has been permitted to proceed *pro se*, the Court shall appoint counsel at the earliest appropriate time if it finds that the requirement of 21 U.S.C. §848(q)(4)(B), that the defendant is financially unable to obtain adequate representation, has been satisfied. The assigned Judge, in his or her discretion, will determine whether more than one attorney is necessary for adequate representation of the petitioner. Appointment and compensation of counsel shall be governed by §6.01(A)(2) of Volume VII of the Guide to Judiciary Policies and Procedures, Appointment of Counsel in Criminal Cases, and by 21 U.S.C. §848(q)(6), (7) & (10)(A). The presumptive rate for compensation of lead counsel or co-lead counsel shall be $125.00 per hour. The presumptive rate for compensation of second counsel shall be $100.00 per hour.

(c) Selection Board. A selection board appointed by the Chief Judge of the District will certify a panel of attorneys qualified for appointment in capital habeas cases. The selection board will consist of a representative of the Federal Public Defender for the Northern District, a representative of the California Appellate Project (CAP), a representative of the Habeas Corpus Resource Center (HCRC), a representative of the State Public Defender, and a representative of the private bar. The selection board may suggest one or more counsel for appointment. The Court also may request suggestions from the selection board for one or more counsel.

2254-26. Case Management and Budgeting

After a capital habeas corpus proceeding has been assigned to a Judge and counsel has been appointed, the assigned Judge shall conduct an initial case management conference to discuss anticipated proceedings in the case. In all cases where attorneys' fees and investigative and expert expenses are reimbursed pursuant to 21 U.S.C. §§848(q)(4) - (10), the petitioner's counsel will be required to prepare phased budgets for submission to the Court. Following the initial case management conference, the assigned Judge may schedule additional case management conferences in advance of each of the budgeting phases. The assigned judge also may schedule one or more *ex parte* conferences with the petitioner's counsel to implement the budgeting process.

2254-27. Lodging of the Record

(a) Material to be Lodged. As soon as practicable, but in any event within 21 days from the date of the initial case management conference, the respondent shall lodge with the Court the following:

(1) Transcripts of the state trial court proceedings;

(2) The appellant's and respondent's briefs on direct appeal to the California Supreme Court, and the opinion or orders of that Court;

(3) The petitioner's and the respondent's pleadings in any state court habeas corpus proceedings, and all opinions, orders and transcripts of such proceedings;

(4) Copies of all pleadings, opinions and orders in any previous federal habeas corpus proceeding filed by the petitioner, or on the petitioner's behalf, which arose from the same conviction;

(5) An index of all materials described in items (1) through (4) above. The respondent shall mark and number the materials so that they can be uniformly cited. The respondent shall serve the index upon counsel for the petitioner;

(6) If any item identified in paragraphs (1) through (4) above does not become available until a later date, the respondent shall provide a supplemental lodging and index within 21 days of its availability.

(b) Missing Documents. If counsel for the petitioner claims that the respondent has not complied with the requirements of paragraph (a) above, or if counsel for the petitioner does not have copies of all the documents the respondent has lodged with the Court, counsel for the petitioner shall notify the Court in writing as soon as practicable, with a copy to the respondent. The respondent will provide copies of the missing documents to the Court and to the petitioner's counsel, as appropriate.

2254-28. Finalized Petition

(a) Form. The term "finalized petition" shall refer to the petition filed by retained or appointed counsel, or by a petitioner who has expressly waived counsel and elected to proceed *pro se* under Habeas L.R. 2254-25(a). The finalized petition shall comply with the requirements of 28 U.S.C. § 2242 and the Rules Governing Section 2254 Cases in the United States District Courts, Rule 2(c). The finalized petition shall be filed on a form supplied by the Clerk, and shall be filled in by printing or typewriting. In the alternative, the finalized petition may be in a typewritten, word-processed or other legible written form which contains all of the information required by the Court's form.

(b) Contents. All assertions of historical or procedural fact shall be accompanied by citations to the state trial record or other record of proceedings and shall appear in a style comporting with the designations employed in the index of materials prepared in accordance with Habeas L.R. 2254-27(a)(5). The finalized petition shall:

(1) State whether the petitioner has previously sought relief arising out of the same matter from this Court or any other federal court, together with the ruling and reasons of such court;

(2) Include a table of contents which sets forth the headings and subheadings in the petition;

(3) Set forth each factual allegation or group of related allegations in a separately numbered or lettered paragraph;

(4) Identify where in the record each claim was exhausted; and

(5) Set forth any scheduled execution date.

(c) Filing and Service. Counsel for the petitioner shall file an original and two copies of the finalized petition and shall serve a copy of the petition on counsel for the respondent. A *pro se* petitioner need only file the original. The Clerk shall serve a copy of a finalized *pro se* petition on the Attorney General.

254-29. Schedule of Proceedings for Considering the Finalized Petition

(a) Presumptive Schedule. Unless the Judge summarily dismisses the petition under Rule 4 of the Rules Governing § 2254 Cases, the following schedule and procedure shall apply, subject to modification by the assigned Judge. Requests for enlargement of any time period in this Rule shall comply with the Civil L.R. 7-8.

(b) Meet and Confer Regarding Exhaustion. If the respondent contends that any claims in the petition are unexhausted and declines to waive exhaustion, counsel for the respondent shall make a good faith effort to confer with counsel for the petitioner regarding the exhausted status of each such claim. Unless relieved by written order of the Court upon good cause shown, counsel for the petitioner shall confer with counsel for the respondent within 14 days after service of a letter from the respondent requesting such a conference. The letter shall identify each claim that respondent contends is unexhausted, specify the basis for asserting that the claim is unexhausted and provide any legal authority that the respondent contends is dispositive of the exhausted status of that claim.

(c) Motion Regarding Exhaustion. If, after the conference held pursuant to Habeas L.R. 2254-29(b), the parties continue to dispute the exhausted status of one or more claims, then no later than forty-five (45) days after service of the petition, the respondent shall file a motion asking the Court to determine the status of the claim(s). In connection with any motion relating to exhaustion disputes, the parties shall file a joint statement identifying:

(1) The claims the parties agree are exhausted;

(2) The claims the parties agree are not exhausted; and

(3) The claims as to which the parties disagree on exhaustion.

(d) Answer and Request for Case Management Conference. Within forty-five (45) days from the service of the finalized petition, or, if the respondent has filed a motion pursuant to Habeas L.R. 2254-29(c), then within such time as the Court may order, the respondent shall file an answer to the petition and may file accompanying points and authorities. The answer shall conform to Rule 5 of the Rules Governing § 2254 Cases. Concurrently with the filing of the answer, the respondent shall file a request that a case management conference be held within forty-five (45) days.

(e) Meet and Confer Regarding Case Management Conference Statement. No later than fourteen (14) days prior to the date set by the Court for a case management conference, counsel for the petitioner and the respondent shall meet and confer to prepare a joint statement setting forth the parties' positions regarding:

(1) The status of any claims the respondent identifies as procedurally defaulted, and the appropriate procedure for addressing those claims;

(2) The scheduling of motions for any evidentiary hearings; and

(3) The scheduling of any other pleadings or proceedings necessary for resolving the petition, including motions for summary judgment.

(f) Filing of Joint Statement. No later than seven (7) days prior to the case management conference, counsel for the petitioner and the respondent shall file the joint statement for the Case Management Conference.

(g) Case Management Conference. At the Case Management Conference, the Court shall set a schedule for: (1) resolving any issues of procedural default; (2) motions for evidentiary hearings; and (3) any other pleadings or proceedings necessary for resolving the petition, including motions for summary judgment.

(h) Discovery. No discovery pursuant to Fed. R. Civ. P. 26-37 shall be had without leave of the Court. Any permitted discovery shall comply with the Federal Rules of Civil Procedure and the Local Rules of this Court.

(i) Request for Evidentiary Hearing. A request for an evidentiary hearing shall include:

(1) A specification of which issues require a hearing;

(2) A discussion of the legal basis for holding a hearing on each issue; and

(3) A summary of the evidence the party proposes to offer.

(j) Evidentiary Hearing. The Court will determine whether an evidentiary hearing will be held. If an evidentiary hearing is held and any party orders a transcript, the transcript will be prepared and immediately provided to the petitioner and to the respondent for use in such briefing and argument as the Court may order.

(k) Oral Argument. If no evidentiary hearing is held, the Court will determine whether to set the matter for oral argument.

2254-30. Notification of Rulings

The Clerk will immediately notify the warden of San Quentin Prison and the Attorney General whenever relief is granted on a petition. The Clerk will immediately notify the Clerk of the United States Court of Appeals for the Ninth Circuit by telephone of (i) the issuance of a final order denying or dismissing a petition without a certificate of probable cause or appealability, or (ii) the denial of a stay of execution.

2254-31. Transmission of Record

(a) When Petition Denied and Certificate of Appealability Denied. When the petitioner files a notice of appeal from an order denying habeas relief, and the District Court has denied a certificate of probable cause or appealability and denied a stay of execution, the Clerk will transmit to the Court of Appeals immediately:

(1) A copy of the notice of appeal;

(2) A copy of the order(s) denying the certificate and stay;

(3) A copy of the docket sheet; and

(4) The entire record of proceedings in the District Court, including any lodged state court records.

(b) When Petition Denied and Certificate of Appealability Granted. When the petitioner files a notice of appeal from an order denying habeas relief, and the District Court has granted a certificate of probable cause or appealability and granted a stay of execution, the Clerk shall retain the record of proceedings until requested by the Court of Appeals to transmit it. The Clerk will transmit to the Court of Appeals immediately:

(1) A copy of the notice of appeal;

(2) A copy of the order(s) granting the certificate and stay; and

(3) A copy of the docket sheet.

(c) When Petition Granted. When the respondent files a notice of appeal from an order granting habeas relief, the Clerk shall retain the record of proceedings until requested by the Court of Appeals to transmit it. The Clerk shall transmit to the Court of Appeals immediately:

(1) A copy of the notice of appeal; and

(2) A copy of the docket sheet.

UNITED STATES BANKRUPTCY COURT
Northern District of California

BANKRUPTCY LOCAL RULES

http://www.canb.uscourts.gov

UNITED STATES DISTRICT COURT
Northern District of California

CRIMINAL LOCAL RULES

Table of Contents

I. SCOPE, PURPOSE AND CONSTRUCTION

1-1. Title

These are the Local Rules of Practice in Criminal proceedings before the United States District Court for the Northern District of California. They should be cited as "Crim. L.R.___."

2-1. Purpose and Construction

These Rules are promulgated pursuant to 28 U.S.C. § 2071 and Fed. R. Crim. P. 57. They supplement the Federal Rules of Criminal Procedure and shall be construed so as to be consistent with those Rules. The provisions of the Civil Local Rules of the Court shall apply to criminal actions and proceedings, except where they may be inconsistent with these criminal local rules, the Federal Rules of Criminal Procedure or provisions of law specifically applicable to criminal cases.

Cross Reference
See Civil L.R. 1-5(i) "*General Orders*" and Civil L.R. 1-5(m) "*Standing Orders of Individual Judges*."

2-2. Definitions

Unless the context requires otherwise, the definitions contained in Civil L.R. 1-5 apply to these local rules.

(a) **Fed. R. Evid**. "Fed. R. Evid." means the Federal Rules of Evidence.

(b) **Probation Officer**. "Probation Officer" refers to a United States Probation Officer appointed by the United States District Court.

2-3. Certificate of Service

(a) **Party Certificate of Service**. Whenever these local rules or other provision of law requires any pleading or paper which is presented for filing in a criminal case to be served upon any party or person, it shall bear on it or have attached to it a certificate of service in a form which complies with Civil L.R. 5-4(a).

(b) **Clerk's Certificate of Service**. Unless the Judge or these local rules require otherwise, any written order of the Court in a criminal case shall bear on it or have attached to it a certificate of service by the Clerk.

2-4. Lodging Copy for Chambers

Unless the Court orders otherwise, an extra copy of any document filed in a criminal case marked for "Chambers," shall be lodged pursuant to Civil L.R. 5-2(b).

II. PRELIMINARY PROCEEDINGS

5-1. Criminal Case Proceedings before Assignment to a District Judge

(a) **Calendar for Proceedings in Criminal Cases Before Assignment**. Each courthouse of this District shall maintain a criminal calendar to hear any matter in a criminal case which has been assigned to that courthouse and which arises before the case is assigned to a District Judge.

Cross Reference
See Crim. L.R. 18-1(a),(b) or (c)

(b) **Proceedings Before Magistrate Judge Prior to Assignment**. At each courthouse a Magistrate Judge shall be designated to hear and decide matters arising before the case has been assigned to a District Judge in criminal cases which have been assigned to that courthouse. The designated Magistrate Judge is empowered to hear and decide any matter on that calendar unless a federal statute or federal rule requires that the matter be decided by a District Judge.

(c) **Initial Appearance After Arrest**. Whenever a person is arrested in this District for a federal offense, the person shall be brought without unnecessary delay before a Magistrate Judge. The Magistrate Judge before whom the person is brought shall preside over the initial appearance in accordance with Fed. R. Crim. P. 5. All subsequent proceedings shall be conducted at the courthouse where the case has been assigned pursuant to Crim. L.R. 7-1.

(d) **Proceedings Before a District Judge Prior to Assignment**. When a matter arises in a criminal case before the case has been assigned to a District Judge which a federal statute or federal rule requires be presented to or decided by a District Judge, it shall be presented to the General Duty Judge for the courthouse or, if unavailable, to the General Duty Judge at any other courthouse.

Cross Reference
See Civil L.R. 1-5(j) "General Duty Judge."

III. INDICTMENT AND INFORMATION

6-1. Impanelment of Grand Jury

The General Duty Judge of each courthouse of this District is empowered to impanel one or more grand juries as the public interest requires. Upon a determination by a General Duty Judge to impanel a grand jury for that courthouse, he or she shall summon a sufficient number of legally qualified residents of the counties served by that courthouse pursuant to Civil L.R. 3-2 to satisfy the requirements of Fed. R. Crim. P. 6(a).

6-2. Grand Jury Administration

(a) **Motions Pertaining to Composition or Term of Empaneled Grand Jury**. A request by the government or a grand juror for an order pertaining to service on or the term of an impaneled grand jury shall be made by *ex parte* motion or request to the Judge who impaneled the grand jury. If that Judge is unavailable within the meaning of Civil L.R. 1-5(n), the motion or request shall be made to the General Duty Judge of the courthouse in which the grand jury sits. Such motions or requests may pertain to matters such as:

(1) A request by a member of a grand jury or by the government that a grand juror be excused;

(2) A request by the government to appoint an alternate grand juror;

(3) A motion to extend the term of a grand jury.

(b) **Motions Regarding Grand Jury Process or Proceedings**. Any government motion regarding those parts of the grand jury's process or proceedings or in aid of its process or proceedings which must be conducted in secret pursuant to Fed. R. Crim. P. 6, may be made under seal by ex parte motion to the General Duty Judge of the courthouse at which the grand jury sits. Unless otherwise ordered by the General Duty Judge pursuant to ex parte request, any such motion filed by a private party shall be accompanied by proof of service of the motion upon the office of the United States Attorney for this District.

7-1. Assignment of Criminal Case

(a) **Designation in Caption of Pleading**. In the caption of each complaint, indictment or information immediately following the identification of the pleading, the government shall identify the courthouse to which the action should be assigned pursuant to Crim. L.R. 18-1. After a complaint, indictment or information has been filed in this District and assigned to the appropriate courthouse pursuant to Crim. L.R. 18-1, the Clerk shall assign it to a District Judge pursuant to the Assignment Plan of the Court. The case shall also be assigned to the designated criminal calendar Magistrate Judge at that courthouse.

(b) **Proceedings before Magistrate Judge after Assignment**. After a case has been assigned to a District Judge pursuant to Crim. L.R. 7-1(a), the criminal calendar Magistrate Judge may conduct the following proceedings as deemed appropriate:

(1) Appoint counsel;

(2) Appoint an interpreter;

(3) Conduct an arraignment and schedule an appearance before the assigned District Judge;

(4) Accept or enter a plea of not guilty;

(5) Conduct a probation or supervised release preliminary revocation hearing;

(6) Hear and determine motions or matters regarding release or detention;

(7) Set a schedule for disclosure of information pursuant to Fed. R. Crim. P. 16;

(8) In a case transferred to this District under Fed. R. Crim. P. 20, order a presentence report and schedule a date for arraignment, plea and sentencing consistent with the time necessary to effect the transfer;

(9) Order a presentence report where a defendant who is represented by counsel has agreed to plead guilty;

(10) In cases pending before the Magistrate Judge, declare forfeiture of bail and conduct proceedings pursuant to Fed. R. Crim. P. 46(e);

(11) After issuance of an order of forfeiture, enforcement, remission or exoneration by a District Judge pursuant to Fed. R. Crim. P. 46(e), conduct further proceedings pertaining to the bond as may be referred by the District Judge;

(12) Conduct proceedings under Fed. R. Crim. P. 40;

(13) Conduct proceedings for extradition;

(14) Conduct such other proceedings which may be performed by a Magistrate Judge as ordered by the assigned District Judge.

8-1. Notice of Related Case in a Criminal Action

(a) **Notice Requirement**. Whenever a party to a criminal action pending in this District knows or learns that the action is related to a civil or criminal action, which is or was pending in this District, that party shall promptly file a "Notice of Related Case in a Criminal Action" with the Judge assigned to the earliest filed action, shall lodge a copy of the notice with the chambers of each Judge assigned to each related case and shall serve all known parties with a copy of the notice.

Commentary

A Judge's involvement in any pre-indictment miscellaneous proceeding (e.g., issuance of search warrant) is not a basis for assignment of any resulting criminal action to that Judge as a related case.

(b) **Definition of Related Case for Criminal Action**. Any criminal action is related to another pending civil or criminal action when:

(1) Both actions concern one or more of the same defendants and the same alleged events, occurrences, transactions or property; or

(2) Both actions appear likely to entail substantial duplication of labor if heard by different Judges or might create conflicts and unnecessary expenses if conducted before different Judges.

(c) **Content of Notice**. A Notice of Related Case in a Criminal Action shall contain:

(1) The title and case number of each related case;

(2) A description of each related case;

(3) A brief statement of the relationship of each action according to the criteria set forth in Crim. L.R. 8-1(b);

(4) A statement by the party with respect to whether assignment to a single Judge is or is not likely to conserve judicial resources and promote an efficient determination of the action.

(d) **Response to Notice**. No later than 7 days after service of a Notice of Related Case in a Criminal Action, any party may serve and file a statement to support or oppose the notice. Such statement shall specifically address the issues in Crim. L.R. 8-1(b) and (c).

(e) **Related Case Order**. After the time for filing support or opposition to the notice has passed, the Judge assigned to the earliest-filed case shall issue an order that indicates whether the later-filed case is related or not, and if the case is related, whether the later-filed case is to be reassigned to that Judge. After the Judge issues the related case order, the Clerk shall reassign the case if ordered to do so and shall serve a copy of the order upon the parties and the assigned Judge in the later-filed case.

IV. PREPARATION FOR DISPOSITION BY TRIAL OR SETTLEMENT

11-1. Voluntary Settlement Conference

(a) **Joint Request for Referral**. At any time prior to the final pretrial conference, the attorney for the government and the attorney for a defendant, acting jointly, may request that the assigned Judge refer the case to another Judge or Magistrate Judge to conduct a settlement conference. In a multiple defendant case, all defendants need not join in the request in order for the assigned Judge to refer for settlement conference the case pending against a requesting defendant.

(b) **Order of Referral**. Upon a request made pursuant to Crim. L.R. 11-1(a), the assigned Judge may, in his or her discretion, refer the case to another Judge or Magistrate Judge available to conduct the settlement conference. In conjunction with the referral, the assigned Judge may order the pretrial services officer of the Court to provide a report of any prior criminal proceedings involving the defendant to the parties and the settlement Judge.

(c) **Conduct of Settlement Conference**. The role of the settlement Judge is to assist the parties in exploring a voluntary settlement in a criminal case. The settlement Judge shall schedule a conference taking into consideration the trial schedule in the case. The attorney for the government and the principal attorney for the defendant shall attend the conference. The defendant need not be present at the conference, but shall be present at the courthouse for consultation with defense counsel, unless the defendant's presence is excused by the settlement judge. At least 7 days before the settlement conference, the Deputy Clerk for the settlement Judge shall notify the marshal to bring a defendant who is in custody to the courthouse to be available for consultation with his or her defense counsel. The settlement conference shall not be reported, unless the parties and the settlement judge agree that it should be on the record. Neither the settlement Judge, nor the parties nor their attorneys shall communicate any of the substance of the settlement discussions to the assigned Judge or to any other person. No statement made by any participant in the settlement conference shall be admissible at the trial of any defendant in the case. If a resolution of the case is reached which involves a change in the plea, the settlement Judge shall not take the plea.

(d) **Withdrawal of Request for Referral**. Participation in a settlement conference is voluntary. Any party may unilaterally withdraw its request for a settlement conference at any time.

12-1. 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. Motions shall be noticed in accordance with Crim. L.R. 47-1.

12.4-1. Disclosure of Nongovernmental Corporate Party

(a) **Certification**. The disclosure statement required pursuant to Fed. R. Crim. P. 12.4(a)(1) must be entitled "Certification of Nongovernmental Corporate Party." If a party has no disclosure to make pursuant to this rule, that party must make a certification stating that no such interest is known.

(b) **Form of Certification**. The certification required by subpart (a) of this rule must take the following form, as is appropriate to the proceeding:

(1) If there is any interest to be certified: "Pursuant to Fed. R. Crim. P. 12.4(a)(1) and Crim. L.R. 12.4-1(a), the undersigned certifies that the following parent or publicly held corporation owns 10 per cent or more of the stock of (name of party), a non-governmental corporate party to this action: (List name of parent or publicly held corporation). Signature, Attorney of Record."

(2) If there is no interest to be certified: "Pursuant to Fed. R. Crim. P. 12.4(a)(1) and Crim. L.R. 12.4-1(a), the undersigned certifies that as of this date, other than the named parties, there is no parent or publicly held corporation which owns 10 per cent or more of the stock of (name of party), a non-governmental corporate party to this action. Signature, Attorney of Record."

(3) Certification, pursuant to subpart (a) of this rule, must be filed as a separate and distinct document.

(4) Any supplemental filing required pursuant to Fed. R. Crim. P. 12.4(b) must be entitled "Supplemental Certification of Nongovernmental Corporate Party" and must comply with the form requirements of subpart (b)(1) of this rule.

(5) When an action is assigned to a district judge pursuant to Crim. L.R. 7-1(a) or is reassigned to another judge pursuant to Crim. L.R. 8-1 or General Order No. 44 - Assignment Plan, each party must lodge with the Clerk a chambers copy for the newly assigned judge of any previously filed certification required by this rule.

12.4-2. Disclosure of Organizational Victim

(a) **Certification**. The government's disclosure statement required pursuant to Fed. R. Crim. P. 12.4(a)(2) must be entitled "Certification of Organizational Victim."

(b) **Form of Certification**. The certification required by subpart (a) of this rule must take the following form:

(1) "Pursuant to Fed. R. Crim. P. 12.4(a)(2) and Crim. L.R. 12.4-2(a), the undersigned certifies that the following organization is a victim of the alleged criminal activity charged herein: (name of victim). The parent or publicly held corporation owning 10 per cent or more of the stock of (name of victim) is: (List name of parent or publicly held corporation, if obtainable. If unobtainable, state "Not obtainable."). Signature, Attorney of Record."

(2) Certification, pursuant to subpart (a) of this rule, must be filed as a separate document.

(3) Any supplemental filing required pursuant to Fed. R. Crim. P. 12.4(b) must be entitled "Supplemental Certification of Organizational Victim" and must comply with the form requirements of subpart (b)(1) of this rule.

(4) When an action is assigned to a district judge pursuant to Crim. L.R. 7-1(a) or is reassigned to another judge pursuant to Crim. L.R. 8-1 or General Order No. 44 - Assignment Plan, each party must lodge with the Clerk a chambers copy for the newly assigned judge of any previously filed certification required by this rule.

16-1. Procedures for Disclosure and Discovery in Criminal Actions

(a) **Meeting of Counsel**. Within 14 days after a defendant's plea of not guilty, the attorney for the government and the defendant's attorney shall confer with respect to a schedule for disclosure of the information as required by Fed. R. Crim. P. 16 or any other applicable rule, statute or case authority. The date for holding the conference can be extended to a day within 21 days after entry of plea upon stipulation of the parties. Any further stipulated delay requires the agreement of the assigned Judge pursuant to Civil L.R. 7-12.

(b) **Order Setting Date for Disclosure**. In the absence of a stipulation by the parties, a schedule for disclosure of information as required by Fed. R. Crim. P. 16 or any other applicable rule, statute or case authority may be set sua sponte by the assigned Judge or Magistrate Judge. If a party has conferred with opposing counsel as required by Crim. L.R. 16-1(a), the party may make a motion pursuant to Crim. L.R. 47-1 and 47-2 to impose a schedule for such disclosure.

(c) **Supplemental Disclosure**. In addition to the information required by Fed. R. Crim. P. 16, in order to expedite the trial of the case, in accordance with a schedule established by the parties at the conference held pursuant to Crim. L.R. 16-1(a) or by the assigned Judge pursuant to Crim. L.R. 16-1(b), the government shall disclose the following:

(1) **Electronic Surveillance**. A statement of the existence or non-existence of any evidence obtained as a result of electronic surveillance;

(2) **Informers**. A statement of the government's intent to use as a witness an informant, i.e., a person who has or will receive some benefit from assisting the government;

(3) **Evidence of Other Crimes, Wrongs or Acts**. A summary of any evidence of other crimes, wrongs or acts which the government intends to offer under F. R. Evid. 404(b), and which is supported by documentary evidence or witness statements in sufficient detail that the Court may rule on the admissibility of the proffered evidence; and

(4) Co-conspirator's Statements. A summary of any statement the government intends to offer under F. R. Evid. 801(d)(2)(E) in sufficient detail that the Court may rule on the admissibility of the statement.

16-2. Motion to Compel Discovery

(a) **Content of Motion**. A motion to compel disclosure or discovery shall be accompanied by a declaration by counsel which shall set forth:

(1) The date of the conference held pursuant to Crim. L.R. 16-1(a);

(2) The name of the attorney for the government and defense counsel present at the conference;

(3) The matters which were agreed upon; and

(4) The matters which are in dispute and which require the determination of the Court.

17-1. Subpoena to Testify in a Criminal Case; Forms

A party seeking to compel the appearance of a witness to testify at a criminal proceeding pursuant to Rule 17(a) or (b) of the Federal Rules of Criminal Procedure, or a party seeking to compel the appearance of a witness to testify and bring documents to a criminal proceeding pursuant to Rule 17(c), must utilize form CAND 89A, "SUBPOENA TO TESTIFY IN A CRIMINAL CASE." Forms are available at the Court's Internet site: http://www.cand.uscourts.gov.

17-2. Subpoena to Produce Documents or Objects in Advance of Trial or Hearing

(a) **Order Required**. No subpoena in a criminal case may require the production of books, papers, documents or other objects in advance of the trial, hearing or proceeding at which these items are to be offered in evidence, unless the Court has entered an order pursuant to Rule 17(c) of the Federal Rules of Criminal Procedure.

(1) An order permitting issuance of a Rule 17(c) subpoena may be obtained by filing either a noticed motion pursuant to Crim. L.R. 47-2 or, for good cause, an ex parte motion without advance notice to the opposing party. An ex parte motion and order thereon may be filed under seal for good cause. A party requesting a subpoena must support its request by a declaration specifying the facts supporting the issuance of the subpoena along with a proposed order.

Cross Reference

This rule relieves the party filing an *ex parte* motion from providing advance notice of the motion to the opposing party as required by Crim. L.R. 47-3. However, subsection (e) below requires notice to the opposing party of a subpoena seeking personnel or complaint records from a law enforcement agency.

(2) The Court will determine whether the material sought should be produced. In issuing an order granting the motion, the Court may place limits on the scope of the requested production.

(b) **Return of Subpoena**. Any Rule 17(c) subpoena must be returnable to the Court and the items sought therein must be delivered to the Court at the place, date and time indicated. The subpoena may advise, however, that no appearance is necessary if the items are produced in advance of the date specified, either to the Court, in an envelope delivered to the Clerk's Office, or directly to the issuing attorney whose name and address appears at the bottom of the subpoena.

(c) **Protection for the Recipient**. Any Rule 17(c) subpoena must advise the subpoenaed party that if compliance would be unreasonable or oppressive, it may file a motion to quash or modify the subpoena, for an in camera review of the documents, or for an order to permit production only pursuant to a protective order. Motions filed under this subsection must comply with Crim. L.R. 47-2.

(d) **Time for Production**. No Rule 17(c) subpoena may require the production of documents or objects in fewer than 14 days from the date the subpoena is served, absent good cause, which must be demonstrated in the motion seeking the order for issuance of the subpoena. If the items sought are voluminous, more than 14 days should be permitted to avoid unnecessary motions to quash or modify.

(e) **Production of Personnel or Complaint Records from Law Enforcement Agency**. In addition to complying with the preceding subsections, if the Rule 17(c) subpoena is directed to a law enforcement agency and seeks the production of personnel or complaint records, the party requesting the subpoena must provide notice of the subpoena to the opposing party in the manner described in subsection (1) below.

(1) A party serving a Rule 17(c) subpoena on a law enforcement agency seeking the production, in advance of trial or hearing, of personnel or complaint records of an officer currently or formerly employed by that agency must serve the opposing party with a copy of the subpoena on the same date that the subpoena is served on the agency.

(2) The term "law enforcement agency" means all police or sheriff's departments, including citizen review boards, and including, but not limited to, state or local transit, public housing or park agencies; agencies with the authority to investigate violations of state, county or municipal law; prison, jail or corrections agencies; and parole and probation agencies.

(f) **Forms**. A party seeking to compel only the production of books, papers, documents or other objects pursuant to Rule 17(c), in advance of the trial, hearing or proceeding at which these items are to be offered in evidence, must utilize form CAND 89B, "SUBPOENA TO PRODUCE DOCUMENTS OR OBJECTS IN A CRIMINAL CASE." Forms are available at the Court's Internet site: http://www.cand.uscourts.gov.

17.1-1. Pretrial Conference

(a) **Time for Pretrial Conference**. On request of any party or on the Judge's own motion, the assigned Judge may hold one or more pretrial conferences in any criminal action or proceeding.

(b) **Pretrial Conference Statement**. Unless otherwise ordered, not less than 7 days prior to the pretrial conference, the parties shall file a pretrial conference statement addressing the matters set forth below, if pertinent to the case:

(1) Disclosure and contemplated use of statements or reports of witnesses under the Jencks Act, 18 U.S.C. § 3500, or Fed. R. Crim. P. 26.2;

(2) Disclosure and contemplated use of grand jury testimony of witnesses intended to be called at the trial;

(3) Disclosure of exculpatory or other evidence favorable to the defendant on the issue of guilt or punishment;

(4) Stipulation of facts which may be deemed proved at the trial without further proof by either party and limitation of witnesses;

(5) Appointment by the Court of interpreters under Fed. R. Crim. P. 28;

(6) Dismissal of counts and elimination from the case of certain issues, e.g., insanity, alibi and statute of limitations;

(7) Joinder pursuant to Fed. R. Crim. P. 13 or the severance of trial as to any co-defendant;

(8) Identification of informers, use of lineup or other identification evidence and evidence of prior convictions of defendant or any witness, etc.;

(9) Pretrial exchange of lists of witnesses intended to be called in person or by deposition to testify at trial, except those who may be called only for impeachment or rebuttal;

(10) Pretrial exchange of documents, exhibits, summaries, schedules, models or diagrams intended to be offered or used at trial, except materials that may be used only for impeachment or rebuttal;

(11) Pretrial resolution of objections to exhibits or testimony to be offered at trial;

(12) Preparation of trial briefs on controverted points of law likely to arise at trial;

(13) Scheduling of the trial and of witnesses;

(14) Request to submit questionnaire for prospective jurors pursuant to Crim. L.R. 24-1, voir dire questions, exercise of peremptory and cause challenges and jury instructions;

(15) Any other matter which may tend to promote a fair and expeditious trial.

V. VENUE

18-1. Intradistrict Assignment of Criminal Actions

(a) **Assignment to San Francisco**. Unless otherwise ordered, the Clerk shall assign all criminal actions and proceedings involving offenses allegedly committed in the counties of Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo or Sonoma to a Judge assigned to the San Francisco Courthouse.

(b) **Assignment to Oakland**. Unless otherwise ordered, the Clerk shall assign all criminal actions and proceedings involving offenses allegedly committed in the counties of Alameda and Contra Costa to a Judge assigned to the Oakland Courthouse.

(c) **Assignment to San Jose**. Unless otherwise ordered, the Clerk shall assign all criminal actions and proceedings involving offenses allegedly committed in the counties of Santa Clara, Santa Cruz, San Benito or Monterey to a Judge assigned to the San Jose Courthouse.

(d) **Extradition**. The Clerk shall assign any extradition proceeding to the courthouse which, pursuant to Crim. L.R. 18-1, serves the county in which the defendant is a resident, or if not a resident, the county in which the defendant is physically present at the time the defendant is apprehended.

18-2. Intradistrict Transfer.

Upon a Judge's own motion or the motion of any party, unless the case was specially assigned pursuant to the Assignment Plan, a Judge may order the Clerk to transfer a criminal case to a different courthouse if it appears that the case was not properly assigned under Crim. L.R. 18-1(a), (b), (c) or (d) or that a transfer would be in the interest of justice based upon the convenience of the defendant and the witnesses and the prompt administration of justice.

Cross Reference

See 18 U.S.C. § 3236 (trial of homicide shall be in county in which the offense occurred).

20-1. Assignment, Plea or Sentencing under Rule 20

Any criminal case transferred to this District pursuant to Fed. R. Crim. P. 20 shall be commenced in the courthouse which, pursuant to Crim. L.R. 18-1 (a), (b), or (c), serves the county in which the defendant is a resident, or if not a resident, the county in which the defendant is physically present at the time the defendant is apprehended.

VI. TRIAL

24-1. Procedure for Exercise of Peremptory Challenges

Peremptory challenges to which each party may be entitled under Fed. R. Crim. P. 24(b) shall be exercised in the manner directed by the assigned Judge. Generally, the government may exercise the first challenge, the defense may exercise the second challenge, the next by the government, the next two by the defense, and alternating in this fashion until the government exercises its sixth challenge and the defense its tenth.

24-2. Passing a Peremptory Challenge

If a party passes a peremptory challenge it shall be counted as if exercised. If the opposing party also passes, the jury shall be deemed selected. If the opposing party exercises a challenge, the party who previously passed, may exercise any unused challenge.

VII. JUDGMENT

32-1. Scheduling of the Sentencing Hearing

(a) **Setting the Date for Sentencing**. Unless referral is waived or delayed pursuant to Crim. L.R. 32-1(b) or (c), at the time of a finding of guilt or entry of a plea of guilty, the defendant shall be referred to the Probation Officer for this Court for investigation and preparation of a presentence report. Unless it determines otherwise, the Court shall set the defendant's sentencing hearing:

(1) No earlier than 75 days after the referral date, for an in-custody defendant; or

(2) No earlier than 95 days after the referral date, for an out-of-custody defendant.

Commentary

This local rule is designed to allow sufficient time for investigation and preparation of a presentence report and the identification and narrowing of issues requiring judicial resolution before sentencing. Pursuant to Fed. R. Crim. P. 32(a), at the time of a finding of guilt or entry of a plea of guilty for good cause shown, counsel may request the Court to adjust requirements set out by the various sections of Crim. L.R. 32 (e.g., shortening or lengthening the time between judgment and sentencing or modify the requirements regarding materials to be filed prior to sentencing.).

Offenses to which the sentencing guidelines are not applicable (offenses prior to November 1, 1987) shall also comply with the time limits established by this rule.

Cross Reference

See Crim. L.R. 32-3 [Duty of defense counsel and defendant to report to probation office on the day of referral].

(b) **Immediate or Expedited Sentencing**. If the defendant waives his or her right to a presentence report and the Court finds that it is able to exercise its sentencing authority meaningfully without a presentence report, the Court may immediately sentence the defendant or set a sentencing hearing on an expedited schedule.

(c) **Delayed Referral and Sentencing**. For good cause shown, the Court may delay referral of the case to the Probation Officer. Upon referral, unless otherwise ordered, the time periods set forth in Crim. L.R. 32-1(a) shall apply.

(d) **Notification to Probation Officer**. On the day a defendant is referred to the Probation Officer, the Clerk shall transmit to the Probation Officer written notice of referral and of the date set for sentencing of the defendant.

32-2. Rescheduling the Date for Sentencing.

(a) **Stipulation or Motion**. At any time prior to filing the final presentence report, the parties may file a stipulation or a party may make a motion to change a date for the sentencing hearing in a case. The stipulation or motion shall be served upon the opposing party and the Probation Officer. The stipulation or motion shall contain:

(1) Good cause for the change;

(2) Certification that the moving party has conferred with opposing counsel and the Probation Officer and that those parties will be available on the changed date if the motion is granted;

(3) Certification that the moving party has conferred with the Courtroom Deputy Clerk for the assigned Judge and that the changed date is available on the calendar of the assigned Judge; and

(4) A proposed order.

(b) **Response or Opposition to Motion to Reschedule**. Any response or opposition to a motion to reschedule the date for a sentencing hearing shall conform with the requirements of Crim. L.R. 47-3(c).

(c) **Continuance by the Probation Officer**. In the event there is a delay in obtaining information necessary for completing the presentence report, the Probation Officer may make a motion pursuant to Civil L.R. 7-11 that the date for sentencing be changed. The motion shall include:

(1) Certification that the Probation Officer has conferred with counsel for the parties and the courtroom Deputy Clerk with respect to the new date; that the date is available for the parties and the hearing calendar of the assigned Judge or whether there is any objection to the change by a party; and

(2) A proposed order.

(d) **Effect of Rescheduling of Sentencing on Deadlines**. Unless otherwise stated, if the Judge grants a motion to change the date for sentencing, unless otherwise ordered, the deadlines set in Crim. L.R. 32-3, 32-4 and 32-5 shall automatically adjust and be calculated from the new sentencing date.

32-3. Initiation of the Presentence Investigation

(a) **Duty to Assist Probation Office Scheduling**. On the day the defendant is referred to the Probation Officer, the defendant's counsel (and, if the defendant is out of custody, the defendant as well,) shall immediately report to the Probation Officer for the purpose of assisting in the presentence investigation.

Cross Reference

Fed. R. Crim. P. 32(b)(2) (Right of defense counsel to notice and opportunity to attend interview).

(b) **Sentencing Information in Government's Possession**. Within 7 days after receiving a written request from the Probation Officer for information (e.g., indictment, plea agreement, investigative report, etc.), the attorney for the government shall respond to the request and may supply other relevant information. The attorney for the government shall serve a copy of the material on defense counsel, except material already in the possession of defense counsel.

(c) **Deadline for Submission of Material Regarding Sentence**. Any material a party wishes the Probation Officer to consider for purposes of the proposed presentence report shall be submitted to the Probation Officer at least 45 days before the date set for sentencing. The party shall serve a copy of the material on opposing counsel, except for material already in the possession of opposing counsel.

32-4. Proposed Presentence Report

(a) **Distribution of Proposed Presentence Report**. Pursuant to Fed. R. Crim. P. 32(b)(6) at least 35 days before the date set for sentencing, the Probation Officer shall furnish to defense counsel (or a pro se defendant) and to the attorney for the government, a proposed presentence report.

(b) **Parties' Response to Proposed Presentence Report**. Within 14 days after the proposed presentence report has been furnished pursuant to Fed. R. Crim. P. 32(b)(6), a party shall deliver to the Probation Officer and to opposing counsel a written response to the proposed presentence report which shall comply with Crim. L.R. 32-4(c).

(c) **Content of Response to Proposed Presentence Report**.

(1) Statement of No Opposition. If a party does not object to factual statements or computations of offense level under the guidelines of the United States Sentencing Commission, the party shall notify the Probation Officer in writing that the party has no objections under Fed. R. Crim. P. 32(b)(6).

(2) Statement of Opposition. If Crim. L.R. 32-4(c)(1) does not apply, the written response required by Crim. L.R. 32-4(b) shall identify and address any objections to factual statements or guideline computations in the proposed report. The response shall not be filed with the sentencing Judge. Such objections must:

(A) Set out each objection to the proposed presentence report, including each material factual statement disputed and how that party's version of the facts differs from those stated in the proposed presentence report, as well as citation to material facts omitted from the proposed presentence report;

(B) Specifically cite the evidentiary support for that party's version of the material facts; and

(C) State any variation the party contends should be made from the guideline computation recommended in the proposed presentence report.

Commentary

This rule is intended to implement the informal process of identifying and narrowing issues that will ultimately require judicial resolution. Parties should be aware that the objections not raised to the Probation Officer may not be considered by the Court absent a showing of good cause. See Fed. R. Crim. P. 32-5(b)(6)(D).

(d) **Presentence Conference with Probation Officer**. If the response of a party contains objections, the party shall attend any meeting called by the Probation Officer pursuant to Fed. R. Crim. P. 32(b)(6)(B). If the presence of a party or parties is not feasible, the Probation Officer may conduct the conference telephonically.

Commentary

This rule does not mandate that a presentence conference occur. If the Probation Officer feels that one is not needed, the Probation Officer need not call such a conference. However, if the Probation Officer does call such a conference, attorneys must attend and participate.

Participants in the presentence conference process should consider disseminating documents by electronic means (e.g., by fax transmission) in order to speed dissemination of the proposed presentence report. Crim. L.R. 32-3 presumes that the U.S. Probation Offices in the Northern District of California will establish regulations and procedures for the expeditious disclosure of the proposed presentence report to the defendant, defense counsel and the attorney for the government.

(e) **Conference with In-Custody Defendant.** If requested by the probation office and to the extent its available resources permit, the U.S. Marshal shall bring an in-custody defendant to a courthouse on a date scheduled for an initial or subsequent interview with the Probation Officer pursuant to Fed. R. Crim. P. 32 or for disclosure of the presentence report to the defendant pursuant to Crim. L.R. 32-4 and 32-5.

Commentary

This rule is designed to aid efforts by the Probation Officer to expedite meetings with defense counsel and the defendant and to reduce the cost of presentence interviews. It is contemplated that the Marshal would utilize any excess capacity to transport or hold a defendant in order to facilitate an interview.

32-5. Final Presentence Report

(a) **Final Presentence Report and Attachments**. At least 14 days before the date set for sentencing, the Probation Officer shall disclose a copy of the final presentence report and recommendations to defense counsel (or a pro se defendant), attorney for the government and lodge a copy with the sentencing Judge. The final presentence report shall be accompanied by a separate enclosure containing any of the following documents:

(1) Plea agreement;

(2) Character reference letters;

(3) Victim-witness letters;

(4) Certification by the Probation Officer that the proposed and final presentence reports were disclosed to defense counsel (or pro se defendant) and the dates of those disclosures; and

(5) Any other matter for consideration by the Court which pertains to sentencing.

Commentary

The final presentence report shall include or contain an addendum setting forth objections that remain unresolved following the process set out in Crim. L.R. 32-4. While this rule requires attachments to the final presentence report be in a separate enclosure, the Probation Officer may attach the materials to the copy of the final report which is furnished to the attorney for the government and attorney for the defendant, rather than in a separate enclosure. The Probation Officer does not need to supply a party with material which originated with that party.

(b) **Sentencing Memorandum**. The parties may submit a sentencing memorandum addressing sentencing issues as set forth below and must submit a sentencing memorandum if a departure or evidentiary hearing is requested. Any sentencing memorandum shall be filed no later than 4 days after the final presentence report is disclosed and served upon the opposing party and the Probation Officer in such a manner that it is received on the day it is filed. If the sentencing memorandum requests a departure, the title of the memorandum shall state "Motion for Departure;" and if the sentencing memorandum requests an evidentiary hearing, the title of the memorandum shall state "Request for Evidentiary Hearing." The sentencing memorandum shall contain the following:

(1) **Unresolved Objections Identified in the Final Presentence Report**. The sentencing memorandum need not reassert objections any party has made that are identified in the final presentence report as unresolved objections; however, a party's sentencing memorandum may elaborate on objections identified in the final presentence report and shall indicate whether or not the party requests an evidentiary hearing to resolve any objection.

(2) **Departures**. Any party requesting a departure that has not been identified in the final presentence report must file a sentencing memorandum that states the sentence requested, the grounds for the departure, and the legal authority for the departure.

(3) **Other Matters**. The sentencing memorandum may include any other matter that a party believes should be considered in connection with sentencing.

Commentary

With the prior approval of the Court, the sentencing memorandum may be filed under seal.

(c) **Response to Sentencing Memorandum**. A response, if any, to the opposing party's memorandum may be filed no later than 4 days after the sentencing memorandum is filed and served upon the opposing party and the Probation Officer in such a manner that it is received on the day it is filed. If a party requests an evidentiary hearing to resolve any issue raised in the reply or the opposing party's sentencing memorandum, the title of the reply shall state "Request for Evidentiary Hearing."

Commentary

If the sentencing memorandum is filed under seal, the reply to the sentencing memorandum must be filed under seal.

(d) **Evidentiary Hearing**. If the sentencing memorandum or reply requests an evidentiary hearing, in addition to so stating in the title of the document, the pleading shall set forth:

(1) The factual issues to be resolved at the evidentiary hearing; and

(2) The names of the witnesses to be called and a description of their proposed testimony.

(e) **Judicial Notice of Evidentiary Hearing or Unsolicited Departure**. If the sentencing Judge is considering departing for a reason not identified in the final presentence report or requested by a party or if the sentencing Judge decides to conduct an evidentiary hearing, the Judge shall notify the parties and the Probation Officer and may schedule a conference with the parties and the Probation Officer to decide any issues relating to the departure or evidentiary hearing. If the Court issues no notice of an evidentiary hearing, no evidentiary hearing will be held on the date set for sentencing.

Commentary

This local rule outlines the procedure for formal litigation relating to sentencing that follows the informal proceedings set out in Crim. L.R. 32-1 through 32-4. This rule anticipates that litigants will have undertaken in good faith to resolve objections informally with opposing counsel and the Probation Officer and thereby identified and narrowed the issues requiring judicial resolution. It seeks to avoid duplication of efforts by relieving litigants from reasserting in memoranda those objections of which the Court will be apprised by the final presentence report, but it requires objections to be raised in the informal process of Crim. L.R. 32-4 by imposing a requirement that good cause be shown before such an objection not previously made can be considered.

32-6. Sentencing Proceedings

(a) **Form of Judgment**. After imposition of sentence, without unnecessary delay, the Court shall enter judgment on the form entitled "Judgment in a Criminal Case" adopted by the Administrative Office of the United States Courts.

(b) **Statement of Reasons**. The Court provides a statement of reasons pursuant to 18 U.S.C. § 3553(c)(1) when:

(1) The Court completes and attaches the form entitled "Statement of Reasons" to the form of judgment entered pursuant to Crim. L.R. 32-6(a); or

(2) The sentencing Judge states in open court the reason for imposing a sentence and orders the court reporter or recorder to prepare immediately a transcript of the proceedings, which the Clerk shall attach to the judgment form required by Crim. L.R. 32-6(a). The court reporter or recorder shall deliver a copy of the transcript to the Probation Officer.

(c) **Record of Finding Regarding Accuracy of Presentence Report**. When the sentencing Judge makes a finding with respect to the accuracy of the presentence report pursuant to Fed. R. Crim. P. 32(c)(1), the Judge shall be deemed to have provided a record of the finding if he or she:

(1) Includes the finding in the statement of reasons pursuant to Crim. L.R. 32-6(b)(1) or (2); or

(2) Orders the Probation Officer to incorporate the finding in an addendum to the final presentence report, a copy of which shall be provided to the Court and the parties at least 5 days before the final presentence report is submitted to the Bureau of Prisons.

32-7. Confidential Character of Presentence Report

(a) **Disclosure of Presentence Reports and Related Records**. A presentence report, probation, supervised release report, violation report and related documents to be offered in a sentencing or violation hearing are confidential records of the Court. Except as otherwise required by Fed. R. Crim. P. 26.2, authorized by statute, federal rule or regulation or unless expressly authorized by order of the Court, such records shall be disclosed only to the Court, court personnel, the defendant, defense counsel and the attorney for the government in connection with sentencing, violation hearings, appeal or collateral review.

(b) **Request for Disclosure Under Circumstances Not Covered by Statute**. Anyone seeking an order authorizing disclosure of a presentence report which is not authorized by statute, federal rule or regulation shall file a motion pursuant to Crim. L.R. 47-1 with the sentencing Judge or, if no longer sitting, with the General Duty Judge of the courthouse where the defendant was sentenced. Such motion shall state with particularity the reason disclosure is sought and to whom the report will be provided. No disclosure shall be made under this Crim. L.R. 32-7(b) except upon an order issued by this Court. The motion shall be served upon the defendant, last defense counsel of record, the attorney for the government and the Probation Officer of record.

Commentary

Other than as allowed by any regulations of the Probation Office for disclosure (e.g., for disclosure to U.S. Marshal in the case of an absconding defendant or to other U.S. Probation Offices for purposes of supervision or other sentencings of the defendant; therapists with whom the defendant is engaged as a result of a court ordered study or condition of supervision; or U.S. Sentencing Commission pursuant to 28 U.S.C. § 994(w)), a presentence report should not be disclosed.

32.1-1. Revocation of Probation or Supervised Release

(a) **Petition for Revocation**. The following procedures shall be followed with respect to any petition by a Probation Officer for revocation of probation or supervised release:

(1) The petition shall be filed and noticed for hearing before the sentencing Judge or sentencing Magistrate Judge. If the sentencing judicial officer is unavailable, the petition shall be presented to the General Duty Judge or Criminal Calendar Magistrate Judge for the courthouse where the probationer or releasee was originally sentenced;

(2) The petition shall be accompanied by a summons and proposed order that the probationer or releasee appear and show cause why probation or supervised release should not be revoked. Alternatively, the petition may request that the Court issue an arrest warrant. If a warrant is sought, the probation office shall recommend bail in a specified amount or that the probationer or releasee be held without release on bail; and

(3) Unless otherwise ordered, the Probation Officer shall serve a copy of the petition and order on the probationer or releasee, last known counsel of record and the attorney for the government.

(b) **Preliminary Revocation Hearing**. A preliminary hearing to determine whether or not there is probable cause to believe that a violation has occurred may be conducted by a criminal calendar Magistrate Judge. If the Magistrate Judge finds the existence of probable cause, the Magistrate Judge shall set the matter for a revocation hearing before the assigned Judge or sentencing Magistrate Judge.

(c) **Appearance by Attorney for the Government**. An attorney for the government may appear on behalf of the government at any proceeding to revoke probation or supervised release.

(d) **Order Regarding Disposition of Petition**. The disposition of a petition for violation of probation or supervised release and the facts upon which it is based shall be set forth on the form adopted by the Administrative Office of the United States Courts for that purpose.

(e) **Presentence Report and Recommendation for Revocation of Probation or Supervised Release**. A Probation Officer may initiate a revocation proceeding by the Submission of a Form 12 to the Court that placed the defendant on probation or supervised release. If the Court decides that a hearing is appropriate, it shall notify the parties and the Probation Officer. The Probation Officer shall have no further contact with the Court with respect to the Form 12 prior to the hearing on the violation.

If, after a hearing, the defendant is found to have violated the terms of probation or supervised release, the Probation Officer shall prepare a dispositional report and recommendation. At least 7 days before the date set for sentencing after the Court has revoked a term of probation or supervised release, the Probation Officer shall disclose a copy of a dispositional report and recommendation to defense counsel (or to a *pro se* defendant) and to the attorney for the government, and shall lodge a copy with the sentencing Judge.

IX. SUPPLEMENTARY AND SPECIAL PROCEEDINGS

40-1. Assignment of Rule 40 Cases

For purposes of assignment of proceedings under Fed. R. Crim. P. 40, the "nearest available federal Magistrate Judge" shall be deemed to be a Magistrate Judge sitting at the courthouse which serves the county in which the defendant is a resident, or, if not a resident, the county in which the defendant is physically present at the time the defendant is apprehended.

41-1. Assignment of Rule 41 Motion or Proceedings

When no criminal case has been filed, proceedings under Fed. R. Crim. P. 41 shall be assigned as a miscellaneous matter to the General Duty Judge at the courthouse which, under Crim. L.R. 18-1, serves the county from which the warrant was issued. When a criminal case is pending or has been completed, proceedings under Fed. R. Crim. P. 41 shall bear the original case number and shall be assigned to the District Judge assigned to the pending or completed criminal case.

X. GENERAL PROVISIONS

44-1. Right to and Appointment of Counsel

(a) **Retained Counsel**. If a defendant appears without counsel in a criminal proceeding, the Court may grant a reasonable continuance if the defendant expresses a desire to retain counsel.

(b) **Appointed Counsel**. If a defendant requests appointment of counsel by the Court, the Court shall appoint counsel in accordance with the plan of the Court adopted pursuant to the Criminal Justice Act of 1964.

(c) **Proceeding *Pro Se***. A defendant may elect to proceed without counsel, provided the defendant waives the right to counsel in a manner approved by the Judge or Magistrate Judge. However, if requested by the pro se defendant, the Court may designate counsel to advise the pro se defendant.

44-2. Appearance and Withdrawal of Counsel

(a) **Appearance of Counsel**. Whether retained or appointed, an attorney appearing for a defendant in a criminal case shall promptly inform the Court by either a written or oral representation on the record that he or she is making a general appearance on behalf of the defendant.

(b) **Withdrawal of Counsel**. An attorney who wishes to withdraw must file a motion to withdraw, showing good cause for allowing the attorney to withdraw. Failure of the defendant to pay agreed compensation may not necessarily be deemed good cause. Notice of the motion shall be given to the defendant and all parties to the case. The attorney continues to represent the party until entry of a court order granting leave to withdraw.

(c) **Duration of Representation**.

(1) **District Court Proceedings**. Unless such leave is granted pursuant to Crim. L.R. 44-2(b), the attorney shall continue to represent the defendant until the case is dismissed, or the defendant is acquitted or, if convicted, until the expiration of the time for making post-trial motions and for filing notice and appeal pursuant to Fed. R. App. P. 4(b).

(2) **On Appeal**. If an appeal is filed, the attorney shall continue to serve until leave to withdraw is granted by the Court having jurisdiction of the case or until other counsel has been appointed by that court as provided in 18 U.S.C. § 3006A and in other applicable provisions of law.

44-3. *Pro Se* Defendant in Criminal Case

(a) **Manner of Giving Notice to Pro Se Defendant**. If a defendant appears pro se, a party shall be deemed to comply with any requirement of these local rules for giving notice to defense counsel if such notice is personally served upon a defendant who is in custody or if such notice is mailed to the last known address of a defendant who is out of custody.

(b) **Actions Required by Pro Se Defendant**. Any act these local rules require to be done by defense counsel shall be performed by the defendant, if appearing pro se.

46-1. Motions to Release or Detain

Subject to the provisions of 18 U.S.C. §§3141-3145, 3148-3149, Magistrate Judges shall hear and determine all motions to release or detain except as otherwise ordered by the Court.

46-2. Posting Security

When the release of a defendant is conditioned upon the deposit of cash (i.e., currency, check or money order) with the Court, such deposit shall be made with the cashier of the office of the Clerk of this Court during the regular business hours set forth in Civil L.R. 77-1(b). When the release of a defendant is conditioned upon the deposit of other security (e.g., deed of trust) with the Court, such deposit shall be made with the Magistrate Judge who set the bail or with a person designated by the Magistrate Judge in accordance with the "Guidelines in Posting Real Property as Bail in Lieu of Cash/Surety Bond; Surrendering Passports(s)," or as modified by the Court. A copy of the guideline is available from the office of the Clerk.

47-1. Motion in Criminal Case

(a) **Types of Motions**. Any request to the Court for an order in a criminal case must be presented by:

(1) Noticed motion pursuant to Crim. L.R. 47-2;

(2) For good cause shown, ex parte motion pursuant to Crim. L.R. 47-3; or

(3) Stipulation of the affected parties pursuant to Crim. L.R. 47-4;

(b) **To Whom Made**. Unless otherwise ordered by the assigned Judge, all motions in criminal cases shall be noticed in writing on the criminal motions calendar of the assigned Judge.

47-2. Noticed Motion in a Criminal Case

(a) **Time**. Except as the assigned Judge directs or these criminal local rules require, all motions in criminal cases shall be filed, served and noticed in writing for hearing not less than 14 days after service of the motion or, if the Judge specially sets a date for hearing, not less than 14 days before the date specially set. This rule does not apply to motions during the course of trial or hearing.

(b) **Format**. Except as otherwise specifically provided, the format of motions shall comply with the requirements of Civil L.R. 7-2(b) and (c). Motions presenting issues of fact shall be supported by affidavits or declarations which shall comply with the requirements of Civil L.R. 7-5.

(c) **Time Under the Speedy Trial Act**. When filing any motion or papers concerning any matter to which an exclusion under 18 U.S.C. § 3161 may apply, the government shall indicate in a concluding paragraph entitled "Speedy Trial Act Implications," the number of days remaining before trial must commence as of the date the motion or paper is filed. If the defendant has any objection to the government's calculation, the objection and the defendant's calculation shall be stated in any response to the motion or papers.

(d) **Opposition or Reply**. Any opposition to a noticed motion shall be served and filed not less than 7 days before the date set for the hearing. Any reply shall be served and filed not less than 4 days before the hearing. Any opposition or reply shall comply with

Civil L.R. 7-3(b), (c) and (d); 7-4 and 7-5, with respect to format and length unless otherwise ordered.

47-3. *Ex Parte* Motion in a Criminal Case

(a) **Ex Parte Motion**. An ex parte motion is a motion filed and submitted for immediate determination by the assigned Judge without giving an opposing party the amount of advance notice which is otherwise required by statute, federal rule or local rule. Unless relieved by these local rules or by order of a Judge for good cause shown or unless being filed under seal pursuant to a statute or federal or local rules, a party making an ex parte motion shall nevertheless give reasonable advance notice of the motion to an opposing party.

Cross Reference

See e.g., Crim. L.R. 6-2 [ex parte motion re grand jury].

(b) **Form and Content of Ex Parte Motion**. An ex parte motion shall contain:

(1) In one filed document not exceeding 5 pages in length, the motion, a memorandum of points and authorities which shall contain a citation to the rule or order which permits use of an ex parte motion to obtain the relief sought;

(2) Affidavits or declarations setting forth specific facts which support granting the requested relief without notice or with limited notice to the opposing party;

(3) A proposed form of order.

(c) **Order Regarding Ex Parte Motion**. In the exercise of his or her discretion and for good cause, the Judge may grant or deny an ex parte motion or request, order further notice, briefing or set the matter for hearing on the Judge's criminal motion calendar.

47-4. Stipulation

A stipulation requesting judicial action shall be in writing signed by all affected parties or their counsel. A proposed form of order may be submitted with the stipulation and may consist of an endorsement on the stipulation of the words, "PURSUANT TO STIPULATION, IT IS SO ORDERED," with spaces designated for the date and signature of the Judge.

Cross Reference

See e.g., Crim. L.R. 11-1(a) [stipulation to voluntary settlement conference] and Crim. L.R. 32-2(a) and (c) [stipulation to change date of sentencing].

55-1. Custody and Disposition of Exhibits

(a) **Applicability of Civil Local Rules Regarding Exhibits**. Excepting contraband, firearms and other sensitive items, or unless the Judge hearing the matter otherwise orders, the procedures set forth in Civil L.R. 79-4(a) and (b) shall govern the custody and disposition of exhibits in criminal proceedings before the Court, except, without further order of a court, a party to a criminal case may take possession of the evidence that party offered upon the declaration of a mistrial.

(b) **Applicability of Civil Local Rules Regarding Sealed Documents**. Except for Civil L.R. 79-5(e), all other provisions of Civil L.R. 79-5 apply to the filing of documents under seal in criminal cases.

58-1. Designation of Magistrate Judges to Try Misdemeanors and Other Petty Offenses.

Subject to the limitation of 18 U.S.C. § 3401, Magistrate Judges are specially designated to try persons accused of and sentence persons convicted of misdemeanors committed within this District. In addition, Magistrate Judges may dispose of misdemeanors which are transferred to this District under Fed. R. Crim. P. 20. A Magistrate Judge may direct the Probation Officer to conduct a presentence investigation of any person convicted of a misdemeanor and to render a report to the Magistrate Judge prior to the imposition of sentence.

58-2. Appeal from Conviction by Magistrate Judge

(a) **Assignment to District Judge**. When an appeal from a judgment of conviction or sentence by a Magistrate Judge to a District Judge is made pursuant to Fed. R. Crim. P. 58(g)(2), the Clerk shall assign the appeal to a District Judge in the same manner as an indictment or felony information would be assigned.

(b) **Record**. If a transcript is desired by a party, the party shall order the transcript from the Court reporter in accordance with the procedure prescribed by Fed. R. App. P. 10(b). If the proceedings were recorded by audio tape, the audio tape shall constitute the record of the proceedings. Upon request, the Clerk shall duplicate and provide a copy of the audio tape to the requesting party at the rate provided for in 28 U.S.C. § 1914. No transcript shall be made of an audio tape unless ordered by the assigned District Judge pursuant to motion by the requesting party. The record shall be deemed complete 14 days after the notice of appeal is filed if no transcript is ordered or upon filing of the transcript or upon lodging the audio tape with the assigned District Judge.

(c) **Hearing**. After the record is complete, the Clerk for the assigned District Judge shall notify the parties of the time set for hearing the appeal. The hearing shall be not more than 90 days after the date of the notice.

(d) **Time for Filing and Serving Briefs**. The appellant shall serve and file an opening brief not later than 35 days before the date set for the hearing pursuant to Crim. L.R. 58-2(c). The appellee shall serve and file a responsive brief not later than 21 days before the hearing date. The appellant may serve and file a reply not later than 14 days before the hearing date.

(e) **Length**. Unless the Court expressly orders otherwise pursuant to ex parte request made prior to the due date, the opening and responsive briefs shall not exceed 25 pages and the reply shall not exceed 10 pages.

58-3. Violation Notices

Pursuant to Rule 58(d)(1), Federal Rules of Criminal Procedure, the prosecution of petty offenses initiated by citation or violation notice shall be terminated upon receipt by the Clerk of the District Court of the amount, if any, of the fixed sum indicated as a fine on the face of the citation or violation notice. Such sums may be revised from time to time by General Order of the Court.

59-1. Effective Date

These rules are effective December 1, 2009 and shall govern all criminal proceedings commenced on or after that date. Unless otherwise ordered by the Assigned Judge, these rules shall also be applicable to any case commenced prior to December 1, 2009, except when fewer than 10 days remain before a party must perform an act regulated by these local rules, in which case the former procedure for performing that act shall apply.

UNITED STATES DISTRICT COURT
Northern District of California

PATENT LOCAL RULES

Table of Contents

1. SCOPE OF RULES

1-1. Title

These are the Local Rules of Practice for Patent Cases before the United States District Court for the Northern District of California. They should be cited as "Patent L.R. __."

1-2. Scope and Construction

These rules apply to all civil actions filed in or transferred to this Court which allege infringement of a utility patent in a complaint, counterclaim, cross-claim or third party claim, or which seek a declaratory judgment that a utility patent is not infringed, is invalid or is unenforceable. The Civil Local Rules of this Court shall also apply to such actions, except to the extent that they are inconsistent with these Patent Local Rules. If the filings or actions in a case do not trigger the application of these Patent Local Rules under the terms set forth herein, the parties shall, as soon as such circumstances become known, meet and confer for the purpose of agreeing on the application of these Patent Local Rules to the case and promptly report the results of the meet and confer to the Court.

1-3. Modification of these Rules

The Court may modify the obligations or deadlines set forth in these Patent Local Rules based on the circumstances of any particular case, including, without limitation, the simplicity or complexity of the case as shown by the patents, claims, products, or parties involved. Such modifications shall, in most cases, be made at the initial case management conference, but may be made at other times upon a showing of good cause. In advance of submission of any request for a modification, the parties shall meet and confer for purposes of reaching an agreement, if possible, upon any modification.

1-4. Effective Date

These Patent Local Rules take effect on December 1, 2009. They govern patent cases filed on or after that date. For actions pending prior to December 1, 2009, the provisions of the Patent Local Rules that were in effect on November 30, 2009, shall apply, except that the time periods for actions pending before December 1, 2009 shall be those set forth in and computed as in the Federal Rules of Civil Procedure and the Patent Local Rules that took effect on December 1, 2009.

2. GENERAL PROVISIONS

2-1. Governing Procedure

(a) Initial Case Management Conference. When the parties confer pursuant to Fed. R. Civ. P. 26(f), in addition to the matters covered by Fed. R. Civ. P. 26, the parties shall discuss and address in the Case Management Statement filed pursuant to Fed. R. Civ. P. 26(f) and Civil L.R. 16-9, the following topics:

(1) Proposed modification of the obligations or deadlines set forth in these Patent Local Rules to ensure that they are suitable for the circumstances of the particular case (see Patent L.R. 1-3);

(2) The scope and timing of any claim construction discovery including disclosure of and discovery from any expert witness permitted by the court;

(3) The format of the Claim Construction Hearing, including whether the Court will hear live testimony, the order of presentation, and the estimated length of the hearing; and

(4) How the parties intend to educate the court on the technology at issue.

2-2. Confidentiality

Discovery cannot be withheld on the basis of confidentiality absent Court order. The Protective Order authorized by the Northern District of California shall govern discovery unless the Court enters a different protective order. The approved Protective Order can be found on the Court's website.

2-3. Certification of Disclosures

All statements, disclosures, or charts filed or served in accordance with these Patent Local Rules shall be dated and signed by counsel of record. Counsel's signature shall constitute a certification that to the best of his or her knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the information contained in the statement, disclosure, or chart is complete and correct at the time it is made.

2-4. Admissibility of Disclosures

Statements, disclosures, or charts governed by these Patent Local Rules are admissible to the extent permitted by the Federal Rules of Evidence or Procedure. However, the statements and disclosures provided for in Patent L.R. 4-1 and 4-2 are not admissible for any purpose other than in connection with motions seeking an extension or modification of the time periods within which actions contemplated by these Patent Local Rules shall be taken.

2-5. Relationship to Federal Rules of Civil Procedure

Except as provided in this paragraph or as otherwise ordered, it shall not be a ground for objecting to an opposing party's discovery request (e.g., interrogatory, document request, request for admission, deposition question) or declining to provide information otherwise required to be disclosed pursuant to Fed. R. Civ. P. 26(a)(1) that the discovery request or disclosure requirement is premature in light of, or otherwise conflicts with, these Patent Local Rules, absent other legitimate objection. A party may object, however, to responding to the

following categories of discovery requests (or decline to provide information in its initial disclosures under Fed. R. Civ. P. 26(a)(1)) on the ground that they are premature in light of the timetable provided in the Patent Local Rules:

(a) Requests seeking to elicit a party's claim construction position;

(b) Requests seeking to elicit from the patent claimant a comparison of the asserted claims and the accused apparatus, product, device, process, method, act, or other instrumentality;

(c) Requests seeking to elicit from an accused infringer a comparison of the asserted claims and the prior art; and

(d) Requests seeking to elicit from an accused infringer the identification of any advice of counsel, and related documents.

Where a party properly objects to a discovery request (or declines to provide information in its initial disclosures under Fed. R. Civ. P. 26(a)(1)) as set forth above, that party shall provide the requested information on the date on which it is required to be provided to an opposing party under these Patent Local Rules or as set by the Court, unless there exists another legitimate ground for objection.

3. PATENT DISCLOSURES

3-1. Disclosure of Asserted Claims and Infringement Contentions

Not later than 14 days after the Initial Case Management Conference, a party claiming patent infringement shall serve on all parties a "Disclosure of Asserted Claims and Infringement Contentions." Separately for each opposing party, the "Disclosure of Asserted Claims and Infringement Contentions" shall contain the following information:

(a) Each claim of each patent in suit that is allegedly infringed by each opposing party, including for each claim the applicable statutory subsections of 35 U.S.C. §271 asserted;

(b) Separately for each asserted claim, each accused apparatus, product, device, process, method, act, or other instrumentality ("Accused Instrumentality") of each opposing party of which the party is aware. This identification shall be as specific as possible. Each product, device, and apparatus shall be identified by name or model number, if known. Each method or process shall be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;

(c) A chart identifying specifically where each limitation of each asserted claim is found within each Accused Instrumentality, including for each limitation that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function.

(d) For each claim which is alleged to have been indirectly infringed, an identification of any direct infringement and a description of the acts of the alleged indirect infringer that contribute to or are inducing that direct infringement. Insofar as alleged direct infringement is based on joint acts of multiple parties, the role of each such party in the direct infringement must be described.

(e) Whether each limitation of each asserted claim is alleged to be literally present or present under the doctrine of equivalents in the Accused Instrumentality;

(f) For any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled; and

(g) If a party claiming patent infringement wishes to preserve the right to rely, for any purpose, on the assertion that its own apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention, the party shall identify, separately for each asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim.

(h) If a party claiming patent infringement alleges willful infringement, the basis for such allegation.

3-2. Document Production Accompanying Disclosure

With the "Disclosure of Asserted Claims and Infringement Contentions," the party claiming patent infringement shall produce to each opposing party or make available for inspection and copying:

(a) Documents (e.g., contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreements, and third party or joint development agreements) sufficient to evidence each discussion with, disclosure to, or other manner of providing to a third party, or sale of or offer to sell, or any public use of, the claimed invention prior to the date of application for the patent in suit. A party's production of a document as required herein shall not constitute an admission that such document evidences or is prior art under 35 U.S.C. § 102;

(b) All documents evidencing the conception, reduction to practice, design, and development of each claimed invention, which were created on or before the date of application for the patent in suit or the priority date identified pursuant to Patent L.R. 3-1(f), whichever is earlier;

(c) A copy of the file history for each patent in suit; and

(d) All documents evidencing ownership of the patent rights by the party asserting patent infringement.

(e) If a party identifies instrumentalities pursuant to Patent L.R. 3-1(g), documents sufficient to show the operation of any aspects or elements of such instrumentalities the patent claimant relies upon as embodying any asserted claims.

The producing party shall separately identify by production number which documents correspond to each category.

3-3. Invalidity Contentions

Not later than 45 days after service upon it of the "Disclosure of Asserted Claims and Infringement Contentions," each party opposing a claim of patent infringement, shall serve on all parties its "Invalidity Contentions" which shall contain the following information:

(a) The identity of each item of prior art that allegedly anticipates each asserted claim or renders it obvious. Each prior art patent shall be identified by its number, country of origin, and date of issue. Each prior art publication shall be identified by its title, date of publication, and where feasible, author and publisher. Prior art under 35 U.S.C. § 102(b) shall be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took place or the information became known, and the identity of the person or entity which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was made known. Prior art under 35 U.S.C. § 102(f) shall be identified by providing the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived. Prior art under 35 U.S.C. § 102(g) shall be identified by providing the identities of the person(s) or entities involved in and the circumstances surrounding the making of the invention before the patent applicant(s);

(b) Whether each item of prior art anticipates each asserted claim or renders it obvious. If obviousness is alleged, an explanation of why the prior art renders the asserted claim obvious, including an identification of any combinations of prior art showing obviousness;

(c) A chart identifying where specifically in each alleged item of prior art each limitation of each asserted claim is found, including for each limitation that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function; and

(d) Any grounds of invalidity based on 35 U.S.C. § 101, indefiniteness under 35 U.S.C. § 112(2) or enablement or written description under 35 U.S.C. § 112(1) of any of the asserted claims.

3-4. Document Production Accompanying Invalidity Contentions

With the "Invalidity Contentions," the party opposing a claim of patent infringement shall produce or make available for inspection and copying:

(a) Source code, specifications, schematics, flow charts, artwork, formulas, or other documentation sufficient to show the operation of any aspects or elements of an Accused Instrumentality identified by the patent claimant in its Patent L.R. 3-1(c) chart; and

(b) A copy or sample of the prior art identified pursuant to Patent L.R. 3-3(a) which does not appear in the file history of the patent(s) at issue. To the extent any such item is not in English, an English translation of the portion(s) relied upon shall be produced.

The producing party shall separately identify by production number which documents correspond to each category.

3-5. Disclosure Requirement in Patent Cases for Declaratory Judgment of Invalidity

(a) **Invalidity Contentions If No Claim of Infringement**. In all cases in which a party files a complaint or other pleading seeking a declaratory judgment that a patent is invalid Patent L.R. 3-1 and 3-2 shall not apply unless and until a claim for patent infringement is made by a party. If the defendant does not assert a claim for patent infringement in its answer to the complaint, no later than 14 days after the defendant serves its answer, or 14 days after the Initial Case Management Conference, whichever is later, the party seeking a declaratory judgment of invalidity shall serve upon each opposing party its Invalidity Contentions that conform to Patent L.R. 3-3 and produce or make available for inspection and copying the documents described in Patent L.R. 3-4.

(b) **Inapplicability of Rule**. This Patent L.R. 3-5 shall not apply to cases in which a request for a declaratory judgment that a patent is invalid is filed in response to a complaint for infringement of the same patent.

3-6. Amendment to Contentions

Amendment of the Infringement Contentions or the Invalidity Contentions may be made only by order of the Court upon a timely showing of good cause. Non-exhaustive examples of circumstances that may, absent undue prejudice to the non-moving party, support a finding of good cause include:

(a) A claim construction by the Court different from that proposed by the party seeking amendment;

(b) Recent discovery of material, prior art despite earlier diligent search; and

(c) Recent discovery of nonpublic information about the Accused Instrumentality which was not discovered, despite diligent efforts, before the service of the Infringement Contentions.

The duty to supplement discovery responses does not excuse the need to obtain leave of court to amend contentions.

3-7. Advice of Counsel

Not later than 50 days after service by the Court of its Claim Construction Ruling, each party relying upon advice of counsel as part of a patent-related claim or defense for any reason shall:

(a) Produce or make available for inspection and copying any written advice and documents related thereto for which the attorney-client and work product protection have been waived;

(b) Provide a written summary of any oral advice and produce or make available for inspection and copying that summary and documents related thereto for which the attorney-client and work product protection have been waived; and

(c) Serve a privilege log identifying any other documents, except those authored by counsel acting solely as trial counsel, relating to the subject matter of the advice which the party is withholding on the grounds of attorney-client privilege or work product protection.

A party who does not comply with the requirements of this Patent L.R. 3-7 shall not be permitted to rely on advice of counsel for any purpose absent a stipulation of all parties or by order of the Court.

4. CLAIM CONSTRUCTION PROCEEDINGS

4-1. Exchange of Proposed Terms for Construction

(a) Not later than 14 days after service of the "Invalidity Contentions" pursuant to Patent L.R. 3-3, not later than 42 days after service upon it of the "Disclosure of Asserted Claims and Infringement Contentions" in those actions where validity is not at issue (and Patent L.R. 3-3 does not apply), or, in all cases in which a party files a complaint or other pleading seeking a declaratory judgment not based on validity, not later than 14 days after the defendant serves an answer that does not assert a claim for patent infringement (and Patent L.R. 3-1 does not apply), each party shall serve on each other party a list of claim terms which that party contends should be construed by the Court, and identify any claim term which that party contends should be governed by 35 U.S.C. § 112(6).

(b) The parties shall thereafter meet and confer for the purposes of limiting the terms in dispute by narrowing or resolving differences and facilitating the ultimate preparation of a Joint Claim Construction and Prehearing Statement. The parties shall also jointly identify the 10 terms likely to be most significant to resolving the parties' dispute, including those terms for which construction may be case or claim dispositive.

4-2. Exchange of Preliminary Claim Constructions and Extrinsic Evidence

(a) Not later than 21 days after the exchange of the lists pursuant to Patent L.R. 4-1, the parties shall simultaneously exchange proposed constructions of each term identified by either party for claim construction. Each such "Preliminary Claim Construction" shall also, for each term which any party contends is governed by 35 U.S.C. § 112(6), identify the structure(s), act(s), or material(s) corresponding to that term's function.

(b) At the same time the parties exchange their respective "Preliminary Claim Constructions," each party shall also identify all references from the specification or prosecution history that support its proposed construction and designate any supporting extrinsic evidence including, without limitation, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses. Extrinsic evidence shall be identified by production number or by producing a copy if not previously produced. With respect to any supporting witness, percipient or expert, the identifying party shall also provide a description of the substance of that witness' proposed testimony that includes a listing of any opinions to be rendered in connection with claim construction.

(c) The parties shall thereafter meet and confer for the purposes of narrowing the issues and finalizing preparation of a Joint Claim Construction and Prehearing Statement.

4-3. Joint Claim Construction and Prehearing Statement

Not later than 60 days after service of the "Invalidity Contentions," the parties shall complete and file a Joint Claim Construction and Prehearing Statement, which shall contain the following information:

(a) The construction of those terms on which the parties agree;

(b) Each party's proposed construction of each disputed term, together with an identification of all references from the specification or prosecution history that support that construction, and an identification of any extrinsic evidence known to the party on which it intends to rely either to support its proposed construction or to oppose any other party's proposed construction, including, but not limited to, as permitted by law, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses;

(c) An identification of the terms whose construction will be most significant to the resolution of the case up to a maximum of 10. The parties shall also identify any term among the 10 whose construction will be case or claim dispositive. If the parties cannot agree on the 10 most significant terms, the parties shall identify the ones which they do agree are most significant and then they may evenly divide the remainder with each party identifying what it believes are the remaining most significant terms. However, the total terms identified by all parties as most significant cannot exceed 10. For example, in a case involving two parties, if the parties agree upon the identification of five terms as most significant, each may only identify two additional terms as most significant; if the parties agree upon eight such terms, each party may only identify only one additional term as most significant.

(d) The anticipated length of time necessary for the Claim Construction Hearing;

(e) Whether any party proposes to call one or more witnesses at the Claim Construction Hearing, the identity of each such witness, and for each witness, a summary of his or her testimony including, for any expert, each opinion to be offered related to claim construction.

4-4. Completion of Claim Construction Discovery

Not later than 30 days after service and filing of the Joint Claim Construction and Prehearing Statement, the parties shall complete all discovery relating to claim construction, including any depositions with respect to claim construction of any witnesses, including experts, identified in the Preliminary Claim Construction statement (Patent L.R. 4-2) or Joint Claim Construction and Prehearing Statement (Patent L.R. 4-3).

4-5. Claim Construction Briefs

(a) Not later than 45 days after serving and filing the Joint Claim Construction and Prehearing Statement, the party claiming patent infringement, or the party asserting invalidity if there is no infringement issue present in the case, shall serve and file an opening brief and any evidence supporting its claim construction.

(b) Not later than 14 days after service upon it of an opening brief, each opposing party shall serve and file its responsive brief and supporting evidence.

(c) Not later than 7 days after service upon it of a responsive brief, the party claiming patent infringement, or the party asserting invalidity if there is no infringement issue present in the case, shall serve and file any reply brief and any evidence directly rebutting the supporting evidence contained in an opposing party's response.

4-6. Claim Construction Hearing

Subject to the convenience of the Court's calendar, two weeks following submission of the reply brief specified in Patent L.R. 4-5(c), the Court shall conduct a Claim Construction Hearing, to the extent the parties or the Court believe a hearing is necessary for construction of the claims at issue.

4-7. Good Faith Participation

A failure to make a good faith effort to narrow the instances of disputed terms or otherwise participate in the meet and confer process of any of the provisions of section 4 may expose counsel to sanctions, including under 28 U.S.C. § 1927.

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APPENDIX A - JOINT CASE MANAGEMENT STATEMENT AND PROPOSED ORDER

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Plaintiff(s),	**CASE NO.**
v.	**JOINT CASE MANAGEMENT STATEMENT AND PROPOSED ORDER**
Defendant(s).	

The parties to the above-entitled action jointly submit this Case Management Statement and Proposed Order and request the Court to adopt it as its Case Management Order in this case.

DESCRIPTION OF THE CASE

1. A brief description of the events underlying the action:

2. The principal factual issues which the parties dispute:

3. The principal legal issues which the parties dispute:

4. The other factual issues *[e.g. service of process, personal jurisdiction, subject matter jurisdiction or venue]* **which remain unresolved for the reason stated below and how the parties propose to resolve those issues:**

5. The parties which have not been served and the reasons:

6. The additional parties which the below-specified parties intend to join and the intended time frame for such joinder:

7. The following parties consent to assignment of this case to a United States Magistrate Judge for *[court or jury]* **trial:**

ALTERNATIVE DISPUTE RESOLUTION

8. *[Please indicate the appropriate response(s).]*

❑ **The case was automatically assigned to Nonbinding Arbitration at filing and will be ready for the hearing by** *(date)*_____.

❑ **The parties have filed a Stipulation and Proposed Order Selecting an ADR process** *(specify process)*:_____.

❑ **The parties filed a Notice of Need for ADR Phone Conference and the phone conference was held on or is scheduled for _____.**

❑ **The parties have not filed a Stipulation and Proposed Order Selecting an ADR process and the ADR process that the parties jointly request [or a party separately requests] is _____.**

9. Please indicate any other information regarding ADR process or deadline.

DISCLOSURES

10. The parties certify that they have made the following disclosures *[list disclosures of persons, documents, damage computations and insurance agreements]***:**

DISCOVERY

11. The parties agree to the following discovery plan *[Describe the plan e.g., any limitation on the number, duration or subject matter for various kinds of discovery; discovery from experts; deadlines for completing discovery]*:

TRIAL SCHEDULE

12. The parties request a trial date as follows:

13. The parties expect that the trial will last for the following number of days:

Dated: _____ **_____**
[Typed name and signature of counsel.]

Dated: _____ **_____**
[Typed name and signature of counsel.]

CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order. In addition the Court orders:

[The Court may wish to make additional orders, such as:
a. Referral of the parties to court or private ADR process;
b. Schedule a further Case Management Conference;
c. Schedule the time and content of supplemental disclosures;
d. Specially set motions;
e. Impose limitations on disclosure or discovery;
f. Set time for disclosure of identity, background and opinions of experts;
g. Set deadlines for completing fact and expert discovery;
h. Set time for parties to meet and confer regarding pretrial submissions;
I. Set deadline for hearing motions directed to the merits of the case;
j. Set deadline for submission of pretrial material;
k. Set date and time for pretrial conference;
l. Set a date and time for trial.]

Dated: _____ **_____**
UNITED STATES DISTRICT/MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Plaintiff(s),	**CASE NO.**
v.	**SUPPLEMENTAL CASE MANAGEMENT STATEMENT AND PROPOSED ORDER**
Defendant(s).	

Pursuant to Civil L.R. 16-10(d), the parties to the above-entitled action certify that they met and conferred at least 10 days prior to the subsequent case management conference scheduled in this case and jointly submit this Supplemental Case Management Statement and Proposed Order and request the Court to adopt it as a Supplemental Case Management Order in this case.

DESCRIPTION OF SUBSEQUENT CASE DEVELOPMENTS

1. The following progress or changes have occurred since the last case management statement filed by the parties:

2. The parties jointly request [or a party separately requests] the Court to make the following Supplemental Case Management Order:

Dated: _____ **_____**
[Typed name and signature of counsel]

Dated: _____ **_____**
[Typed name and signature of counsel]

SUPPLEMENTAL CASE MANAGEMENT ORDER

The Supplemental Case Management Statement and Proposed Order is hereby adopted by the Court as a Supplemental Case Management Order for the case and the parties are ordered to comply with this Order. *[In addition, the Court orders as follows:]*

Dated: _____ **_____**
UNITED STATES DISTRICT/MAGISTRATE JUDGE

United States District Court

For the Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Plaintiff,

v.

Defendant.
_____/

No. C

STIPULATION AND [PROPOSED] ORDER SELECTING ADR PROCESS

ADR CERTIFICATION

The parties stipulate to participate in the following ADR process:

Court Processes:

❑ Arbitration ❑ ENE ❑ Mediation

(To provide additional information regarding timing of session, preferred subject matter expertise of neutral, or other issues, please attach a separate sheet.)

Private Process:

❑ Private ADR (*please identify process and provider*)

_____

Dated: _____ _____
Attorney for Plaintiff

Dated: _____ _____
Attorney for Defendant

IT IS SO ORDERED:

Dated: _____ _____
UNITED STATES DISTRICT JUDGE

SIGNATURE AND CERTIFICATION BY PARTIES AND LEAD TRIAL COUNSEL

Pursuant to Civ. L.R. 16 and ADR L.R. 3-5(b), each of the undersigned certifies that he or she has read either the handbook entitled "Dispute Resolution Procedures in the Northern District of California," or the specified portions of the ADR Unit's Internet site <www.adr.cand.uscourts.gov>, discussed the available dispute resolution options provided by the court and private entities, and considered whether this case might benefit from any of them.

(Note: This Certification must be signed by each party and its counsel.)

Dated: _____ _____
[Typed name and signature of plaintiff]

Dated: _____ _____
[Typed name and signature of counsel for plaintiff]

Dated: _____ _____
[Typed name and signature of defendant]

Dated: _____ _____
[Typed name and signature of counsel for defendant]

United States District Court

For the Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Plaintiff,

v.

Defendant.
_____/

No. C

NOTICE OF NEED FOR ADR PHONE CONFERENCE [ADR L.R. 3-5]

ADR CERTIFICATION

The parties either:

❑ have not yet reached an agreement to an ADR process, or

❑ have tentatively agreed to a settlement conference before a magistrate judge.

Accordingly, ADR L.R. 3-5 requires a telephone conference with the ADR Director or Program Counsel before the case management conference.

Last day to file Joint Case Management Statement: _____

Date of Initial Case Management Conference: _____

The following counsel will participate in the ADR phone conference:

Name	***Party Representing***	***Phone No.***	***Fax No.***

(For additional participants, please attach a separate sheet with the above information.)

The ADR Unit will notify you by return fax indicating, in the space below, the date and time of your phone conference. Plaintiff's counsel shall initiate the call using the following number: (415) 522-4603. Please consult ADR L.R. 3-5(d).

For court use only:

ADR Phone Conference Date: _____ **Time:** _____ **AM/PM**

For scheduling concerns, call 415-522-2199.

Date: _____

_____
ADR Case Administrator

SIGNATURE AND CERTIFICATION BY PARTIES AND LEAD TRIAL COUNSEL

Pursuant to Civ. L.R. 16 and ADR L.R. 3-5(b), each of the undersigned certifies that he or she has read either the handbook entitled "Dispute Resolution Procedures in the Northern District of California," or the specified portions of the ADR Unit's Internet site <www.adr.cand.uscourts.gov>, discussed the available dispute resolution options provided by the court and private entities, and considered whether this case might benefit from any of them.

(Note: This Certification must be signed by each party and its counsel.)

Dated: _____ _____
[Typed name and signature of plaintiff]

Dated: _____ _____
[Typed name and signature of counsel for plaintiff]

Dated: _____ _____
[Typed name and signature of defendant]

Dated: _____ _____
[Typed name and signature of counsel for defendant]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

_____ (Full Name of Petitioner) Petitioner, v. _____ (Name of Warden) Respondent.	**CASE NO.** _____ **DEATH PENALTY CASE** **APPLICATION FOR APPOINTMENT OF COUNSEL; REQUEST FOR STAY OF EXECUTION**

My name is _____. I am a prisoner in state custody under sentence of death. I was convicted and sentenced in the _____ County Superior Court. The California Supreme Court affirmed my death sentence on _____, 20 ___. My scheduled execution date is _____, 20___.

I was tried and I am being held in violation of my federal constitutional rights. The attorney who represented me in my most recent state court proceeding in connection with my conviction and death sentence has informed me that he/she is unable to represent me in federal habeas corpus proceedings. I am indigent and have substantially no assets. I hereby request that the Court appoint an attorney to represent me in my habeas corpus case in this Court. I also request that the Court stay my execution at this time.

I have filed the following federal applications for relief with respect to my conviction and death sentence: _____

_____

_____

_____.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

_____
[Signature of Prisoner]