

**To:** Members of the Public and the Northern District of California Bar

**From:** Office of the Clerk

**Re:** Summary of proposed revisions to the Civil and Criminal  
Local Rules; invitation for public comment

**Date:** June 9, 2023



## Clerk's Office Memorandum

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The Judges of the United States District Court for the Northern District of California have approved the following proposed modifications to the Civil and Criminal Local Rules. Pursuant to Civil Local Rule (L.R.) 83-2(b), the Court hereby posts the following proposed modifications for public comment. Redlined and "clean" copies of the proposed modifications are attached.

Comments or suggestions may be submitted to [media@cand.uscourts.gov](mailto:media@cand.uscourts.gov).

Any comments or suggestions must be received by Monday, July 10, 2022, at 4:00 p.m. PDT.

### Summary of Proposed Revisions

**Item 1:** A revision changes Civil Local Rules 5-1 and 79-4 and Criminal Local Rule 55-1, requiring parties to e-file exhibits following trial and to retain custody of exhibits until the case is final.

**Item 2:** A revision abrogates Civil Local Rule 7-14, which prohibits parties from citing Northern District opinions designated "not for citation," and part of Civil Local Rule 3-4, which described the process for so designating. This will harmonize this court's rules with the Ninth Circuit's and those of the other California district courts.

**Item 3:** A revision changes Civil Local Rule 7-7 so that continuance of a motion hearing after an opposition has been filed requires a judge order (typically accomplished through submission of a proposed order).

**Item 4:** A revision to Civil Local Rule 73-1 clarifies that the deadline to file consent or declination to the jurisdiction of a magistrate judge may be set or extended by the Clerk or the Magistrate Judge assigned to the case.

**Item 5:** A revision to Civil Local Rule 5-4 reflects that use of drop boxes is not limited to after hours, and that filings may be placed in any division's drop box regardless of where the presiding judge sits.

**ITEM 1: Proposed Modifications to Civil Local Rules 5-1 and 79-4  
and Criminal Local Rule 55-1 (Redlined Copy)**

**Civil Rule 5-1. Electronic Case Filing**

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**(g) Exhibits**

- (1) **Mandatory Electronic Filing.** Unless otherwise ordered by the Court, exhibits offered during trial shall be filed on the docket within ten days of a trial verdict.
  - (A) The parties shall file through the CM/ECF event “Admitted Exhibits” those exhibits admitted for review by the trier of fact. These exhibits shall be accompanied by a Joint Certification of Counsel that the exhibits are true and correct copies of the exhibits submitted to the trier of fact in the matter.
  - (B) The parties may file any exhibits that were offered but not admitted by the judge using the CM/ECF event “Exhibits Not Admitted,” which will automatically file the documents under seal. These exhibits shall be accompanied by a Joint Certification of Counsel that the exhibits are true and correct copies of the exhibits offered but not admitted by the judge.
- (2) **Redaction.** Before electronically filing exhibits under this rule, the filer must redact any information the judge ruled the public may not view. If the court has not already ruled on a sealing request pertaining to the exhibits, they should be filed following the procedure in Local Rule 79-5(d).
- (3) **Physical Exhibits.** When a party offers or introduces physical exhibits into evidence, they must electronically file a photograph of that physical exhibit in accordance with subsection (g)(1) of this rule. Nothing contained in this Local Rule shall prevent the presiding judge from entering an order with respect to the handling, custody, or storage of any exhibit.
- (4) **Digital Exhibits not Supported by CM/ECF.** Parties must upload electronic records in a format unsupported by CM/ECF (e.g., audio or video files) to an online location designated by the Clerk’s Office. Parties must include the titles of exhibits filed using this method in the list of “Admitted Exhibits” filed pursuant to subsection (g)(1) of this rule.

**~~(g)~~(h) Service of Electronically Filed Documents**

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**~~(h)~~(i) Signatures**

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**ITEM 1: Proposed Modifications to Civil Local Rules 5-1 and 79-4  
and Criminal Local Rule 55-1 (Redlined Copy)**

**Civil Rule 79-4. Custody and Disposition of Exhibits and Transcripts**

- (a) **Custody of Exhibits During Trial or Evidentiary Hearing.** Unless the Court directs otherwise, the original of each exhibit admitted into evidence during a trial or other evidentiary proceeding shall be held in the custody of the Clerk party who offered the exhibit.
- (b) **~~Removal~~ Retention of Exhibits Upon Conclusion of Proceeding.** ~~The Court will retain custody of admitted exhibits for 14 days after the conclusion of a proceeding (e.g., receipt of a jury verdict). During this 14 day period, exhibits will be available for public inspection. After this 14 day period expires, any exhibit placed in the custody of the Clerk pursuant to Civil L.R. 79-4(a) must be removed within 5 days by the party that submitted it into evidence. Unless otherwise permitted by the Court directs otherwise,~~ the party that submitted an exhibit into evidence must maintain custody of that exhibit until:
- (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.~~

**Criminal Rule 55-1. ~~Custody and Disposition of Exhibits~~ Applicability of Civil Local Rules Regarding Exhibits.**

~~Applicability of Civil Local Rules Regarding Exhibits.~~ ~~Excepting contraband, firearms and other sensitive items, or u~~ Unless the Judge hearing the matter otherwise orders, the procedures set forth in Civil L.R. 5-1(g) and 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.~~

**ITEM 1: Proposed Modifications to Civil Local Rules 5-1 and 79-4  
and Criminal Local Rule 55-1 (Clean Copy)**

**Civil Rule 5-1. Electronic Case Filing**

...

**(g) Exhibits**

- (1) **Mandatory Electronic Filing.** Unless otherwise ordered by the Court, exhibits offered during trial shall be filed on the docket within ten days of a trial verdict.
  - (A) The parties shall file through the CM/ECF event “Admitted Exhibits” those exhibits admitted for review by the trier of fact. These exhibits shall be accompanied by a Joint Certification of Counsel that the exhibits are true and correct copies of the exhibits submitted to the trier of fact in the matter.
  - (B) The parties may file any exhibits that were offered but not admitted by the judge using the CM/ECF event “Exhibits Not Admitted,” which will automatically file the documents under seal. These exhibits shall be accompanied by a Joint Certification of Counsel that the exhibits are true and correct copies of the exhibits offered but not admitted by the judge.
- (2) **Redaction.** Before electronically filing exhibits under this rule, the filer must redact any information the judge ruled the public may not view. If the court has not already ruled on a sealing request pertaining to the exhibits, they should be filed following the procedure in Local Rule 79-5(d).
- (3) **Physical Exhibits.** When a party offers or introduces physical exhibits into evidence, they must electronically file a photograph of that physical exhibit in accordance with subsection (g)(1) of this rule.  
Nothing contained in this Local Rule shall prevent the presiding judge from entering an order with respect to the handling, custody, or storage of any exhibit.
- (4) **Digital Exhibits not Supported by CM/ECF.** Parties must upload electronic records in a format unsupported by CM/ECF (e.g., audio or video files) to an online location designated by the Clerk’s Office. Parties must include the titles of exhibits filed using this method in the list of “Admitted Exhibits” filed pursuant to subsection (g)(1) of this rule.

**(h) Service of Electronically Filed Documents**

...

**(i) Signatures**

...

**ITEM 1: Proposed Modifications to Civil Local Rules 5-1 and 79-4  
and Criminal Local Rule 55-1 (Clean Copy)**

**Civil Rule 79-4. Custody and Disposition of Exhibits and Transcripts**

- (a) **Custody of Exhibits During Trial or Evidentiary Hearing.** Unless the Court directs otherwise, the original of each exhibit admitted into evidence during a trial or other evidentiary proceeding shall be held in the custody of the party who offered the exhibit.
- (b) **Retention of Exhibits Upon Conclusion of Proceeding.** Unless the Court directs otherwise, the party that submitted an exhibit into evidence must maintain custody of that exhibit until:
- (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.

**Criminal Rule 55-1. Applicability of Civil Local Rules Regarding Exhibits.**

Unless the Judge hearing the matter otherwise orders, the procedures set forth in Civil L.R. 5-1(g) and 79-4(a) and (b) shall govern the custody and disposition of exhibits in criminal proceedings before the Court.

**ITEM 2: Proposed Modifications to  
Civil Local Rules 7-14 and 3-4 (Redline Copy)**

**Civil Rule 7-14. ~~Designation Not for Citation (abrogated)~~**

~~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.”~~

**Civil Rule 3-4. Papers Presented for Filing**

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**~~(c) — 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.~~

*Note:* Since proposed Item 2 only eliminates language and does not add language, no “clean copy” follows.

**ITEM 3: Proposed Modifications to  
Civil Local Rule 7-7 (Redlined Copy)**

**Civil Rule 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.

**ITEM 3: Proposed Modifications to  
Civil Local Rule 7-7 (Clean Copy)**

**Civil Rule 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 upon order of the assigned Judge.



**ITEM 4: Proposed Modifications to  
Civil Local Rule 73-1 (Redlined Copy)**

**Civil Rule 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 Clerk or 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 set by the Clerk or the Magistrate Judge ~~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, unless otherwise directed.
- (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).

**Civil Rule 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:
- (1) Parties must either file written consent to the jurisdiction of the Magistrate Judge, or request reassignment to a District Judge, by the deadline set by the Clerk or the Magistrate Judge.
  - (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, 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, unless otherwise directed.
- (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).

**ITEM 5: Proposed Modifications to  
Civil Local Rule 5-4 (Redlined Copy)**

**Civil Rule 5-4. Drop Box Filings**

- (a) **Documents Which May Be Filed.** Most documents that are required or permitted to be manually filed 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 other case-initiating documents that are required or permitted to be manually filed 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 required or permitted to be ~~manually~~ filed manually may be filed by deposit in ~~the a drop box at any courthouse of the district 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.

**Item 5: Proposed Modifications to  
Civil Local Rule 5-4 (Clean Copy)**

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- (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 other case-initiating documents that are required or permitted to be manually filed 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, a document required or permitted to be filed manually may be filed by deposit in a drop box at any courthouse of the district.
- (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.