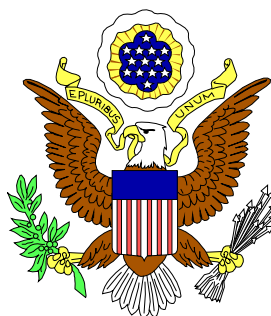


Local Rules of the United States District Court EASTERN DISTRICT OF CALIFORNIA



Effective July 1, 2011

EASTERN DISTRICT OF CALIFORNIA LOCAL RULES

SELECTED RULES APPLICABLE TO PRISONER CIVIL RIGHTS CASES

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RULE 110 (Fed. R. Civ. P. 11)

SANCTIONS FOR NONCOMPLIANCE WITH RULES

Failure of counsel or of a party to comply with these Rules or with any order of the Court may be grounds for imposition by the Court of any and all sanctions authorized by statute or Rule or within the inherent power of the Court.

RULE 130 (Fed. R. Civ. P. 7)

GENERAL FORMAT OF DOCUMENTS

(a) Electronically-Filed Documents. Documents electronically filed shall be created and formatted to comply, in appearance and presentation both in an electronic format and when printed, with the requirements for conventionally-filed paper documents.

(b) Conventionally-Filed Documents and Courtesy Copies. All documents presented for conventional filing or lodging and the chambers courtesy copies shall be on white, unglazed opaque paper of good quality with numbered lines in the left margin, 8-1/2" x 11" in size, and shall be flat, unfolded (except where necessary for presentation of exhibits), firmly bound at the top left corner, pre-punched with two (2) holes (approximately 1/4" diameter) centered 2-3/4" apart, 1/2" to 5/8" from the top edge of the document, and shall comply with all other applicable provisions of these Rules. Matters contained thereon shall be presented by typewriting, printing, photographic or offset reproduction, or other clearly legible process, without erasures or interlining that materially defaces the document, and shall appear on one side of each sheet only.

(c) Spacing. Documents shall be double-spaced except for the identification of counsel, title of the action, category headings, footnotes, quotations, exhibits and descriptions of real property. Quotations of more than fifty (50) words shall be indented.

(d) Numbering. Each page shall be numbered consecutively at the bottom and shall provide a brief description of the document on the same line.

RULE 131 (Fed. R. Civ. P. 7)

COUNSEL IDENTIFICATION AND SIGNATURES

(a) Counsel Identification. The name, address, telephone number, and the California State Bar membership number of all attorneys, or, if in propria persona, the name, address, and telephone number of the party, and the specific identification of each party represented by name and interest in the litigation (e.g., plaintiff Smith, defendant Jones) shall appear in the upper left-hand corner of the first page of each document presented for filing, except that in the instance of multi-party representation reference may be made to the signature page for the complete list of parties represented. Attorneys for service shall be designated in accordance with L.R. 180. See Fed. R. Civ. P. 11; L.R. 180, 182; Cal. Rules of Court 2.111.

(b) Signatures Generally. All pleadings and non-evidentiary documents shall be signed by the individual attorney for the party presenting them, or by the party involved if that party is appearing in propria persona. Affidavits and certifications shall be signed by the person executing the document. The name of the person signing the document shall be typed or printed underneath the signature. See Fed. R. Civ. P. 11. If a document is submitted to the Clerk via portable electronic media, signatures shall appear either as a facsimile of the original (in a scanned document placed on portable electronic media), or on a separate, scanned signature page if the document was published to .pdf and then placed on portable electronic media. In the latter situation, the docket shall reflect the submission of the signature page.

(c) Attorney Signatures. Anything filed using an attorney's name, login, and password will be deemed to have been signed by that attorney for all purposes, including Fed. R. Civ. P. 11. For example, for the attorney whose login and password is being used, it is sufficient to indicate a signature as in the following example: "/s/ John M. Barrister, Esquire."

(d) Misuse of Attorney's Electronic Signature. Any person challenging the authenticity of an electronically-filed document or placement of the attorney's signature on that document must file an objection and request that the document be stricken within twenty-one (21) days of receiving the Notice of Electronic Filing, or at a later time for good cause shown by an attorney exercising due diligence. Attorneys are responsible for, and must take care to ensure, the validity of their signatures.

(e) Documents Requiring Signatures of Multiple Counsel. Documents that are normally signed by more than one counsel, whether the counsel represent the same party or different parties, may be prepared by obtaining approval from any other counsel to state that the other counsel has authorized submission of the document on that counsel's behalf. Submitting counsel shall place the other counsel's signature on the electronic filing by using "/s/ counsel's name (as authorized on [date])."

Alternatively, one counsel may obtain the original signatures from all counsel who are filing the document, scan the signature page(s) only and file the signature page(s) as an attachment to the document with an explanatory statement on the signature page of the filed document.

(f) Non-Attorney's Electronic Signature. Documents that are required to be signed by a person who is not the attorney of record in a particular action (verified pleadings, affidavits, papers authorized to be filed electronically by persons in pro per, etc.), may be submitted in electronic format bearing a "/s/" and the person's name on the signature line along with a statement that counsel has a signed original, e.g., "/s/ John Doe (original signature retained by attorney Mary Roe)." It is counsel's duty to maintain this original signature for one year after the exhaustion of all appeals. This procedure may also be followed when a hybrid electronic/paper document is filed, i.e., the conventionally served document may also contain an annotated signature in lieu of the original.

(g) Misuse of Non-Attorney's Electronic Signature. A non-filing signatory, party, or attorney who disputes the authenticity of an electronically-filed document with a non-attorney signature must file an objection and request that the document be stricken within twenty-one (21) days of receiving the Notice of Electronic Filing or a copy of the document, whichever first occurs, unless good cause exists for a later contest of the signature by a person exercising due diligence.

(h) Electronic Signatures on Certain Documents in Criminal Actions. Several documents in criminal actions require the signature of a non-attorney, such as a grand jury foreperson, a defendant, a third-party custodian, a United States Marshal, an officer from Pretrial Services or Probation, or some other federal officer or agent. Unless the procedure in L.R. 131(f) is followed, the Clerk will scan these documents, upload them to the CM/ECF system, and except as otherwise provided by administrative procedures, discard the paper documents. The electronically-filed document as it is maintained on the Court's servers shall constitute the official version of that record.

RULE 134 (Fed. R. Civ. P. 5)

TIME OF FILING

(a) Filing Complete. Emailing a document to the Clerk or to the Court (as opposed to electronic filing in CM/ECF) shall not constitute "filing" of the document. Except as noted in L.R. 121 for the filing of initial documents, a document filed electronically shall not be considered filed for purposes of these Rules or the Federal Rules of Civil or Criminal Procedure until the filing counsel receives a system-generated "Notice of Electronic Filing." See L.R. 135. Paper filings, when permitted or required by these procedures, shall be complete upon presentation to the Clerk.

(b) Time of Filing A document will generally be deemed filed on a particular day if filed before midnight (Pacific Time) on that business day. However, if the time of day at which the document is filed is of the essence, the Court may order that the document be filed by a time certain. Filings via CM/ECF may be made twenty-four hours a day, but portable electronic media may be submitted over the counter at the Clerk's Office only during Clerk's Office business hours. See 77-121(b).

(c) Technical Failures. The Clerk shall deem the CM/ECF site to be subject to a technical failure on a given day if the site is unable to accept filings continuously or intermittently over the course of any period of time greater than two hours after 2:00 p.m. on a given day. Known systems outages will be posted on the website, if possible. CDs or other electronic media may be filed during a time of technical failure.

(1) Untimely Filings Due to CM/ECF Failure. A party may file on the next business day following the technical failure that is announced on the Court's website. If the technical failure is not so announced on the Court's website, then the party must file the document as promptly as possible and seek appropriate relief from the Court.

(2) Service Required Despite Court's Technical Failure. If filing is impossible due to the CM/ECF failure, counsel shall timely serve the document directly on all counsel in the action by email, overnight delivery, or other expeditious means appropriate to the circumstances.

(3) Failure at the Sender. Problems on the filer's end, such as phone line problems, problems with the filer's Internet Service Provider (ISP), or hardware or software problems, will not constitute a technical failure under these procedures nor excuse an untimely filing. A filer subject to mandatory electronic filing who cannot directly file a document electronically because of a technical problem on the filer's end must file the document electronically from another computer or in portable electronic format at the Clerk's Office. If electronic filing is not possible in any form, the party may

file a paper document, shall annotate on the cover page that electronic filing was not possible because of technical reasons, and shall file electronically as soon as possible.

(d) After-Hours Filed Documents. Generally, documents, including motions for temporary restraining orders, filed electronically after normal business hours of the Clerk's Office will not be reviewed by the Court until the next business day, at the earliest.

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

SERVICE OF DOCUMENTS DURING ACTION

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

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

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

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

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

(f) Service Upon Attorney. Service of all documents authorized to be served in accordance with Fed. R. Civ. P. 5 or Fed. R. Crim. P. 49 shall be complete when served upon the attorney for the party, if the party has appeared and is

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

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

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

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

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

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

RULE 142 (Fed. R. Civ. P. 43)

AFFIDAVITS

(a) Requirements. An affidavit, see L.R. 101, submitted in support of any motion shall

(1) identify the affiant, the party or parties on whose behalf it is submitted, and the motion to which it pertains, see L.R. 133(h);

(2) be served on all other parties and filed with the motion, opposition or reply to which it relates, unless accompanied by an affidavit of counsel purporting to show good cause for the separate filing thereof; and

(3) identify, authenticate, and attach documents and exhibits offered in support of or in opposition to the motion, unless such documents and exhibits are already in the record and specifically referred to in the motion or opposition.

(b) Affidavits Referencing Depositions. When deposition testimony is referenced in or appended to an affidavit, the party filing the affidavit shall comply with L.R. 133(j).

RULE 144 (Fed. R. Civ. P. 6)

EXTENDING AND SHORTENING TIME

(a) **Extensions on Stipulation.** Unless the filing date has been set by order of the Court, an initial stipulation extending time for no more than twenty-eight (28) days to respond to a complaint, cross-claim or counterclaim, or to respond to interrogatories, requests for admissions, or requests for production of documents may be filed without approval of the Court if the stipulation is signed on behalf of all parties who have appeared in the action and are affected by the stipulation. All other extensions of time must be approved by the Court. No open extensions of time by stipulation of the parties will be recognized.

(b) **Contents of Application for Extension.** All motions for extensions of time shall set forth the total period of extensions already obtained by the parties as to the particular matters for which the extension is sought.

(c) **Initial Ex Parte Extension.** The Court may, in its discretion, grant an initial extension ex parte upon the affidavit of counsel that a stipulation extending time cannot reasonably be obtained, explaining the reasons why such a stipulation cannot be obtained and the reasons why the extension is necessary. Except for one such initial extension, ex parte applications for extension of time are not ordinarily granted.

(d) **Time for Requesting Extensions.** Counsel shall seek to obtain a necessary extension from the Court or from other counsel or parties in an action as soon as the need for an extension becomes apparent. Requests for Court-approved extensions brought on the required filing date for the pleading or other document are looked upon with disfavor.

(e) **Shortening Time.** Applications to shorten time shall set forth by affidavit of counsel the circumstances claimed to justify the issuance of an order shortening time. Ex parte applications to shorten time will not be granted except upon affidavit of counsel showing a satisfactory explanation for the need for the issuance of such an order and for the failure of counsel to obtain a stipulation for the issuance of such an order from other counsel or parties in the action. Stipulations for the issuance of an order shortening time require the approval of the Judge or Magistrate Judge on whose calendar the matter is to be heard before such stipulations are given effect. Any proposed order shortening time shall include blanks for the Court to designate a time and date for the hearing and for the filing of any response to the motion.

RULE 162.1 (Fed. R. Civ. P. 47)

**EXAMINATION AND CHALLENGES OF TRIAL JURY -
CIVIL AND CRIMINAL**

(a) Examination of Jurors. Examination of prospective jurors shall be by the Court subject to supplementation by counsel as provided by Fed. R. Civ. P. 47 and Fed. R. Crim. P. 24. Not less than seven (7) days before commencement of the trial, unless otherwise ordered, counsel shall file, and serve any requested questions for voir dire examination touching upon unique or unusual aspects of the action. These requests may be reasonably supplemented by oral requests during voir dire examination to remedy omissions, to clarify, or to pursue lines of inquiry suggested by answers.

(b) Procedure. Counsel shall consult with the courtroom deputy clerk of the assigned Judge or Magistrate Judge for procedures utilized by that Judge in the selection of a jury and in the exercise of peremptory challenges. See 28 U.S.C. § 1870; Fed. R. Civ. P. 47(b).

RULE 163 (Fed. R. Civ. P. 51)

**JURY INSTRUCTIONS AND VERDICTS -
CIVIL AND CRIMINAL ACTIONS**

(a) Filing. Unless the Court otherwise orders or permits, requested jury instructions in all actions shall be filed and copies served on all parties at the opening of the trial. Instructions thereafter presented may be deemed not to have been properly requested unless (1) the necessity for the request arose in the course of trial and could not reasonably have been anticipated before trial from the pleadings, discovery or nature of the action and (2) the request is presented as promptly as possible. See Fed. R. Civ. P. 51; Fed. R. Crim. P. 30.

(b) Form and Number.

(1) Electronic Filers. Two copies of the instructions shall be submitted. One copy shall be electronically filed as a .pdf document and shall contain each instruction on a separate page, numbered and identified as to the party presenting it. Each instruction shall cite the decision, statute, ordinance, regulation, or other authority supporting the proposition stated in the instruction. The second copy (jury copy) shall comply with (b)(4) and shall be submitted by e-mail to the appropriate e-mail address as listed on the Court's website in Word or Word Perfect format. See L.R. 137(b).

(2) Conventional Filers. Two (2) copies of the instructions shall be filed on 8-1/2" x 11" paper. The first copy shall contain each instruction on a separate page, numbered and identified as to the party presenting it. Each instruction shall cite the decision, statute, ordinance, regulation, or other authority supporting the proposition stated in the instruction. The second copy (jury copy) shall comply with (b)(4).

(3) Cover Sheet. The cover sheet on each set of instructions shall contain the appropriate caption (title, Court and cause) and an identification of the party presenting the instructions.

(4) Jury Copies. As the jury copy may be duplicated and given to the jury, the individual instructions shall be unnumbered and unidentified as to the party presenting them and shall contain no citation to the authority supporting the proposition stated in the instruction.

(c) Content. Each requested instruction shall be (as far as possible) free of legal jargon, understandable, concise, impartial, and free from argument. All requested instructions on a single subject shall be grouped together when submitted to the Court. All instructions intended as alternates shall be so designated.

(d) Standard Instructions. When the instructions are derived from the Ninth Circuit Pattern Jury Instructions, California Jury Instructions-Civil (CACI), California Jury Instructions-Civil (BAJI), California Jury Instructions-Criminal (CALJIC) or Federal Jury Practice and Instructions (Civil and Criminal), or other source of standard instructions, the source shall be from the latest edition provided. If a standard instruction is altered by omissions, additions, or modifications by counsel (other than substitution of the parties' names for "plaintiff" and "defendant"), the modification shall be specifically noted and explained on the file copy.

(e) Verdict and Special Interrogatories. The jury instructions shall be accompanied by a form or forms of verdict. Requests for special verdicts or interrogatories to be answered in connection with a general verdict shall also accompany the instructions.

(f) Conference - Objections. The Court will set a time for a conference with counsel for the purpose of settling instructions. Unless the Court orders otherwise, counsel shall be prepared at that time to object to any instructions and to support any objection with citation to authority. Upon the settling of the instructions, and before counsel's final argument to the jury, the Court will hold a hearing on the record and outside the presence of the jury for the purpose of permitting counsel to voice any objections concerning the instructions.

RULE 182 (Fed. R. Civ. P. 83)

ATTORNEYS - APPEARANCE AND WITHDRAWAL

(a) Appearance as Attorney of Record.

(1) **Appearance Required.** Except as permitted in (b) and except as the Court may allow a courtesy appearance in criminal actions, no attorney may participate in any action unless the attorney has appeared as an attorney of record. A single client may be represented by more than one attorney of record to the extent authorized by the applicable Rules of Professional Conduct.

(2) **Manner of Making Appearance.** Appearance as an attorney of record is made (i) by signing and filing an initial document, see L.R. 131(a); (ii) by causing the attorney's name to be listed in the upper left hand corner of the first page of the initial document; (iii) by physically appearing at a court hearing in the matter, formally stating the appearance on the record, and then signing and filing a confirmation of appearance within seven (7) days; or (iv) by filing and serving on all parties a substitution of attorneys as provided in (g).

(b) **Attorneys Within Organizations.** Appearances as an attorney of record shall not be made in the name of a law firm, organization, public entity, agency, or department. See Fed. R. Civ. P. 11. When an attorney is employed or retained by a law firm, organization, public entity, agency, or department, however, the attorney may participate in an action, without filing a substitution of attorneys, if another person employed or retained by the same law firm, organization, public entity, agency, or department is attorney of record in the action.

(c) Counsel for Service.

(1) **Designation of Counsel for Service.** When multiple attorneys from a single law firm, organization, public entity, agency, or department are listed in the upper left hand corner of the first page of each filed document, see L.R. 131(a), one of the listed attorneys shall be designated as counsel for service. That designation shall be accomplished by so designating in the counsel identification in the upper left hand corner of the first page of the initial document or by filing and serving a document entitled "Designation of Counsel for Service," which will state the name, address, and telephone number of the designated counsel for service and will be signed by that counsel. The Clerk will serve court orders on the designated counsel for service. See L.R. 137(f). The identity of counsel for service in a particular action may be changed by filing and serving on all parties a document entitled "Change in Designation of Counsel for Service" stating the name, address, and telephone number of new and old counsel for service, identifying new counsel for service and bearing the signature of the new counsel for service.

(2) Service in the Absence of a Designation. If no designation of counsel for service has been made in a particular instance, the Clerk may select the attorney for service from the listing in the upper left hand corner of the first page of the initial filed document or from the signature block.

(d) Withdrawal. Unless otherwise provided herein, an attorney who has appeared may not withdraw leaving the client in propria persona without leave of court upon noticed motion and notice to the client and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. Withdrawal as attorney is governed by the Rules of Professional Conduct of the State Bar of California, and the attorney shall conform to the requirements of those Rules. The authority and duty of the attorney of record shall continue until relieved by order of the Court issued hereunder. Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit.

(e) Withdrawal Following Limited Appearance. Any attorney who has appeared on behalf of a party in an action solely for the purpose of contesting an application for a temporary restraining order or other preliminary injunctive relief may withdraw from that action within fourteen (14) days after making that appearance, or at such other time as the Court may determine, by filing a notice and affidavit that the attorney is no longer counsel of record for the party. Such application shall establish that the attorney has returned all documents and other items received in connection with the action and shall set forth the last known address and telephone number of the party.

(f) Change of Address. Each appearing attorney and pro se party is under a continuing duty to notify the Clerk and all other parties of any change of address or telephone number of the attorney or the pro se party. Absent such notice, service of documents at the prior address of the attorney or pro se party shall be fully effective. Separate notice shall be filed and served on all parties in each action in which an appearance has been made.

(g) Substitution of Attorneys. An attorney who has appeared in an action may substitute another attorney and thereby withdraw from the action by submitting a substitution of attorneys that shall set forth the full name and address of the new individual attorney and shall be signed by the withdrawing attorney, the new attorney, and the client. All substitutions of attorneys shall require the approval of the Court, and the words "**IT IS SO ORDERED**" with spaces designated for the date and signature of the Judge affixed at the end of each substitution of attorneys.

(h) Local Co-Counsel. A Judge to whom an action is assigned has discretion in that action, and upon notice, to require an attorney appearing in this Court who maintains an office outside this District to designate a member of the Bar of this Court who does maintain an office within this District as co-counsel with the authority to act as attorney of record for all purposes. In such a case, the attorney shall file with such designation the address, telephone number and consent of the designee.

(i) Formal Notice of Association of Counsel. Any attorney not substituted in as counsel of record under (g) and not authorized to participate under other provisions in this Rule must file a notice of association, signed by an attorney of record and the associating attorney, and served on all parties.

RULE 183 (Fed. R. Civ. P. 83)

PERSONS APPEARING IN PROPRIA PERSONA

(a) Rules Governing Appearance. Any individual who is representing himself or herself without an attorney must appear personally or by courtesy appearance by an attorney admitted to the Bar of this Court and may not delegate that duty to any other individual, including husband or wife, or any other party on the same side appearing without an attorney. Any individual representing himself or herself without an attorney is bound by the Federal Rules of Civil or Criminal Procedure, these Rules, and all other applicable law. All obligations placed on "counsel" by these Rules apply to individuals appearing in propria persona. Failure to comply therewith may be ground for dismissal, judgment by default, or any other sanction appropriate under these Rules. A corporation or other entity may appear only by an attorney.

(b) Address Changes. A party appearing in propria persona shall keep the Court and opposing parties advised as to his or her current address. If mail directed to a plaintiff in propria persona by the Clerk is returned by the U.S. Postal Service, and if such plaintiff fails to notify the Court and opposing parties within sixty-three (63) days thereafter of a current address, the Court may dismiss the action without prejudice for failure to prosecute.

(c) Pro Se Party Exceptions to Electronic Filing. Pro se parties are exempted from the requirement of filing documents electronically. Pro se parties must file documents conventionally, and any person appearing pro se may use electronic filing only with the permission of the assigned Judge. See L.R. 133.

RULE 201 (Fed. R. Civ. P. 38)

DEMAND FOR JURY TRIAL

Where demand is made for a jury trial, it shall appear immediately following the title of the complaint or answer containing the demand, or on such other document as may be permitted by Fed. R. Civ. P. 38(b).

Any notation on the civil cover sheet, as described in L.R. 200, concerning whether a jury trial is or is not demanded, shall not constitute a demand for a jury trial under these Rules.

RULE 220 (Fed. R. Civ. P. 15)

CHANGED PLEADINGS

As used in this Rule, the term "changed pleadings" shall refer to amended and supplemental pleadings permitted and filed pursuant to Fed. R. Civ. P. 15.

Unless prior approval to the contrary is obtained from the Court, every pleading to which an amendment or supplement is permitted as a matter of right or has been allowed by court order shall be retyped and filed so that it is complete in itself without reference to the prior or superseded pleading. No pleading shall be deemed amended or supplemented until this Rule has been complied with. All changed pleadings shall contain copies of all exhibits referred to in the changed pleading. Permission may be obtained from the Court, if desired, for the removal of any exhibit or exhibits attached to a superseded pleading, in order that the same may be attached to the changed pleading.

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

CIVIL MOTION CALENDAR AND PROCEDURE

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

(b) Notice, Motion, Brief and Evidence. Except as otherwise provided in these Rules or as ordered or allowed by the Court, all motions shall be noticed on the motion calendar of the assigned Judge or Magistrate Judge. The moving party shall file a notice of motion, motion, accompanying briefs, affidavits, if appropriate, and copies of all documentary evidence that the moving party intends to submit in support of the motion. The matter shall be set for hearing on the motion calendar of the Judge or Magistrate Judge to whom the action has been assigned or before whom the motion is to be heard not less than twenty-eight (28) days after service and filing of the motion. . Motions defectively noticed shall be filed, but not set for hearing; the Clerk shall immediately notify the moving party of the defective notice and of the next available dates and times for proper notice, and the moving party shall file and serve a new notice of motion setting forth a proper time and date. See L.R. 135..

(c) Opposition and Non-Opposition. Opposition, if any, to the granting of the motion shall be in writing and shall be filed and served not less than fourteen (14) days preceding the noticed (or continued) hearing date. A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect, specifically designating the motion in question. No party will be entitled to be heard in opposition to a motion at oral arguments if opposition to the motion has not been timely filed by that party. See L.R. 135. .

(d) Reply. Not less than seven (7) days preceding the date of hearing, the moving party may serve and file a reply to any opposition filed by a responding party.

(e) Related or Counter-Motions. Any counter-motion or other motion that a party may desire to make that is related to the general subject matter of the original motion shall be served and filed in the manner and on the date prescribed for the filing of opposition. If a counter-motion or other related motion is filed, the Court may continue the hearing on the original and all related motions so as to give all parties reasonable opportunity to serve and file oppositions and replies to all pending motions.

(f) Continuances. Requests for continuances of hearings on the motion calendar, upon stipulation or otherwise, shall be made to the Judge or Magistrate Judge on whose calendar the matter is set, at least seven (7) days before the scheduled hearing date. All stipulations for continuance shall be submitted for approval to the

Court. See L.R. 143, 144.

(g) Hearing and Oral Argument. Upon the call of the motion, the Court will hear appropriate and reasonable oral argument. Alternatively, the motion may be submitted upon the record and briefs on file if the parties stipulate thereto, or if the Court so orders, subject to the power of the Court to reopen the matter for further briefs or oral arguments or both. Any party that believes that extended oral argument, more than 10 minutes per side or 20 minutes in the aggregate, will be required shall notify the courtroom deputy clerk so that the hearing may be rescheduled if deemed appropriate by the Court.

(h) Use of Affidavits. Factual contentions involved in pretrial motions shall be initially presented and heard upon affidavits, except that the Court may in its discretion require or allow oral examination of witnesses. See L.R. 142.

(i) Failure to Appear. Absent notice of intent to submit the matter on the briefs, failure to appear may be deemed withdrawal of the motion or of opposition to the motion, in the discretion of the Court, or may result in the imposition of sanctions.

(j) Applications for Reconsideration. Whenever any motion has been granted or denied in whole or in part, and a subsequent motion for reconsideration is made upon the same or any alleged different set of facts, counsel shall present to the Judge or Magistrate Judge to whom such subsequent motion is made an affidavit or brief, as appropriate, setting forth the material facts and circumstances surrounding each motion for which reconsideration is sought, including:

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

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

(3) what new or different facts or circumstances are claimed to exist which did not exist or were not shown upon such prior motion, or what other grounds exist for the motion; and

(4) why the facts or circumstances were not shown at the time of the prior motion.

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

(l) Motions in Prisoner Actions. All motions, except motions to dismiss for lack of prosecution, filed in actions wherein one party is incarcerated and proceeding in propria persona, shall be submitted upon the record without oral argument unless otherwise ordered by the Court. Such motions need not be noticed on the motion calendar. Opposition, if any, to the granting of the motion shall be served and filed by the responding party not more than twenty-one (21) days after the date of service of the motion. A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect, specifically designating the motion in question. Failure of the responding party to file an opposition or to file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion and may result in the imposition of sanctions. The moving party may, not more than seven (7) days after the opposition is served, serve and file a reply to the opposition. All such motions will be deemed submitted twenty-eight (28) days after the service of the motion or when the reply is filed, whichever comes first. See L.R. 135.

RULE 231 (Fed. R. Civ. P. 65)

TEMPORARY RESTRAINING ORDER - PRELIMINARY INJUNCTION

(a) Temporary Restraining Orders. Except in the most extraordinary of circumstances, no temporary restraining order shall be granted in the absence of actual notice to the affected party and/or counsel, by telephone or other means, or a sufficient showing of efforts made to provide notice. See Fed. R. Civ. P. 65(b). Appropriate notice would inform the affected party and/or counsel of the intention to seek a temporary restraining order, the date and time for hearing to be requested of the Court, and the nature of the relief to be requested. Once a specific time and location has been set by the Court, the moving party shall promptly give additional notice of the time and location of the hearing.

(b) Timing of Motion. In considering a motion for a temporary restraining order, the Court will consider whether the applicant could have sought relief by motion for preliminary injunction at an earlier date without the necessity for seeking last-minute relief by motion for temporary restraining order. Should the Court find that the applicant unduly delayed in seeking injunctive relief, the Court may conclude that the delay constitutes laches or contradicts the applicant's allegations of irreparable injury and may deny the motion solely on either ground.

(c) Documents to Be Filed. No hearing on a temporary restraining order will normally be set unless the following documents are provided to the Court and, unless impossible under the circumstances, to the affected parties or their counsel:

- (1) a complaint;
- (2) a motion for temporary restraining order;
- (3) a brief on all relevant legal issues presented by the motion;
- (4) an affidavit in support of the existence of an irreparable injury;
- (5) an affidavit detailing the notice or efforts to effect notice to the affected parties or counsel or showing good cause why notice should not be given, see L.R. 142;
- (6) a proposed temporary restraining order with a provision for a bond, see L.R. 151;
- (7) a proposed order with blanks for fixing the time and date for hearing a motion for preliminary injunction, the date for the filing of responsive papers, the

amount of the bond, if any, and the date and hour of issuance, see L.R. 137; and

(8) in all instances in which a temporary restraining order is requested ex parte, the proposed order shall further notify the affected party of the right to apply to the Court for modification or dissolution on two (2) days' notice or such shorter notice as the Court may allow. See Fed. R. Civ. P. 65(b).

(d) Preliminary Injunction.

(1) Notice. See L.R. 144, 230.

(2) Accompanying Documents. All motions for preliminary injunction shall be accompanied by (i) briefs on all relevant legal issues to be presented by the motion, (ii) affidavits in support of the motion, including affidavits on the question of irreparable injury, and (iii) a proposed order with a provision for a bond. See L.R. 230, 151.

(3) Required Information. All parties shall inform the Court in their briefs of the following: (i) whether they desire to present oral testimony at the hearing, and (ii) an estimate of the amount of time they anticipate will be required for the hearing. The parties shall inform the Court and all other parties immediately upon learning of a change in the need for a preliminary injunction, the length of time the hearing will require, or other similar information.

(e) Modification or Dissolution. When a preliminary injunction or temporary restraining order has been issued, the affected party may apply to the Court for modification or dissolution of the injunction or order. Such motion shall normally be accompanied by a brief on all relevant legal issues to be presented in its support and affidavits supporting modification or dissolution and detailing the notice to or efforts to notify the affected party or counsel.

(f) Actions Involving Real Property. A motion for a preliminary injunction or a temporary restraining order to limit picketing, restrain real property encroachments, or protect easements shall depict by drawings, plot plans, photographs, or other appropriate means, or shall describe in detail the premises involved, including, if applicable, the length and width of the frontage on a street or alley, the width of sidewalks, and the number, size, and location of entrances.

RULE 250.1 (Fed. R. Civ. P. 30)

DEPOSITIONS

(a) Filing of Depositions. Depositions taken orally or by written question, whether duces tecum or not, subpoenas and notices therefor, proofs of service thereof, if any, and related documents shall not be filed unless and until there is a proceeding in which the document or proof of service is at issue. Before or upon the filing of a document making reference to a deposition, counsel shall comply with L.R. 133(j).

(b) Custody and Maintenance of Deposition Transcripts. Counsel noticing a deposition is responsible to obtain the original deposition transcript or audio or video tape record from the deposition reporter, see Fed. R. Civ. P. 30(f), and to retain it under conditions suitable to protect it from loss, destruction or tampering until the earlier of (1) the date it is filed in accordance with L.R. 133(j) and 250.1(a), or (2) one year after the judgment has become final or other final disposition of the action. Before that date, for good cause, any party or intervenor may move the Court for an order prohibiting the destruction of a transcript or record permitted hereunder or otherwise directing the custody and maintenance of the transcript or record.

RULE 250.2 (Fed. R. Civ. P. 33)

INTERROGATORIES

(a) Interrogatories. Interrogatories shall be so arranged that after each separate question there shall appear a blank space reasonably calculated to enable the answering party to insert the answers and/or objections. The answering party shall answer or object within the spaces provided or, if unable to do so, shall retype the interrogatories along with the answers and/or objections.

(b) Objections. Each objection to any interrogatory shall include a statement of reasons and, if appropriate, citation to relevant authority. See Fed. R. Civ. P. 33(b)(4).

(c) Filing of Interrogatories. Interrogatories, responses, and proofs of service thereof shall not be filed unless and until there is a proceeding in which the interrogatories or proof of service is at issue. When required in a proceeding, only that part of the set of interrogatories and answers that is in issue shall be filed.

RULE 250.3 (Fed. R. Civ. P. 34)

PRODUCTION OF DOCUMENTS

(a) Requests for Production. Responses to requests for production shall set forth each request in full before each response.

(b) Objections. Each objection to any request for production shall include a statement of reasons and, if appropriate, citation to relevant authority. See Fed. R. Civ. P. 33(b)(2)(C).

(c) Filing of Requests for Production. Requests for production, responses and proofs of service thereof shall not be filed unless and until there is a proceeding in which the request, response, or proof of service is at issue. When required in a proceeding, only that part of the request for production, response or proof of service that is in issue shall be filed.

RULE 250.4 (Fed. R. Civ. P. 36)

REQUESTS FOR ADMISSION

(a) Requests for Admission. Responses to requests for admission shall set forth each request in full before each response.

(b) Objections. Each objection to any request for admission shall include a statement of reasons and, if appropriate, citation to relevant authority. See Fed. R. Civ. P. 36(a)(5).

(c) Filing of Requests for Admission. Requests for admission, responses, and proofs of service thereof shall not be filed unless and until there is a proceeding in which the document or proof of service is at issue. When required in a proceeding, only that part of the request for admission and response that is in issue shall be filed.

RULE 260 (Fed. R. Civ. P. 56)

MOTIONS FOR SUMMARY JUDGMENT OR SUMMARY ADJUDICATION

(a) Motions for Summary Judgment or Summary Adjudication. Each motion for summary judgment or summary adjudication shall be accompanied by a "Statement of Undisputed Facts" that shall enumerate discretely each of the specific material facts relied upon in support of the motion and cite the particular portions of any pleading, affidavit, deposition, interrogatory answer, admission, or other document relied upon to establish that fact. The moving party shall be responsible for the filing of all evidentiary documents cited in the moving papers. See L.R. 133(j).

(b) Opposition. Any party opposing a motion for summary judgment or summary adjudication shall reproduce the itemized facts in the Statement of Undisputed Facts and admit those facts that are undisputed and deny those that are disputed, including with each denial a citation to the particular portions of any pleading, affidavit, deposition, interrogatory answer, admission, or other document relied upon in support of that denial. The opposing party may also file a concise "Statement of Disputed Facts," and the source thereof in the record, of all additional material facts as to which there is a genuine issue precluding summary judgment or adjudication. The opposing party shall be responsible for the filing of all evidentiary documents cited in the opposing papers. See L.R. 133(j). If a need for discovery is asserted as a basis for denial of the motion, the party opposing the motion shall provide a specification of the particular facts on which discovery is to be had or the issues on which discovery is necessary.

(c) Stipulated Facts. All interested parties may jointly file a stipulation setting forth a statement of stipulated facts to which all interested parties agree. As to any stipulated facts, the parties so stipulating may state that their stipulations are entered into only for the purposes of the motion for summary judgment and are not intended to be otherwise binding.

(d) Use of Affidavits. See Fed. R. Civ. P. 56(e); L.R. 142.

(e) Use of Depositions. See L.R. 133(j), 250.1.

(f) Summary Adjudication. This Rule shall apply to motions for orders specifying material facts that appear without substantial controversy pursuant to Fed. R. Civ. P. 56(d), except that the proposed "Statement of Undisputed Facts" and the "Statement of Disputed Facts" shall be limited to the facts that the moving party asserts are without substantial controversy and the facts the opposing party contends are in dispute.

RULE 281 (Fed. R. Civ. P. 16)

PRETRIAL STATEMENTS

(a) **Time for Filing.** As required by the pretrial (scheduling) order in the action, counsel shall file either separate pretrial statements or a joint pretrial statement as follows:

(1) **Separate Statements.** Not less than fourteen (14) days before the date set by the Court for the holding of the final pretrial conference, counsel for the plaintiff shall serve and file a pretrial statement in the form prescribed herein. Not less than seven (7) days before the date set for the holding of the pretrial conference, counsel for all other parties shall serve on all parties and file pretrial statements that may adopt by reference any or all of the matters set forth in the plaintiff's pretrial statement.

(2) **Joint Statements.** Not less than seven (7) days before the date set by the Court for the holding of the final pretrial conference, or such other time as the Court may order, counsel for all parties shall file a joint pretrial statement in the form prescribed herein or in such other form as the Court may prescribe.

(3) **Word Processed Copy.** Electronic filers shall also concurrently submit an electronic copy of their statement in Word or Word Perfect format following the procedures for proposed orders. See L.R. 137(b).

(b) **Form, Contents.** The pretrial statement shall state the name of the party or parties on whose behalf it is presented and set forth the nature of the action and the following matters, under the following captions and in the following order:

(1) **Jurisdiction - Venue.** The factual and statutory basis of federal jurisdiction and venue and whether there is any dispute concerning jurisdiction or venue.

(2) **Jury - Non-Jury.** Whether the party has demanded a jury trial of all or any of the issues or, if not, whether a demand for jury trial made by any other party is conceded or contested.

(3) **Undisputed Facts.** A plain, concise statement of the facts that are undisputed.

(4) **Disputed Factual Issues.** A plain, concise statement of each fact (and any related essential facts) that the party claims or concedes to be in dispute.

(5) **Disputed Evidentiary Issues.** A plain, concise summary of any

reasonably anticipated disputes concerning admissibility of live and deposition testimony, physical and demonstrative evidence and the use of special technology at trial, including computer animation, video discs, and other high technology, and a statement whether each such dispute should be resolved by motion in limine, briefed in the trial brief, or addressed in some other manner.

(6) Special Factual Information in Certain Actions. In addition to the facts and issues described in (3) through (5), the following special information with respect to the following types of actions shall be specified within either the disputed or undisputed facts sections as appropriate:

(i) In eminent domain actions:

(A) As to each parcel involved, its designation, general description, location, and size; the interest taken; the names of persons claiming an interest therein and the interests claimed; whether an order of possession has been issued; each objection or defense to the taking, if any; and the claimed market value of the interest taken at the time of the taking.

(B) Whether consolidation of trial with other actions would be practicable or desirable.

(C) Suggested procedures for a mutual exchange of lists of comparable sales to be relied upon by the valuation experts, such lists to include for each transaction, to the extent known, the names of the parties, the date of transaction, amount of consideration, location of property, and recording date.

(D) Whether evidence of value other than comparable sales is to be relied upon and, if so, the method of valuation and the authority for its use.

(ii) In patent actions:

(A) The name, number, filing, and issue date of the patent or patents involved.

(B) The names of all persons claiming a present interest in each patent.

(C) An abstract of each patent sufficient to permit determination of the nature and essence of the technical disclosure of the application. An abstract in keeping with that called for in Patent Office Rule 1.72(b) shall be deemed sufficient. See 37 C.F.R. § 1.72.

(D) A statement of the facts relied upon to support any charge of infringement.

(E) Where invalidity of a patent has been asserted as a defense, any and all prior art (patents, publications, and public uses) pleaded in the answer or noticed pursuant to 35 U.S.C. § 282, in relation to the defense invoked, whether the defense be 35 U.S.C. § 102 or 35 U.S.C. § 103.

(F) An explanation of any interparty tests that have been conducted and a request for such interparty tests as should be ordered before setting for trial.

(iii) In actions involving contracts:

(A) The parties' respective versions of the terms of the contract.

(B) Whether the contract and any modifications or collateral agreements were written or oral or both, specifying any document, letter, or other writing relied upon by date and parties, and indicating any oral agreement relied upon by date, place, and parties.

(C) Any misrepresentation of fact, mistake, or other matter affecting validity.

(D) Any breach of contract.

(E) Any waiver or estoppel.

(F) The relief sought (rescission, restitution, damages for breach, specific performance, etc.).

(G) The measure of restitution or damages and an itemized statement of the elements thereof.

(iv) In tort actions for personal injury, wrongful death or property damage:

(A) The date, place, and general nature of the incident; the particular acts, omissions, or conditions constituting the basis for liability; the particular acts, omissions or conditions constituting the basis of any defense; any statute, ordinance, or regulation violated by either party; the applicability of the doctrine of strict liability or res ipsa loquitur.

(B) Each plaintiff's age; injuries sustained; any prior injury or condition worsened; periods of hospitalization; medical expenses and estimated future medical expenses; the period of total and/or partial disability; annual, monthly, or

weekly earnings before the incident; earnings loss to date and estimated diminution of future earnings power; property damage; general damages; punitive damages.

(C) In wrongful death actions: the names and ages of dependents; the annual, monthly, or weekly contribution of decedent to dependents before death; the physical condition, education, and training of decedent at the time of death.

(7) **Relief Sought.** The elements of monetary damage, if any, and the specific nature of any other relief sought.

(8) **Points of Law.** A statement of the legal theory or theories of recovery or of defense and of any points of law (substantive or procedural) that are or may reasonably be expected to be in controversy, citing the pertinent statutes, ordinances, regulations, cases, and other authorities relied upon. Extended legal argument is not required in the pretrial statement.

(9) **Abandoned Issues.** A statement of all issues raised by the pleadings that have been abandoned, including, for example, claims for relief and affirmative defenses.

(10) **Witnesses.** A list (names and addresses) of all prospective witnesses, whether offered in person or by deposition or interrogatory, designating those who are expert witnesses. Only witnesses so listed will be permitted to testify at the trial, except as may be otherwise provided in the pretrial order.

(11) **Exhibits - Schedules and Summaries.** A list of documents or other exhibits that the party expects to offer at trial. Only exhibits so listed will be permitted to be offered at trial except as may be otherwise provided in the pretrial order.

(12) **Discovery Documents.** A list of all portions of depositions, answers to interrogatories, and responses to requests for admission that the party expects to offer at trial.

(13) **Further Discovery or Motions.** Any requests for further discovery or pretrial motions. Where discovery and/or law and motion has been terminated by a Court order, counsel shall set forth the grounds for relief from that order and why a motion to be relieved was not made before the date ordered in the status conference for termination. Motions for relief at pretrial are not favored and will ordinarily be denied unless the moving party makes a strong showing.

(14) **Stipulations.** Any stipulations requested or offered for pretrial or trial purposes.

(15) **Amendments - Dismissals.** Any requested amendments to

pleadings, dismissals, additions or substitutions of parties, or dispositions as to defaulting parties.

(16) Settlement Negotiations. A statement whether settlement negotiations between parties and/or a court settlement conference under L.R. 270 would be helpful.

(17) Agreed Statements. A statement whether presentation of all or part of the action upon an Agreed Statement of Facts is feasible and advisable.

(18) Separate Trial of Issues. A statement whether separate trial of any of the issues is feasible and advisable.

(19) Impartial Experts - Limitation of Experts. A statement whether appointment by the Court of impartial expert witnesses or limitation of the number of expert witnesses is advisable.

(20) Attorneys' Fees. A statement whether attorneys' fees are sought and the time and manner in which they are to be ascertained. See L.R. 293.

(21) Trial Exhibits. Any special handling of trial exhibits and a statement of advisability of court retention of exhibits pending appeal decision. See L.R. 138(e).

(22) Trial Protective Order. Whether a trial protective order will be sought pursuant to L.R. 141.1(b)(2).

(23) Miscellaneous. Any other appropriate comments, suggestions, or information that might aid in the disposition of the action, including references to any matters set forth in Fed. R. Civ. P. 16(c).

(c) Claims of Privilege. If any privilege against disclosure is claimed with respect to any statement required by this Rule and the validity of the claim has not yet been determined, a party may omit such statement and include instead a statement of such claim of privilege and the grounds therefor.

(d) Fed. R. Civ. P. 26(a)(3) Disclosures. The foregoing disclosures satisfy the requirements of Fed. R. Civ. P. 26(a)(3).

RULE 285 (Fed. R. Civ. P. 16)

TRIAL BRIEFS

(a) Opening Briefs. Counsel for each party shall file and serve on all other parties within the time set by the Court but not less than fourteen (14) days before trial a brief setting forth:

- (1) a short statement of facts;
- (2) all admissions and stipulations not recited in the pretrial order; and
- (3) a summary of points of law, including reasonably anticipated disputes concerning admissibility of evidence, legal arguments, and citations of authority in support thereof.

(b) Responding Briefs. Although not required to do so, opposing counsel may file and serve on all other parties an answering brief within the time set by the Court but not less than seven (7) days before trial; provided, however, that as to any evidentiary questions raised in a trial brief by one party and not also addressed in the opposing party's opening brief, a brief shall be filed and served by the opposing party on those questions at least seven (7) days before trial.

RULE 303 (Fed. R. Civ. P. 72)

ROLE OF MAGISTRATE JUDGE AND PROCEDURE FOR RESOLVING GENERAL PRETRIAL MATTERS IN CRIMINAL AND CIVIL ACTIONS

(a) **Determination.** In accordance with 28 U.S.C. § 636(b)(1), a Magistrate Judge shall hear, conduct such evidentiary hearings as are appropriate in, and determine all general pretrial matters referred in accordance with L.R. 302. Rulings of the Magistrate Judge shall be in writing with a statement of the reasons therefor and shall be filed and served on all parties.

(b) **Finality.** Rulings by Magistrate Judges pursuant to this Rule shall be final if no reconsideration thereof is sought from the Court within fourteen (14) days calculated from the date of service of the ruling on the parties, unless a different time is prescribed by the Magistrate Judge or the Judge.

(c) **Reconsideration by a District Judge.** A party seeking reconsideration of the Magistrate Judge's ruling shall file a request for reconsideration by a Judge and serve the Magistrate Judge and all parties. Such request shall specifically designate the ruling, or part thereof, objected to and the basis for that objection. This request shall be captioned "Request for Reconsideration by the District Court of Magistrate Judge's Ruling."

(d) **Opposition.** Opposition to the request shall be served and filed within seven (7) days after service of the request.

(e) **Notice and Argument.** The timing requirements of L.R. 230 have no application to requests for reconsideration under this Rule. The request shall be referred to the assigned Judge automatically by the Clerk, promptly following the date for filing opposition, without the necessity of a specific motion for such reference by the parties. Unless otherwise ordered, requests in criminal actions shall be calendared and heard at the trial confirmation. No oral argument shall be allowed in the usual civil action unless the assigned Judge specifically calendars such argument, either on request of a party or sua sponte.

(f) **Standard of Review.** The standard that the assigned Judge shall use in all such requests is the "clearly erroneous or contrary to law" standard set forth in 28 U.S.C. § 636(b)(1)(A). See Fed. R. Civ. P. 72(a).

(g) The assigned Judge may also reconsider any matter at any time sua sponte.

RULE 304 (Fed. R. Civ. P. 72)

MAGISTRATE JUDGES' AUTHORITY IN EXCEPTED PRETRIAL MATTERS

(a) Determination. In accordance with 28 U.S.C. § 636(b)(1)(B) and (C), the Magistrate Judges shall hear, conduct such evidentiary hearings as are appropriate in, and submit to the assigned Judge proposed findings of fact and recommendations for the disposition of excepted pretrial motions referred in accordance with L.R. 302. The Magistrate Judge shall file the proposed findings and recommendations and shall serve all parties.

(b) Objections. Within fourteen (14) days after service of the proposed findings and recommendations on the parties, unless a different time is prescribed by the Court, any party may file, and serve on all parties, objections to such proposed findings and/or recommendations to which objection is made and the basis for the objection.

(c) Transcripts. If objection is made to a proposed finding or recommendation based upon a ruling made during the course of any evidentiary hearing, which ruling has not otherwise been reduced to writing, the party making such objection shall so indicate at the time of filing objections and shall forthwith cause a transcript of all relevant portions of the record to be prepared and filed.

(d) Response. Responses to objections shall be filed, and served on all parties, within fourteen (14) days after service of the objections.

(e) Notice and Argument. The timing requirements of L.R. 230 have no application to objections to proposed findings and recommendations under this Rule. No separate notice is required. The objections shall be referred to the assigned Judge automatically by the Clerk, promptly following the date for filing opposition, without the necessity of a specific motion for such reference by the parties. Unless otherwise ordered, requests in criminal actions shall be calendared by the courtroom deputy clerk upon request of any party filed with that party's objections or opposition thereto or upon the direction of the assigned Judge.

(f) Review. See Fed. R. Civ. P. 72(b).

RULE 305 (Fed. R. Civ. P. 73)

PROCEDURES FOR THE DISPOSITION OF CIVIL ACTIONS ON CONSENT OF THE PARTIES

(a) Notice of Option. The Clerk shall notify the parties in all civil actions that they may consent to have a Magistrate Judge conduct any and all proceedings in the action and order the entry of a final judgment. Such notice shall be handed or transmitted by the Clerk to the plaintiff at the time the action is filed, and to the removing defendant at the time of removal, and the plaintiff or defendant shall transmit the notice to all other parties as an attachment to copies of the complaint and summons, or the removal documents, when served. See also 28 U.S.C. § 636(c). The Court may, at appropriate times, inform the parties of the options available under section 636(c). All such communication shall comply with the requirement of section 636(c)(2).

(b) Reference to Magistrate Judge. After all necessary consents have been obtained, the Clerk shall transmit the file in the action to the assigned Judge, for review, approval by the Judge and Magistrate Judge, and referral. Notwithstanding the consent of all parties, the Judge or Magistrate Judge may reject the referral. Once an action has been referred to a Magistrate Judge, that Magistrate Judge shall have authority to conduct all proceedings referred to the Magistrate Judge, including, if appropriate, authority to enter a final judgment in the action. See Fed. R. Civ. P. 73(a).

(c) Appeal to the Court of Appeals. Upon the entry of final judgment in any action disposed of by a Magistrate Judge on consent of the parties under the authority of 28 U.S.C. § 636(c) and these Rules, an aggrieved party may appeal directly to the United States Court of Appeals for the Ninth Circuit in the same manner as governs appeals from any other final judgment of the Court. See Fed. R. Civ. P. 73(c).