

# Local Rules of the United States District Court

# EASTERN DISTRICT OF CALIFORNIA



**Effective January 3, 2005**

**EASTERN DISTRICT OF CALIFORNIA LOCAL RULES**

**SELECTED RULES APPLICABLE TO PRISONER CIVIL RIGHTS CASES**

<u>Rule No.</u>	<u>Title of Rule</u>
6-136	Calculation of Time Periods
6-144	Extending and Shortening Time
7-130	General Format of Documents
11-110	Sanctions for Noncompliance with Rules
15-220	Changed Pleadings
16-281	Pretrial Statements
16-285 <sup>1</sup>	Trial Briefs
30-250	Depositions
33-250	Interrogatories
34-250	Production of Documents
36-250	Requests for Admission
38-201	Demand for Jury Trial
43-142	Affidavits
47-162	Examination and Challenges of Trial Jury - Civil and Criminal
51-163	Jury Instructions and Verdicts - Civil and Criminal Actions
56-260	Motions for Summary Judgment or Summary Adjudication
65-231	Temporary Restraining Order - Preliminary Injunction
72-303	Role of Magistrate Judge and Procedure for Resolving General Pretrial Matters in Criminal and Civil Actions
72-304	Magistrate Judges' Authority in Excepted Pretrial Matters
73-305	Procedures for the Disposition of Civil Actions on Consent of the Parties
78-230	Civil Motion Calendar and Procedure
83-182	Attorneys - Appearance and Withdrawal
83-183	Persons Appearing <u>In Propria Persona</u>

## RULE 6-136

### CALCULATION OF TIME PERIODS

**(a) Additional Time After Service.** The time period fixed by these Local Rules shall be subject to the provisions of Fed. R. Civ. P. 6(e) or Fed. R. Crim. P. 45(c), allowing, when authorized by law, additional time to do some act or take some proceeding within a prescribed period after service of a notice or other paper on the party by mail or by electronic means in accordance with Fed. R. Civ. P. 5(b) or Fed. R. Crim. P. 49. Whenever in these Local Rules a different time period is prescribed for an act depending on whether service is in person or by mail or electronic means, the Rule shall be deemed to include the time period prescribed in Fed. R. Civ. P. 6(e) and Fed. R. Crim. P. 47, and no additional time shall be allowed for service by mail or electronic means. For purposes of Fed. R. Civ. P. 5(b)(2)(A) and Fed. R. Crim. P. 49, a party may effect personal service in addition to electronic service.

**(b) Computation of Time.** The time periods fixed by these Local Rules shall be subject to the provisions of Fed. R. Civ. P. 6(a) or Fed. R. Crim. P. 45(a). References in these Local Rules to "court days" are intended to invoke the computation prescribed by Fed. R. Civ. P. 6(a) and Fed. R. Crim. P. 45(a).

**(c) Specific Time Provisions.** Pursuant to the provisions of Fed. R. Civ. P. 6(d) or Fed. R. Crim. P. 45(d), the otherwise applicable time periods fixed by those Rules have been lengthened by order of the Court as set forth in these Local Rules governing service of notices of motion, affidavits, and other documents.

**(d) Computation of Time in Court Orders.** When a court order omits to specify whether the days prescribed or allowed are court or calendar days, then the provisions of Fed. R. Civ. P. 6(a) or Fed. R. Crim. P. 45(a) shall control to determine the calculation of the days prescribed or allowed.

**RULE 6-144**

**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 thirty (30) 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 to the Court 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 will not ordinarily be 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 will be 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 7-130**

**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 11-110**

### **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 15-220**

**CHANGED PLEADINGS**

As used in this Local 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 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 prior pleadings, in order that the same may be attached to the changed pleading.

**RULE 16-281**  
**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 ten (10) court days prior to the date set by the Court for the holding of the final pretrial conference, counsel for the plaintiff shall personally serve and file a pretrial statement in the form prescribed herein. Alternatively, counsel for the plaintiff may serve by other means thirteen (13) court days and file ten (10) court days prior to the conference. Not less than five (5) court days prior to 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 five (5) court days prior to 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 processed format compatible with Word Perfect following the procedures for proposed orders. See L.R. 5-137.

**(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) above, 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 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 (anticipation) or 35 U.S.C. § 103 (obviousness).

(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) 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 prior to 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 prior to death, and 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 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 status conference order, counsel shall set forth the grounds for relief from that order and why a motion to be relieved was not made prior to 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. 16-270 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. 54-293.

**(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. 39-138(e).

**(22) 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 Local 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.

## **RULE 16-285**

### **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 ten (10) court days prior to 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 three (3) court days prior to 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 three (3) court days prior to trial.

## **RULE 30-250**

### **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 with the Clerk until there is a proceeding in which the document or proof of service is at issue. Prior to or upon the filing of a document making reference to a deposition, counsel shall comply with L.R. 5-133(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 with the Clerk in accordance with L.R. 5-133(j) and 30-250(a), or (2) one year after the judgment has become final or other final disposition of the action. Prior to such 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 33-250**

### **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.

**(c) Filing of Interrogatories.** Interrogatories, responses, and proofs of service thereof shall not be filed with the Clerk 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. If filed with the Clerk, interrogatories are governed by CM/ECF.

**RULE 34-250**

**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.

**(c) Filing of Requests for Production.** Requests for production, responses and proofs of service thereof shall not be filed with the Clerk 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. If filed with the Clerk, requests for production are governed by CM/ECF.

**RULE 36-250**  
**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.

**(c) Filing of Requests for Admission.** Requests for admission, responses, and proofs of service thereof shall not be filed with the Clerk 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. If filed with the Clerk, requests for admission are governed by CM/ECF.

**RULE 38-201**

**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. 3-200, concerning whether a jury trial is or is not demanded, shall not constitute a demand for a jury trial under these Local Rules.

## **RULE 43-142**

### **AFFIDAVITS**

**(a) Requirements.** An affidavit, see L.R. 1-101, 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. 5-133(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 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. 5-133(j).

## **RULE 47-162**

### **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 three (3) days before commencement of the trial, unless otherwise ordered, counsel shall file, and serve on all other counsel, 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 51-163**

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

**(a) Filing.** Unless the Court otherwise orders or permits, requested jury instructions in civil and criminal actions shall be filed with the Clerk 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 prior to 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 be submitted by e-mail to the appropriate e-mail address as listed on the Court's web site in word processing format compatible with Word Perfect. See L.R. 5-137(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 be filed lodged with a cover sheet.

**(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 passed along 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. 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 prior to 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 56-260

### **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 with the Clerk of all evidentiary documents cited in the moving papers. See L.R. 5-133(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 with the Clerk of all evidentiary documents cited in the opposing papers. See L.R. 5-133(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. 43-142.

**(e) Use of Depositions.** See L.R. 5-133(j).

**(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 65-231

### 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. 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. 43-142,
- (6) a proposed temporary restraining order with a provision for a bond, see L.R. 65.1-151,
- (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. 5-137, 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) court days' notice by personal service or such other notice as the Court may allow. See Fed. R. Civ. P. 65(b); L.R. 6-136.

**(d) Preliminary Injunction.**

(1) **Notice.** See L.R. 6-144, 78-230.

(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 provision for bond. See L.R. 78-230, 65.1-151.

(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.** An 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 72-303

### **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), a Magistrate Judge shall hear, conduct such evidentiary hearings as are appropriate, and determine all general pretrial matters referred in accordance with L.R. 72-302. Rulings of the Magistrate Judge shall be in writing with a statement of the reasons therefor and shall be served on all parties and filed with the Clerk.

**(b) Finality.** Rulings by Magistrate Judges shall be final if no reconsideration thereof is sought from the Court within ten (10) court days calculated from the date of service of the ruling on the parties, see Fed. R. Civ. P. 6(a), (e); Fed. R. Crim. P. 45(a), (e), 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 with the Clerk 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 five (5) court days after service of the request. See L.R. 6-136. The assigned Judge may also reconsider any matter at any time sua sponte.

**(e) Notice and Argument.** L.R. 78-230 has no application to requests for reconsideration under this Rule. No separate notice is required. 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).

## RULE 72-304

### 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 appropriate, 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. 72-302. The Magistrate Judge shall file the proposed findings and recommendations with the Clerk and shall serve all parties.

**(b) Objections.** Within ten (10) court days after service of the proposed findings and recommendations on the parties, see Fed. R. Civ. P. 6(a); Fed. R. Civ. P. 6(e); Fed. R. Crim. P. 45(a); Fed. R. Crim. P. 45(c), unless a different time is prescribed by the Court, any party may file with the Clerk, 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) Opposition.** Responses to objections shall be filed with the Clerk, and served on the Magistrate Judge and on all parties, within ten (10) court days after service of the objections. See L.R. 6-136.

**(e) Notice and Argument.** L.R. 78-230 has 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 73-305

### 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 Local 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).

## RULE 78-230

### CIVIL MOTION CALENDAR AND PROCEDURE

**(a) Motion Calendar.** Each Judge or Magistrate Judge will maintain an individual motion calendar. Information as to the times and dates for calling each motion calendar may be obtained from the Clerk.

**(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 with the Clerk 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 personal service and filing of the motion or not less than thirty-one (31) days after mailed or electronic 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. 5-135, 6-136(a).

**(c) Opposition and Non-Opposition.** Opposition, if any, to the granting of the motion shall be in writing and shall be filed with the Clerk not less than fourteen (14) days preceding the noticed (or continued) hearing date. Opposition shall be personally on opposing counsel not less than fourteen (14) days preceding the hearing date (personal service) or mailed or electronic service not less than seventeen (17) days preceding the 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. 5-135(a), 6-136(a).

**(d) Reply.** Not less than five (5) court 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 with the Clerk in the manner and on the date prescribed for the filing of opposition. In the event such 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) Calculation of Time Periods.** The time periods fixed by this Rule shall supersede the time periods for service of notices of motions, affidavits, and other documents prescribed by Fed. R. Civ. P. 6(d). See generally L.R. 6-136.

**(g) 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 five (5) court days prior to the scheduled hearing date. All stipulations for continuance shall be submitted for approval to the Court. See L.R. 83-141, 6-142.

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

**(i) 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. 43-142.

**(j) 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.

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

- (1) when and to what Judge or Magistrate Judge the prior motion was made,
- (2) what ruling, decision or order was made thereon,
- (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.

**(l) Motions Before a Magistrate Judge.** Only those motions in matters specified in L.R. 72-302 and 72-303 shall be noticed, briefed, and argued before a Magistrate Judge. All other motions shall be noticed, briefed and argued before a District Judge unless the matter is specifically referred to a Magistrate Judge pursuant to L.R. 72-302(a) or 72-303.

**(m) Motions in Prisoner Cases.** All motions, except motions to dismiss for lack of prosecution, filed in cases 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 with the Clerk by the responding party not more than eighteen (18) days, plus three (3) days for mailing or electronic service, 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 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 five (5) court days after the opposition is served, plus three (3) days for mailing or electronic service, 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. 5-135(a), 6-136(a).

## **RULE 83-182**

### **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 cases, 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. 7-131(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 three (3) court days; or (iv) by filing and serving on all parties a substitution of attorneys as provided in subsection (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(a). 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 document filed with the Clerk, see L.R. 7-131(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. 5-137(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 document filed with the Clerk or from the signature block.

**(d) Withdrawal.** Subject to the provisions of subsection (c), 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 ten (10) days from the making of said 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 attorney appearing and each party appearing in propria persona 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 party if appearing in propria persona. Absent such notice, service of documents at the prior address of the attorney or party shall be fully effective. Separate notice shall be filed with the Clerk and served on all parties in each action wherein 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 such designee.

**(i) Formal Notice of Association of Counsel.** Any attorney not substituted in as counsel of record under L.R. 83-182(g) and not authorized to participate under other provisions in this Local Rule must file a notice of association with the Clerk, signed by an attorney of record and the associating attorney, and served on all parties.

## **RULE 83-183**

### **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 and by these Local Rules. All obligations placed on "counsel" by these Local 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 (60) 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 with the Clerk. 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. 5-133.

**FILED**

NOV 20 2007

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY Yan  
DEPUTY CLERK

IN RE: )  
 )  
ADOPTION OF AMENDMENTS TO )  
LOCAL RULES OF COURT EFFECTIVE )  
DECEMBER 1, 2007 )  
 )  
GENERAL ORDER NO. 464

Good cause appearing,

IT IS HEREBY ORDERED that the amendments to the Local Rules of Court for the Eastern District of California, detailed in the attachment hereto, are hereby adopted and are effective on December 1, 2007. An amended copy of the Local Rules is available on the Court's Web Site.

DATED: November 20, 2007

FOR THE COURT:



GARLAND E. BURRELL, JR.  
Chief United States District Judge

## **Amendments to Local Rules of Court Effective December 1, 2007**

### **1. L.R. 1-101:**

**A. Consent to Service:** This definition is amended as follows to reflect the amended subdivisions of Fed. R. Civ. P. 5:

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

**B. Conventional Service:** This definition is amended as follows to reflect the amended subdivisions of Fed. R. Civ. P. 5:

"Conventional Service" is service during the course of an action accomplished by traditional means (either personal or mailing) pursuant to Fed. R. Civ. P. 5(b)(2)(A)-(C)(D) and Fed. R. Crim. P. 49.

**C. Pretrial Conference:** This definition is amended as follows to reflect the amended subdivisions of Fed. R. Civ. P. 16:

"Pretrial Conference" means the final pretrial conference as defined in Fed. R. Civ. P. 16(d)(e). See L.R. 16-282.

**D. Status Conference:** This definition is amended as follows to reflect the amended subdivisions of Fed. R. Civ. P. 16:

"Status Conference" means any pretrial, scheduling or discovery conference excepting the final pretrial conference as defined in Fed. R. Civ. P. 16(d)(e). See L.R. 16-240.

### **2. L.R. 5-133(b)(3):** This subdivision is amended as follows to correct an error in the current rule (since L.R. 83-141 does not exist):

**(3) Form of Requests.** Requests to use paper or electronic filing as exceptions from these Rules shall be submitted as stipulations as provided in L.R. 83-141 83-143 or, if a stipulation cannot be had, as written motions setting out an explanation of reasons for the exception. Points and authorities are not required, and no argument or hearing will normally be held. Requests may also be made in scheduling conference and pretrial conference statements when the need can be foreseen.

3. **L.R. 5-135(a):** This subdivision is amended as follows to reflect the amended subdivisions of Fed. R. Civ. P. 5:

**(a) Service of Electronic Documents.** "Service" as utilized in these Rules includes electronic service as set forth in the CM/ECF procedures in these Local 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. 5-135(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)(D)(E) and Fed. R. Crim. P. 49.

4. **L.R. 5-135(g)(1):** This subdivision is amended as follows to reflect the amended subdivisions of Fed. R. Civ. P. 5 and to create consistency with the other local rules:

**(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 and waiver of the right to receive service by first class mail pursuant to Fed. R. Civ. P. ~~Rule~~ 5(b)(2)(D)(E) and Fed. R. Crim. P. ~~Rule~~ 49; (2) consent to making electronic service and waiver of the right to make service by personal service or first class mail pursuant to Fed. R. Civ. P. ~~Rule~~ 5(b)(2)(D)(E). This consent pertinent to Fed. R. Civ. P. ~~Rule~~ 5 does not affect service of a summons and complaint pursuant to Fed. R. Civ. P. ~~Rule~~ 4, i.e., there is no electronic service of a complaint. Waiver of service and notice by first class mail 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.

5. **L.R. 6-136(a):** This subdivision is amended as follows to reflect the amended subdivisions of Fed. R. Civ. P. 6:

**(a) Additional Time After Service.** The time period fixed by these Local Rules shall be subject to the provisions of Fed. R. Civ. P. 6(e)(d) or Fed. R. Crim. P. 45(c), allowing, when authorized by law, additional time to do some act or take some proceeding within a prescribed period after service of a notice or other paper on the party by mail or by electronic means in accordance with Fed. R. Civ. P. 5(b) or Fed. R. Crim. P. 49. Whenever in these Local Rules a different time period is prescribed for an act depending on whether service is in person or by mail or electronic means, the Rule shall be deemed to include the time period prescribed in Fed. R. Civ. P. 6(e)(d) and Fed. R. Crim. P. 47, and no additional time shall be allowed for service by mail or electronic means. For purposes of Fed. R. Civ. P. 5(b)(2)(A) and Fed. R. Crim. P. 49, a party may effect personal service in addition to electronic service.

6. **L.R. 6-136(c):** This subdivision is amended as follows to reflect the amended subdivisions of Fed. R. Civ. P. 6:

**(c) Specific Time Provisions.** Pursuant to the provisions of Fed. R. Civ. P. 6(d)(c) or Fed. R. Crim. P. 45(d), the otherwise applicable time periods fixed by those Rules have been lengthened by order of the Court as set forth in these Local Rules governing service of notices of motion, affidavits, and other documents.
7. **L.R. 4-210(b):** This subdivision is amended as follows to distinguish the letter l from a numeral 1:

**(b) Proof of Service of Process.** If service is not waived, proof of service of process shall be made by acknowledgment of the party served or by affidavit of the person serving such process. Such proof of service shall be filed and served on all parties who have been served or who have appeared in the action as of the time of filing the proof of service, as soon as possible after service has been completed and, in any event, before any action based upon the service is requested or taken by the Court or is taken by a party in reliance on proper service. Such proof of service shall show the date, place and manner of the service. When service is made by manual delivery, it shall show the hour, the particular address or vicinity at which service was made, the name and address of the person served, and the name and address of the person making the service. See Fed. R. Civ. P. 4(d)(l).
8. **L.R. 78-230(f):** This subdivision is amended as follows to reflect the amended subdivisions of Fed. R. Civ. P. 6:

**(f) Calculation of Time Periods.** The time periods fixed by this Rule shall supersede the time periods for service of notices of motions, affidavits, and other documents prescribed by Fed. R. Civ. P. 6(d)(c). See generally L.R. 6-136.
9. **L.R. 78-230(g):** This subdivision is amended as follows to correct errors in the current rule (since L.R. 83-141 and L.R. 6-142 do not exist):

**(g) 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 five (5) court days prior to the scheduled hearing date. All stipulations for continuance shall be submitted for approval to the Court. See L.R. 83-141 83-143, 6-142, 6-144.

10. **L.R. 16-240(b):** This subdivision is amended as follows to reflect the amended subdivisions of Fed. R. Civ. P. 26:

**(b) Reports.** Except in those types of cases specifically exempted from initial disclosure by Fed. R. Civ. P. 26(a)(1)(E)(B), the parties must submit reports to the Court concerning their proposed discovery plan within 14 days after their discovery conference. The Court may require the submission of preconference reports on some or all of the foregoing subjects. See also L.R. 16-271(d)(2).
11. **L.R. 54-292(b):** This subdivision is amended as follows to reflect the amended subdivisions of Fed. R. Civ. P. 6:

**(b) Filing of Cost Bill.** Within ten (10) days after entry of judgment or order under which costs may be claimed, the prevailing party may serve on all other parties and file with the Clerk a bill of costs conforming to 28 U.S.C. § 1924. See Fed. R. Civ. P. 6(a), (e)(d). The cost bill shall itemize the costs claimed and shall be supported by a memorandum of costs and an affidavit of counsel that the costs claimed are allowable by law, are correctly stated, and were necessarily incurred. Cost bill forms shall be made available by the Clerk's Office upon request or on the Court's website.
12. **L.R. 72-303(b):** This subdivision is amended as follows to reflect the amended subdivisions of Fed. R. Civ. P. 6 and to correct an error in the current rule (since Fed. R. Crim. P. 45(e) does not exist):

**(b) Finality.** Rulings by Magistrate Judges shall be final if no reconsideration thereof is sought from the Court within ten (10) court days calculated from the date of service of the ruling on the parties, see Fed. R. Civ. P. 6(a), (e)(d); Fed. R. Crim. P. 45(a), (e)(c), unless a different time is prescribed by the Magistrate Judge or the Judge.
13. **L.R. 72-304(b):** This subdivision is amended as follows to reflect the amended subdivisions of Fed. R. Civ. P. 6 and to create consistency with L.R. 72-303(b):

**(b) Objections.** Within ten (10) court days after service of the proposed findings and recommendations on the parties, see Fed. R. Civ. P. 6(a), ;~~Fed. R. Civ. P. 6 (e)(d)~~; Fed. R. Crim. P. 45(a), ;~~Fed. R. Crim. P. 45(c)~~, unless a different time is prescribed by the Court, any party may file with the Clerk, and serve on all parties, objections to such proposed findings and/or recommendations to which objection is made and the basis for the objection.

14. **L.R. Crim 58-422(e):** This subdivision is amended as follows to correct an error in the current rule (since L.R. 6-142 does not exist):

**(e) Time for Serving and Filing Briefs.** Appellant's brief shall be served and filed within twenty-one (21) days after service of the notice of hearing. Appellee's brief shall be served and filed within twenty-one (21) days after the filing and service of the appellant's brief. See L.R. 5-135(a), 6-136(a). Appellant may serve and file a reply brief within five (5) court days after service of the appellee's brief. These periods may be altered by the assigned Judge upon application of the parties or *sua sponte*. See L.R. 6-142, 6-144.

15. **L.R. Crim 12-430(f):** This subdivision is amended as follows to correct an error in the current rule (since L.R. 6-142 does not exist):

**(f) Extensions of Time.** If a party is unable to comply with the foregoing schedule for the filing of motions, that party shall move the assigned Magistrate Judge for an extension of time specifically setting forth the basis for the requested extension. See L.R. 6-142, 6-144. Such motion shall be made as soon as practicable but, in any event, not later than the last date set by the Court for the filing of motions.

16. **L.R. Crim 17.1-430(c):** This subdivision is amended as follows to correct an error in the current rule (since L.R. 6-142 does not exist):

**(c) Shortening and Extending Time.** See L.R. 6-142, 6-144.

17. **L.R. A-540(d):** This subdivision is amended as follows to correct an error in the current rule (since L.R. 6-142 does not exist):

**(d) Motion for Default Judgment.** Upon a showing that no one has appeared to claim the property and give security, and that due notice of the action and arrest of the property has been given, a party may move for judgment at any time after the time for answer has expired. See L.R. 72-302(c)(19). If no one has appeared, the party may have an *ex parte* hearing before the Court and judgment without further notice. If any person has appeared and does not join in the motion for judgment, such person shall be given seven (7) court days notice of the motion, see L.R. 6-136; provided, however, that the Court can extend or shorten the time of the required notice on good cause. See L.R. 6-142, 6-144.