



1 A judge to whom a case is assigned may in that case, in the judge's discretion,  
2 require an attorney appearing in this court pursuant to the provisions of this rule  
3 and who maintains an office outside of this district to designate **a member of the**  
4 **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. The attorney must  
file with such designation the address, telephone number and written consent of  
such designee.

5 Civ. L. R. 83.3.c.5 (emphasis added).

6 In the case of *O'Dea v. Conagra Foods, Inc.*, Case No. 13cv3158 L (NLS), which is  
7 currently pending before the undersigned, defendant's counsel, Patrick E. Brookhouser, Jr. and  
8 the firm McGrath North Mullin & Kratz, PC LLO, applied for pro hac vice status. The pro hac  
9 vice application designated David R. Clark, The Clark Law Firm, APLC, as local counsel. The  
10 Clark Law Firm is located in Meadow Vista, CA 95722. Meadow Vista is not located in the  
11 Southern District of California. Instead, Meadow Vista is in Placer County, California and is in  
12 the Eastern District of California. 28 U.S.C. §84(b). The pro hac vice application was deficient  
13 on its face in that David R. Clark does not maintain an office within this district. Accordingly,  
14 the application was denied.

15 Attorney Clark telephoned chambers to ask for an informal reconsideration of the denial  
16 of the pro hac vice application. He was advised that any request for judicial action must be in  
17 writing. *See* Civil Local Rule 83.9: "Except as otherwise provided by law, attorneys or parties to  
18 any action or proceeding must refrain from writing letters to the judge, or otherwise  
19 communicating with the judge unless opposing counsel is present. All matters to be called to a  
20 judge's attention should be formally submitted as hereinafter provided."

21 On January 27, 2014, defendant Conagra moved for reconsideration of the Order denying  
22 the pro hac vice application. In its motion, Attorney Clark noted that he has been a continuous  
23 35-year member of the bar of this Court, and was "until recently" a partner residing in the San  
24 Diego office of Higgs, Fletcher & Mack until he relocated his practice to Northern California.  
25 (Mtn at 1.) Counsel also notes that with the availability of electronic filing and service, "it is no  
26 longer necessary for counsel to have a physical location in San Diego." (*Id.*) Although counsel  
27 believes the necessity for the designation of local counsel who maintains an office within the  
28 district is obsolete and "there is no need to have a physical office to discharge those obligations

1 in San Diego,” the Rule remains in place and compliance is expected. (*Id.* at 2.)

2 Finally in what appears to be an attempt to come within the Rule, Mr. Clark states that he  
3 “hereby agree[s] to designate a local office where he can also be reached, if necessary, at this old  
4 firm, Higgs, Fletcher & Mack at 401 West A Street, Suite 2600, San Diego, CA 92101.” (*Id.*)

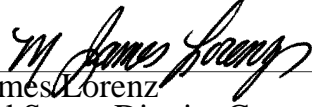
5 But the mere designation of a local office does not circumvent the requirement that local counsel  
6 “maintain[s] an office within this district.” CIV. L. R. 83.3.c.5.

7 Counsel’s improper ex parte communication with the Court, his lack of respect for  
8 compliance with the Civil Local Rules, and his apparent willingness to suggest a sham solution  
9 in order to appear as local counsel convinces the Court that Mr. Clark is not an appropriate  
10 designated local counsel.

11 Based on the foregoing, **IT IS ORDERED** denying defendant’s motion for  
12 reconsideration.

13 **IT IS SO ORDERED.**

14 DATED: January 30, 2014

15   
16 M. James Lorenz  
United States District Court Judge

17 COPY TO:

18 HON. NITA L. STORMES  
19 UNITED STATES MAGISTRATE JUDGE

20 ALL PARTIES/COUNSEL  
21  
22  
23  
24  
25  
26  
27  
28