

LOCAL RULES - CENTRAL DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**CHAPTER I
LOCAL CIVIL RULES**

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**CHAPTER I
LOCAL CIVIL RULES, INTEGRATED WITH TITLES
OF FEDERAL RULES OF CIVIL PROCEDURE**

I. SCOPE OF RULES — ONE FORM OF ACTION

F.R.CIV.P. 1. SCOPE AND PURPOSE OF RULES

L.R. 1-1 Applicability. These Local Rules apply to all civil actions and proceedings in the United States District Court for the Central District of California.

L.R. 1-2 General Orders. The Clerk shall maintain a file of General Orders of the Court which shall be available for inspection by the public during regular office hours.

L.R. 1-3 Applicability of Rules to Persons Appearing Without Attorneys. Persons appearing *pro se* are bound by these rules, and any reference in these rules to “attorney” or “counsel” applies to parties *pro se* unless the context requires otherwise.

L.R. 1-4 Definitions. Unless the context requires otherwise, as used in these Local Rules:

(a) “Court” includes the judge or magistrate judge to whom a civil or criminal action, proceeding, case or matter has been assigned;

(b) “Declaration” includes any declaration under penalty of perjury executed in conformance with 28 U.S.C. § 1746, and any properly executed affidavit;

(c) “Defendant” means any party against whom a claim for relief is made or against whom an indictment or information is pending in a criminal case;

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(d) “F.R.App.P.” means the Federal Rules of Appellate Procedure;

(e) “F.R.Civ.P.” means the Federal Rules of Civil Procedure;

(f) “F.R.Crim.P.” means the Federal Rules of Criminal Procedure;

(g) “F.R.Evid.” means the Federal Rules of Evidence;

(h) “Judge” refers to a United States District Judge or other judicial officer acting in any matter assigned to a United States District Judge;

(i) “Person” includes natural person, corporation, partnership or other association of individuals;

(j) “Plaintiff” means any party claiming affirmative relief by complaint, counterclaim or cross-claim;

Wherever applicable, each gender includes the other gender and the singular includes the plural.

F.R.CIV.P. 2. ONE FORM OF ACTION

II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

F.R.CIV.P. 3. COMMENCEMENT OF ACTION

L.R. 3-1 Civil Cover Sheet. All civil actions presented to the Clerk for filing shall be accompanied by a Civil Cover Sheet, in duplicate, completed and signed by

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the attorney or party presenting the matter. In all cases where jurisdiction is invoked in whole or in part under 28 U.S.C. § 1338 (regarding patents, plant variety protection, copyrights and trademarks), the Clerk shall also be provided at the time of filing with the original and two copies of the required notice to the Patent and Trademark Office in patent, plant variety protection and trademark matters and the original and four copies of the required notice in copyright matters. Copies of the Civil Cover Sheet and the required forms of notice to the Patent and Trademark Office are available from the Clerk.

F.R.CIV.P. 4. SUMMONS

L.R. 4-1 Summons - Presentation for Issuance. The summons shall be prepared by the attorney upon forms supplied by the Clerk.

L.R. 4-2 Summons - Service of Process - United States Marshal - Civil Cases. Except as otherwise provided by order of the Court, or when required by the treaties or statutes of the United States, process shall not be presented to the United States Marshal for service.

L.R. 4-3 Summons - Service of Process - United States Government. Civil process on behalf of the United States government or an officer or agency thereof shall be made by the United States Marshal upon request by the government.

F.R.CIV.P. 4.1. SERVICE OF OTHER PROCESS

F.R.CIV.P. 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

L.R. 5-1 Lodging Documents. “Lodge” means to deliver to the Clerk a document which is tendered to the Court but is not approved for filing, such as a proposed form of order.

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L.R. 5-2 Filing In Forma Pauperis. An action to be filed *in forma pauperis* shall be accompanied by a motion, with supporting declaration. The declaration shall set forth information sufficient to establish that the movant will be unable to pay the fees and costs or give security therefor. The Clerk shall supply forms which may be used for an application to proceed *in forma pauperis*.

L.R. 5-3 Proof of Service

L.R. 5-3.1 Form. Proof of service shall be made by declaration of the person accomplishing the service. That declaration shall include the following information:

- (a) The day and manner of service;
- (b) Each person and/or entity served;
- (c) The title of each document served; and
- (d) The method of service employed (*e.g.*, personal, mail, substituted, etc.)

L.R. 5-3.2 Proof of Service - Attachment to Document Served. If the proof or acknowledgment of service is attached to the original document, it shall be attached as the last page of the document.

L.R. 5-4 Service and Filing of Pleadings and Other Papers - Electronic Case Filings. In those categories designated by General Order of the Court, the Clerk will accept in certain actions documents filed, signed or verified by electronic means. A document filed by electronic means in compliance with this Local Rule constitutes a written document for the purposes of applying these Local Rules and the Federal Rules of Civil Procedure.

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F.R.CIV.P. 6. TIME

L.R. 6-1 Notice and Service of Motion. Unless otherwise provided by rule or order of the Court, no oral motions will be recognized and every motion shall be presented by written notice of motion. The notice of motion shall be filed with the Clerk and served on each of the parties either by deposit in the mail or by personal service. If mailed, the notice of motion shall be served not later than twenty-four (24) days before the Motion Day designated in the notice. If served personally, the notice of motion shall be served not later than twenty-one (21) days before the Motion Day designated in the notice. The notice of motion and all moving papers in support thereof shall be filed with the Clerk not less than twenty (20) days prior to the Motion Day for which the matter is noticed. The Court may order a shorter time. All motions belonging upon the Motion Day calendar shall be placed by the Clerk upon the calendar for hearing upon the day for which the motion is noticed.

III. PLEADINGS AND MOTIONS

F.R.CIV.P. 7. PLEADINGS ALLOWED; FORM OF MOTIONS

L.R. 7-1 Stipulations. Stipulations will be recognized as binding only when made in open court, on the record at a deposition, or when filed in the proceeding. Written stipulations affecting the progress of the case shall be filed with the Court, be in the form provided by L.R. 52-9, and will not be effective until approved by the judge, except as authorized by statute or the F.R.Civ.P.

L.R. 7-2 Applicability. The provisions of this rule shall apply to motions, applications, petitions, orders to show cause, and all other proceedings except a trial on the merits (all such being included within the term “motion” as used herein) unless otherwise ordered by the Court or provided by statute, the F.R.Civ.P., or the Local Rules.

L.R. 7-3 Conference of Counsel Prior to Filing of Motions. In all cases not listed as exempt in L.R. 16-11, and except in connection with discovery motions (which are governed by L.R. 37-1 through 37-4) and applications for temporary

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restraining orders or preliminary injunctions, counsel contemplating the filing of any motion shall first contact opposing counsel to discuss thoroughly, *preferably in person*, the substance of the contemplated motion and any potential resolution. If the proposed motion is one which under the F.R.Civ.P. must be filed within a specified period of time (*e.g.*, a motion to dismiss pursuant to F.R.Civ.P. 12(b), or a new trial motion pursuant to F.R.Civ.P. 59(a)), then this conference shall take place at least five (5) days prior to the last day for filing the motion; otherwise, the conference shall take place at least twenty (20) days prior to the filing of the motion. If the parties are unable to reach a resolution which eliminates the necessity for a hearing, counsel for the moving party shall include in the notice of motion a statement to the following effect:

“This motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on (date).”

L.R. 7-4 Motion Papers. The Court may decline to consider a motion unless it meets the requirements of L.R. 7-4 through 7-8. On the first page of the notice of motion and every other document filed in connection with any motion, there shall be included, under the title of the document, the date and time of the motion hearing, and the name of the judicial officer before whom the motion has been noticed. The notice of motion shall contain a concise statement of the relief or Court action the movant seeks.

L.R. 7-5 Moving Papers. There shall be served and filed with the notice of motion:

(a) A brief but complete memorandum in support thereof and the points and authorities upon which the moving party will rely; and

(b) The evidence upon which the moving party will rely in support of the motion.

L.R. 7-6 Evidence on Motions. Factual contentions involved in any motion and opposition to motions shall be presented, heard, and determined upon

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declarations and other written evidence (including documents, photographs, deposition excerpts, etc.) alone, except that the Court may, in its discretion, require or allow oral examination of any declarant or any other witness.

L.R. 7-7 Form and Content of Declarations. Declarations shall contain only factual, evidentiary matter and shall conform as far as possible to the requirements of F.R.Civ.P. 56(e).

L.R. 7-8 Presence of Declarants - Civil Cases. On motions for and orders to show cause re preliminary injunctions, motions to be relieved from default and other motions where an issue of fact is to be determined (*e.g.*, civil contempt, but excluding motions contesting venue and personal jurisdiction), not later than ten (10) calendar days prior to the hearing, a party desiring to cross-examine any declarant who is not beyond the subpoena power of the Court and who is reasonably available to the party offering the declaration may serve by hand (or facsimile) and file a notice of request to cross-examine such declarant. If the party offering the declaration disputes that the declarant is within the subpoena power of the Court and reasonably available to the offering party, such party shall serve and file an objection to the notice of request to cross-examine not later than seven (7) calendar days prior to the hearing. The offering party shall be under no obligation to produce the declarant unless the Court has granted the request to cross-examine by written order not later than three (3) calendar days prior to the hearing. No declaration of a declarant with respect to whom such a request has been granted shall be considered unless such declarant is personally present and available at the hearing for such cross-examination as the Court may permit. The Court may, in the alternative, order that the cross-examination be done by deposition taken on two (2) calendar days' notice with the transcript being lodged two (2) court days prior to the hearing. The Court may impose sanctions pursuant to these Local Rules against any party or counsel who requests the presence of any declarant without a good-faith intention to cross-examine the declarant.

L.R. 7-9 Opposing Papers. Each opposing party shall, not later than ten (10) days after service of the motion in the instance of a new trial motion and not later than fourteen (14) days before the date designated for the hearing of the motion in all other instances, serve upon all other parties and file with the Clerk either (a) the evidence upon which the opposing party will rely in opposition to the motion and a brief but complete memorandum which shall contain a statement of all the reasons in opposition thereto and the points and authorities upon which the opposing party will

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rely, or (b) a written statement that that party will not oppose the motion. Evidence presented in all opposing papers shall comply with the requirements of L.R. 7-6, 7-7 and 7-8.

L.R. 7-10 Reply Papers. A moving party may, not later than the seventh calendar date (not excluding Saturdays, Sundays, and holidays) before the date designated for the hearing of the motion, serve and file a reply memorandum, and declarations or other rebuttal evidence. Absent prior written order of the Court, the opposing party shall not file a response to the reply.

L.R. 7-11 Continuance of Hearing Date. Unless the order for continuance shall specify otherwise, the entry of an order continuing the hearing of a motion automatically extends the time for filing and serving opposing papers and reply papers to fourteen (14) days and seven (7) days, respectively, preceding the new hearing date. A stipulation to continue shall provide the date the opposition and reply papers are due to be filed with the Court.

L.R. 7-12 Failure to File Required Papers. The Court may decline to consider any memorandum or other paper not filed within the deadline set by order or local rule. The failure to file any required paper, or the failure to file it within the deadline, may be deemed consent to the granting or denial of the motion.

L.R. 7-13 Sanctions for Late Filing. A party filing any document in support of, or in opposition to, any motion noticed for hearing as above provided after the time for filing the same shall have expired, also shall be subject to the sanctions of L.R. 83-7 and the F.R.Civ.P.

L.R. 7-14 Appearances at Hearing. Counsel for the moving party and the opposing party shall be present on the hearing date and shall have such familiarity with the case as to permit informed discussion and argument of the motion. Failure of any counsel to appear, unless excused by the Court in advance pursuant to L.R. 7-15 or otherwise, may be deemed consent to a ruling upon the motion adverse to that counsel's position.

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L.R. 7-15 Oral Argument - Waiver. Counsel may, with the consent of the Court, waive oral argument. Counsel who have agreed to waive oral argument shall advise the court clerk of such agreement by no later than noon on the third court day preceding the hearing date. The court clerk shall advise the parties by no later than noon on the court day preceding the hearing date as to whether the Court has consented to the waiver of oral argument. The Court may dispense with oral argument on any motion except where an oral hearing is required by statute, the F.R.Civ.P. or these Local Rules.

L.R. 7-16 Advance Notice of Withdrawal or Non-Opposition. Any moving party who does not intend to press the motion or who intends to withdraw it before the hearing date, any opposing party who does not intend to oppose the motion, and any party who intends to move for a continuance of the hearing of a motion shall, not later than noon on the Tuesday preceding the hearing date, notify opposing counsel and the court clerk.

L.R. 7-17 Resubmission of Motions Previously Acted Upon. If any motion, application or petition has been made to any judge of this Court and has been denied in whole or in part or has been granted conditionally or on terms, any subsequent motion for the same relief in whole or in part, whether upon the same or any allegedly different state of facts, shall be presented to the same judge whenever possible. If presented to a different judge, it shall be the duty of the moving party to file and serve a declaration setting forth the material facts and circumstances as to each prior motion, including the date and judge involved in the prior motion, the ruling, decision, or order made, and the new or different facts or circumstances claimed to warrant relief and why such facts or circumstances were not shown to the judge who ruled on the motion. Any failure to comply with the foregoing requirements shall be the basis for setting aside any order made on such subsequent motion, either *sua sponte* or on motion or application, and the offending party or attorney may be subject to the sanctions provided by L.R. 83-7.

L.R. 7-18 Motion for Reconsideration. A motion for reconsideration of the decision on any motion may be made only on the grounds of (a) a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision, or (b) the emergence of new material facts or a change of law occurring after the time of such decision, or (c) a manifest

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showing of a failure to consider material facts presented to the Court before such decision. No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion.

L.R. 7-19 Ex Parte Application. An application for an ex parte order shall be accompanied by a memorandum containing, if known, the name, address and telephone number of counsel for the opposing party, the reasons for the seeking of an ex parte order, and points and authorities in support thereof. An applicant also shall lodge the proposed ex parte order.

L.R. 7-19.1 Notice of Application. It shall be the duty of the attorney so applying (a) to make a good faith effort to advise counsel for all other parties, if known, of the date, time and substance of the proposed ex parte application and (b) to advise the Court in writing of efforts to contact other counsel and whether any other counsel, after such advice, opposes the application or has requested to be present when the application is presented to the Court.

L.R. 7-19.2 Waiver of Notice. If the judge to whom the application is made finds that the interest of justice requires that the ex parte application be heard without notice (which in the instance of a TRO means that the requisite showing under F.R.Civ.P. 65(b) has been made), the judge may waive the notice requirement of L.R. 7-19.1.

L.R. 7-20 Orders on Motions and Applications. Any order lodged in connection with a motion or application must comply with L.R. 52.

F.R.CIV.P. 7.1. DISCLOSURE STATEMENT

L.R. 7.1-1 Certification as to Interested Parties. To enable the Court to evaluate possible disqualification or recusal, counsel for all parties shall file with their first appearance an original and two copies of a Notice of Interested Parties which shall list all persons, associations of persons, firms, partnerships and corporations (including parent corporations) which have a direct, pecuniary interest in the outcome of the case, including any insurance carrier which may be liable in

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whole or in part (directly or indirectly) for a judgment that may be entered in the action or for the cost of defense.

The Notice shall include the following certification:

“The undersigned, counsel of record for _____, certifies that the following listed party (or parties) has (have) a direct, pecuniary interest in the outcome of this case. These representations are made to enable the Court to evaluate possible disqualification or recusal.

(Here list the names of all such parties and identify their connection and interest.)

Signature, Attorney of Record for:”

F.R.CIV.P. 8. GENERAL RULES OF PLEADING

L.R. 8-1 Jurisdiction - Allegations. The statutory or other basis for the exercise of jurisdiction by this Court shall be plainly stated in the first paragraph of any document invoking this Court’s jurisdiction.

L.R. 8-2 Three-Judge Court - Identification in Pleading. If a party contends that the matter filed requires hearing by a court composed of three judges, the words “Three-Judge Court” shall be typed immediately below the docket number.

L.R. 8-3 Response to Initial Complaint. A stipulation extending the time within which to answer or otherwise respond to the initial complaint in an action by not more than thirty (30) days need not be approved by the judge, but shall be filed. This rule shall not apply to answers, replies or other responses to cross-claims, counterclaims, third-party complaints or any amended or supplemental pleadings.

F.R.CIV.P. 9. PLEADING SPECIAL MATTERS

F.R.CIV.P. 10. FORM OF PLEADINGS

**F.R.CIV.P. 11. SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS;
REPRESENTATIONS TO COURT; SANCTIONS**

L.R. 11-1 Signature of Counsel. All documents, except declarations, shall be signed by the attorney for the party or the party appearing *pro se*. The name of the person signing the document shall be clearly typed below the signature line.

L.R. 11-2 Facsimile Documents. Documents may not be transmitted by facsimile directly to the Clerk's office for filing. However, copies of facsimile documents shall be accepted for filing, provided that they are legible. The original of any faxed document, including the original signature of the attorney, party or declarant, shall be maintained by the filing party until the conclusion of the case, including any applicable appeal period, subject to being produced upon order of the Court.

L.R. 11-3 Documents Presented to the Court - Form and Format

L.R. 11-3.1 Legibility. All pleadings, motions, affidavits, declarations, briefs, points and authorities, and all other papers and documents, including all exhibits thereto (hereinafter collectively referred to as "documents"), presented for filing or lodging with the Clerk, shall be typewritten or printed, or prepared by a photocopying or other duplicating process that will produce clear and permanent copies equally legible to printing, in black or dark blue ink.

L.R. 11-3.1.1 Typeface. Either a proportionally spaced or a monospaced face may be used. A proportionally spaced face must be 14-point or larger, or as the Court may otherwise order. A monospaced face may not contain more than 10-1/2 characters per inch.

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L.R. 11-3.2 Paper. All documents shall be submitted on opaque, unglazed, white paper (including recycled paper) not less than 13-pound weight. The paper shall be 8 ½ x 11 inches, numbered on the left margin with not more than 28 lines per page. Only one side of the paper shall be used. The lines on each page shall be double spaced and numbered consecutively with line 1 beginning at least one inch below the top edge of the paper.

L.R. 11-3.3 Pagination. All documents shall be numbered consecutively at the bottom of each page.

L.R. 11-3.4 Original; Copies. The original of a document shall be labeled as the original and shall consist entirely of the original pages, except as otherwise allowed by these rules. All copies are to be clearly identified as such.

L.R. 11-3.5 Pre-Punching, Riders and Backing of Documents. All documents presented for filing or lodging shall be pre-punched with two (2) normal-size holes (approximately 1/4" diameter), centered 2-3/4 inches apart, 1/2 to 5/8 inches from the top edge of the document. No pages of any document shall have any rider or attachment affixed thereto. All pages shall be firmly bound at the top and backed. The backing shall extend not more than one (1) inch below the pages bound and have the short title of the document typed in the lower right hand corner.

L.R. 11-3.6 Spacing. The typing or printing on the document shall be double spaced, including citations and quotations.

L.R. 11-3.6.1 Footnotes - Exception. Footnotes may be single spaced.

L.R. 11-3.6.2 Real Property Description - Exception. The description of real property may be single spaced.

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L.R. 11-3.6.3 Corporate Surety Bonds - Exception. Printed forms of corporate surety bonds and undertakings may be single spaced and have unnumbered lines if they comply generally with the space requirements of this rule.

L.R. 11-3.7 Quotations. Quotations from cited cases or other authorities more than one sentence in length shall be clearly indented not less than 5 spaces nor more than 20 spaces.

L.R. 11-3.8 Title Page. On the first page of all documents:

(a) The name, California bar number, office address (or residence address if no office is maintained), and the telephone and facsimile numbers of the attorney or a party appearing *pro se* presenting the document shall be placed commencing with line 1 at the left margin. Immediately beneath, the party on whose behalf the document is presented shall be identified. All this information shall be single spaced. When a document is presented, the information set forth in this paragraph shall be supplied for each attorney or party appearing *pro se* who joins in the presentation of that document, and who has not previously filed a document that includes the information.

(b) The space between lines 1 and 7 to the right of the center of the page shall be left blank for use by the Clerk.

(c) The title of the Court shall be centered on or below line 8.

(d) The names of the parties shall be placed below the title of the Court and to the left of center, and single spaced. If the parties are too numerous, the names may be continued on the second or successive pages in the same space. In all documents, after the initial pleadings, the names of the first-named party only on each side shall appear.

(e) The docket number of the case shall be placed to the right of the center of the page and immediately opposite the names of the parties on the

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first page. Immediately below the docket number shall appear a concise description of the nature of the document (*e.g.*, notice of motion, memorandum in support or opposition). Immediately below the description shall appear the time and date of the hearing on the matter to which the paper is addressed.

(f) The title of a complaint or petition shall state the nature of the action or proceeding.

L.R. 11-3.9 Citations

L.R. 11-3.9.1 Acts of Congress. All citations to Acts of Congress shall include a parallel citation to the United States Code by title and section.

L.R. 11-3.9.2 Regulations. All citations to regulations shall include a citation to the Code of Federal Regulations by title and section, and the date of promulgation of the regulation.

L.R. 11-3.9.3 Cases. Initial citation of any United States Supreme Court case shall include parallel citations to United States Reports, Lawyer's Edition, and Supreme Court Reporter. Federal Reporter, Federal Supplement or Federal Rules Decisions citations shall be used where available. Initial state court citations shall include both the official reports and any regional reporter published by West Publishing Company. California parallel citations may be limited to the official reports and California Reporter.

L.R. 11-4 Copies

L.R. 11-4.1 In General. All documents, including exhibits to documents, shall be filed with one clear, conformed and legible copy for the use of the judge.

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L.R. 11-4.2 Three-Judge Court. If the matter is one that is to be heard by a three-judge court, the original and three copies shall be filed.

L.R. 11-4.3 Carbon Copies. If a copy is a carbon, it must be the first carbon and clearly legible.

L.R. 11-4.4 Conformed Copy. Copies shall be conformed to the original but need not be executed. Conformed copies shall be identical to the original in content, pagination, additions, deletions and interlineations.

L.R. 11-4.5 Request for Conformed Copy. If the party presenting a document for filing requests the Clerk to return a conformed copy by United States mail, an extra copy shall be submitted by the party for that purpose accompanied by a postage-paid, self-addressed envelope.

L.R. 11-5 Exhibits to Documents

L.R. 11-5.1 Non-Paper Physical Exhibits. Non-paper physical exhibits shall not be attached to any document. A non-paper physical exhibit shall be placed in a secure container identified by the case name and number, and the name, address and telephone number of the submitting party, and lodged with a separately filed Notice of Lodging.

L.R. 11-5.2 Numbering. Unless compliance is impracticable, a paper exhibit shall be securely fastened to the document to which it relates and shall be numbered at the bottom of each page consecutively to the principal document.

L.R. 11-5.3 Exhibit Number. The exhibit number shall be placed immediately above or below the page number on each page of the exhibit. Exhibits shall be tabbed in sequential order.

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L.R. 11-5.4 Size of Paper. Exhibits shall not exceed 8 ½ x 11 inches in size whenever practicable. Larger exhibits shall be folded in such a manner as not to exceed an 8 ½ x 11 inch sheet.

L.R. 11-5.5 Small Exhibits. An exhibit smaller than 8 ½ x 11 inches shall be attached to an 8 ½ x 11 inch sheet.

L.R. 11-6 Points and Authorities - Trial Briefs - Length. No memorandum of points and authorities, pre-trial brief, trial brief, or post-trial brief shall exceed 25 pages in length, excluding indices and exhibits, unless permitted by order of the judge.

L.R. 11-7 Appendices. Appendices shall not include any matters which properly belong in the body of the memorandum of points and authorities or pre-trial or post-trial brief.

L.R. 11-8 Table of Contents and Table of Authorities. Any memorandum of points and authorities or any brief exceeding ten (10) pages in length, excluding exhibits, shall be accompanied by an indexed table of contents setting forth the headings or subheadings contained in the body thereof, and by an indexed table of the cases, statutes, rules, and other authorities cited.

L.R. 11-9 Sanctions. The presentation to the Court of frivolous motions or opposition to motions (or the failure to comply fully with this rule) subjects the offender at the discretion of the Court to the sanctions of L.R. 83-7.

F.R.CIV.P. 12. DEFENSES AND OBJECTIONS — WHEN AND HOW PRESENTED — BY PLEADING OR MOTION — MOTION FOR JUDGMENT ON THE PLEADINGS

F.R.CIV.P. 13. COUNTERCLAIM AND CROSS-CLAIM

F.R.CIV.P. 14. THIRD-PARTY PRACTICE

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F.R.CIV.P. 15. AMENDED AND SUPPLEMENTAL PLEADINGS

L.R. 15-1 Lodging - Separate Document. An original and one copy of the proposed amended pleading shall be lodged as a separate document with any notice of motion or stipulation to amend a pleading.

L.R. 15-2 Complete Document. Every amended pleading filed as a matter of right or allowed by order of the Court shall be complete including exhibits. The amended pleading shall not refer to the prior, superseded pleading.

L.R. 15-3 Date of Service. An amended pleading allowed by order of the Court shall be deemed served upon the parties who have previously appeared on the date the motion to amend is granted or the stipulation therefor is approved. Service of amended pleadings on a party who has not previously appeared shall be made as provided in L.R. 4-1, 4-2, and 4-3.

F.R.CIV.P. 16. PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

L.R. 16-1 Applicability. All civil actions or proceedings (including Admiralty) shall be pre-tried pursuant to F.R.Civ.P. 16 unless exempted by this rule or expressly waived in whole or in part by order of the Court.

L.R. 16-2 Meeting of Counsel Before Final Pretrial Conference. At least forty (40) days in advance of the date set for the Final Pretrial Conference, counsel for the parties shall meet together in person at a convenient time and place and shall accomplish the following:

L.R. 16-2.1 Subject Matter Jurisdiction. The parties should assure themselves that this Court has jurisdiction of the subject matter. If some question of subject matter jurisdiction is raised by any party, that party shall address the jurisdictional issue by motion to be heard prior to the Final Pretrial Conference.

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L.R. 16-2.2 Stipulation of Facts. The parties shall make every effort to stipulate to facts upon which the parties know or have reason to know there can be no dispute for the purpose of simplifying the issues of fact to be tried. A stipulation to the existence of a fact does not, unless expressly stated, stipulate to its admissibility in evidence.

L.R. 16-2.3 Exchange of Exhibits. If not previously exchanged, the parties shall exchange all exhibits to be used at trial other than those contemplated to be used solely for impeachment. Exhibits shall be marked in accordance with the procedures set forth in L.R. 26-4.

L.R. 16-2.4 Witnesses. The parties shall exchange a list of names and addresses of witnesses (including expert witnesses) to be called at trial other than those contemplated to be used solely for impeachment.

L.R. 16-2.5 Expert Witnesses. The parties shall discuss the status of expert witness designations, expert witnesses, and any issues concerning experts to be raised at the Final Pretrial Conference.

L.R. 16-2.6 Evidentiary Matters. The parties shall attempt to resolve any objections to the admission of oral and documentary evidence.

L.R. 16-2.7 Depositions. Each party intending to present any evidence by way of deposition testimony shall:

(a) Identify on the original transcript to be lodged pursuant to L.R. 32-1 the testimony the party intends to offer by bracketing in the margins the questions and answers that the party intends to offer at trial. The opposing party shall likewise countermark any testimony that it plans to offer. The parties shall agree between themselves on a separate color to be used by each party which shall be consistently used by that party for all depositions marked in the case.

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(b) Each party shall mark objections to the proffered evidence in the margins of the deposition by briefly stating the ground for the objection.

Promptly after a party has marked, countermarked or objected to a deposition to be lodged with the Clerk, such party shall serve and file notice of the portions of the deposition marked or countermarked by stating the pages and lines so marked, objections made and the grounds indicated therefor.

L.R. 16-2.8 Contentions of Law and Fact. Each party shall make known to the opposing party its contentions regarding the applicable facts and law.

L.R. 16-2.9 Settlement. The parties shall exhaust all possibilities of settlement.

L.R. 16-2.10 Exchange of Graphic and Illustrative Material. If not already exchanged as a part of the exhibits in accordance with L.R. 16-2.3, the parties shall exchange copies of all graphic or illustrative material to be shown the trier of fact as illustrating the testimony of an expert or other witness at least ten days before trial. Items not so exchanged or disclosed may not be used at trial except by order of the Court on a finding of good cause for the failure to exchange or disclose.

L.R. 16-3 Memorandum of Contentions of Fact and Law. Not later than twenty-one (21) days in advance of the Final Pretrial Conference, each party shall serve and file a Memorandum of Contentions of Fact and Law containing a summary of the party's basic factual contentions supported by legal authority in the form of a legal brief. The Memorandum shall include the following parts:

L.R. 16-3.1 Factual Contentions. The Memorandum shall contain a brief but full exposition of the party's theory of the case and a statement in narrative form of what the party expects to prove. The Memorandum also shall contain the specific factual items listed in Appendix B to these Local Rules in actions involving personal injury, wrongful death, comparative or contributory negligence, contracts, and patents, and in class actions and eminent domain proceedings. In the event a case

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does not fall within any of the foregoing categories, the parties shall set forth a concise statement of their factual contentions.

L.R. 16-3.2 Legal Brief

(a) Issues of Law - The Memorandum shall include a legal brief discussing the issues of law necessary to the determination of the case.

(b) Evidentiary Problems - The legal brief shall identify and state the party's position on any anticipated evidentiary problems.

L.R. 16-3.3 Bifurcation of Issues. The Memorandum shall contain any request for bifurcation of issues together with a statement of reasons for the request.

L.R. 16-3.4 Jury Trial. The Memorandum shall state whether any issues are triable to a jury as a matter of right and, if so, whether a timely demand for jury has been made, or whether the matter will be tried to the Court (F.R.Civ.P. 38, L.R. 38-1). If less than all issues are triable to a jury, the issues triable to a jury and to the Court shall be separately listed, with appropriate citation of authorities.

L.R. 16-3.5 Attorneys' Fees. If either party claims that attorneys' fees are recoverable by the prevailing party, the Memorandum shall discuss the factual and legal basis of such claim.

L.R. 16-3.6 Abandonment of Issues. The Memorandum shall state any issues in the pleadings which have been abandoned.

L.R. 16-4 Witness List. Each party shall serve and file under separate cover, at the same time as the Memorandum of Contentions of Fact and Law, a witness list containing the information required by F.R.Civ.P. 26(a)(3)(A) and (B). An asterisk shall be placed next to the names of those witnesses whom the party may call if the need arises. The Court may choose to treat these disclosures as the disclosures under

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F.R.Civ.P. 26(a)(3) and to adopt them as part of the Final Pretrial Conference Order. Accordingly, all objections shall be stated in the witness lists.

L.R. 16-5 Exhibit List. All parties shall jointly file a single document under separate cover, at the same time as the Memorandum of Contentions of Fact and Law, setting forth a joint list of exhibits containing the information required by F.R.Civ.P. 26(a)(3)(C). The exhibits shall be listed in numerical order. When an exhibit has been identified and numbered at a deposition, the same number shall be used for that exhibit at trial. If a document has not been previously marked at a deposition as an exhibit, it shall be given the appropriate number in accordance with the requirements of L.R. 26-4. It is recognized that not all exhibits identified and marked at depositions may be offered at trial so that there may be gaps in the numerical sequence on the exhibit list. An asterisk shall be placed next to the exhibits which a party may offer if the need arises. The Court may choose to treat these disclosures as the disclosures under F.R.Civ.P. 26(a)(3) and to adopt them as part of the Final Pretrial Conference Order. Accordingly, all objections shall be separately stated and attached to the proposed Final Pretrial Conference Order.

The exhibit list shall be substantially in the form indicated by the following example:

Case Title: _____ Case No. _____

<u>No. of Exhibit</u>	<u>Description</u>	<u>Date Identified</u>	<u>Date Admitted</u>
3	1/30/80 letter from Doe to Roe		
105	\$500 check dated 2/3/82 drawn on Roe payable to Doe		
1002*	Handwritten notes dated 1/16/80		

[* An asterisk shall be placed next to the exhibits which a party may offer if the need arises.]

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At trial, an enlarged copy of an exhibit shall be submitted with a reduced sized copy; the reduced sized copy shall be the official exhibit. The enlarged copy shall be given the same number with a subdesignation (*e.g.*, Exh. 24A) and shall be returned to counsel by the clerk at the conclusion of the trial.

L.R. 16-5.1 Marking of Exhibits. Counsel shall obtain and prepare official exhibit tags to be placed on exhibits for trial. These exhibit tags may be obtained from the Clerk.

L.R. 16-6 Final Pretrial Conference Order. A Final Pretrial Conference Order shall be prepared by plaintiff's counsel and signed by all counsel. It is the duty of all counsel to cooperate with plaintiff's counsel in the preparation and submission of the Final Pretrial Conference Order as required by this rule. Failure of counsel to comply shall subject counsel to the sanctions provided by L.R. 83-7 and 28 U.S.C. § 1927.

L.R. 16-6.1 Lodging. Plaintiff shall lodge the Final Pretrial Conference Order with the Clerk seven (7) days before the date set for the Final Pretrial Conference.

L.R. 16-6.2 Form. The Final Pretrial Conference Order shall be substantially in the form shown in Pretrial Form No. 1 set forth in Appendix A to these Local Rules.

Sections 7 and 8 of the Final Pretrial Conference Order should state only *ultimate issues* of fact and law, respectively. Evidentiary issues and subsidiary issues, the resolution of which is not necessary to rendering a verdict or judgment, should not be listed.

L.R. 16-7 Final Pretrial Conference. Each party appearing at the Final Pretrial Conference shall be represented by the attorney (or the party if *pro se*) who is then contemplated to have charge of the conduct of the trial on behalf of such party. At the Final Pretrial Conference the Court will consider:

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L.R. 16-7.1 Unserved Parties. Any party not theretofore dismissed who is unserved at the time of the Final Pretrial Conference will be dismissed from the action without prejudice.

L.R. 16-7.2 Motions and Other Proceedings. All motions and other proceedings pending (except a motion for summary judgment), including motions to dismiss; for the payment of attorney's fees and costs or other penalties pursuant to F.R.Civ.P. 37; to impose personal liability upon counsel for excessive costs pursuant to 28 U.S.C. § 1927 or L.R. 83-7; and to impose such sanctions as may be appropriate for failure of any party to attend or participate in pre-trial preparation as required.

L.R. 16-7.3 Setting for Trial. The Court expects that at the Final Pretrial Conference the lead trial attorneys for the parties will then be ready to proceed to trial. Unless previously set, the trial shall be set at the earliest date permitted by the calendar of the Court.

L.R. 16-8 Continuances. No continuance shall be granted merely on the stipulation of the parties. If the Court is satisfied that counsel are preparing the case with diligence and additional time is required to comply with this rule, the Final Pretrial Conference may be continued upon submission of a timely stipulation signed by all counsel setting forth the reasons for the requested continuance. The stipulation should also set forth what has been accomplished in preparing the case for the Final Pretrial Conference. No continuance will be granted unless the stipulation has been lodged before the date upon which the Final Pretrial Conference Order must be lodged with the Court. Counsel shall inform the court clerk immediately by telephone or other expeditious means when a stipulation is to be submitted for continuance of the Final Pretrial Conference.

A motion for continuance may be noticed upon five (5) days' notice to be heard not later than the last Motion Day before the date for which the Final Pretrial Conference has been set.

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L.R. 16-9 Trial Brief. Unless the Court otherwise orders, at least seven (7) days before trial is scheduled to commence, each counsel may file and serve a trial brief which may:

- (a) Supplement the Contention Memorandum briefing by citing newly decided cases;
 - (b) Brief such legal matters as directed by the Court;
 - (c) Reply to the Contention Memorandum briefing of the other side;
- and
- (d) Set forth any anticipated evidentiary problems.

L.R. 16-10 Waiver of Pretrial. In their report to the Court pursuant to F.R.Civ.P. 26(f), the parties may advise the Court that the matter should not be subject to the pretrial procedures in L.R. 16-2 through 16-9, and may request the Court to order a waiver. The request shall contain the reasons that counsel request the waiver.

L.R. 16-10.1 Procedure on Waiver. If the Court agrees that the case should not be subject to L.R. 16-2 through 16-9, the Court shall so indicate in its scheduling order entered under F.R.Civ.P. 16(b).

L.R. 16-10.2 Preparation for Trial. When the Court has granted a waiver of L.R. 16-2 through 16-9, the lead trial attorneys for the parties shall meet thirty (30) days before the date set for commencement of the trial and each party shall file not less than fourteen (14) days before the date set for commencement of the trial:

- (a) A succinct statement of the factual and legal issues;

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(b) Unless otherwise ordered by the Court, in non-jury cases, the direct testimony of all witnesses reasonably available to the party, in declaration or narrative form, who shall be subject to cross examination at trial by the opposing party as provided in L.R. 43-1;

(c) Witness list;

(d) Exhibit list;

(e) Depositions to be used at trial marked as required by L.R. 16-2.7; and

(f) Trial brief which provides the theory of the case and statutory or precedential support for the theory together with any unusual evidentiary or legal questions which may be anticipated at trial.

L.R. 16-10.3 Waiver - Limitation. Unless otherwise ordered by the Court, waiver of L.R. 16-2 through 16-9 shall apply only to cases that are realistically estimated to consume no more than two (2) trial days.

L.R. 16-11 Exemptions. Unless otherwise required by the Court, the following categories of cases are exempted from the requirements for a scheduling order or Final Pretrial Conference under F.R.Civ.P. 16:

(a) Petitions filed under 28 U.S.C. §§ 2241 *et seq.*, or their functional equivalents;

(b) Actions for judicial review of a decision by the Commissioner of Social Security under 42 U.S.C. § 405(g);

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(c) Any case in which the plaintiff is appearing *pro se* and is not an attorney;

(d) Any case removed to this Court from the small claims division of a municipal or justice court;

(e) Appeals from the bankruptcy court;

(f) Extradition cases;

(g) Actions to enforce or quash an administrative summons or subpoena; and

(h) Actions by the United States to collect on a student loan guaranteed by the United States.

L.R. 16-12 Representation at Conferences. Each party appearing at any Scheduling or Pretrial Conference held under F.R.Civ.P. 16 shall be represented by the attorney (or the party if *pro se*) who is then contemplated to have charge of the conduct of the trial on behalf of such party.

L.R. 16-13 Modification of Scheduling Orders and Pretrial Orders. Any application to modify an order entered pursuant to F.R.Civ.P. 16 shall be made to the judicial officer who entered the order.

L.R. 16-14 Policy Re Settlement. It is the policy of the Court to encourage disposition of civil litigation by settlement when such is in the best interest of the parties. The Court favors any reasonable means to accomplish this goal. Nothing in this rule shall be construed to the contrary. The parties are urged first to discuss and to attempt to reach settlement among themselves without resort to these procedures. It is also the policy of the Court that unless an alternative settlement procedure is

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selected by the parties, the judge assigned to preside over the civil case (the trial judge) may participate in facilitating settlement.

L.R. 16-14.1 Proceedings Mandatory. Unless exempted by the trial judge, the parties in each civil case shall participate in one of the settlement procedures set forth in this rule or as otherwise approved by the trial judge.

L.R. 16-14.2 Time for Proceedings. Except as otherwise ordered by the Court, a Notice of Settlement Procedure Selection, signed by counsel for both sides, shall be filed not later than fourteen (14) days after entry of the scheduling order under F.R.Civ.P. 16(b). Unless otherwise ordered, no later than forty-five (45) days before the Final Pretrial Conference, the parties shall participate in the settlement procedures selected by the Court.

L.R. 16-14.3 Court-Ordered Proceedings. If the parties do not file a timely Notice of Settlement Procedure Selection, the trial judge may order the parties to participate in any of the settlement procedures set forth in this rule.

L.R. 16-14.4 Suggested Settlement Procedures

SETTLEMENT PROCEDURE NO. 1 - The parties shall appear before the district judge or magistrate judge assigned to the case for such settlement proceedings as the judge may conduct or direct.

SETTLEMENT PROCEDURE NO. 2 - The parties shall appear before an attorney selected from the Attorney Settlement Officer Panel or before an attorney appointed by the trial judge for settlement proceedings.

SETTLEMENT PROCEDURE NO. 3 - The parties shall participate in a non-judicial dispute resolution proceeding.

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SETTLEMENT PROCEDURE NO. 4 - With the consent of the trial judge, the parties shall appear before a district judge or magistrate judge selected at random from the Civil Settlement Panel for all further settlement proceedings.

L.R. 16-14.5 Requirements for Settlement Procedures. Regardless of the settlement procedure selected, the following requirements shall apply unless otherwise ordered by the trial judge or the settlement officer:

(a) **STATEMENT OF CASE** - The parties shall submit in writing to the settlement officer, *in camera* (but not file), a confidential settlement statement (not to exceed five (5) pages) setting forth the party's statement of the case and the party's settlement position, including the last offer or demand made by that party and a separate statement of the offer or demand the party is prepared to make at the settlement conference. This confidential settlement statement shall be delivered to the settlement officer, at least five (5) days before the date of the conference.

(b) **APPEARANCE BY PARTY** - Each party shall appear at the settlement proceeding in person or by a representative with full authority to settle the case which in the case of lawsuits brought against the United States or any of its agencies as a party, shall involve the attendance of an attorney charged with responsibility for the conduct of the case and who has final settlement authority as provided by his or her superiors. Parties residing outside the District may have a representative with final settlement authority available by telephone during the entire proceeding in lieu of personal appearance.

(c) **APPEARANCE BY LEAD TRIAL ATTORNEY** - Each party shall be represented at the settlement proceeding by the attorney who is expected to try the case, unless excused by the settlement officer.

(d) **PREPARATION BY PARTY** - Each party shall have made a thorough analysis of the case prior to the settlement proceeding and shall be fully prepared to discuss all economic and non-economic factors relevant to a full and final settlement of the case.

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L.R. 16-14.6 Optional Requirements for Settlement Procedures.

Without limitation, the settlement officer may require any of the following procedures in any settlement proceeding:

- (a) An opening statement by each counsel.
- (b) With the agreement of the parties, a “summary” or “mini-trial,” tried either to the settlement officer or to a mock jury.
- (c) Presentation of the testimony, summary of testimony or report of expert witnesses.
- (d) A closing argument by each counsel.
- (e) Any combination of the foregoing.

L.R. 16-14.7 Report of Settlement. If a settlement is reached it shall be (a) reported immediately to the trial judge’s courtroom deputy clerk; and (b) timely memorialized.

L.R. 16-14.8 Confidentiality of Proceedings. All settlement proceedings shall be confidential. No part of a settlement proceeding shall be reported, or otherwise recorded, without the consent of the parties, except for any memorialization of a settlement and the Clerk’s minutes of the proceeding.

L.R. 16-14.9 Rule Non-Exclusive. Nothing in this rule shall preclude or replace any settlement practice used by any judge or magistrate judge of the Court. The provisions of this rule are not exclusive and nothing in this rule shall preclude any judge or magistrate judge of the Court from dispensing with any provision of this rule as to any case or category of cases, as the judge, in his or her discretion, determines to be appropriate.

IV. PARTIES

F.R.CIV.P. 17. PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

F.R.CIV.P. 18. JOINDER OF CLAIMS AND REMEDIES

F.R.CIV.P. 19. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

L.R. 19-1 Fictitiously Named Parties. No complaint or petition shall be filed that includes more than ten (10) Doe or fictitiously named parties.

L.R. 19-2 Misjoinder. No complaint or petition alleging violation of copyright, patent or trademark shall contain causes of action of different owners claiming violation of different copyrights, patents or trademarks, unless the complaint or petition is accompanied by a declaration of counsel setting forth grounds showing that the interests of justice will be advanced, and a multiplicity of actions avoided, by such joinder.

F.R.CIV.P. 20. PERMISSIVE JOINDER OF PARTIES

F.R.CIV.P. 21. MISJOINDER AND NON-JOINDER OF PARTIES

F.R.CIV.P. 22. INTERPLEADER

F.R.CIV.P. 23. CLASS ACTIONS

L.R. 23-1 Caption. The title of any pleading purporting to commence a class action shall include the legend: “(Title of Pleading) Class Action.”

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L.R. 23-2 Class Allegations. Any pleading purporting to commence a class action shall contain a separate section entitled “Class Action Allegations.” The information required in L.R. 23-2.1 and 23-2.2 shall be set forth in that section.

L.R. 23-2.1 Statutory Reference. The section shall contain a reference to the portion or portions of F.R.Civ.P. 23 under which it is contended that the suit is properly maintainable as a class action.

L.R. 23-2.2 Class Action Requisites. The section shall contain appropriate allegations thought to justify the action’s proceeding as a class action, including, but not limited to:

- (a) The definition of the proposed class;
- (b) The size (or approximate size) of the proposed class;
- (c) The adequacy of representation by the representative(s) of the class;
- (d) The commonality of the questions of law and fact;
- (e) The typicality of the claims or defenses of the representative(s) of the class;
- (f) If proceeding under F.R.Civ.P. 23(b)(3), allegations to support the findings required by that subdivision; and
- (g) The nature of notice to the proposed class required and/or contemplated.

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L.R. 23-3 Certification. Within 90 days after service of a pleading purporting to commence a class action other than an action subject to the Private Securities Litigation Reform Act of 1995, P.L. 104-67, 15 U.S.C. § 772-1 *et seq.*, the proponent of the class shall file a motion for certification that the action is maintainable as a class action, unless otherwise ordered by the Court.

F.R.CIV.P. 23.1. DERIVATIVE ACTIONS BY SHAREHOLDERS

F.R.CIV.P. 23.2. ACTIONS RELATING TO UNINCORPORATED ASSOCIATIONS

F.R.CIV.P. 24. INTERVENTION

F.R.CIV.P. 25. SUBSTITUTION OF PARTIES

V. DEPOSITIONS AND DISCOVERY

F.R.CIV.P. 26. GENERAL PROVISIONS GOVERNING DISCOVERY; DUTY OF DISCLOSURE

L.R. 26-1 Conference of Parties; Report. At the conference of parties held pursuant to F.R.Civ.P. 26(f), the parties shall discuss the following matters in addition to those noted in F.R.Civ.P. 26(f):

(a) *Complex Cases.* The complexity of the case, and whether all or part of the procedures of the Manual For Complex Litigation (current edition) should be utilized. Counsel may propose to the Court modifications of the procedures in the Manual to facilitate the management of a particular action.

(b) *Motion Schedule.* The dispositive or partially dispositive motions which are likely to be made, and a cutoff date by which all such motions shall be made.

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(c) *Settlement.* The likelihood of settlement, whether settlement discussions have taken place or are scheduled, and which mandatory settlement procedure should be utilized under L.R. 16-14.

(d) *Trial Estimate.* A preliminary estimate of the time required for trial.

(e) *Additional Parties.* The likelihood of appearance of additional parties.

(f) *Expert Witnesses.* The proposed timing of disclosures under F.R.Civ.P. 26(a)(2).

In their written report required by F.R.Civ.P. 26(f), the parties shall include their views and proposals on the matters listed in this local rule.

L.R. 26-2 Discovery Documents - Filing. When a discovery request or response is required for use in a proceeding, only that part of the document which is in issue shall be filed. All such discovery documents shall be held by the attorney pending use for the period specified in L.R. 79-3 for the retention of exhibits, unless otherwise ordered by the Court. Discovery documents lodged with the Court for a motion or a trial which are not used in said motion or trial shall be returned by the clerk to the party lodging the document at the conclusion of the motion or trial.

L.R. 26-3 Exhibits in Discovery

L.R. 26-3.1 Numbering of Exhibits. Documents introduced in discovery shall be numbered sequentially. Only one exhibit number shall be assigned to any given document. Exhibits shall be numbered without regard to the identity of the party introducing the exhibits.

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If possible, each new exhibit shall be given the next available number. If it is not possible to do so (as, for example, when multiple depositions are conducted on the same day), then the parties shall break the sequence and use higher numbers to avoid duplication.

L.R. 26-3.2 Duplicate Exhibits. Any exhibit which is an exact duplicate of an exhibit previously numbered shall bear the same exhibit number regardless of which party is using the exhibit. Any version of any exhibit which is not an exact duplicate shall be marked and treated as a different exhibit bearing a different exhibit number.

L.R. 26-3.3 Inadvertent Numbering of a Duplicate Exhibit. If, through inadvertence, the same exhibit has been marked with different exhibit numbers, the parties shall assign the lowest such exhibit number to the exhibit and conform all deposition transcripts and exhibits to reflect the lowest number. The superseded number shall not be reused by the parties.

Example: If the same exhibit has been marked as 52 in the deposition of A and 125 in the depositions of B, C and/or D, the exhibit marked 125 shall be renumbered 52 and the depositions of B, C and D shall be conformed to the renumbered exhibit. Thereafter, number 125 shall not be used.

L.R. 26-3.4 Designation of Exhibit Sub-Parts. If it is necessary to identify sub-parts of a document that has been marked as an exhibit, then such sub-parts shall be designated by the number of the exhibit followed by a number designation.

Example: If a three-page contract is marked as Exhibit No. 12, the pages of the contract may be marked as Exhibits 12-1, 12-2, and 12-3; the entire document shall be referred to as Exhibit 12.

L.R. 26-3.5 Exhibits - Internal Control Numbering. In addition to exhibit numbers, documents may bear other numbers or letters used by the parties for internal control purposes.

F.R.CIV.P. 27. DEPOSITIONS BEFORE ACTION OR PENDING APPEAL

F.R.CIV.P. 28. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN

F.R.CIV.P. 29. STIPULATIONS REGARDING DISCOVERY PROCEDURE

F.R.CIV.P. 30. DEPOSITIONS UPON ORAL EXAMINATION

F.R.CIV.P. 31. DEPOSITIONS UPON WRITTEN QUESTIONS

F.R.CIV.P. 32. USE OF DEPOSITIONS IN COURT PROCEEDINGS

L.R. 32-1 Use at Trial or on a Motion. Deposition transcripts to be used at trial or on a motion shall be marked as provided in L.R. 16-2.7. The original deposition shall be lodged with the Clerk on or before the first day of a trial or at least ten (10) days before a motion unless required to be filed earlier under L.R. 16-10.2. In addition, all original depositions not so lodged shall be brought to court by the attorney in custody of the same for any trial. Any party may by notice require an original deposition to be lodged for a motion proceeding. At a trial or motion, the Court may order a lodged deposition to be filed or received in evidence, or may direct a party to prepare extracts from a deposition to be filed or received in evidence. The requirement for marking depositions shall not apply to depositions intended to be used at trial solely for impeachment.

L.R. 32-2 Original of Transcript. The original transcript of a deposition shall, unless otherwise stipulated to on the record at the deposition, after signing and correction, or waiver of the same, as provided in F.R.Civ.P. 30 (e), be sent to the attorney noticing the deposition. The said attorney shall maintain control of the original deposition until final disposition of the case or until called upon to lodge the original deposition with the Court pursuant to L.R. 32-1. A copy of a deposition signed and certified as required in F.R.Civ.P. 30(e) and (f) may be used in lieu of an original.

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F.R.CIV.P. 33. INTERROGATORIES TO PARTIES

L.R. 33-1 Numbering. Interrogatories shall be numbered sequentially without repeating the numbers used on any prior set of interrogatories propounded by that party.

L.R. 33-2 Answers and Objections. The party answering or objecting to interrogatories shall quote each interrogatory in full immediately preceding the statement of any answer or objection thereto.

L.R. 33-3 Original. The original of the interrogatories served on the opposing party shall be held by the attorney propounding the interrogatories pending use or further order of the Court.

F.R.CIV.P. 34. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

L.R. 34-1 Numbering. Requests for production shall be numbered sequentially without repeating the numbers used on any prior set of requests for production propounded by that party.

L.R. 34-2 Responses and Objections. The party responding or objecting to requests for production shall quote each request for production in full immediately preceding the statement of any response or objection thereto.

L.R. 34-3 Original. The original of the requests for production of documents or to inspect tangible things served on the opposing party shall be held by the attorney propounding the requests pending use or further order of the Court.

F.R.CIV.P. 35. PHYSICAL AND MENTAL EXAMINATIONS OF PERSONS

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F.R.CIV.P. 36. REQUESTS FOR ADMISSION

L.R. 36-1 Numbering. Requests for admissions shall be numbered sequentially without repeating the numbers used on any prior set of requests propounded by that party.

L.R. 36-2 Answers and Objections. The party answering or objecting to requests for admission shall quote each request in full immediately preceding the statement of any answer or objection thereto.

L.R. 36-3 Original. The original of the requests for admission served on the opposing party shall be held by the attorney propounding the requests pending use or further order of the Court.

F.R.CIV.P. 37. FAILURE TO MAKE DISCLOSURE OR COOPERATE IN DISCOVERY; SANCTIONS

L.R. 37-1 Pre-Filing Conference of Counsel. Prior to the filing of any motion relating to discovery pursuant to F.R.Civ.P. 26-37, counsel for the parties shall confer in a good faith effort to eliminate the necessity for hearing the motion or to eliminate as many of the disputes as possible. It shall be the responsibility of counsel for the moving party to arrange for this conference. If both counsel are located within the same county of the Central District, the conference shall take place in person at the office of the moving party's counsel, unless the parties agree to meet someplace else. If both counsel are not located within the same county of the Central District, the conference may take place telephonically. Unless relieved by written order of the Court upon good cause shown, counsel for the opposing party shall confer with counsel for the moving party within ten (10) calendar days after the moving party serves a letter requesting such conference. The moving party's letter shall identify each issue and/or discovery request in dispute, shall state briefly with respect to each such issue/request the moving party's position (and provide any legal authority which the moving party believes is dispositive of the dispute as to that issue/request), and specify the terms of the discovery order to be sought.

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L.R. 37-2 Moving Papers. If counsel are unable to settle their differences, they shall formulate a written stipulation. The stipulation shall be filed and served with the notice of motion.

L.R. 37-2.1 Form of Joint Stipulation. The stipulation must be set forth in one document signed by both counsel. The stipulation shall contain all issues in dispute and, with respect to each such issue, the contentions and points and authorities of each party. The stipulation shall not refer the Court to any other documents. For example, if the sufficiency of an answer to an interrogatory is in issue, the stipulation shall contain, verbatim, both the interrogatory and the allegedly insufficient answer, followed by each party's contentions as to that particular interrogatory, separately stated. If the allegations made in a prior filing are relevant, a copy of that prior filing should be attached as an exhibit. Exhibits to the stipulation may include declarations prepared in conformity with L.R. 7-7. The specification of the issues in dispute, and the parties' contentions and points and authorities with respect to such issues, may be preceded by an introductory statement from each party, provided that no party's introductory statement shall exceed three (3) pages in length. When a party states its contentions with respect to a particular issue, such party shall also state how it proposed to resolve the dispute over that issue at the conference of counsel.

Although the stipulation should present the disputed issues as concisely as the subject matter permits, the page limitation established by L.R. 11-6 does not apply to stipulations regarding discovery disputes. Any stipulation exceeding ten (10) pages in length, excluding exhibits, shall be accompanied by an indexed table of contents setting forth the headings or subheadings contained in the body thereof, but need not be accompanied by a table of authorities.

The title page of the stipulation must state the discovery cutoff date, the pretrial conference date, and the trial date. In addition, a copy of the order establishing the initial case schedule, as well as any amendments, must be attached to the stipulation or to a declaration filed in support of the motion.

L.R. 37-2.2 Preparation of Joint Stipulation. Following the conference of counsel, counsel for the moving party shall provide counsel for the opposing party with the moving party's portion of the stipulation. Unless the parties agree otherwise,

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counsel for the opposing party shall deliver or fax to counsel for the moving party the opposing party's portion of the stipulation within five (5) court days of receipt of the moving party's draft. After the opposing party's portion is added to the document by the moving party's counsel, the stipulation shall be provided to opposing counsel, who shall sign it and return it by hand to counsel for the moving party, no later than the end of the next business day, so that it can be filed with the notice of motion.

L.R. 37-2.3 Supplemental Memorandum. After the Joint Stipulation is filed, each party may file a supplemental memorandum of law not later than fourteen (14) days prior to the hearing date. Unless otherwise ordered by the Court, a supplemental memorandum shall not exceed five (5) pages in length. No other separate memorandum of points and authorities shall be filed by either party in connection with the motion.

L.R. 37-2.4 Failure to File Joint Stipulation. The Court will not consider any discovery motion in the absence of a joint stipulation or a declaration from counsel for the moving party establishing that opposing counsel (a) failed to confer in a timely manner in accordance with L.R. 37-1; (b) failed to provide the opposing party's portion of the joint stipulation in a timely manner in accordance with L.R. 37-2.2; or (c) refused to sign and return the joint stipulation after the opposing party's portion was added. If such declaration accompanies the motion, then L.R. 6-1, 7-9 and 7-10 apply.

L.R. 37-3 Hearing on Motion. The motion may be noticed to be heard on the particular judge's regular Motion Day which shall be not earlier than twenty-one (21) days after the filing of the motion. Unless the Court in its discretion otherwise allows, no discovery motions shall be filed or heard on an ex parte basis, absent a showing of irreparable injury or prejudice not attributable to the lack of diligence of the moving party.

L.R. 37-4 Cooperation of Counsel - Sanctions. The failure of any counsel to comply with or cooperate in the foregoing procedures may result in the imposition of sanctions.

VI. TRIALS

F.R.CIV.P. 38. JURY TRIAL OF RIGHT

L.R. 38-1 Jury Trial Demand - Included in Pleading. If the demand for jury trial is included in a pleading, it shall be set forth at the end thereof and be signed by the attorney for the party making the demand. The caption of such a pleading shall also contain the following: “DEMAND FOR JURY TRIAL.”

L.R. 38-2 Jury Trial Demand - Removed Cases Where Jury Trial Not Demanded Prior to Removal. In all such cases removed to this Court which are not at issue at the time of removal, the demand for jury trial must be filed within ten (10) days after service of the last responsive pleading addressed to an issue triable by right by a jury. If the matter already is at issue at the time of removal, the demand must be filed within ten (10) days after the filing of the notice of removal if the demand is made by the removing party, and within ten (10) days after service of filing of the notice of removal if the demand is made by a party other than the removing party.

L.R. 38-3 Jury Trial Demand - Marking Civil Cover Sheet Insufficient. Marking the Civil Cover Sheet shall not be deemed a sufficient demand to comply with F.R.Civ.P. 38(b) or L.R. 38-1 and 38-2.

L.R. 38-4 Exceptions. The provisions of L.R. 38-3 shall not prevent the use of printed forms provided by the Clerk or by the Administrative Office of the United States Courts.

F.R.CIV.P. 39. TRIAL BY JURY OR BY THE COURT

F.R.CIV.P. 40. ASSIGNMENT OF CASES FOR TRIAL

L.R. 40-1 Continuances. Any application for continuance of any trial or similar proceeding shall be served and filed at least five (5) days before the day set

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for the trial or proceeding. The application shall set forth in detail the reasons therefor.

L.R. 40-1.1 Notice of Application for Continuance. Counsel shall notify the court clerk immediately when a stipulation for the continuance of a hearing, pre-trial conference, trial or other proceeding is to be submitted for approval of the Court.

L.R. 40-1.2 Application for Continuance - Approval of the Court. No continuance (whether stipulated to by counsel or not) shall be effective unless approved in writing or announced in open court by the judge.

L.R. 40-2 Notice of Settlement. Counsel shall inform the court clerk immediately by telephone or other expeditious means when a case set for trial or other proceeding has been settled.

L.R. 40-3 Failure to Comply - Sanctions. Failure to comply with the provisions of L.R. 40-1 and 40-2 may subject counsel to the following sanctions:

- (a) Payment of costs and attorneys' fees of an opposing party;
- (b) Payment of one day's jury fees of the panel if one has been called for the trial; and
- (c) Such other sanctions as may seem proper to the Court under the circumstances.

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F.R.CIV.P. 41. DISMISSAL OF ACTIONS

L.R. 41-1 Dismissal - Unreasonable Delay. Civil suits which have been pending for an unreasonable period of time without any action having been taken therein may, after notice, be dismissed for want of prosecution.

L.R. 41-2 Dismissal - Effect. Unless the Court provides otherwise, any dismissal pursuant to L.R. 41-1 shall be without prejudice.

L.R. 41-3 Reinstatement - Sanctions. If any action dismissed pursuant to L.R. 41-1 is reinstated, the Court may impose such sanctions as it deems just and reasonable.

L.R. 41-4 Refiling of Dismissed Action. If any action dismissed pursuant to L.R. 41-1 is refiled as a new action, the party filing the later action shall comply with the requirements of L.R. 83-1.2.2.

L.R. 41-5 Dismissal - Failure to Appear. If a party, without notice to the Court, fails to appear at the noticed call of any action or proceeding, the matter is subject to dismissal for want of prosecution.

L.R. 41-6 Dismissal - Failure of Pro Se Plaintiff to Keep Court Apprised of Current Address. A party proceeding *pro se* shall keep the Court and opposing parties apprised of such party's current address and telephone number, if any. If mail directed by the Clerk to a *pro se* plaintiff's address of record is returned undelivered by the Postal Service, and if, within fifteen (15) days of the service date, such plaintiff fails to notify, in writing, the Court and opposing parties of said plaintiff's current address, the Court may dismiss the action with or without prejudice for want of prosecution.

F.R.CIV.P. 42. CONSOLIDATION; SEPARATE TRIALS

F.R.CIV.P. 43. TAKING OF TESTIMONY

L.R. 43-1 Non-Jury Trial - Narrative Statements. In any matter tried to the Court, the judge may order that the direct testimony of a witness be presented by written narrative statement subject to the witness' cross-examination at the trial. Such written, direct testimony shall be adopted by the witness orally in open court, unless such requirement is waived.

F.R.CIV.P. 44. PROOF OF OFFICIAL RECORD

F.R.CIV.P. 44.1. DETERMINATION OF FOREIGN LAW

F.R.CIV.P. 45. SUBPOENA

L.R. 45-1 Motions Relating to Discovery Subpoenas. L.R. 37 applies to motions relating to discovery subpoenas served on (a) parties and (b) non-parties represented by counsel.

F.R.CIV.P. 46. EXCEPTIONS UNNECESSARY

F.R.CIV.P. 47. SELECTION OF JURORS

F.R.CIV.P. 48. NUMBER OF JURORS — PARTICIPATION IN VERDICT

F.R.CIV.P. 49. SPECIAL VERDICTS AND INTERROGATORIES

L.R. 49-1 Request for Special Verdict or Interrogatories. Any request for a special verdict or a general verdict accompanied by answers to interrogatories shall be filed and served at least five (5) court days before trial is scheduled to commence.

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L.R. 49-2 Form - Presentation By Counsel. Special verdicts or interrogatories shall not bear any identification of the party presenting the form. Identification shall be made only on a separate page appended to the front of the special verdict or interrogatory form.

F.R.CIV.P. 50. JUDGMENT AS A MATTER OF LAW IN JURY TRIALS; ALTERNATIVE MOTION FOR NEW TRIAL; CONDITIONAL RULINGS

F.R.CIV.P. 51. INSTRUCTIONS TO JURY: OBJECTION

L.R. 51-1 Requests for Instructions. Proposed instructions shall be in writing and shall be filed and served at least five (5) court days before trial is scheduled to begin unless a different filing date is ordered by the Court. The parties jointly shall submit a single set of instructions as to which they agree. In addition, each party shall submit separately those proposed instructions as to which all parties do not agree.

L.R. 51-2 Form of Requests. Each requested instruction shall:

- (a) Be set forth in full on a separate page;
- (b) Embrace only one subject or principle of law; and
- (c) Not repeat the principle of law contained in any other request.

L.R. 51-3 Identity of Requesting Party. The identity of the party requesting the instructions shall be set forth on a cover page only and shall not be disclosed on the proposed instructions.

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L.R. 51-4 Citation of Authority. The authority for or source of each proposed instruction shall be set forth on a separate page or document and shall not be disclosed on the proposed instruction.

L.R. 51-5 Objections. Objections shall be filed and served on or before the first day of trial unless the Court permits oral objections.

L.R. 51-5.1 Separate Objections. Written objections shall be numbered and shall specify distinctly the objectionable matter in the proposed instruction. Each objection shall be accompanied by citation of authority. Where applicable, the objecting party shall submit an alternative instruction covering the subject or principle of law.

F.R.CIV.P. 52. FINDINGS BY THE COURT; JUDGMENT ON PARTIAL FINDINGS

L.R. 52-1 Non-Jury Trial - Findings of Fact and Conclusions of Law. In any matter tried to the Court without a jury requiring findings of fact and conclusions of law, counsel for each party shall lodge and serve proposed findings of fact and conclusions of law at least five (5) court days before trial.

L.R. 52-2 Other Findings of Fact and Conclusions of Law. In all other cases where findings of fact and conclusions of law are required under F.R.Civ.P. 41, 52, and 65, the attorney directed to do so by the Court shall lodge and serve proposed findings of fact within five (5) court days of the decision.

L.R. 52-3 Format

Proposed findings of fact shall:

- (a) Be in separately numbered paragraphs;

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- (b) Be in chronological order; and
- (c) Not make reference to allegations contained in pleadings.

Conclusions of law shall follow the findings of fact and:

- (a) Shall be in separately numbered paragraphs, and
- (b) May include brief citations of appropriate authority.

L.R. 52-4 Orders. Each order shall be prepared by the attorney directed to do so by the Court. The order shall comply with the requirements of L.R. 58-10. Within three (3) court days of the ruling, the attorney preparing the order shall serve it on all parties and lodge it with the Clerk.

L.R. 52-5 Signing of Orders for Absent Judges. Except as otherwise provided by F.R.Civ.P. 63, application for any order in a civil action (including cases on appeal) shall be made to the judge to whom the case is assigned. If the judge to whom the action is assigned is not available and there is an emergency necessitating an order, the judge's court clerk shall be consulted to determine whether a judge of this Court has been designated to handle matters in the absence of the assigned judge. If a designation has been made, the application shall be presented to the designated judge. If no designation has been made by the assigned judge, then the matter shall be presented to the Chief Judge, or in the Chief Judge's absence, to any other available judge. If no emergency exists, the application will be held by the assigned judge's court clerk until the assigned judge is available.

L.R. 52-6 Service of Document. The attorney whose duty it is to prepare any document required by L.R. 52-2, 52-4 or 52-5 shall serve a copy on opposing counsel on the same day that the document is lodged with the Court. Alternatively, the attorney preparing the document may present it to opposing counsel for approval as to form before the document is lodged.

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L.R. 52-7 Separate Objection. Opposing counsel may, within five (5) court days after service of a copy of a document prepared pursuant to L.R. 52-2, 52-4 or 52-5, file and serve objections to the form of the document and the grounds thereof. The failure to file timely objections shall be deemed a waiver of any defects in the form of the document.

L.R. 52-8 Endorsement of Counsel. Unless the Court otherwise directs, no document governed by L.R. 52-2, 52-4 or 52-5 will be signed by the judge unless either opposing counsel shall have endorsed thereon an approval as to form, or the time for objection has expired. If it finds the ends of justice so requires, the Court may conduct a hearing on the proper form of the document, or it may sign the document as prepared or as modified.

L.R. 52-9 Order Upon Stipulation. At the end of a stipulation of the parties to the granting of an order and following the signatures of counsel, the order shall be set forth in one of the following ways:

(a) If at least two lines of the text of the stipulation, and the signature lines of the attorneys, and the signature line for the judge, appear on the same page, then the words “IT IS SO ORDERED,” with a space below those words for the date and the signature line for the judge may be used; or,

(b) In any other instance, the “IT IS SO ORDERED” format shall not be used, and, instead, the pertinent elements of the order requested in the stipulation shall be set forth immediately above the judge’s signature line and the date, and at least two lines of the text of the order shall appear on the page that has the judge’s signature line and the date.

F.R.CIV.P. 53. MASTERS

L.R. 53-1 Appointment. Appointment of a master pursuant to F.R.Civ.P. 53 shall be made by written order of the Court.

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L.R. 53-2 Fees and Expenses. A master's fees and expenses, when approved by the Court, shall be paid as the Court orders. Those amounts are recoverable as costs under L.R. 54-4.10.

VII. JUDGMENT

F.R.CIV.P. 54. JUDGMENTS; COSTS

L.R. 54-1 In General. Unless otherwise ordered by the Court, a prevailing party shall be entitled to costs.

L.R. 54-2 Prevailing Party Defined

L.R. 54-2.1 Recovery on Complaint. The plaintiff is the prevailing party when it recovers on the entire complaint.

L.R. 54-2.2 Dismissal or Judgment in Favor of Defendant. The defendant is the prevailing party when the proceeding is terminated by court-ordered dismissal or judgment in favor of defendant.

L.R. 54-2.3 Partial Recovery. The Court shall determine the prevailing party when there is a partial recovery or a recovery by more than one party.

L.R. 54-2.4 Voluntary Dismissal. Upon request for good cause shown, the Court shall determine the prevailing party when the case is voluntarily dismissed or otherwise voluntarily terminated.

L.R. 54-3 Bill of Costs - Filing and Form - Notice. Within fifteen (15) days after entry of judgment, the party entitled to costs shall file a Notice of Application to the Clerk to Tax Costs and shall lodge a verified Bill of Costs on Form CV-59 in accordance with the instructions on said form. The Bill of Costs and the Application

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to the Clerk to Tax Costs shall be prepared as two separate documents. The Bill of Costs will be lodged when presented for filing and will be filed at the time of determination of allowable costs by the Clerk of the Court. All costs shall be specified so that the nature of the claim can be readily understood.

L.R. 54-3.1 Form of Notice. The Notice of Application to the Clerk to Tax Costs shall state the hour and date when such application will be made.

L.R. 54-3.2 Time of Application; Hearing. The date and time for taxation of costs by the Clerk shall be not less than fourteen (14) nor more than twenty-one (21) days from the date notice is given to the other parties. If no objections to the Bill of Costs are filed in compliance with L.R. 54-7, then no appearance by counsel is required. In the absence of a timely objection, any item listed may be taxed as requested in the Bill of Costs. When an objection is filed, the Clerk may determine that no hearing is required and the parties will be so notified. If a hearing is to be held, the Clerk may specify the form of the hearing and determine if telephonic appearances are appropriate.

L.R. 54-4 Items Taxable as Costs. The following items are taxable as costs:

L.R. 54-4.1 Filing Fees. The Clerk's filing fees.

L.R. 54-4.2 Fees for Service of Process. Fees for service of process (whether served by the United States Marshal or other persons authorized by F.R.Civ.P. 4) and for service of subpoenas pursuant to F.R.Civ.P. 45.

L.R. 54-4.3 United States Marshal's Fees. Fees paid to the United States Marshal, including:

- (a) Fees paid pursuant to 28 U.S.C. § 1921;

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(b) Charges connected with caring for property attached, replevied, libeled, or held pending stay or execution; and

(c) The United States Marshal's commission on collections paid to creditors. That commission shall be 1 percent of the amount up to \$1,000.00, and 1/2 of 1 percent on the amount in excess of \$1,000, but not less than \$2.50 for any collection.

L.R. 54-4.4 Clerk's Fees. Fees for certification of documents necessary for preparation for a hearing or trial.

L.R. 54-4.5 Reporter's Transcripts. The cost of the original and one copy of all or any part of a trial transcript, daily transcript or a transcript of matters occurring before or after trial, if requested by the Court or prepared pursuant to stipulation.

L.R. 54-4.6 Depositions. Costs incurred in connection with taking oral depositions, including:

(a) The cost of the original and one copy of the transcription of the oral portion of all depositions used for any purpose in connection with the case, including non-expedited transcripts, the reporter's appearance fee, fees for binding, bates stamping, non-expedited shipping and handling, processing fee, ASCII disks, production and code compliance charge, electronic transmission charge, miniscripts and witness handling charges, but not including the cost of videotaped or recorded depositions unless otherwise ordered by the Court;

(b) The reasonable fees of the deposition reporter, the notary, and any other persons required to report or transcribe the deposition, but not including the costs of video or audio technicians unless otherwise ordered by the Court;

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(c) Reasonable witness fees paid to a deponent, including fees actually paid to an expert witness deponent pursuant to F.R.Civ.P. 26(b)(4)(C). However, such fees do not include expert witness fees paid to a trial witness in excess of the statutory witness fee unless otherwise ordered by the Court;

(d) Reasonable fees paid to an interpreter when necessary to the taking of the deposition; and

(e) The cost of copying or reproducing exhibits used at the deposition and made a part of the deposition transcript.

L.R. 54-4.7 Witness Fees. Statutory witness fees paid to witnesses, including:

(a) Per diem, mileage, subsistence and attendance fees as provided in 28 U.S.C. § 1821 paid to witnesses subpoenaed and/or actually attending the proceeding;

(b) Witness fees for a party if required to attend by an opposing party; and

(c) Witness fees for officers and employees of a corporation or other entity if they are not parties in their individual capacities.

L.R. 54-4.8 Interpreter's and Translator's Fees. Fees paid to interpreters and translators, including:

(a) The salaries, fees, expenses, and costs of an interpreter as provided by 28 U.S.C. §§ 1827 and 1828; and

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(b) Fees for translation of documents received in evidence, used as part of the proceeding or when otherwise reasonably necessary to the preparation of the case.

L.R. 54-4.9 Docket Fees. Docket fees as provided by 28 U.S.C. § 1923.

L.R. 54-4.10 Masters, Commissioners and Receivers. The reasonable fees and expenses of masters, commissioners, and receivers.

L.R. 54-4.11 Certification, Exemplification and Reproduction of Documents. Document preparation costs, including:

(a) The cost of copies of an exhibit attached to a document necessarily filed and served;

(b) The cost of copies of documents admitted into evidence when the original is not available or the copy is substituted for the original at the request of an opposing party;

(c) Fees for an official certification of proof respecting the non-existence of a document or record;

(d) Patent Office charges for the patent file wrappers and prior art patents necessary to the prosecution or defense of a proceeding involving a patent;

(e) Notary fees incurred in notarizing a document when the cost of the document is taxable; and

(f) Fees for necessary certification or exemplification of any document.

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L.R. 54-4.12 Premiums on Undertakings and Bonds. Premiums paid on undertakings, bonds, security stipulations, or substitutes therefor, where required by law or Court order, or where necessary to enable a party to secure a right granted in the proceeding.

L.R. 54-4.13 Other Costs. Upon order of the Court, the following items may be taxed as costs:

(a) Summaries, computations, polls, surveys, statistical comparisons, maps, charts, diagrams, and other visual aids reasonably necessary to assist the jury or the Court in understanding the issues at the trial;

(b) Photographs, if admitted in evidence or attached to documents necessarily filed and served upon the opposing party; and

(c) The cost of models.

L.R. 54-4.14 State Court Costs. Costs incurred in state court prior to removal which are recoverable under state statutes shall be recoverable by the prevailing party in this Court.

L.R. 54-5 Costs on Appeal. An application to tax costs on appeal that are taxable in the District Court under Federal Rules of Appellate Procedure 39(e) shall be filed in the District Court no later than thirty (30) days after the date the mandate or judgment was issued by the Court of Appeals.

L.R. 54-6 Costs on a Bankruptcy Appeal to the District Court. A cost bill on a bankruptcy appeal decided in the District Court is to be filed within fifteen (15) days of the entered date of the order deciding a bankruptcy appeal. The following are taxable as costs for bankruptcy appeals decided by the District Court:

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(a) The costs of printing or otherwise reproducing briefs or excerpts of the record. A statement by counsel that the cost is no higher than generally charged for such reproduction in the local area and that no more copies than what was actually necessary were reproduced shall be required;

(b) The cost of the preparation and transmission of the record;

(c) If supersedeas or other bonds were purchased in order to preserve rights pending appeal, the premium paid for such bonds; and

(d) Any Clerk's fees which have actually been paid.

L.R. 54-7 Objections to Bill of Costs - Response. Any party may file and serve written objections to any item specified in a Bill of Costs. The grounds for objection shall be specifically stated. The objections shall be filed and served not later than seven (7) days before the date noticed for the application. In the absence of a timely objection, any item listed may be taxed as requested in the Bill of Costs. A written reply may be filed and served not later than three (3) days before the date noticed for the application.

L.R. 54-8 Clerk's Determination - Finality. After considering any objections to the Bill of Costs and any responses thereto, the Clerk shall tax costs to be included in the Judgment. The Clerk's determination shall be final unless modified by the Court upon review pursuant to L.R. 54-9.

L.R. 54-9 Review of Clerk's Determination. Review of the Clerk's taxation of costs may be obtained by a motion to retax costs filed and served within five (5) days of the Clerk's decision. That review will be limited to the record made before the Clerk, and encompass only those items specifically identified in the motion.

L.R. 54-10 Clerk's Duty. As soon as practicable after the taxation of costs becomes final, the Clerk shall insert the amount into the blank left in the judgment for that purpose, and shall enter a similar notation on the docket sheet.

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L.R. 54-11 Writ of Execution for Costs. The Clerk shall, upon request, issue a writ of execution to recover costs or attorney's fees included in the judgment:

(a) Upon presentation of a certified copy of the final judgment in the District Court; or

(b) Upon presentation of a mandate of the Court of Appeals to recover costs taxed by the appellate court.

L.R. 54-12 Filing Date for Attorneys' Fees. Any motion or application for attorneys' fees shall be served and filed within fourteen (14) days after the entry of judgment or other final order, unless otherwise ordered by the Court. Such motions and their disposition shall be governed by L.R. 7-3, *et seq.*

F.R.CIV.P. 55. DEFAULT

L.R. 55-1 Default Judgments. When application is made to the Court for a default judgment, the application shall be accompanied by a declaration in compliance with F.R.Civ.P. 55(b)(1) and/or (2) and include the following:

(a) When and against what party the default was entered;

(b) The identification of the pleading to which default was entered;

(c) Whether the defaulting party is an infant or incompetent person, and if so, whether that person is represented by a general guardian, committee, conservator or other representative;

(d) That the Soldiers' and Sailors' Civil Relief Act of 1940 (50 App. U.S.C. § 520) does not apply; and

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(e) That notice has been served on the defaulting party, if required by F.R.Civ.P. 55(b)(2).

L.R. 55-2 Default Judgment - Unliquidated Damages. If the amount claimed in a judgment by default is unliquidated, the applicant may submit evidence of the amount of damages by declarations. Notice must be given to the defaulting party of the amount requested. The party against whom judgment is sought may submit declarations in opposition.

L.R. 55-3 Default Judgment - Schedule of Attorneys' Fees. When a promissory note, contract or applicable statute provides for the recovery of reasonable attorneys' fees, those fees shall be calculated according to the following schedule:

<u>Amount of Judgment</u>	<u>Attorneys' Fees Awards</u>
\$0.01 - \$1,000	30% with a minimum of \$250.00
\$1,000.01 - \$10,000	\$300 plus 10% of the amount over \$1,000
\$10,000.01 - \$50,000	\$1200 plus 6% of the amount over \$10,000
\$50,000.01 - \$100,000	\$3600 plus 4% of the amount over \$50,000
Over \$100,000	\$5600 plus 2% of the amount over \$100,000

This schedule shall be applied to the amount of the judgment exclusive of costs. An attorney claiming a fee in excess of this schedule may file a written request at the time of entry of the default judgment to have the attorney's fee fixed by the Court. The Court shall hear the request and render judgment for such fee as the Court may deem reasonable.

F.R.CIV.P. 56. SUMMARY JUDGMENT

L.R. 56-1 Papers Required From Moving Party. There shall be served and lodged with each notice of motion for summary judgment pursuant to F.R.Civ.P. 56

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a proposed “Statement of Uncontroverted Facts and Conclusions of Law” and the proposed judgment. Such proposed statement shall set forth the material facts as to which the moving party contends there is no genuine issue.

L.R. 56-2 Statement of Genuine Issues of Material Fact by Opposing Party.

Any party who opposes the motion shall serve and file with the opposing papers a separate document containing a concise “Statement of Genuine Issues” setting forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated.

L.R. 56-3 Determination of Motion. In determining any motion for summary judgment, the Court will assume that the material facts as claimed and adequately supported by the moving party are admitted to exist without controversy except to the extent that such material facts are (a) included in the “Statement of Genuine Issues” and (b) controverted by declaration or other written evidence filed in opposition to the motion.

L.R. 56-4 Motions Under F.R.Civ.P. 56(d). This rule shall apply to motions for orders specifying material facts that appear without substantial controversy pursuant to F.R.Civ.P. 56(d), except that the proposed “Statement of Uncontroverted Facts and Conclusions of Law” and “Statement of Genuine Issues” shall be limited to the facts which the moving party asserts to be without substantial controversy and the moving party shall submit a proposed order instead of a proposed judgment.

F.R.CIV.P. 57. DECLARATORY JUDGMENTS

F.R.CIV.P. 58. ENTRY OF JUDGMENT

L.R. 58-1 Entry of Judgments and Orders. The entry of judgments and orders by the Clerk through notation in the appropriate civil docket pursuant to F.R.Civ.P. 58 and 79 shall be made at the earliest practicable time.

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L.R. 58-2 Entry of Judgments - Costs. Entry of judgment shall not be delayed pending taxation of costs to be included therein pursuant to L.R. 54. A blank space shall be left in the form of judgment for insertion of costs by the Clerk after they have been taxed.

L.R. 58-3 Entry of Judgments and Orders - Clerk's Orders and Judgments. Orders and judgments signed by the Clerk pursuant to F.R.Civ.P. 55(a) and 77(c) and L.R. 58-1 shall be noted in the civil docket. That notation shall constitute entry of the judgment or order as provided by F.R.Civ.P. 58 and 79 (a).

L.R. 58-4 Entry of Judgments and Orders - Settlement of Orders or Judgments. Entry of judgments or orders shall not be made by the Clerk until the Court has settled the form of judgment or order as provided in L.R. 52-8.

L.R. 58-5 Judgment by Clerk. Judgments may be entered by the Clerk without further direction from the judge in the following instances:

(a) Judgments on the verdict of a jury as provided in F.R.Civ.P. 58 unless the judge directs otherwise;

(b) Judgments by default as set forth in F.R.Civ.P. 55(b)(1), provided that no judgment shall be entered without a declaration that any natural person against whom it is sought is not an infant, incompetent person, or exempted under the Soldiers' and Sailors' Civil Relief Act of 1940; and

(c) Judgments on offers of judgment as set forth in F.R.Civ.P. 68.

The Clerk may require the party obtaining a judgment or order to prepare and present same.

L.R. 58-6 Entry of Judgment - Memorandum of Decision, Opinion, Minute Order. Notation in the civil docket of entry of a memorandum of decision, an opinion

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of the Court, or a minute order of the Clerk shall not constitute entry of judgment pursuant to F.R.Civ.P. 58 and 79(a) unless specifically ordered by the judge.

L.R. 58-7 Entry of Judgment - Settlement of Interest. If interest is accruing or will accrue on any judgment, decree or order, the party preparing the proposed form of judgment, decree or order shall indicate by memorandum attached thereto the applicable interest rate as computed under 28 U.S.C. § 1961(a) or 26 U.S.C. § 6621 and the amount of interest to be added for each day the document remains unsigned.

L.R. 58-8 Entry of Judgment - Award - Tax Cases. In tax cases involving overpayments or deficiencies, and in such other cases as it deems appropriate, the Court may withhold entry of judgment to permit the parties to submit, either separately or jointly by stipulation, the computation of the amount of money to be awarded in accordance with the Court's determination of the issues.

L.R. 58-9 Judgment, Order, Decree - United States a Party - Duty of Clerk. When a judgment, order or decree is entered by the Court directing any officer of the United States to perform any act, unless such officer is present in Court when the order is made, the Clerk shall forthwith transmit a copy of the judgment, order or decree to the officer ordered to perform the act.

L.R. 58-10 Signature Line for Signature of Judge. At least two lines of the text of any order or judgment shall appear on the page that has the line provided for the signature of the judge. Next to the signature line shall be the word "Dated:" with a blank left for the judge to write in the date. At least two lines above the signature line shall be left blank for the judge's signature.

L.R. 58-11 Default Judgment - Separate Document. A proposed default judgment shall be submitted as a separate document in compliance with F.R.Civ.P. 58.

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F.R.CIV.P. 59. NEW TRIALS; AMENDMENT OF JUDGMENTS

L.R. 59-1 New Trial - Procedure

L.R. 59-1.1 Specification of Ground - Error of Law. If the ground for the motion is an error of law occurring at the trial, the error shall be specifically stated.

L.R. 59-1.2 Specification of Ground - Insufficiency of Evidence. If the ground for the motion is the insufficiency of the evidence, the motion shall specify with particularity the respects in which the evidence is claimed to be insufficient.

L.R. 59-1.3 Specification of Ground - Newly Discovered Evidence. If the ground for the motion is newly discovered evidence, the motion shall be supported by a declaration by the party, or the agent of the party having personal knowledge of the facts, showing:

- (a) When the evidence was first discovered;
- (b) Why it could not with reasonable diligence have been produced at trial;
- (c) What attempts were made to discover and present the evidence at trial;
- (d) If the evidence is oral testimony, the nature of the testimony and the willingness of the witness to so testify; and
- (e) If the evidence is documentary, the documents or duly authenticated copies thereof, or satisfactory evidence of their contents where the documents are not then available.

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L.R. 59-1.4 New Trial - Hearing. The motion shall be considered upon:

- (a) The pleadings and papers on file;
- (b) The minutes of the court clerk;
- (c) The reporter's notes or transcript; and
- (d) Declarations, if the ground is other than error of law or insufficiency of the evidence and the facts or circumstances relied on do not otherwise appear in the file.

L.R. 59-1.5 New Trial - Declarations - Time for Filing. Declarations in support of a motion for a new trial shall be filed concurrently with the motion unless the Court fixes a different time.

L.R. 59-1.6 New Trial - Calendaring of Motion. The motion for a new trial shall be noticed and heard (if required by the Court) as provided in L.R. 7-3 *et seq.*

F.R.CIV.P. 60. RELIEF FROM JUDGMENT OR ORDER

F.R.CIV.P. 61. HARMLESS ERROR

F.R.CIV.P. 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

F.R.CIV.P. 63. INABILITY OF A JUDGE TO PROCEED

VIII. PROVISIONAL AND FINAL REMEDIES

F.R.CIV.P. 64. SEIZURE OF PERSON OR PROPERTY

L.R. 64-1 Issuance of Writ. All writs or other process issued for the seizure of persons or property pursuant to F.R.Civ.P. 64 shall be issued, attested, signed and sealed as required for writs issued out of this Court.

L.R. 64-2 Writs or Other Process of Seizure - Civil Cases - Execution and Return. Any writ or other process for seizure in a civil action shall only be directed to, executed and returned by the United States Marshal or by a state or local law enforcement officer authorized by state law or a private person specially appointed by the Court for that purpose. Unless otherwise relieved by the Court, an attorney for the seizing party must be available to the seizing officer at the time of the seizure.

L.R. 64-3 Process Requiring Entry Upon Premises. An order of Court requiring entry upon private premises without notice shall only be executed by the United States Marshal, a state or local law enforcement officer, or a private person specially appointed by the Court for that purpose. If process is to be executed by a private person, the private person shall be accompanied by a United States Marshal or a state or local law enforcement officer, who shall be present upon the premises during the execution of the order.

L.R. 64-4 Applications Concerning Provisional Remedies. Applications concerning provisional remedies other than injunctive relief shall be made to a magistrate judge of this Court, unless otherwise ordered.

F.R.CIV.P. 65 INJUNCTIONS

L.R. 65-1 Temporary Restraining Orders and Preliminary Injunctions. A party seeking a temporary restraining order (“TRO”) must submit an application, a proposed TRO, and a proposed order to show cause why a preliminary injunction should not issue. If the TRO is denied, the Court may set the hearing on the order to

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show cause without regard to the twenty-one (21) days notice of motion requirement of L.R. 6-1.

When a TRO is not sought, an application for a preliminary injunction shall be made by notice of motion and not by order to show cause.

L.R. 65-2 Approval of Bonds, Undertakings and Stipulations of Security.

The Clerk is authorized to approve on behalf of the Court all bonds, undertakings and stipulations of security given in the form and amount prescribed by statute, order of the Court or stipulation of counsel, which comply with the requirements of L.R. 65-3, and contain a certificate by an attorney pursuant to L.R. 65-5, except where the approval of a judge is specifically required by law.

L.R. 65-3 Bonds or Undertakings - Sureties - Qualifications. No bond or undertaking requiring third-party sureties will be approved unless it bears the names and addresses of third-party sureties and is accompanied by a declaration by the surety stating that:

- (a) The surety is a resident of the State of California;
- (b) The surety who intends to deed real property as security owns the real property within the State of California;
- (c) The security posted by the surety is worth the amount specified in the bond or undertaking, over and above just debts and liabilities; and
- (d) The property, real or personal, which is to be conveyed as security, is not exempt from execution and prejudgment attachment.

If specifically approved by the Court, real property in any other state of the United States may be part of the surety's undertaking.

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(f) The attorney has determined whether the bond or undertaking is required by law to be approved by a judge.

L.R. 65-7 Bonds or Undertakings - Approval of Judge. If a bond or undertaking is required by law to be approved by a judge, it shall be presented to the judge with the attorney's certificate required by L.R. 65-5 before it is filed by the Clerk.

L.R. 65-8 Bonds or Undertakings - Summary Adjudication of Obligation and Execution - Proceeding. An indemnitee or party in interest seeking a judgment on a bond or undertaking shall proceed by Motion for Summary Adjudication of Obligation and Execution. Service of the motion on personal sureties shall be made pursuant to F.R.Civ.P.5(b). Service shall be made on a corporate surety as provided in 31 U.S.C. § 9306.

L.R. 65-9 Bonds or Undertakings - Surety - Court Officer. No clerk, deputy clerk, marshal, magistrate judge, judge, attorney, or other officer of this Court will be accepted as surety upon any bond or undertaking in any action or proceeding in this Court.

L.R. 65-10 Bonds or Undertakings - Cash Deposit. In any civil proceeding, a cashier's check may be deposited with the Clerk in lieu of any bond or undertaking requiring a personal or corporate surety. Such deposit shall be subject to all of the provisions of L.R. 65-2 *et seq.* and the F.R.Civ.P. applicable to bonds and undertakings.

F.R.CIV.P. 65.1. SECURITY: PROCEEDINGS AGAINST SURETIES

F.R.CIV.P. 66. RECEIVERS APPOINTED BY FEDERAL COURTS

L.R. 66-1 Temporary Receiver. Upon good cause shown by verified pleadings or declaration, the Court may in its discretion appoint a temporary receiver without notice to creditors.

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L.R. 66-2 Temporary Receiver - Term of Appointment. A temporary receiver shall not be appointed for a period longer than the next Motion Day following the expiration of twenty (20) days after the date of appointment.

L.R. 66-3 Permanent Receiver - Order to Show Cause. Concurrently with appointment of a temporary receiver, the Court shall issue an order to show cause requiring the parties and the creditors of the defendant to show cause why a permanent receiver should not be appointed.

L.R. 66-4 Permanent Receiver - Notice. A copy of the Court's order to show cause why a permanent receiver should not be appointed shall be served on the defendant, any other parties to the action, and all known creditors of the defendant by the person requesting appointment of a receiver.

L.R. 66-4.1 Notice - Change of Form. The Court may in its discretion, prescribe a different form of notice, other persons upon whom the notice shall be served, and the time for and manner of service.

L.R. 66-5 Schedule of Creditors. A schedule of names, addresses and amounts of claims of all known creditors of the defendant shall be filed by the temporary receiver within five (5) days after appointment of a permanent receiver. If no temporary receiver has been appointed, the defendant shall file that schedule within the same time.

L.R. 66-5.1 Known Creditors - Defined. Known creditors shall mean those creditors who are listed as such in the records or books of account of the person or entity for which a receiver is appointed.

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L.R. 66-6 Permanent Receivers - Reports

L.R. 66-6.1 Report Required. Within six months of appointment, and semi-annually thereafter, the receiver shall serve and file with the Court a report showing:

- (a) The receipts and expenditures of the receivership; and
- (b) All acts and transactions performed in the receivership.

L.R. 66-7 Permanent Receivers - Notice of Hearing. The receiver shall give notice by mail to all parties to the action and to all known creditors of the defendant of the time and place for hearing of:

- (a) Petitions for the payment of dividends to creditors;
- (b) Petitions for the confirmation of sales of real property and personal property;
- (c) Reports of the receiver;
- (d) Applications for instructions concerning administration of the estate;
- (e) Applications for discharge of the receiver; and
- (f) Applications for fees and expenses of the receiver, the attorney for the receiver and any other person appointed to aid the receiver.

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The provisions of L.R. 6-1 shall apply to such notice.

L.R. 66-8 Permanent and Temporary Receivers - Administration of Estate.

Except as otherwise ordered by the Court, a receiver shall administer the estate as nearly as possible in accordance with the practice in the administration of estates in bankruptcy.

L.R. 66-8.1 Permanent Receivers - Attorney - Records. A receiver, the attorney for the receiver, and such other persons appointed by the Court or employed by the receiver to aid the receivership, shall keep an itemized record of time spent and services rendered.

L.R. 66-8.2 Failure to Maintain Itemized Record. Failure to maintain the itemized records required by L.R. 66-8.1 may be grounds for denying reimbursement or compensation.

F.R.CIV.P. 67. DEPOSIT IN COURT

L.R. 67-1 Order of Deposit - Service on the Clerk. For purposes of F.R.Civ.P. 67, service on the Clerk of Court of an order for deposit to an interest-bearing account means personal service on the Clerk, Chief Deputy Clerk, Finance Director or Fiscal Operations Officer.

L.R. 67-2 Registry Fee on Funds Deposited. Whenever money is deposited into Court and is deposited by the Clerk into an interest-bearing account, by order of the Court or otherwise, the Clerk is authorized and directed by this rule to deduct from the income earned on the investment a registry fee not to exceed the amount prescribed by the Judicial Conference of the United States.

F.R.CIV.P. 68. OFFER OF JUDGMENT

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F.R.CIV.P. 69. EXECUTION

L.R. 69-1 Writs and Examinations. A motion concerning execution of a judgment shall be made to the assigned District Judge, unless the motion relates to the scheduling and conducting of judgment debtor and third party examinations pursuant to CAL. CIV. PROC. CODE §§ 708.110 *et seq.* or other post-judgment discovery, in which case the motion shall be made to the assigned Magistrate Judge.

F.R.CIV.P. 70. JUDGMENT FOR SPECIFIC ACTS; VESTING TITLE

F.R.CIV.P. 71. PROCESS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES

IX. SPECIAL PROCEEDINGS

F.R.CIV.P. 71A. CONDEMNATION OF PROPERTY

F.R.CIV.P. 72. MAGISTRATE JUDGES; PRETRIAL ORDERS

L.R. 72-1 Duties and Functions of Magistrate Judges. United States Magistrate Judges of this Court are authorized to perform all of the duties and functions prescribed and authorized by 28 U.S.C. § 636, or any other statutes or Federal Rules of Procedure which authorize Magistrate Judges to perform judicial duties or functions, as set forth in General Order No. 01-13, or any successor General Order. Magistrate Judges shall have the inherent power of judicial officers to implement and enforce their own orders and to regulate proceedings before them, to the extent permitted by law.

L.R. 72-2 Nondispositive Rulings on Pretrial Matters

L.R. 72-2.1 Motions for Review of Nondispositive Rulings. Any party objecting under F.R.Civ.P. 72(a) to a Magistrate Judge's ruling on a pretrial matter

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not dispositive of a claim or defense must file a motion for review by the assigned District Judge, designating the specific portions of the ruling objected to and stating the grounds for the objection. Such motion shall be filed within ten (10) days of an oral ruling which the Magistrate Judge indicates will not be followed by a written ruling, or within ten (10) days of service of a written ruling.

L.R. 72-2.2 Effectiveness of Magistrate Judge's Ruling Pending Review. Regardless of whether a motion for review has been filed, the Magistrate Judge's ruling remains in effect unless the ruling is stayed or modified by the Magistrate Judge or the District Judge.

L.R. 72-3 Dispositive Motions and Prisoner Petitions

L.R. 72-3.1 Duties of Magistrate Judge. Upon the assignment of a case covered by F.R.Civ.P. 72, the Magistrate Judge shall conduct all necessary proceedings. Pursuant to Rule 10 of the Rules Governing Section 2254 Cases in the United States District Courts, the duties imposed upon a Judge of the District Court may be performed by a full-time Magistrate Judge (except in death penalty cases).

L.R. 72-3.2 Summary Dismissal of Habeas Corpus Petition. The Magistrate Judge promptly shall examine a petition for writ of habeas corpus, and if it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief, the Magistrate Judge may prepare a proposed order for summary dismissal and submit it and a proposed judgment to the District Judge.

L.R. 72-3.3 Report by Magistrate Judge. In habeas cases that are not summarily dismissed, and in all other matters covered by F.R.Civ.P. 72(b) that the Magistrate Judge determines can be resolved without trial, the Magistrate Judge shall file a report which may contain proposed findings of fact, conclusions of law and recommendations for disposition. If the Magistrate Judge concludes that a trial by a District Judge is required, the Magistrate Judge shall so report to the District Judge.

L.R. 72-3.4 Objections to Report Where Party In Custody. If a party is in custody at the time of the filing of the Magistrate Judge's report, the time for

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filing objections allowed under F.R.Civ.P. 72(b) shall be twenty (20) days or such further time as the Magistrate Judge may order.

L.R. 72-3.5 Determination of Objections by District Judge. If no objections are filed within the time allowed, the Magistrate Judge shall submit the matter to the District Judge on the basis of the original report. If objections are timely filed, the Magistrate Judge may issue a revised or supplemental report or submit the matter to the District Judge on the basis of the original report.

L.R. 72-3.6 Filing of Transcript. If an evidentiary hearing was conducted by the Magistrate Judge, the party objecting shall obtain and file a certified transcript of the hearing or pertinent part thereof. Upon application, the Magistrate Judge may extend the time to file the transcript.

L.R. 72-4 Post-Judgment Matters. Following entry of judgment, all motions or other matters not covered by L.R. 69-1 shall be considered and determined by the District Judge.

L.R. 72-5 Motion To Disqualify Magistrate Judge. A motion to disqualify a Magistrate Judge pursuant to 28 U.S.C. §§ 144 or 455 shall be made to the assigned District Judge. If no District Judge has been assigned, the matter shall be handled by the appropriate duty District Judge. A copy of the motion shall be submitted to the assigned Magistrate Judge, and the Magistrate Judge shall not proceed with the matter until the motion has been determined. If the District Judge denies the motion, the case shall proceed as originally assigned. If the District Judge grants the motion, the case shall be returned to the Clerk for assignment to a different Magistrate Judge.

F.R.CIV.P. 73. MAGISTRATE JUDGES; TRIAL BY CONSENT AND APPEAL OPTIONS

L.R. 73-1 Authorization. Any full-time Magistrate Judge may exercise the authority provided by Title 28, U.S.C. § 636(c), and may conduct any or all proceedings, including a jury or non-jury trial, in a civil case.

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L.R. 73-2 Notice. The Clerk shall notify the parties in all civil cases that they may consent to have a Magistrate Judge conduct all further proceedings in the case, including the entry of a judgment. The notice shall advise the parties that, in any case which already has been assigned to a Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and these Local Rules, the parties may consent to proceed only before the assigned Magistrate Judge; and that, in all other cases, they may consent to proceed before any Magistrate Judge whose name appears on a list maintained by the Clerk of those Magistrate Judges currently available for consent cases. The notice shall be given by the Clerk to the plaintiff at the time an action is filed and by the plaintiff to other parties as attachments to copies of the complaint and summonses, when served. Additional notices may be furnished to the parties at later stages of the proceedings.

L.R. 73-3 Execution of Consent Form. If the parties agree to a magistrate judge's exercise of civil jurisdiction over a case, they shall execute and file a joint form of consent or separate forms of consent setting forth such election. If the parties decide to use a joint form, the plaintiff, or the defendant, if the plaintiff is acting *pro se*, shall be primarily responsible for securing the execution of the form by the parties and for filing such form with the Clerk. However, either party may procure the form. No consent form will be made available to a District Judge or Magistrate Judge, nor will its contents be made known to any District Judge or Magistrate Judge, unless all parties have consented to proceed before a Magistrate Judge.

L.R. 73-4 Filing of Consent. Unless the consent is filed at least thirty (30) days prior to the date of the Final Pretrial Conference, it may be filed only with the pre-approval of the District Judge assigned to the case. Once the consent to proceed before a Magistrate Judge has been filed, the Magistrate Judge shall have the authority to conduct any and all proceedings and to direct the Clerk to enter a judgment in the same manner as if a District Judge had presided.

L.R. 73-5 Notification of Consent. Upon the filing of the consent, the Clerk shall immediately notify the parties and the Magistrate Judge of the consent, and shall transmit the file to the Magistrate Judge.

F.R.CIV.P. 74. [ABROGATED]

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F.R.CIV.P. 75. [ABROGATED]

F.R.CIV.P. 76. [ABROGATED]

X. DISTRICT COURTS AND CLERKS

F.R.CIV.P. 77. DISTRICT COURTS AND CLERKS

L.R. 77-1 Procedures for Emergency Matters. If an emergency arises after normal business hours and requires judicial action prior to the next business day, counsel shall call the emergency telephone number of the U.S. Marshal, (213) 894-2485. The Marshal shall notify the Clerk, who shall contact counsel promptly concerning further proceedings. Any action commenced as an emergency under this rule shall be assigned as provided in L.R. 83-1. Failure to follow these emergency procedures or abuse thereof may result in sanctions.

F.R.CIV.P. 78. MOTION DAY

L.R. 78-1 Motion Days. Each Monday, commencing at 10:00 a.m., shall be “Motion Day” on which motions will be heard unless set for another day or hour by order of the Court. If Monday is a national holiday, any motion noticed for that day shall be considered noticed for the next succeeding motion calendar of the judge before whom the motion is calendared without special order or further notice.

F.R.CIV.P. 79. BOOKS AND RECORDS KEPT BY THE CLERK AND ENTRIES THEREIN

L.R. 79-1 Clerk’s Office - Removal of Records and Files. No records or objects belonging in the files of the Court may be taken from the office or custody of the Clerk except upon written order of the Court.

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L.R. 79-2 Receipt for Removal. Any person removing records pursuant to L.R. 79-1 shall give the Clerk a descriptive receipt using the form prescribed by the Clerk.

L.R. 79-2.1 Clerk's Office - Removal of Records and Files - Court Officers. The provisions of L.R. 79-1 shall not apply to a judge, master, examiner employed by the United States, United States Magistrate Judge, a judge's law clerk, court reporter, or court clerk requiring records or objects in the exercise of official duty. Any court officer removing records or objects shall provide the Clerk with a receipt as required in L.R. 79-2.

L.R. 79-3 Clerk's Office - Disposition of Exhibits - Civil Cases. All models, diagrams, documents or other exhibits lodged with the Clerk or admitted into evidence or marked at trial shall be retained by counsel of record until expiration of the time for appeal where no appeal is taken, entry of stipulation waiving or abandoning the right to appeal, final disposition of the appeal, or order of the Court, whichever occurs first.

L.R. 79-4 Clerk's Office - Removal of Contraband. Contraband of any kind coming into the possession of the Clerk shall be returned to an appropriate governmental agency. The agency shall give the Clerk the receipt required by L.R. 79-2. The agency shall be responsible for the contraband until expiration of the time for appeal, where no appeal is taken, entry of stipulation waiving or abandoning the right to appeal, final disposition of the appeal, or order of the Court, whichever occurs first.

L.R. 79-5 Confidential Court Records

L.R. 79-5.1 Filing Under Seal - Procedures. Except when authorized by statute or federal rule, no case or document shall be filed under seal without prior approval by the Court. Where approval is required, a written application and a proposed order shall be presented to the judge along with the document submitted for filing under seal. The proposed order shall address both the sealing of the application and order itself, if appropriate. The original and judge's copy of the document shall be sealed in separate envelopes with a copy of the title page attached to the front of

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each envelope. Conformed copies need not be placed in sealed envelopes. Where under-seal filings are authorized by statute or rule, the authority therefor shall appear on the title page of the proposed filing.

L.R. 79-5.2 Confidential Court Records - Disclosure. No sealed or confidential record of the Court maintained by the Clerk shall be disclosed except upon written order of the Court.

L.R. 79-5.3 Procedure for Disclosure of Confidential Court Records. An application for disclosure of sealed or confidential court records shall be made to the Court in writing and filed by the person seeking disclosure. The application shall set forth with particularity the need for specific information in such records. The procedures of L.R. 7-3 *et seq.* shall govern the hearing of any such application.

F.R.CIV.P. 80. STENOGRAPHER; STENOGRAPHIC REPORT OR TRANSCRIPT AS EVIDENCE

XI. GENERAL PROVISIONS

F.R.CIV.P. 81. APPLICABILITY IN GENERAL

F.R.CIV.P. 82. JURISDICTION AND VENUE UNAFFECTED

F.R.CIV.P. 83. RULES BY DISTRICT COURTS; JUDGE'S DIRECTIVES

L.R. 83-1 Assignment of Cases - Notice of Related Cases in Central District, Other Actions, or Petitions to Multidistrict Panel

L.R. 83-1.1 Assignment of Cases. Civil actions shall be assigned when commenced to individual judges and magistrate judges of this Court in the manner provided by General Order.

L.R. 83-1.2 Refiling of Actions

L.R. 83-1.2.1 Improper Refiling of Actions. It is not permissible to dismiss and thereafter refile an action for the purpose of obtaining a different judge.

L.R. 83-1.2.2 Duty on Refiling of Actions. Whenever an action is dismissed by a party or by the Court before judgment and thereafter the same or essentially the same claims, involving the same or essentially the same parties, are alleged in another action, the later-filed action shall be assigned to the judge to whom the first-filed action was assigned. It shall be the duty of every attorney in any such later-filed action to bring those facts to the attention of the Court in the Civil Cover Sheet and by the filing of a Notice of Related Case(s) pursuant to L.R. 83-1.3.

L.R. 83-1.3 Notice of Related Cases

L.R. 83-1.3.1 Notice. At the time a civil action (including a notice of removal or bankruptcy appeal) is filed, or as soon as known thereafter, the attorney shall file and serve on all parties who have appeared a Notice of Related Case(s), stating whether any action previously filed or currently pending in the Central District and the action being filed appear:

(a) To arise from the same or substantially identical transactions, happenings or events; or

(b) To involve the same patent, trademark or copyright, except where in one or both actions the same patent, trademark or copyright is joined with other patents, trademarks or copyrights which do not cover the same or substantially identical subject matter; or

(c) To call for determination of the same or substantially identical questions of law and fact; or

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(d) Likely for other reasons to entail substantial duplication of labor if heard by different judges.

The Notice of Related Case(s) shall also include a brief factual statement setting forth the basis for the attorney's belief that the action qualifies for related case transfer.

The Notice of Related Case also shall be served concurrently with service of the complaint.

L.R. 83-1.3.2 Opposition. Any party opposing a related case transfer may, within five (5) days of the service of a notice of Related Case(s) on that party, or first appearance, file and serve a short counter-statement setting forth the reasons the action does not qualify for related case transfer.

L.R. 83-1.3.3 Continuing Duty. It shall be the continuing duty of the attorney in any case promptly to bring to the attention of the Court, by the filing of a Notice of Related Case(s) pursuant to L.R. 83-1.3, all facts which in the opinion of the attorney or party appear relevant to a determination whether such action and one or more pending actions should, under the criteria and procedures set forth in L.R. 83-1.3, be heard by the same judge.

L.R. 83-1.4 Notice of Pendency of Other Actions or Proceedings

L.R. 83-1.4.1 Notice. Whenever a civil action filed in or removed to this Court involves all or a material part of the subject matter of an action then pending before the United States Court of Appeals, Bankruptcy Appellate Panel, Bankruptcy Court or any other federal or state court or administrative agency, the attorney shall file a "Notice of Pendency of Other Actions or Proceedings" with the original complaint or petition filed in this Court. The duty imposed by L.R. 83-1.4 continues throughout the time an action is before this Court.

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L.R. 83-1.4.2 Notice - Contents. The Notice of Pendency of Other Actions or Proceedings shall contain:

(a) A description sufficient to identify all other actions or proceedings;

(b) The title of the court or administrative body in which the other actions or proceedings are pending;

(c) The names of the parties or participants in such other actions or proceedings;

(d) The names, addresses and telephone numbers of the attorneys in such other actions or proceedings; and

(e) A brief factual statement setting forth the basis for the attorney's belief that the action involves all or a material part of the subject matter of such other actions or proceedings.

L.R. 83-1.4.3 Notice of Petition to the Judicial Panel on Multidistrict Litigation - Duty of Counsel. The attorney shall comply with L.R. 83-1.4 promptly upon learning that an action or proceeding filed in this Court is the subject of or is related to an action which is before the Judicial Panel on Multidistrict Litigation, or which has been transferred by it pursuant to 28 U.S.C. § 1407.

L.R. 83-2 Attorneys - Admission, Substitution and Withdrawal, Communications With Court

L.R. 83-2.1 Appearance Before the Court. An appearance before the Court on behalf of another party or a class may be made only by an attorney admitted to the Bar of or permitted to practice before this Court.

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L.R. 83-2.2 Admission to Practice

L.R. 83-2.2.1 In General. Admission to and continuing membership in the Bar of this Court is limited to persons of good moral character who are active members in good standing of the State Bar of California.

L.R. 83-2.2.2 Familiarity with Federal Rules. An applicant (including a *pro hac vice* applicant) for admission to practice before this Court shall certify the applicant's familiarity with the Local Rules, the Local Criminal Rules, the F.R.Civ.P., the F.R.Crim.P., and the F.R.Evid.

L.R. 83-2.3 Pro Hac Vice Appearance

L.R. 83-2.3.1 Permission to Appear Pro Hac Vice. Any person who is not otherwise eligible for admission to practice before this Court, but who is a member in good standing of, and eligible to practice before, the bar of any United States Court, or of the highest court of any State, Territory or Insular Possession of the United States, who is of good moral character, and who has been retained to appear before this Court, may, upon written application and in the discretion of the Court, be permitted to appear and participate *pro hac vice* in a particular case.

L.R. 83-2.3.2 Disqualification from Pro Hac Vice Appearance. Unless authorized by the Constitution of the United States or Acts of Congress, an applicant is not eligible for permission to practice *pro hac vice* if the applicant:

- (a) Resides in California; or
- (b) Is regularly employed in California; or
- (c) Is regularly engaged in business, professional, or other similar activities in California.

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L.R. 83-2.3.3 Designation of Local Counsel. The person seeking to appear *pro hac vice* is required to designate an attorney who is a member of the Bar of this Court and who maintains an office within this District as local counsel with whom the Court and opposing counsel may readily communicate regarding the conduct of the case and upon whom papers may be served, unless otherwise ordered by the Court.

L.R. 83-2.3.4 Designation of Co-Counsel. A judge to whom a case is assigned may, in the exercise of discretion, require the designation of an attorney who is a member of the Bar of this Court and who maintains an office within the District as co-counsel with authority to act as attorney of record for all purposes.

L.R. 83-2.4 Attorneys for the United States, or its Departments or Agencies. Any person who is not eligible for admission under L.R. 83-2.2.1 or 83-2.3, employed within this state and who is a member in good standing of, and eligible to practice before, the bar of any United States Court, or of the highest court of any State, Territory or Insular Possession of the United States, and who is of good moral character, may be granted leave of court to practice in this Court in any matter for which such person is employed or retained by the United States, or its departments or agencies. The application for such permission shall include a certification filed with the Clerk showing that the applicant has applied to take the next succeeding Bar Examination for admission to the State Bar of California for which that applicant is eligible. No later than one year after submitting the foregoing application, the applicant shall submit to this Court proof of admission to the State Bar of California. Failure to do so shall result in revocation of permission to practice in this Court.

L.R. 83-2.5 Professional Corporations and Unincorporated Law Firms

L.R. 83-2.5.1 Appearance. No appearance may be made and no pleadings or other documents may be signed in the name of any professional law corporation or unincorporated law firm (both hereinafter referred to as “law firm”) except by an attorney admitted to the Bar of or permitted to practice before this Court.

L.R. 83-2.5.2 Form of Appearance. A law firm may appear in the following form of designation or its equivalent:

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John Smith
A Member of Smith and Jones, P.C.
Attorneys for Plaintiff

L.R. 83-2.6 Jurisdiction of Court. Any attorney who appears for any purpose submits to the discipline of this Court in all respects pertaining to the conduct of the litigation.

L.R. 83-2.7 Notification of Attorney Change of Name, Address, Firm Association, Telephone Number, Facsimile Number or E-Mail Address. An attorney who is a member of the bar of this Court, or who has been authorized to appear in a case in this Court, and who changes his or her name, office address (or residence address if no office is maintained), law firm association, telephone number, facsimile number or e-mail address, shall, within fourteen (14) days of the change, notify the Clerk of Court. If any actions are currently pending, the attorney shall file and serve a copy of the notice upon all opposing parties.

L.R. 83-2.8 Procedure for Admission

L.R. 83-2.8.1 Admission to the Bar of This Court. Each applicant for admission to the Bar of this Court shall fill out and present to the Clerk an Application for Admission to the Bar of the Central District of California.

L.R. 83-2.8.2 Pro Hac Vice Appearance. Each applicant for permission to appear *pro hac vice* shall fill out and present to the Clerk an Application of Non-Resident Attorney to Appear in a Specific Case and pay the applicable fee.

L.R. 83-2.8.3 Fees. Each applicant admitted to practice shall pay to the Clerk the admission fee prescribed by the Judicial Conference of the United States and such other fees as may from time to time be required by General Order of this Court. Any additional fee shall be credited by the Clerk to the Attorneys' Admission Fund.

L.R. 83-2.9 Withdrawal and Substitution of Attorneys

L.R. 83-2.9.1 Appearance by Attorney. Whenever a party has appeared by an attorney, the party may not thereafter appear or act *pro se*, except upon order made by the Court after notice to such attorney and to any other parties who have appeared in the action.

L.R. 83-2.9.2 Substitution of Attorney

L.R. 83-2.9.2.1 Motion for Withdrawal. An attorney may not withdraw as counsel except by leave of court. An application for leave to withdraw must be made upon written notice given reasonably in advance to the client and to all other parties who have appeared in the action.

L.R. 83-2.9.2.2 Individuals. When an attorney of record for any reason ceases to act for a party, such party shall appear *pro se* or appoint another attorney by a written substitution of attorney signed by the party and the attorneys.

L.R. 83-2.9.2.3 Corporation or Unincorporated Associations. An attorney requesting leave to withdraw from representation of a corporation or unincorporated association shall give written notice to the corporation or unincorporated association of the consequences of its inability to appear *pro se*. “Unincorporated association,” as used in L.R. 83-2.9 and 83-2.10, shall include a partnership.

L.R. 83-2.9.2.4 Delays by Substitution of Attorneys. Unless good cause is shown and the ends of justice require, no substitution or relief of attorney will be approved that will cause delay in prosecution of the case to completion.

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L.R. 83-2.10 Persons Appearing Without an Attorney - Pro Se Litigants

L.R. 83-2.10.1 Corporation, Unincorporated Association, Partnership or Trust. A corporation including a limited liability corporation, a partnership including a limited liability partnership, an unincorporated association, or a trust may not appear in any action or proceeding *pro se*.

L.R. 83-2.10.2 Individuals. Any person representing himself or herself without an attorney must appear *pro se* for such purpose. That representation may not be delegated to any other person, including a spouse, parent or other relative, nor to any other party on the same side who is not represented by an attorney. A non-attorney guardian for a minor or an incompetent person must be represented by counsel.

L.R. 83-2.10.3 Compliance With Federal Rules. Any person appearing *pro se* will be required to comply with these Local Rules, and with the F.R.Civ.P., F.R.Crim.P., F.R.Evid. and F.R.App.P.

L.R. 83-2.10.4 Sanctions. Failure to comply with the rules enumerated in L.R. 83-2.10.3 may be ground for dismissal or judgment by default.

L.R. 83-2.11 Communications With the Judge. Attorneys or parties to any action or proceeding shall refrain from writing letters to the judge, making telephone calls to chambers, or otherwise communicating with a judge in a pending matter unless opposing counsel is present. All matters shall be called to a judge's attention by appropriate application or motion filed in compliance with these Local Rules.

L.R. 83-3 Attorney Disciplinary Rules of the Court

L.R. 83-3.1 Discipline

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L.R. 83-3.1.1 The Standing Committee on Discipline. At all times the Court will maintain a Standing Committee on Discipline (hereinafter “Committee”). The Committee shall consist of 13 attorneys who are members of the Bar of the Court. However, in the event of any vacancy or vacancies, the Committee may continue to perform any of the functions herein authorized so long as there are nine members in office.

Committee members shall be appointed by the Chief Judge with the concurrence of the Executive Committee. The Chief Judge shall designate one member to serve as the chair. A Committee member shall serve for a term of one to three years but may continue in office, upon order of the Chief Judge, beyond said three-year term until the completion of any disciplinary proceeding (which includes the initial investigation to presentation of disciplinary recommendations to the Court) in which the member is participating. Each committee member’s term shall commence on January 1 of the year specified in the appointment, and appointments shall be staggered so that each year the terms of four members, not including the Chair, shall end. Should any Committee member not complete a three-year term, that member’s replacement shall complete the length of term remaining. The Chair of the Committee shall serve a term of three years as Chair, regardless of previous time served as a Committee member.

The Chair of the Committee shall organize the Committee into four sections of three members each. Each section shall consist of one member who has one year remaining on his term, one member who has two years remaining on his term, and one member who has three years remaining on his term. The Chair of the Committee may assign any matter before the Committee to one of the sections for initial investigation and further proceedings described in these rules. Except for the requirement of seven affirmative votes for the imposition of discipline as specified in Rule 83-3.1.5, the Committee may perform or decide any matter arising under these rules by a majority vote. For any Committee meeting, a quorum of seven is required.

L.R. 83-3.1.2 Standards of Professional Conduct - Basis for Disciplinary Action. In order to maintain the effective administration of justice and the integrity of the Court, each attorney shall be familiar with and comply with the standards of professional conduct required of members of the State Bar of California and contained in the State Bar Act, the Rules of Professional Conduct of the State Bar of California, and the decisions of any court applicable thereto. These statutes, rules

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and decisions are hereby adopted as the standards of professional conduct, and any breach or violation thereof may be the basis for the imposition of discipline. The Model Rules of Professional Conduct of the American Bar Association may be considered as guidance.

L.R. 83-3.1.3 Possible Disciplinary Penalties. An order imposing discipline under this Rule may consist of any of the following:

- (a) disbarment,
- (b) suspension not to exceed three years,
- (c) public or private reproof, and/or
- (d) monetary penalties (which may include an order to pay the costs of the proceedings).

Any suspension or reproof imposed may be subject to specified conditions, which may include continuing legal education requirements, counseling and/or supervision of practice.

L.R. 83-3.1.4 Who May Originate Complaints - Initial and Further Investigation - Hearing and Opportunity for Attorney Involved to Appear and Present Evidence. A complaint that an attorney has violated any of the standards of conduct specified in Rule 83-3.1.2, may come to the Committee from any District, Bankruptcy or Magistrate Judge of the Court or from any other person. The complaint shall be in writing addressed to the Committee in care of the Clerk of Court. The Clerk shall promptly serve a copy of the complaint on the Chair of the Committee and the attorney affected.

Upon receipt of any such complaint, the Committee chair shall assign the matter of possible disciplinary action based on the complaint to one of the

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sections of the Committee for initial investigation and possible disciplinary proceedings.

The section to which such a complaint is referred shall promptly conduct an initial investigation. If the section determines that the complaint should not be the subject of further disciplinary action, and the Committee concurs in that determination, the matter will thereupon be closed. Notice of closing shall be promptly sent to the complainant, the attorney affected and the Chief Judge. If the Committee determines that the complaint should be further investigated as being one that may result in disciplinary action, the section shall thereupon conduct such further investigation and inquiries as it deems necessary. The section, in so doing, may take the testimony of witnesses and may seek from the Chief Judge, or his or her designee, any subpoena necessary for its investigation and the Clerk shall promptly issue any such requested subpoena. The affected attorney may also apply to the Chief Judge, or his or her designee, for any necessary subpoenas.

L.R. 83-3.1.4.1 Appointment of Prosecutor. At the request of the investigating section, concurred in by the Chair of the Committee, the Chief Judge may appoint a member of the Bar of the Court who is not a Committee member to (1) supervise and conduct such further investigation as may be appropriate; (2) prosecute the matter at any hearing conducted by the section or the Committee or any other proceeding the Court may require before entering an order of discipline; and (3) defend any order of discipline on appeal.

By order of the Chief Judge, with the concurrence of the Executive Committee, the prosecutor shall be compensated for services out of the Attorneys' Admission Fund.

L.R. 83-3.1.4.2 Duties of the Chief Judge. If the Chief Judge is recused or otherwise is unavailable to perform the duties as outlined in this rule, the duties shall be referred to the next available district judge in regular active service who is senior in commission of all the active judges.

L.R. 83-3.1.4.3 Indemnification of Prosecutor, Section, and Committee. Any expenses incurred in the prosecution of a disciplinary

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proceeding and any award of court costs against the section, the Committee or the prosecutor shall likewise be paid out of the Attorneys' Admission Fund.

L.R. 83-3.1.5 Right of Attorney Involved to a Hearing and to Present Evidence. Before recommending the imposition of any discipline, the investigating section shall provide to the attorney involved a statement of the charges and a description of the discipline which the section is considering recommending. The section, upon request of the attorney involved, shall conduct a hearing on the charges, which hearing shall be on the record. The attorney involved shall have the right to be represented by counsel and to be personally heard under oath at said hearing. The attorney involved may also present sworn testimony of relevant witnesses and may submit briefing and evidentiary exhibits at said hearing. Following the said hearing, the section shall formulate its findings of fact and conclusions of law in writing together with a statement of the discipline, if any, which it recommends. Where the imposition of discipline is recommended, the section shall transmit to the Committee, along with its recommendation, copies of its findings of fact and conclusions of law, the exhibits which it received in evidence and the record of testimony which was presented to it. The Committee may thereafter adopt, modify or reject the section's recommended action. The Committee may, but need not, hear any further statement by the attorney affected or his or her counsel, or receive any further evidence or briefing. If the Committee determines to recommend the imposition of discipline, it must do so at a meeting with at least seven members voting in favor of the recommendation.

L.R. 83-3.1.6 Confidentiality of Proceedings. The record in a disciplinary proceeding shall not be public (unless otherwise ordered by the Court) but shall become public if and when a final order imposing discipline is entered.

L.R. 83-3.1.7 Presentation of Disciplinary Recommendations to the Court. When the Committee has determined that discipline should not be imposed, the matter will thereupon be closed. Notice of the closing shall be promptly sent to the complainant, the attorney affected and the Chief Judge.

When the Committee has determined that discipline should be imposed, it shall transmit to the Chief Judge its recommendation and the complete record, including the section's findings of fact and conclusions of law, and shall

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request an order of the Court imposing the recommended discipline. A copy of the Committee's recommendation shall also be sent to the attorney affected and his or her counsel.

The matter of whether the Court should impose discipline shall be assigned to three judges of the Court selected at random in the same manner as civil cases are distributed, but not to include any judge who originated the complaint. The judges to whom the matter is assigned are not required to conduct any further hearing, to hear the attorney involved or his or her counsel, or to receive any further evidence or briefing before determining to issue an appropriate order. The assigned judges may adopt, modify or reject the Committee's recommendation for the imposition of discipline. The decision of said judges shall be final. If the judges assigned determine to impose discipline, they shall sign and file an appropriate order imposing it.

L.R. 83-3.1.8 Application For Reinstatement. Any attorney who has been suspended or disbarred under Rules 83-3.1.1 through 83-3.1.7 may make an application for reinstatement. The application for reinstatement shall be by written motion addressed to the Committee. The Committee shall consider the application and make a recommendation to the Chief Judge. The Chief Judge may, with the concurrence of the Executive Committee, adopt, modify or reject the recommendation of the Committee concerning the application. Before making its recommendation, the Committee is not required to hear the attorney affected or his or her counsel and is not required to hear any testimony or receive any other evidence or briefing. Nor shall the Chief Judge or the Executive Committee be required to do so before deciding on the application.

L.R. 83-3.1.9 Disbarment or Suspension by Other Courts or Conviction of a Crime. Upon receipt of reliable information that a member of the Bar of this Court or any attorney appearing *pro hac vice* (1) has been suspended or disbarred from the practice of law by the order of any United States Court, or by the Bar, Supreme Court, or other governing authority of any State, territory or possession, or the District of Columbia, or (2) has resigned from the Bar of any United States Court or of any State, territory or possession, or the District of Columbia while an investigation or proceedings for suspension or disbarment was pending, or (3) has been convicted of a crime, the elements or underlying facts of which may affect the

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attorney's fitness to practice law, this Court shall issue an Order to Show Cause why an order of suspension or disbarment should not be imposed by this Court.

If the attorney files a response stating that imposition of an order of suspension or disbarment from this Court is not contested, or if the attorney does not respond to the Order to Show Cause within the time specified, then the Court shall issue an order of suspension or disbarment. The order shall be filed by the Chief Judge.

If the attorney files a written response to the Order to Show Cause within the time specified stating that the entry of an order of suspension or disbarment is contested, then the Chief Judge or other district judge who may be assigned shall determine whether an order of suspension or disbarment shall be entered. Where an attorney has been suspended or disbarred by another Bar, or has resigned from another Bar while disciplinary proceedings were pending, the attorney in the response to the Order to Show Cause, must set forth facts establishing one or more of the following: (a) the procedure in the other jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; (b) there was such an infirmity of proof establishing the misconduct as to give rise to a clear conviction that the Court should not accept as final the other jurisdiction's conclusion(s) on that subject; (c) imposition of like discipline would result in a grave injustice; or (d) other substantial reasons exist so as to justify not accepting the other jurisdiction's conclusion(s). In addition, at the time the response is filed, the attorney must produce a certified copy of the entire record from the other jurisdiction or bear the burden of persuading the Court that less than the entire record will suffice.

Unless stated otherwise by order of the Court, an attorney who has been suspended or disbarred from the Bar of this Court because of his resignation, suspension or disbarment from the Bar of another court will be reinstated upon proof of reinstatement as an active member in good standing in such other Bar.

No action by the Committee is required in connection with these proceedings unless the Court orders otherwise.

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L.R. 83-3.1.10 Discipline by Agencies. Information that a member of the Bar of this Court has been suspended or disbarred from practice by the order of any federal or state administrative agency, shall be treated as a complaint which can be the basis of disciplinary action by this Court. The matter shall be referred to the Committee for investigation, hearing and recommendation as provided hereinabove in the case of other complaints.

L.R. 83-3.1.11 Notice of Disciplinary Action to State Bar and Other Courts. The Clerk shall give prompt notice of any order imposing discipline under this Rule 83-3 to the California State Bar and to the Bar or disciplinary body of those courts to which the attorney involved has been admitted to practice and of which the Clerk is aware.

L.R. 83-3.1.12 Powers of an Individual Judge to Deal With Contempt or Other Misconduct Not Affected. Disciplinary proceedings under Rule 83-3.1 shall not affect, or be affected by, any proceedings for criminal contempt under the U.S. Criminal Code, nor shall anything contained in this Rule 83-3.1 be construed to deny any judge of this Court said judge's inherent power to maintain control over the proceedings conducted before said judge, nor to deny the judge those powers derived from any statute or rule of court. Misconduct of any attorney in the presence of a court or in any manner in respect to any matter pending in a court may be dealt with directly by the judge in charge of the matter or at said judge's option, referred to the Committee, or both.

L.R. 83-3.2 Practice Prohibited While on Inactive Status. Any attorney previously admitted to the Bar of this Court who no longer is enrolled as an active member of the Bar, Supreme Court, or other governing authority of any State, territory or possession, or the District of Columbia, shall not practice before this Court. Upon receipt of reliable information that such attorney is practicing before the Bar of this Court, this Court shall issue an Order to Show Cause why the attorney should not be disbarred from this Court, and shall proceed with the Order to Show Cause in the manner set forth in L.R. 83-3.1.9.

L.R. 83-3.3 Obligation to Notify Court of Felony Conviction or Change of Status. Any attorney admitted to the Bar of this Court or admitted *pro hac vice* shall promptly notify the Clerk of this Court of (1) the attorney's conviction of

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any felony, or (2) the imposition of discipline in any other jurisdiction, or (3) the attorney's resignation from the Bar while disciplinary investigation or proceedings were pending in any other jurisdiction.

L.R. 83-4 Student Practice

L.R. 83-4.1 Consent. An eligible law student acting under the supervision of a member of the bar of this Court may appear on behalf of any client including federal, state or local government bodies, if the client has filed a written consent with the Court. Additional written consent must be given if one eligible student is replaced by another.

L.R. 83-4.2 Requirements. An eligible student shall:

- (a) be enrolled and in good standing in a law school accredited by the American Bar Association or The State Bar of California;
- (b) have completed one-half of the legal studies required for graduation;
- (c) have completed a course in evidence. For civil cases, an eligible law student must have also completed a course in civil procedure. For criminal cases, an eligible law student must have completed courses in criminal law and criminal procedure. An eligible law student must also have knowledge of and be familiar with the Federal Rules of Civil and Criminal Procedure as well as the Federal Rules of Evidence, the Rules of Professional Conduct of The State Bar of California and applicable statutory rules, and rules of this Court;
- (d) be certified by the dean of a law school as being adequately trained to fulfill all responsibilities as a legal intern to the Court in compliance with L.R. 83-4.2(a) and (b);

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(e) not accept compensation for his or her legal services directly or indirectly from a client; and

(f) file with the Clerk of the Court all documents required to comply with this rule.

L.R. 83.4-3 Supervising Attorney. The supervising attorney shall:

(a) have such substantial litigation experience to satisfy the Court of his or her ability to supervise the student;

(b) file with the Clerk of the Court to whom each case has been assigned a “Request to Undertake the Supervision of an Eligible Law Student.” The undertaking, if approved by the Court, may be withdrawn by the supervising attorney by filing a written notice with the Clerk of the Court and by giving notice of such withdrawal to the affected student;

(c) appear with the student in any oral presentations before this Court;

(d) sign all documents filed with this Court;

(e) assume personal professional responsibility for the student’s work in matters before this Court;

(f) assist and counsel the student in the preparation of the student’s work in matters before this Court; and

(g) be responsible to supplement oral or written work of the student as necessary to assure proper representation of the client. All written work will be filed over the signature of the supervising attorney. Written work may also

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be signed by the eligible law student who participated in such written work. The student, in signing the written work, shall indicate his or her status as an eligible law student.

L.R. 83-4.4 Law School Dean's Certification. The dean's certification of the student:

(a) shall be filed with the Clerk of the Court and shall remain in effect for a period of three years or until withdrawn;

(b) shall state that he or she knows of no reason which would render the law student ineligible under this rule;

(c) may be withdrawn for good cause by the dean with notice to the Court and to the student. Certification may only be withdrawn by the dean for good cause. Such cause shall be stated in the notice filed with the Court.

L.R. 83-4.5 Student Appearance. Upon fulfilling the requirements of this rule, the student may appear and make oral presentations before this Court when accompanied by the supervising attorney.

L.R. 83-5 Minors or Incompetents

L.R. 83-5.1 Minors or Incompetents - Settlement of Claim of Minor or Incompetent. No claim in any action involving a minor or incompetent person shall be settled, compromised or dismissed without leave of the Court embodied in an order, judgment or decree.

L.R. 83-5.2 Minors or Incompetents - Settlement of Claim Procedure. Insofar as practicable, hearings on petitions to settle, compromise or dismiss a claim in an action involving a minor or incompetent person shall conform to California Code of Civil Procedure Section 372 and California Rule of Court 241.

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L.R. 83-5.3 Minors or Incompetents - Attorney's Fees. In all actions involving the claim of a minor or incompetent person, whether resolved by settlement or judgment after trial, the Court shall fix the amount of attorney's fees.

L.R. 83-5.4 Minors or Incompetents - Judgment or Settlement Funds. All monies or property recovered on behalf of a minor or incompetent person, either by settlement or judgment, shall be paid into the registry of the Court unless otherwise ordered by the Court. All monies received by the Clerk representing a settlement or judgment on behalf of a minor or incompetent person shall be deposited by the Clerk in accordance with L.R. 67-1 and 67-2.

L.R. 83-5.5 Minors or Incompetents - Disbursement of Funds. All monies or property deposited with the Clerk pursuant to L.R. 83-5.4 shall be disbursed by the Clerk only in accordance with an order of the Court.

L.R. 83-5.5.1 Conformance to State Law. Unless otherwise ordered by the Court, disbursement of funds of California residents or foreign nationals shall be made by the Clerk in accordance with the provisions of California Probate Code §§ 3600 *et seq.* If the minor, incompetent person, guardian, custodian or parent is a resident of a state of the United States other than California, the funds or property shall be disbursed pursuant to restrictions of the state of residence similar to the provisions of California Probate Code §§ 3600 *et seq.*

L.R. 83-5.6 Minors or Incompetents - Letters of Guardianship or Custody - Bond. Before any funds or property are ordered distributed to any guardian or custodian, the following documents shall be filed with this Court:

(a) A certified copy of letters of guardianship or an order of appointment as custodian of the estate of an incompetent; and

(b) A certificate by a state court certifying that a surety bond has been filed by the guardian or custodian in a sum at least equal to the amount of money or value of property to be distributed.

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L.R. 83-5.6.1 Corporate Guardian. If letters of guardianship or an order of appointment as custodian of the estate of an incompetent person have been issued to a corporate guardian authorized by state law to so act, no certificate showing filing of a bond shall be necessary

L.R. 83-6 Conduct in Courtroom and Environs

L.R. 83-6.1 Prohibition of Broadcasting, Television, Photography. Between 7:00 a.m. and 7:00 p.m., Monday through Friday, and at all other times when the Court is in session, the use of any forms, means or manner of radio or television broadcasting and the taking or making of photographs, motion pictures, video or sound recordings is prohibited in any room where court proceedings are being held, including but not limited to the areas specified below:

WESTERN DIVISION SPRING STREET BUILDING - The following areas of the United States Courthouse, 312 North Spring Street, Los Angeles, California:

- (a) The parking areas; and
- (b) The Main Street, Spring Street, second through fifth floors, eighth, ninth, tenth and sixteenth floors, except any area designated as a Press Room.

WESTERN DIVISION ROYBAL BUILDING - The following areas of the Roybal Federal Building and United States Courthouse, 255 East Temple Street, Los Angeles, California:

- (a) The parking areas;
- (b) The Temple Street and Terrace floors, except the area designated as a Press Room; and

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(c) The third, fifth through eighth, eleventh and fourteenth floors.

SOUTHERN DIVISION - The following areas of the Ronald Reagan Federal Building and United States Courthouse, 411 West Fourth Street, Santa Ana, California:

(a) The parking areas; and

(b) The first, third, sixth, ninth and tenth floors, except the area designated as a Press Room.

EASTERN DIVISION - The following areas of the United States Courthouse, 3470 Twelfth Street, Riverside, California:

(a) The parking areas; and

(b) The Ground level, Plaza level and the second and third floors, except for any area designated as a Press Room.

L.R. 83-6.2 Official Recordings - Exception. L.R. 83-6.1 shall not prohibit recordings made by official court reporters, recorders or United States Magistrate Judges in the performance of their official duties. No other use may be made of an official recording of a court proceeding without an express, written order of the Court.

L.R. 83-6.3 Ceremonial Functions - Exception. The prohibition of L.R. 83-6.1 shall not apply, when specifically authorized in writing by the judge who is presiding at ceremonial sessions or non-judicial functions.

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L.R. 83-6.4 Videotape. L.R. 83-6.1 does not prohibit the videotaping or other electronic recording of depositions for trial purposes, nor the preparation and perpetuation of testimony taken by or under the direction of a judge or magistrate judge of this Court, or any duly designated visiting judge. Any equipment taken into or through the areas enumerated in L.R. 83-6.1 is subject to such security regulations as may be adopted from time to time by the Court.

L.R. 83-6.5 Possession of Equipment

L.R. 83-6.5.1 In General. Video or sound recording, photographic, radio or television broadcasting equipment shall not be possessed in the areas enumerated in L.R. 83-6.1 unless expressly authorized by a judge or magistrate judge of this Court, except as provided in L.R. 83-6.2, 83-6.3, 83-6.5.2, 83-6.5.3 and 83-6.5.4.

L.R. 83-6.5.2 Dictating Equipment - Attorneys. Attorneys admitted to practice before the Court are authorized to possess dictating equipment in the areas enumerated in L.R. 83-6.1. Any dictating equipment possessed by an attorney in these areas shall be used only in the attorney's lounge, a witness room, the library, or the Clerk's Office.

L.R. 83-6.5.3 Dictating Equipment - Media. Members of the print or electronic media, *i.e.*, newspaper, magazine, radio or television, are authorized to possess dictating or audio tape recording equipment in the areas enumerated in L.R. 83-6.1. Any dictating or audio tape recording equipment possessed by a bona fide member of the media in these areas shall be used only in the press room, the attorney's lounge, a witness room, or the Clerk's Office.

L.R. 83-6.5.4 Press Conferences. The provisions of this rule shall not apply to press conferences or public announcements by the U.S. Attorney or the Federal Public Defender, who will provide the Court Security Office advance written notification of such press conferences or public announcements. A Court Security Officer will escort communications media personnel and their equipment to and from the site of such press conference or public announcement.

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L.R. 83-6.6 Enforcement of Rule. The United States Marshal, the General Services Administration police, and the security force contracted for service by the Central District of California shall enforce the provisions of L.R. 83-6.1 and 83-6.5.

L.R. 83-6.7 Violation of Rule - Contempt. A violation of L.R. 83-6.1 or 83-6.5 may constitute contempt of Court. All proceedings for such contempt occurring in or in connection with a case assigned to a judge shall be heard by the judge presiding over such case. All other proceedings for such contempt shall be brought before a Criminal Duty Judge.

L.R. 83-7 Sanctions - Violation of Rule. The violation of or failure to conform to any of these Local Rules may subject the offending party or counsel to:

(a) monetary sanctions, if the Court finds that the conduct was willful, grossly negligent, or reckless;

(b) the imposition of costs and attorneys' fees to opposing counsel, if the Court finds that the conduct rises to the level of bad faith and/or a willful disobedience of a court order; and/or

(c) for any of the conduct specified in (a) and (b) above, such other sanctions as the Court may deem appropriate under the circumstances.

L.R. 83-8 Vexatious Litigants

L.R. 83-8.1 Policy. It is the policy of the Court to discourage vexatious litigation and to provide persons who are subjected to vexatious litigation with security against the costs of defending against such litigation and appropriate orders to control such litigation. It is the intent of this rule to augment the inherent power of the Court to control vexatious litigation and nothing in this rule shall be construed to limit the Court's inherent power in that regard.

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L.R. 83-8.2 Orders for Security and Control. On its own motion or on motion of a party, after opportunity to be heard, the Court may, at any time, order a party to give security in such amount as the Court determines to be appropriate to secure the payment of any costs, sanctions or other amounts which may be awarded against a vexatious litigant, and may make such other orders as are appropriate to control the conduct of a vexatious litigant. Such orders may include, without limitation, a directive to the Clerk not to accept further filings from the litigant without payment of normal filing fees and/or without written authorization from a judge of the Court or a Magistrate Judge, issued upon such showing of the evidence supporting the claim as the judge may require.

L.R. 83-8.3 Findings. Any order issued under L.R. 83-8.2 shall be based on a finding that the litigant to whom the order is issued has abused the Court's process and is likely to continue such abuse, unless protective measures are taken.

L.R. 83-8.4 Reference to State Statute. Although nothing in this rule shall be construed to require that such a procedure be followed, the Court may, at its discretion, proceed by reference to the Vexatious Litigants statute of the State of California, Cal. Code Civ. Proc. §§ 391 - 391.7.

L.R. 83-9 Time Limits for Decisions by Court

L.R. 83-9.1 Time Limit Established. The Court shall render and file its decision on motions and non-jury trials within 120 days after the matter is submitted for decision.

L.R. 83-9.1.2 "Submitted" Defined

(a) A motion shall be deemed submitted for decision (i) on the date the Court announces on the record in open court, at the conclusion of the hearing thereon, that the matter is submitted for decision; or (ii) on the date the last memorandum or other document is permitted to be filed. If no oral argument is conducted on the motion, a motion shall be deemed submitted for decision as of the date the last memorandum or other pleading is permitted to be filed.

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(b) A non-jury trial shall be deemed submitted for decision (i) on the date the Court announces on the record in open court, at the conclusion of the trial, that the matter is submitted for decision; or (ii) on the date the last memorandum or other document is permitted to be filed.

L.R. 83-9.2 Duty of Counsel. If the Court does not render and file its decision on a submitted matter within 120 days of submission, all counsel shall, within 130 days after the matter is submitted for decision, file with the Court a joint request that such decision be made without further delay. A copy of such request shall be sent to the Chief Judge.

L.R. 83-9.3 Duty of Court to Respond. Unless the Court makes its decision within 30 days after the filing of a joint request, it shall, within the same time period, advise the parties in writing of the date by which the decision will be made. A copy of such written advice shall be filed in the case and sent to the Chief Judge.

L.R. 83-9.4 Follow-Up Duty of Counsel. In the event the Court fails timely to make its decision or to advise the parties of an intended decision date, as required by L.R. 83-9.3, counsel shall then file a joint request with the Chief Judge to establish an intended decision date. A copy of such request shall be filed in the case.

L.R. 83-9.5 Date of Intended Decision. Upon receipt of a request under L.R. 83-9.3, the Chief Judge shall, after consultation with the judge to whom the matter is assigned, establish a firm intended decision date by which the Court's decision shall be made. Such setting of a final intended decision date shall be in writing, shall be filed in the case, and shall be served on the parties.

L.R. 83-10 Appeals - Designation of Reporter's Transcript. The designation of a reporter's transcript on appeal shall specify each hearing date or dates ordered from the court reporter. That designation shall be made on the appropriate form, which is available from the Clerk.

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L.R. 83-11 through 83-15 [Reserved]

L.R. 83-16 Habeas Corpus Petitions and Motions Under 28 U.S.C. Section 2255

L.R. 83-16.1 Court Forms. A petition for a writ of habeas corpus or a motion filed pursuant to 28 U.S.C. § 2255 shall be submitted on the forms approved and supplied by the Court.

L.R. 83-16.2 Verification - Other Than By Person in Custody. If the petition or motion is verified by a person other than the individual in custody, the person verifying the document shall set forth the reason why it has not been verified by the person in custody. The person verifying the document shall allege only facts personally known to that person. If facts are alleged upon information and belief, the source of the information and belief shall be stated.

L.R. 83-16.3 Habeas Corpus - Exclusion, Deportation and Removal Cases. A next friend petition for a writ of habeas corpus in exclusion, deportation and removal cases must allege that the petitioner has been authorized by the applicant for admission or respondent in the proceedings to file the petition. If the petition is filed by a relative who is the father, mother, husband, wife, brother, sister, uncle or aunt of the applicant for admission in the proceedings, that fact shall be alleged and authorization to file the petition need not be shown.

L.R. 83-17 Special Requirements for Habeas Corpus Petitions Involving the Death Penalty

L.R. 83-17.1 Applicability. This rule shall govern the procedures for a first federal habeas proceeding under Chapter 153 of Title 28 of the United States Code in which a petitioner seeks relief from a judgment imposing the penalty of death. The application of this rule may be modified by the judge to whom the case is assigned. These rules shall supplement the Rules Governing § 2254 Cases.

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L.R. 83-17.2 Notices From California Attorney General. The California Attorney General shall send to the Clerk of this Court prompt notice whenever the California Supreme Court affirms a sentence of death.

L.R. 83-17.3 Initial Filings and Petitions

(a) A prisoner under a judgment of death may file a petition for writ of habeas corpus or a request for appointment of counsel. Such filings shall be made in the Western Division (Los Angeles) of the Central District. Upon such filing, the case shall be randomly assigned to a district judge through the district-wide Death Penalty Assignment Wheel. After filing and assignment, the matter shall be immediately referred to the Death Penalty Committee for the appointment of counsel.

(b) Petitions shall be submitted on a form supplied by the Clerk of Court, filled in by printing or typewriting, or as a legible typewritten document which contains all of the information required by that form. All petitions or requests for appointment of counsel: (i) shall state whether the petitioner has previously sought habeas relief arising out of the same matter from this court or any other federal court, together with a copy of the ruling; and (ii) shall clearly identify in the caption any scheduled execution date. Any petition exceeding ten (10) pages in length, excluding exhibits, shall be accompanied by an indexed table of contents setting forth the headings or subheadings contained in the body thereof.

(c) An original and one copy of the petition shall be filed by counsel for petitioner. A *pro se* petitioner need only file the original. If the petitioner is represented by counsel, counsel for the petitioner shall promptly serve a copy of the petition on counsel for the respondent. No filing fee is required.

(d) If the petitioner is not represented by counsel, the Clerk of Court shall immediately serve the California Attorney General's Office by mail or fax when an initial filing is received by the Court.

(e) When a petition or request for appointment of counsel is filed by a petitioner who was convicted outside of this district, the Clerk of the Court

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shall immediately advise the Clerk of the Court of the district in which the petitioner was convicted, and prepare a stay and transfer order for signature of a district court judge.

L.R. 83-17.4 Counsel

(a) Appointment of Counsel - Upon receipt of the habeas corpus petition or request for appointment of counsel, the Death Penalty Committee shall appoint the Office of the Federal Public Defender. If the Office of the Federal Public Defender has already been assigned the maximum number of cases, as determined by the Defender Services Committee of the United States Judicial Conference, the Death Penalty Committee shall appoint counsel from a panel of attorneys qualified for appointment in death penalty cases. The panel of attorneys shall be approved by the Death Penalty Committee and appointed by the Chief Judge of the District.

(b) Second Counsel

(i) If the case is assigned to the Office of the Federal Public Defender, second counsel may be appointed from the panel only when (1) the case is returned to the state court due to unexhausted claims for which a state court remedy may still be available and (2) the Office of the Federal Public Defender is unavailable to provide representation in state court.

(ii) If the case is not assigned to the Office of the Federal Public Defender, the Death Penalty Committee shall appoint one attorney from the panel. If the assigned judge, in his or her discretion, determines that second counsel is necessary, the matter shall be referred to the Death Penalty Committee for the appointment of second counsel.

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L.R. 83-17.5 Transfer of Venue

(a) Subject to the provisions of 28 U.S.C. § 2241(d), it is the policy of this Court that a petition should be heard in the district in which petitioner was convicted, rather than in the district of petitioner's present confinement.

(b) If an order for transfer of venue is made on a first petition for habeas corpus, the Court shall order a stay of execution which shall continue until such time as the transferee court acts upon the petition or the order of stay.

L.R. 83-17.6 Stays of Execution

(a) Stay Pending Final Disposition - Upon the filing of a habeas corpus petition or request for appointment of counsel, unless the application is patently frivolous, the Court shall issue a stay of execution pending final disposition of the petition in the district court.

(b) Stay Pending Appeal - If the petition is denied and a certificate of appealability is issued, the Court shall grant a stay of execution which will continue in effect until the Court of Appeals acts upon the appeal or the order of stay.

(c) Notice of Stay - Upon the granting of any stay of execution, the Clerk of the Court shall immediately notify the Warden of San Quentin Prison and the California Attorney General. The California Attorney General shall assure that the Clerk of the Court has a twenty-four (24) hour telephone number to the Warden.

L.R. 83-17.7 Procedures for Considering the Petition. Unless the Court summarily dismisses the petition under Rule 4 of the Rules Governing § 2254 cases, the following schedule and procedures shall apply subject to modification by the Court. Requests for enlargement of any time period in this rule shall comply with the applicable Local Rules of the Court.

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(a) Respondent shall as soon as practicable, but in any event on or before thirty (30) days from the date of service of the petition, lodge with the Court the following:

(i) Transcripts of the state trial court proceedings.

(ii) Appellant's and respondent's briefs on direct appeal to the California Supreme Court, and the opinion or orders of that court.

(iii) Petitioner's and respondent's briefs in any state court habeas corpus proceedings, and all opinions, orders and transcripts of such proceedings.

(iv) An index of all materials described in paragraphs (a)(i) through (a)(iii) above. Such materials are to be marked and numbered so that they can be uniformly cited. Respondent shall serve this index upon counsel for petitioner.

(v) If any items identified in paragraphs (a)(i) through (a)(iv) are not available, respondent shall state when, if at all, such missing material can be filed.

(b) If counsel for petitioner claims that respondent has not complied with the requirements of paragraph (a), or if counsel for petitioner does not have copies of all the documents lodged with the Court by respondent, counsel for petitioner shall promptly file written notice thereof. Respondent shall supply copies of the missing documents forthwith, and file notice of compliance.

(c)(i) In the interest of expediting habeas death penalty cases, it is the policy of the Court to entertain unexhausted claims if the respondent waives the exhaustion issue. However, if the respondent declines to waive the exhaustion issue with respect to any or all claims in the petition, prior to filing a motion, counsel for respondent shall make a good faith effort to confer with counsel for petitioner

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regarding the exhausted status of each such claim. Unless relieved by written order of the Court upon good cause shown, counsel for petitioner shall confer with counsel for respondent within seven (7) calendar days after service of a letter requesting such conference. The respondent's letter shall identify each claim that respondent contends is unexhausted, specify the basis for asserting that the claim is unexhausted, and provide any legal authority that respondent contends is dispositive of the exhausted status of that claim.

(ii) If, after the meeting, the parties continue to dispute the exhausted status of one or more claims, the respondent shall file an appropriate motion no later than thirty (30) days after service of the petition. In connection with any motion relating to exhaustion disputes, the parties shall file a joint statement indicating (1) which claims the parties agree have been fairly presented to the state supreme court, (2) which claims the parties agree have not been fairly presented to the state supreme court, and (3) on which claims the parties disagree whether the claim has been fairly presented to the state supreme court.

(d) If respondent does not intend to challenge the exhausted status of any claim in the petition, or is willing to waive exhaustion as to all such claims, respondent shall file an answer within thirty (30) days from the date of service of the petition. Respondent shall include in the answer the matters defined in Rule 5 of the Rules Governing § 2254 Cases and shall attach any other relevant documents not already lodged or filed. An answer that exceeds ten (10) pages in length, excluding exhibits, shall be accompanied by an indexed table of contents setting forth the headings or subheadings contained in the body thereof.

(e) Within thirty (30) days after respondent has filed the answer, petitioner may file a traverse.

(f) No discovery shall be had without leave of the Court. A request for discovery shall be presented to the Court by way of a joint stipulation in substantially the same format as required by L.R. 37-2.1. The joint stipulation shall identify the discovery requested, a statement explaining the need for the requested discovery, and opposing counsel's position regarding the need for the requested discovery.

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(g) Any request for an evidentiary hearing by either party shall be made within twenty (20) days from the filing of the traverse, or within twenty (20) days from the expiration of the time for filing the traverse. The request shall include a specification of the factual issues and the legal reasoning that require a hearing and a summary of the evidence of each claim the movant proposes to offer at the hearing. Any opposition shall be filed within fifteen (15) days after the request for an evidentiary hearing was filed. The Court will then determine whether an evidentiary hearing will be held.

L.R. 83-17.8 Evidentiary Hearing. If an evidentiary hearing is held, the Court will order a transcript of the hearing to be prepared and immediately provided to petitioner and respondent for use in briefing and argument as the Court may order.

L.R. 83-17.9 Rulings. The Clerk of the Court shall immediately notify the Warden of San Quentin Prison and the California Attorney General whenever relief is granted on a petition.

The Clerk of the Court shall immediately notify the Clerk of the United States Court of Appeals for the Ninth Circuit by telephone of:

- (a) the issuance of a final order denying or dismissing a petition without a certificate of appealability, or
- (b) the denial of a stay of execution.

When a notice of appeal is filed, the Clerk of the Court shall immediately transmit the record to the Court of Appeals. The Clerk will, however, retain for future use of the Court a copy of all pleadings and transcripts generated by the proceedings in the district court.

Not later than ten (10) days after the issuance of the mandate of a reviewing court that results in the denial with prejudice of all habeas relief, the

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respondent shall lodge a complete copy of the state court record and all other items identified in L.R. 83-17.7.

F.R.CIV.P. 84. FORMS

F.R.CIV.P. 85. TITLE

L.R. 85-1 Short Title. These rules may be cited as the Local Rules.

F.R.CIV.P. 86. EFFECTIVE DATE

END OF CHAPTER I - LOCAL CIVIL RULES