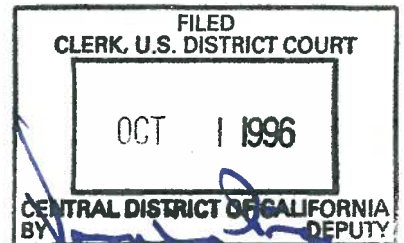


UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA



IN THE MATTER OF:)
)
AMENDMENTS TO LOCAL CIVIL)
RULE 9, PRE-TRIAL PROCEEDINGS)
_____)

GENERAL ORDER NO. 96-15

WHEREAS, the Judges of this Court have adopted revisions to Local Civil Rule 9, PRE-TRIAL PROCEEDINGS, and

WHEREAS, the proposed new revisions and rules were published for public comment, pursuant to 28 U.S.C § 2071 (b) and Rule 83 of the Federal Rules of Civil Procedure, and such comments as were made having been considered by the Court;

IT IS HEREBY ORDERED that effective November 4, 1996, Local Civil Rule 9 is amended, as follows:

"RULE 9. PRE-TRIAL PROCEEDINGS

9.1 APPLICABILITY - All civil actions or proceedings (including Admiralty) shall be pre-tried pursuant to F.R.Civ.P. 16 and this Local Rule 9 unless exempted by this rule or expressly waived in whole or in part by order of the Court.

9.2 PRE-TRIAL CALENDAR - The Court may cause the notice for a Pre-Trial Conference to be sent to the parties on a date not earlier than thirty (30) days after the Joint Report of Early Meeting required by Local Rule 6 is due to be filed with the Court. The Pre-Trial Conference shall be set for a date not earlier than sixty (60) days after the mailing of such notice.

9.3 NOTICE - The court clerk shall give prompt notice to all parties appearing in the action or proceeding of the date and time of setting of the Pre-Trial Conference.

9.4 MEETING OF COUNSEL - At least forty (40) days in advance of the date set for the Pre-Trial Conference, counsel for the parties shall meet together in person at a convenient time and place and shall accomplish the following purposes:

9.4.1 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, resolution of the jurisdictional issue shall be brought on by motion to be heard prior to the Pre-Trial Conference.

9.4.2 OTHER DISPOSITIVE PRE-TRIAL MOTIONS - The parties shall explore the applicability of any statute of limitation, personal jurisdiction or venue requirement, or other defense that might dispose of the action without trial on the merits.

9.4.3 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 the admissibility in evidence.

9.4.4 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 for impeachment or rebuttal. EXHIBITS SHALL BE MARKED IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN LOCAL RULE 8.5.

9.4.5 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 for impeachment or rebuttal.

9.4.6 EXPERT WITNESSES - If expert witnesses are to be called at trial, the plaintiff (including any counterclaimant, cross-claimant and third-party plaintiff) shall designate experts to be called by plaintiff and provide the reports required by F. R. Civ. P. 26(a)(2)(B), not later than eight weeks prior to the discovery cutoff date. Defendant shall designate experts to be called by defendant and provide the reports required by F. R. Civ. P. 26(a)(2)(B), not later than five weeks prior to the discovery cutoff date. Failure to timely comply with this rule may result in the expert being excluded at trial as a witness. The Court may adjust this schedule if it appears to be incompatible with the discovery cutoff date.

Expert testimony intended solely for impeachment or rebuttal shall be disclosed as required by F. R. Civ. P. 26(a)(2)(C).

The disclosures made under this rule shall be supplemented as required under Local Rule 6.8.

9.4.7 EVIDENTIARY MATTERS - The parties shall attempt to resolve any objections to the admission of oral and documentary evidence.

9.4.8 DISCOVERY - Unless an earlier discovery cutoff date has been set, all discovery, including expert discovery, shall be completed, and all discovery

motions shall be heard, at least twenty-one (21) days before the Pre-Trial Conference.

9.4.9 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 Local Rule 8.1.2 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.

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

(c) In appropriate cases and when ordered by the Court, the parties shall jointly prepare a deposition summary to be used in lieu of question and answer reading of a deposition at trial.

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.

9.4.10 CONTENTIONS OF LAW AND FACT - Each party shall make known to the opposing party its contentions regarding the applicable facts and law.

9.4.11 SETTLEMENT - The parties shall exhaust all possibilities of settlement.

9.4.12 EXCHANGE OF GRAPHIC AND ILLUSTRATIVE MATERIAL - If not already exchanged as a part of the exhibits or disclosed in accordance with Local Rule 9.4.6, 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.

9.5 MEMORANDUM OF CONTENTIONS OF FACT AND LAW - Not later than twenty-one (21) days in advance of the Pre-Trial 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:

9.5.1 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 shall also 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, patents, and in class actions and eminent domain proceedings. In the event a case does not fall within any of the foregoing categories, the parties shall set forth a concise statement of their factual contentions.

9.5.2 LEGAL BRIEF

(a) Issue 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.

9.5.3 BIFURCATION OF ISSUES - The Memorandum shall contain any request for bifurcation of issues together with a statement of reasons for the request.

9.5.4 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, Local Rule 3.4.10). 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.

9.5.5 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.

9.5.6 ABANDONMENT OF ISSUES - The Memorandum shall state any issues in the pleadings which have been abandoned.

9.6 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 list of witnesses to be called at trial other than those contemplated to be used for

impeachment or rebuttal. The obligation of listing such witnesses is a continuing one, and except for good cause shown, the testimony of any such witness proffered at trial who is not listed upon a party's witness list shall be precluded. If any witness is listed whose identity was not previously disclosed pursuant to Local Rules 6.2.1 and 6.8, the witness list shall be accompanied by a statement of the reasons for such non-disclosure.

9.7 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 list of exhibits the parties expect to offer at trial other than those to be used for impeachment or rebuttal, with a description of each exhibit sufficient for identification. 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 Local Rule 8.5. It is recognized that exhibits identified and marked at depositions may not all be offered at trial so that there may be gaps in the numerical sequence on the exhibit list. If any document is listed as an exhibit which was not previously disclosed pursuant to Local Rules 6.2.2 and 6.8, the exhibit list shall be accompanied by a statement of the reasons for such non-disclosure.

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		

9.8 PRE-TRIAL CONFERENCE ORDER - A Pre-Trial 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 Pre-Trial Conference Order as required by this rule. Failure of counsel to comply shall subject counsel to the sanctions provided by the provisions of Local Rule 27 and 28 U.S.C. Section 1927.

9.8.1 LODGING - Plaintiff shall lodge the Pre-Trial Conference Order with the Clerk seven (7) days before the date set for the Pre-Trial Conference.

9.8.2 FORM - The Pre-Trial Conference Order shall be substantially in the form shown in Pre-Trial Form No. 1 set forth in Appendix A to these Local Rules.

Sections 7 and 8 of the Pre-Trial 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.

9.8.3 BINDING EFFECT - The Pre-Trial Conference Order when signed by the Court shall control the subsequent course of the action, unless modified at the trial to prevent manifest injustice (F.R.Civ.P.16 (e)).

9.9 PRE-TRIAL CONFERENCE - Each party appearing at the Pre-Trial 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 Pre-Trial Conference the Court will consider:

9.9.1 UNSERVED PARTIES - Any party not heretofore dismissed who is unserved at the time of the Pre-Trial Conference will be dismissed from the action without prejudice.

9.9.2 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. Section 1927 or Local Rule 27; and to impose such sanctions as may be appropriate for failure of any party to attend or participate in pre-trial preparation as required by this rule and F.R.Civ.P.16.

9.9.3 SETTING FOR TRIAL - The Court expects that at the Pre-Trial 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.

9.10 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 Pre-Trial

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 Pre-Trial Conference. No continuance will be granted unless the stipulation has been lodged before the date upon which the Pre-Trial 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 Pre-Trial 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 Pre-Trial Conference has been set.

9.11 WAIVER OF PRE-TRIAL - Within sixty (60) days of the filing of the answer the parties may advise the Court that the matter should not be subject to the pre-trial rules of this Court and request the Court to order a waiver. The request shall contain the reasons that counsel requests the waiver.

9.11.1 PROCEDURE ON WAIVER - If the Court orders that the case should not be subject to the pre-trial rule, counsel shall meet within fifteen (15) days of such order and shall within seven (7) days of such meeting prepare and file a comprehensive discovery schedule that will permit the trial to be set within six (6) months of the date of the meeting.

9.11.2 PREPARATION FOR TRIAL - 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;
- (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 Local Rule 13.6;
- (c) Witness list;
- (d) Exhibit list;
- (e) Depositions to be used at trial marked as required by Local Rule 9.4.9; 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.

9.11.3 WAIVER - LIMITATION - Unless otherwise ordered by the Court, waiver of pre-trial shall apply only to cases that are realistically estimated to consume no more than two (2) trial days.

9.12 EXEMPTIONS - Unless otherwise required by the Court, the following categories of cases are exempted from the provisions of this rule:

- (a) Petitions filed under 28 U.S.C. §§ 2242, 2254 and 2255, or their functional equivalents;
- (b) Actions for judicial review of a decision by the Secretary of Health and Human Services under 42 U.S.C. § 405 (g); and
- (c) Any case in which the plaintiff is appearing pro se;
- (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."