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PREAMBLE TO LOCAL RULES

The Local Rules of Practice for the United States District Court for the Southern District of California are contained herein. These rules are divided into two parts: civil and criminal. Civil rules may be cited as " CivLR ___" ; criminal rules may be cited as "CrimLR ___."

Rules covering admiralty and habeas corpus proceedings may be found at the end of the civil rules, cited as A.1-E.1; and HC.1, HC.2, et seq.

CIVIL LOCAL RULES

Civil Rule 1.1 Scope and Availability of Local Rules

a. **Title and Citation**. These are the Local Civil Rules of Practice for the United States District Court for the Southern District of California. They may be cited as "CivLR __."

b. **Effective Date.** These Rules become effective on January 30, 2016.

c. **Scope of the Rules; Construction, Definitions.** These rules supplement the Federal Rules of Civil Procedure, and they must be construed so as to be consistent with those rules and to promote the just, efficient and economical determination of every action and proceeding. The provisions of the Civil Rules must apply to all actions and proceedings, including criminal, bankruptcy and admiralty, and actions and proceedings before magistrate judges, except where they may be inconsistent with rules or provisions of law specifically applicable thereto.

d. In any case for the convenience of the parties in interest, or in the interest of justice, a judge may waive the applicability of these rules.

e. **Definitions**

1. "Attorney" or "counsel" includes an attorney, proctor, advocate, solicitor, counsel, or counselor;

2. "Brief" includes briefs, memoranda, points and authorities and other written argument or compilation of authorities;

3. "Civil action" includes any action, case, proceeding or matter of a civil nature;

4. "Clerk" means the Clerk of the United States District Court for the Southern District of California and deputy clerks, unless the context otherwise requires;

5. "Court" includes the district judge or magistrate judge to whom a civil or criminal action, proceeding, case or matter has been assigned;

6. "Court clerk" means a deputy clerk assigned to the courtroom of a judge or magistrate judge of this Court;

7. "Declaration" includes any declaration under penalty of perjury executed in conformance with 28 U.S.C. §1746, and any properly executed affidavit;

8. "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;

9. "Fed. R. App. P." means the Federal Rules of Appellate Procedure;

10. "Fed. R. Civ. P." means the Federal Rules of Civil Procedure;

11. "Fed. R. Crim.P." means the Federal Rules of Criminal Procedure;

12. "Fed. R. Evid." means the Federal Rules of Evidence;

13. "File" means the delivery to and acceptance by the clerk or the court clerk of a document which will be noted in the civil or criminal docket;

14. "Judge" refers to any United States District Judge exercising jurisdiction with respect to a particular action or proceeding in said court or, to a part-time or full-time United States Magistrate Judge, to whom such action or proceeding has been assigned for purposes relevant to the context in which such reference occurs.

15. "Lodge" means to submit by email or otherwise any document(s) to the Clerk of Court (unless otherwise specified by these rules or by order of the Court).

16. "Motion" includes all motions, applications, petitions or other requests made for judicial action;

17. "Person" includes natural person, corporation, partnership or other association of individuals;

18. "Plaintiff" means any party claiming affirmative relief by complaint, counter claim or cross-claim.

Civil Rule 1.2 Availability of Local Rules

a. **Availability.** The clerk must post updated copies of these rules on the court website, www.casd.uscourts.gov. Changes to the Local Rules must be advertised in the Court's official newspaper for publication of notices; on the Court's website, and provide for a period of public comment prior to them taking effect. The clerk must make copies of these rules available on request or upon payment of a nominal charge, which may be set by general order.

b. **Notice after adoption.** Immediately upon the adoption of these rules or of any change in these rules, copies of the new and revised local rules must be provided to such publications and persons as the chief judge deems appropriate.

Civil Rule 3.1 Designation of Nature of Action (Civil Cover Sheet)

For administrative purposes only, every complaint, petition or other paper initiating a civil action or proceeding must be accompanied by a completed civil cover sheet and must set forth immediately below the docket number one or more of the following categories most nearly descriptive of the subject matter of the action or proceeding:

a. Admiralty - Maritime Claims (except Jones Act)
b. Antitrust
c. Contract
d. Copyright/Trademark/Unfair Competition
e. Patent
f. Labor Relations
g. Tax
h. Tort/Personal Injury (including Jones Act)/Property Damage Fraud/Other (specify)
i. Government Collection/Forfeiture/Penalty
j. Civil Rights
k. Land Condemnation
l. Habeas Corpus
m. Review of Administrative Action
n. Federal Securities
o. Miscellaneous (specify)

Civil Rule 3.2 Actions In Forma Pauperis

a. **Affidavit**. All actions sought to be filed in forma pauperis, pursuant to 28 U.S.C. §1915, must be accompanied by an affidavit that includes a statement of all assets which shows inability to pay initial fees or give security. This affidavit must consist of a declaration in support of request to proceed in forma pauperis. This declaration must contain the following:

1. A statement as to current employment including the amount of wages or salary per month and the name and address of the current employer.

2. A statement, if not currently employed, as to the date of last employment and the amount of wages or salary per month which was received.

3. A statement as to any money received within the past twelve months from any of the following sources:
   a. Business, profession, or self-employment;
   b. Rent payments, interest, or dividends;
   c. Pensions, annuities, or life insurance payments;
   d. Gifts or inheritances;

e. Any other source.

The statement must include a description of each source of money and the amount of money received from each source during the past twelve months.

4. A statement as to any cash in possession and as to any money in a financial institution, including checking, savings, and any other accounts. The statement must include any money available to the declarant.

5. A statement as to any real estate, stocks, bonds, notes, automobiles, investments, or other valuable property (excluding ordinary household furnishings and clothing). The statement must describe the property and state its approximate value.

6. A statement as to all persons who depend upon the declarant for support. The statement must include the relationship of the dependents and the amount contributed toward their support.

7. A statement that, because of poverty, there is an inability to pay the initial costs of the proceeding or give security therefore, and the declarant's belief that the declarant is entitled to relief.

This declaration must be executed under penalty of perjury.

b. **Prison Account Certification**. In actions by incarcerated persons who seek to bring a civil action or appeal a judgment in forma pauperis, the affidavit requesting leave to proceed in forma pauperis must contain a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the suit or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

c. **Partial Fee Assessment for Prisoners**. In considering a prisoner's requests to proceed in forma pauperis, the court must assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits to the prisoner's account; or (2) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal. Thereafter, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner must forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.

d. **Partial Fee Assessment for Non-prisoners.** In considering a non-prisoner's request to proceed in forma pauperis, the court may, in its discretion, impose a partial filing fee which is less than the full filing fee that is required by law, but which is commensurate with the applicant's ability to pay.

e. **Partial Fee Waiver.** In all actions sought to be filed in forma pauperis pursuant to 28 U.S.C. §1915(a), and in which the person has insufficient assets or means by which to pay the full or assessed partial filing fee, the person may submit an application for waiver of the initial partial filing fee. In order to qualify for a waiver, the person must justify depletions of the previously

adequate account or income history to show that the depletion was not a deliberate attempt to avoid payment of initial filing fees.

f. **In Forma Pauperis Procedure.** All persons must submit the request to proceed in forma pauperis, accompanied by the affidavit required by 28 U.S.C. §1915(a)(1) and Civil Local Rule 3.2.a, at the time the suit or notice of appeal is submitted for filing. Incarcerated persons must also attach the 6-month prison account certification required by 28 U.S.C. §1915(a)(2) and Civil Local Rule 3.2.b. Applications for partial fee waivers (if any) pursuant to 28 U.S.C. §1915(b)(4) and Civil Local Rule 3.2.e may also be submitted at the time the suit or notice of appeal is submitted for filing. NO PARTIAL FEE CHECKS WILL BE ACCEPTED UNTIL THE COURT REVIEWS THE AFFIDAVIT AND ACCOUNT INFORMATION SUBMITTED IN SUPPORT OF A PRISONER'S REQUEST TO PROCEED IN FORMA PAUPERIS AND ISSUES AN ORDER ASSESSING THE AMOUNT OF INITIAL FEE WHICH IS DUE. The clerk of the court is authorized to return any partial fee check submitted prior to the court's partial fee assessment order.

g. **Fee Collection Cap.** In no event will the fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

Civil Rule 4.1 Service

a. **Service of Process.** Service of process, i.e., service of the summons and complaint, must be performed in accordance with Rule 4, Fed. R. Civ. P.

   All complaints must be served within ninety (90) days. Any extension will be granted only upon good cause shown.

b. **Failure to Serve.** On the one hundredth (100th) day following the filing of the complaint, or on the fourteenth (14th) day following an extension of time to serve, if proof of service has not yet been filed, the clerk will prepare an order to show cause with notice to plaintiff why the case should not be dismissed without prejudice and submit it to the assigned district judge for signature.

c. **Instructions to Marshal.** Where service of a summons and pleading is to be made by United States marshal upon a person or entity, the party at whose request the summons is issued is responsible for providing the United States marshal's office with appropriate instructions regarding the person upon whom service is to be made, in what capacity the service is to be made (official or individual), and at what address service is to be made. Failure to comply with these instructions may cause the marshal not to perform service.

d. **Service of Pleadings other than Original Complaint.** Service of an amended complaint, counterclaim, cross-claim, or third-party complaint, must be made upon each new party to the litigation, whether or not multiple parties are represented by a single attorney. Service of all other pleadings authorized to be served in accordance with Rule 5, Fed. R. Civ. P., must be complete when served upon the attorney for a party, if the party is represented by an attorney. Where an attorney represents multiple parties, service of one copy of a pleading, other than an amended

complaint, an amended counterclaim, or an amended third-party complaint, will constitute service of all parties represented by that attorney, unless the court otherwise orders.

The summons must be prepared by the attorney, or the party, if the party is proceeding pro se, upon forms supplied by the clerk, and must be presented concurrently with the filing of a complaint or petition commencing the action.

Civil Rule 4.5 Fee Schedule

Fees will be charged for the following services in accordance with the Miscellaneous Fee Schedule approved by the Judicial Conference of the United States:

a. Filing of a civil case
b. Filing a Habeas Corpus Petition
c. Notice of Appeal
d. Appeal to district court from judgment and conviction in misdemeanor case
e. Ninth Circuit docket fees when filing notice of appeal
f. Filing or indexing any paper not in a case or proceeding, including registration of petitions to perpetuate testimony, filing power of attorney, letters rogatory or letters of request, filing of papers by trustees
g. Search of the records
h. Certification of any document or paper
i. Exemplification of any document is twice the amount of the fee for certification
j. Reproducing any record or paper, magnetic tape recording, or microfiche retrieval of a record from storage
k. For a check paid into the court which is returned for lack of funds
l. For admission of attorneys to practice, including a certificate of admission, or for a duplicate certificate of admission
m. For the handling of registry funds deposited with the court
n. For usage of electronic access to court data
o. For filing an action brought under Title III of the Cuban Liberty and Democratic Solidarity Act **(A copy of the fee schedule can be obtained from the court's website, or upon request to the clerk of court.)**

Commencement of Action, Format of Pleadings, Papers and Amendments - Filing of Papers

Civil Rule 5.1 Form; Paper; Legibility; Nature of Documents to be Filed

a. **Legibility.** Each document filed, including exhibits where practicable, must be in English, plainly written, or typed in double space on one side of the document, line numbered in the left margin with not more than 28 lines per page,and letter size. Documents filed in paper format must be flat and unfolded, without backing sheet, double spaced on one side of the paper or

printed or prepared by means of a duplicating process on opaque, unglazed white paper. Quotations in excess of three lines must be indented and single spaced. Typewritten text must be no less than 10-point type in the Courier font or equivalent, spaced 10 characters per horizontal inch. Printed text, produced on a word processor or other computer, may be proportionally spaced allowing 28 lines on one side of the document, provided the type is no smaller than 14-point standard font (e.g. Times New Roman). The text of footnotes and quotations must also conform to these font requirements. Approved templates are available on the Court's website (www.casd.uscourts.gov) and may be amended by the Court over time as deemed appropriate.

b. **Original; copies.** The original of a document must be labeled as the original. All copies are to be clearly identified as such. The case number must appear in the lower right corner of each page, although it is not required on the title page or on the complaint, petition or other document which opens the case. The typed number must be inserted in the following format: year, case type, four-digit case number with leading zeros if necessary (96cv0010). Case types are as follows: civil = cv, criminal = cr, magistrate judge = mg, miscellaneous = mc. The clerk's office can provide a macro in WordPerfect format upon request.

c. **Interlineations.** There must be no erasures or interlineations on a document unless they are noted by the clerk or judge by marginal initials at the time of filing.

d. **Pre-punching and Attachments.** All documents presented for filing or lodging in paper format must be pre-punched with two (2) normal-size holes (approximately ¼" diameter), centered 2¾ inches apart, ½ to ⅝ inches from the top edge of the document. No pages of any document should have any attachment affixed thereto. All pages must be firmly bound at the top.

e. **Exhibits.** Except where compliance is impracticable, exhibits must be paged in consecutive numerical order and each page must show the exhibit number either immediately above or below the page number. Unless the physical nature of the exhibit renders it impracticable, exhibits must be attached to the documents to which they belong and must be readable without detaching the exhibit from the accompanying document.

   Each document containing exhibits must have, as a cover page to the exhibits, a table of contents indicating the page number of each of the succeeding exhibits. If exhibits are tabbed, the tabs must be at the bottom and not at the sides.

f. **Compliance.** Unless a waiver is first obtained from the court, the clerk must not file any document which does not comply with the requirements of these rules. Said document will be endorsed "lodged" until approved by the court.

g. **Adversary Proceeding.** The clerk must refuse to accept for filing any complaint, petition or any other pleading in a civil case, other than a Petition for Limitation of Liability under Rule F of the Admiralty and Maritime Rules, unless it is entitled as an adversary proceeding naming the defendant or respondent.

h. **Party Filing Document.** Except as provided in the federal rules, or by leave of court, no document will be filed in any case by any person not a party thereto.

i. **Copies:**

1. The original of all documents, including exhibits attached thereto, must be filed together with one legible conformed copy for the court's use, except motions filed under Criminal Local Rule 47.1.b.1.
2. The original and three copies must be filed in a three judge case.
3. In a consolidated proceeding the original and one copy will be filed in the low-numbered case or the lead case as may be designated by the court. The case number of each consolidated case must appear on each pleading following the lead case number.
4. If parties presenting documents for filing request the clerk to return a conformed copy by U.S. Mail, an extra copy must be submitted for this purpose and must be accompanied by a self-addressed envelope bearing sufficient postage.
5. The original and two copies of all substitutions of attorneys must be filed.

j. **Title Page.** The first page of every document must contain the following information which may be single spaced:

1. The name, address and telephone number of the attorney appearing for a party or of an individual appearing pro se, must be printed or typewritten in the space to the left of the page's center and beginning at line one. Attorneys appearing pro hac vice and attorneys employed or retrained by the United States or its agencies and authorized to practice in this court pursuant to Civil Local Rule 83.3.c.3, will list their bar numbers for the states of which they are active members. Attorneys appearing for a party must also include their California State Bar Number. The space to the right of the page's center must be reserved for the clerk's filing stamp.

2. The title of the court must commence at or below line eight of the first page.

3. Below and to the left of the title of the court, the title of the action must be inserted. In the event the parties are too numerous for all to be named on the first page, the names of the parties may be carried onto the successive page(s).

   In the space to the right of center the following will appear: The number of the action, a brief designation of the document's nature, mention of any notice of motion or affidavits or memorandum in support and "Demand for Jury Trial", if any.

4. The following information must appear on the cover page of each motion, and any opposition and reply, in the space opposite the caption below the case number: name of judicial officer, courtroom number and the date and time of hearing.

5. Names must be typed below signatures on document.

k. **Paragraphing Pleadings.** Averments in any pleading which seeks relief must be made in numbered paragraphs, each of which must be limited, as far as is practicable, to a statement of a single set of circumstances. Responsive pleadings must contain numbered paragraphs, each of which corresponds to the paragraph to which it is directed.

l. **Citations.** When citing Acts of Congress or sections of them, counsel must include the corresponding appropriate U.S.C. citations. When counsel cite regulations, counsel must supply the appropriate citations to the Code of Federal Regulations, including code number, page, section and the date of the regulation's promulgation.

m. **Captions.** All documents submitted for filing must be filed and captioned separately. Sentencing memoranda may be filed together with motions for departure, or may be filed separately from motions for departure. Objections to presentence reports must be filed separately. Sentencing summary charts must be filed. Double captions are required for cross- and counter-complaints, third party complaints, and their responses.

Civil Rule 5.2 Proof of Service

Proof of service of all papers required or permitted to be served, other than those for which a particular method of proof is prescribed in the Fed. R. Civ. P., must be filed in the clerk's office promptly and in any event before action is to be taken thereon by the court or the parties. The proof must show the day and manner of service and may be (1) written acknowledgment of service, on the original of the copy served, by the attorney or person in charge of his office receiving a copy thereof, or (2) by certificate of a member of the bar of this court; (3) by affidavit of the person who mailed or otherwise served the papers, or (4) by any other proof satisfactory to the court.

If an affidavit of mailing or of service is attached to the original pleading, it must be attached underneath the same so that the character of the pleading is easily discernible.

Failure to make the proof of service required by this subdivision does not affect the validity of the service; and the court may at any time allow the proof of service to be amended or supplied unless it clearly appears that to do so would result in material prejudice to the substantial rights of any party.

Civil Rule 5.3 Facsimile Filings

a. **Method of Filing**. A fax filing agency will file all fax transmitted pleadings on behalf of the parties or their counsel. NO DOCUMENTS MAY BE TRANSMITTED DIRECTLY TO THE CLERK BY FAX FOR FILING. ANY DOCUMENTS SO TRANSMITTED MUST BE REJECTED AND NOT FILED.

    1. The fax filing agency acts as the agent of the filing party and not as agent of the court. A document will be deemed filed when it is submitted by the fax filing agency, received in the clerk's office, and filed by the clerk. Mere transmission to or receipt by the fax filing agency will not be construed as filing.

    2. The fax filing agency must meet all technical requirements under Civil Local Rule 5.1.

    3. Counsel or parties utilizing a fax filing agency will ensure that additional copies necessary for filing will be reproduced by the fax filing agency, and any applicable filing fees are submitted at the time of filing.

b. **When Filed.** Electronic transmission of a document via facsimile machine does not constitute filing; filing is complete when the document is filed with the clerk.

c. **Form, Paper, Legibility**. Only plain paper (no thermal paper) facsimile machines may be used. All documents must be on size 8-1/2" x 11" bond. All copies must be clear, clean and legible, and comply with Civil Local Rule 5.1.

d. **Original Signature**. The image of the original manual signature on the fax copy will constitute an original signature for all court purposes. The original signed document must not be substituted except by court order. The original signed document must be maintained by the attorney of record or the party originating the document, for a period no less than the maximum allowable time to complete the appellate process. Upon request, the original document must be provided to other parties for review.

e. **Transmission Record.** The sending party is required to maintain a transmission record in the event fax filing late becomes an issue. A transmission record means the document printed by the sending facsimile machine stating the telephone number of the receiving machine, the number of pages sent, the transmission time, and an indication of errors in transmission.

Civil Rule 5.4 Electronic Case Filing

a. **Scope of Electronic Case Filing.** Except as prescribed by local rule, order, or other procedure, the Court has designated all cases to be assigned to the Electronic Filing System. Unless otherwise expressly provided in the Court's Electronic Case Filing Administrative Policies and Procedures Manual, the Court's Local Rules, or in exceptional circumstances preventing a registered user from filing electronically, as of November 1, 2006 all petitions, motions, memoranda of law, or other pleadings and documents to be filed with the Court by a registered user in connection with a case assigned to the Electronic Filing System must be electronically filed. Unless otherwise ordered by the Court, all attorneys admitted to practice before the Southern District of California must register for Electronic Case Filing.

b. **Consequences of Electronic Filing**. Electronic transmission of a document to the Electronic Filing System in the manner prescribed by the Court's Administrative Policies and Procedures Manual, together with the transmission of an NEF from the Court, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure and the Local Rules of this Court, and constitutes entry of the document on the docket kept by the Clerk in accordance with Fed. R. Civ. P. 58 and 79.

c. **Service of Pleadings and Documents Filed Electronically.** The NEF that is automatically generated by the Court's Electronic Filing System constitutes service of the filed document on Filing Users. Parties who are not Filing Users must be served with a copy of any pleading or other document filed electronically in accordance with the Federal Rules of Civil Procedure and these Local Rules. A certificate of service is required when a party electronically files a document, and must state the manner in which service or notice was accomplished on each party.

d. **Consent to Electronic Service.** Registration as a Filing User constitutes consent to Electronic Service of all documents as provided in this General Order and in accordance with the Federal Rules of Civil Procedures and Federal Rules of Criminal Procedure.

e. **Official Court Record.** The official Court record will be the electronic file maintained on the Court's servers. This includes information transmitted to the Court in electronic format, as well as documents filed in paper form, scanned, and made a part of the electronic record to the extent permitted by the Court's policies. The official record will also include any documents or exhibits that may be impractical to scan. The electronic file maintained on the Court's servers must contain a reference to any such documents filed with the Court. For cases initiated prior to the implementation of the Electronic Filing System, the official Court record will include both the pre-implementation paper file maintained by the Clerk, as well as the post-implementation electronic files maintained on the Court's servers. The Clerk's Office must not maintain a paper court file in any case initiated on or after the effective date of these procedures except as otherwise provided in these procedures.

f. **Electronic Filing Policies and Procedures.** The Court's CM/ECF Administrative Policies and Procedures Manual, which may be obtained on the court's website or upon request from the Clerk, sets forth the guidelines parties must follow to file documents electronically. The Court may direct the Clerk to strike from the record any document which fails to comply with the requirements for electronic filing set forth in the Administrative Policies and Procedures Manual.

Civil Rule 7.1 Motion Practice, Extensions, Enlargements or Shortening of Time, Submission of Orders

a. **Scope of Rule.** Unless otherwise ordered by a judge of this district, or unless contrary to statute or in conflict with a provision of the Fed. R. Civ. P., the provisions of this rule will apply to motions, applications and orders to show cause, or other request for ruling by the court. Such matters include motions to withdraw the reference from the bankruptcy court, appeals of orders by the bankruptcy court, and objections to magistrate judge's orders pursuant to Rule 72.a, Fed. R. Civ. P.

b. **Motion Hearing Dates.** All hearing dates for any matters on which a ruling is required must be obtained from the clerk of the judge to whom the case is assigned.

c. **Computation of Time.** All legal holidays and computation of time must be as provided in Rule 6, Fed. R. Civ. P.

d. **Argument and Submission.**

1. **Written and Oral Argument.** Motions must be determined upon the moving papers referred to herein and oral argument. A judge may, in the judge's discretion, decide a motion without oral argument.

2. **Argument by telephonic conference.** At the discretion of the court, argument concerning a noticed motion may be conducted through the use of a telephone conference

call to be arranged, initiated and paid for by the party proposing this method of oral argument. If such telephonic argument is approved by the court, the matter may be taken off the regular motion hearing calendar, and reset for a date and/or time more convenient to the court and the parties.

e. **Time for Hearing and Schedule for Filing Papers.**

1. **Twenty-eight (28) Day Rule -- Setting Time for Hearing.** When there has been an adverse appearance, a written notice of a matter requiring the court's ruling is necessary, unless otherwise provided by rule or court order. Pursuant to the provisions of Civil Local Rule 7.1.b all hearing dates for any motion must be obtained from the law clerk of the judge to whom the case is assigned. Unless the court shortens time and except as otherwise specified in Civil Local Rule 7.1.e.6, any notice of motion, application or notice of other matter requiring the court's ruling, plus all necessary supporting documents, will require a minimum filing date of twenty-eight (28) days prior to the date for which the matter is noticed. (For example, the notice of motion and supporting documents for a motion to be heard on a Monday must be filed and served no later than the fourth (4th) Monday prior to the Monday hearing. If the fourth Monday prior to the Monday hearing is a holiday, however, then the notice of motion and supporting documents would be due five (5) Fridays before the hearing.)

2. **Time for filing opposition.** Except as otherwise specified in Civil Local Rule 7.1.e.1, each party opposing a motion, application or order to show cause must file that opposition or statement of non-opposition with the clerk and serve the movant or the movant's attorney not later than fourteen (14) *calendar* days prior to the noticed hearing. (For example, for a motion to be heard on a Monday, the opposition papers must be filed and served no later than two Mondays prior to the noticed hearing.)
3. **Reply Memorandum of Points and Authorities.** Except as otherwise specified in Civil Local Rule 7.1.e.1, any reply memorandum must be filed and served not later than seven (7) days prior to the date for which the matter is noticed. (For example, for a hearing, the reply papers must be filed and served no later than by the Monday prior to the hearing. If the Monday prior to the hearing is a holiday, however, then the reply papers would be due two (2) Fridays prior to the hearing.) See Fed. R. Civ. P. 6(e).

4. **Service of Motions and Opposition by Mail.** For those parties not required or authorized by the court to file and serve motions and oppositions electronically using the Case Management/Electronic Case Filing System, unless otherwise provided by order of the court, the sixty, (60) twenty-eight (28) and fourteen (14) day periods of notice set forth in Civil Local Rules 7.1.e.1, 7.1.e.2 and 7.1.e.6 are increased for purposes of mail service upon opposing parties of counsel by three (3) days. The extension of time for service does not extend court filing deadlines. Federal Rule of Civil Procedure 6(d), extending the time within which an act may or must, be done, does not apply to the notice periods governed by this section. Any motion, notice of motion, or opposition, and supporting documentation will not be accepted for filing unless accompanied by proof of service demonstrating either hand-delivery or compliance with this section's mailing provisions.

5. **Applications for Orders Shortening Time.** All applications for orders shortening time under these rules must be submitted ex parte, be accompanied by a proposed order, and be served on all opposing parties.

6. **Social Security Cases.** In all actions brought under either or both §205(g) of the Social Security Act, 42 U.S.C. §405(g) or §1631(c)(3) of the Social Security Act, 42 U.S.C. §1383(c)(3), any notice of motion for summary judgment or for other disposition on the merits without a trial plus all necessary supporting documents must be filed with the clerk and served on the other party or the party's attorney not later than sixty (60) days prior to the date for which the matter is noticed. If the opposing party wishes to file a cross-motion for summary judgment or for other disposition on the merits without trial, that party must comply with the filing requirements of Civil Local Rule 7.1.e.1 (i.e., such cross-motion must be filed twenty-eight (28) days prior to the date for which the matter is noticed. (Any opposition to the cross-motion must be filed and served no later than fourteen (14) days prior to the day for which the matter is noticed.) Any reply to that opposition must be filed and served no later than seven (7) days prior to the date for which the matter is noticed.

7. **Untimely Motions.** The clerk's office is directed not to file untimely motions and responses thereto without the consent of the judicial officer assigned to the case.

8. **Special Briefing Schedules.** All documents to be filed in response to a special briefing schedule must contain the language 'special briefing schedule ordered' directly below the designation of the document's nature.

f. **Contents of Papers Filed.**

1. **Motions, Notices, Statement of Facts.** Each motion or other request for ruling by the court must be accompanied by a separate motion and notice of motion and another separate document captioned "Memorandum of Points and Authorities in support of [the motion]." Where appropriate, a separate statement of material facts must be supplied.

2. **Movant**

   a. In addition to the affidavits required or permitted by Fed. R. Civ. P. 6(d) and 56, copies of all documentary evidence which the movant intends to submit in support of the motion, or other request for ruling by the court, must be served and filed with the notice of motion.

   b. **Waiver.** A movant's failure to file any papers required under the local rules may be deemed as a waiver of the motion, or other request for ruling by the court.

3. **Opposing Party**

   a. Unless otherwise provided by rule or court order, a party opposing a motion, or other request for ruling by the court must file a written opposition. If such party chooses

not to oppose the motion, the party must file a written statement that the party does not oppose the motion or other request for ruling by the court.

b. Opposing party's papers and contents: Documentary evidence and points and authorities – The opposition must contain a brief and complete statement of all reasons in opposition to the position taken by the movant, an answering memorandum of points and authorities, and copies of all documentary evidence upon which the party in opposition relies.

c. Waiver: If an opposing party fails to file the papers in the manner required by Civil Local Rule 7.1.e.2, that failure may constitute a consent to the granting of a motion or other request for ruling by the court.

g. **Withdrawl, Continuance, Failure to Appear.**

1. **Withdrawal.** Any movant who does not intend to proceed with a motion or other request for ruling by the court must notify opposing counsel and the judge before whom the matter is pending as soon as possible.

2. **Continuances.** Any request for continuance of a noticed matter must be made as soon as possible to the judge to whom the matter is assigned. Prior to seeking such continuance, the party seeking the continuance must contact all opposing parties or their counsel to determine whether they would agree to such continuance.

3. **Failure to Appear.** If no one appears to oppose a motion or other request for ruling, the movant must relate the matter's material elements and the court may render its decision.

h. **Length of Brief in Support of or in Opposition to Motions.** Briefs or memoranda in support of or in opposition to all motions noticed for the same motion day must not exceed a total of twenty-five (25) pages in length, per party, for all such motions without leave of the judge who will hear the motion. No reply memorandum will exceed ten (10) pages without leave of the judge. Briefs and memoranda exceeding ten (10) pages in length must have a table of contents and a table of authorities cited.

i. **Applications for Reconsideration.**

1. Whenever any motion or any application or petition for any order or other relief has been made to any judge and has been refused in whole or in part, or has been granted conditionally or on terms, and a subsequent motion or application or petition is made for the same relief in whole or in part upon the same or any alleged different state of facts, it will be the continuing duty of each party and attorney seeking such relief to present to the judge to whom any subsequent application is made an affidavit of a party or witness or certified statement of an attorney setting forth the material facts and circumstances surrounding each prior application, including inter alia: (1) when and to what judge the application was made, (2) what ruling or decision or order was made thereon, and (3) what new or different facts and circumstances are claimed to exist which did not exist, or were not shown, upon such prior application.

2. Except as may be allowed under Rules 59 and 60 of the Federal Rules of Civil Procedure, any motion or application for reconsideration must be filed within twenty-eight (28) days after the entry of the ruling, order or judgment sought to be reconsidered.

j. **Joinders in Motions.**

1. The clerk must refuse to accept for filing any joinder in motions if there are no pending motions on file.

2. Each joinder must specifically identify the party(s) and the particular motion(s) to which the joinder applies.

Civil Rule 7.2 Stipulations/Joint Motions

a. Except as otherwise provided, stipulations must be recognized as binding on the court only when approved by the judge.

b. Any stipulation for which court approval is sought must first be filed as a "joint motion." Parties are not required to obtain a hearing date for the motion, and are not required to file a separate points and authorities or declaration unless required by the nature of the motion or requested by the assigned judicial officer.

c. Upon the filing of a joint motion, the filing party must also submit a proposed order to the assigned judicial officer. The proposed order must be a document separate from the joint motion.

Civil Rule 8.2 Civil Rights Act (42 U.S.C. §1983)

a. **Complaint by Prisoners.** Complaints by prisoners under the Civil Rights Act, 42 U.S.C. §1983, must be legibly written or typewritten on forms supplied by the court and signed by the plaintiff complainant. The forms must be completed in accordance with the instructions provided with the forms. The complaint must contain a short and plain statement of the claim and each averment must be simple, concise, and direct. Additional pages not to exceed fifteen (15) in number may be included with the court approved form complaint, provided the form is completely filled in to the extent applicable in the particular case. The court approved form and any additional pages submitted must be written or typed on only one side of a page and the writing or typewriting must be no smaller in size than standard elite type. Complaints tendered to the clerk for filing which do not comply with this rule may be returned by the clerk, together with a copy of this rule, to the person tendering said complaint.

b. **Forma Pauperis.** All actions sought to be filed in forma pauperis pursuant to 28 U.S.C. §1915 must comply with Civil Local Rule 3.2.

Civil Rule 9.2 Three-Judge Court

a. In any action or proceeding which a party believes is required to be heard by a three-judge district court, the words "Three-Judge District Court Requested" or the equivalent must be included immediately following the title of the first pleading in which the cause of action requiring a three-judge court is pleaded. Unless the basis for the request is apparent from the pleading, it must be set forth in the pleading or in a brief statement attached thereto. The words "Three-Judge District Court Requested" or the equivalent on a pleading is a sufficient request under 28 U.S.C. §2284.

b. In any action or proceeding in which a three-judge court is requested, parties must file the original and three copies of every pleading, motion, notice, or other document with the clerk until it is determined either that a three-judge court will not be convened or that the three-judge court has been convened and dissolved, and the case remanded to a single judge. The parties may be permitted to file fewer copies by order of the court.

c. A failure to comply with this local rule is not a ground for failing to convene or for dissolving a three-judge court.

d. The clerk must forthwith notify the assigned judge of such filing.

Civil Rule 12.1 Extension of Time to Answer

Extensions of time for answering, or moving to dismiss a complaint will only be secured by obtaining the approval of a judicial officer, who will base the decision on a showing of good cause.

Civil Rule 15.1 Amended Pleadings

a. **Amended Pleadings.** Every pleading to which an amendment is permitted as a matter of right or has been allowed by court order, must be complete in itself without reference to the superseded pleading.

   All amended pleadings must contain copies of all exhibits referred to in such amended pleadings. Permission may be obtained from the court, if desired, for the removal of any exhibit or exhibits attached to prior pleadings, in order that the same may be attached to the amended pleading. Each amended pleading must be designated successively as first amended, second amended, etc.

b. **Motions to Amend.** Any motion to amend a pleading must be accompanied by: (1) a copy of the proposed amended pleading, and (2) a version of the proposed amended pleading that shows---through redlining, underlining, strikeouts, or other similarly effective typographic methods---how the proposed amended pleading differs from the operative pleading. If the court grants the motion, the moving party must file and serve the amended pleading.

c. **Amended Pleadings Filed After Motions to Dismiss or Strike.** Any amended pleading filed after the granting of a motion to dismiss or motion to strike with leave to amend, must be accompanied by a version of that pleading that shows---through redlining, underlining, strikeouts, or other similarly effective typographic methods---how that pleading differs from the previously dismissed pleading.

d. **Pro Se Parties in Custody.** Parties who are in custody and appearing pro se are exempted from complying with the requirements of Civil Local Rule 15.1.b. to provide a version of the proposed amended pleading that shows how that pleading differs from the operating pleading. Pro se parties in custody are also exempted from the requirements of Civil Local Rule 15.1.c.

Civil Rule 16.1 Pretrial and Setting for Trial

a. **Application of this Rule.**
   1. Pretrial proceedings and setting of cases for trial must be governed by Fed. R. Civ. P. 16 and this rule, and by such orders as are issued pursuant thereto. The timing of the Federal Rule 16(b) scheduling order is adjusted to accommodate the Early Neutral Evaluation Conference, as allowed under Fed. R. Civ P. 1.

   2. All civil and admiralty cases must be pre-tried unless pre-trial is waived by order of the court.

b. **Counsels Duty of Diligence.** All counsel and parties, if they are proceeding pro se, must proceed with diligence to take all steps necessary to bring an action to readiness for trial. In doing so they should be mindful of the requirements of Rule 16(c), Fed. R. Civ. P., following subparagraph (11) thereto, and the sanctions contained in Rule 16(f) Fed. R. Civ .P., for failure to prepare for and participate in good faith in the pretrial conference process.

c. **Early Neutral Evaluation ("ENE") Conference.**
   1. Within forty-five (45) days of the filing of an answer, counsel and the parties must appear before the assigned judicial officer supervising discovery for an early neutral evaluation conference; this appearance must be made with authority to discuss and enter into settlement.

      At any time after the filing of a complaint and before an answer has been filed, counsel for any party may make a request in writing to the judicial officer assigned to supervise discovery in the case to hold an early neutral evaluation conference, discovery conference or status/case management conference. Copies of the request must be sent to counsel for the parties and the parties whose addresses are known to the requesting counsel. Upon receiving such request, the judicial officer will examine the circumstances of the case and the reasons for the request and determine whether any such conference would assist in the reduction of expense and delay the case. The judicial officer will hold such conferences as he or she deems appropriate.

      a. At the ENE conference, the judicial officer and the parties will discuss the claims and defenses and seek to settle the case.
      b. The ENE conference will be informal, off the record, privileged, and confidential.

c. Attendance may be excused only for good cause shown and by permission of the court. Sanctions may be appropriate for an unexcused failure to attend.

2. If no settlement is reached at the ENE conference, the judicial officer may do one of the following:
   a. Discus the parties' willingness to agree to non-binding arbitration or mediation within forty-five (45) days (1) in any case where the judicial officer believes arbitration or mediation might result in a cost-effective resolution of the lawsuit, or (2) in any case where the parties have indicated an interest in arbitration or mediation. Additionally, a case management conference will be set in these cases approximately sixty (60) days after the ENE conference.
   b. Where no arbitration or mediation is agreed upon, the judicial officer must hold a case management conference within thirty (30) days after the ENE conference. The case management conference may be held at the conclusion of the ENE conference.

d. Case Management Conference. The parties who have responsibility over the litigation and the counsel who is responsible for the case, will be present at the case management conference. The judicial officer may approve attendance of a party or counsel by telephonic conference call. At a reasonable time *before* this conference all counsel will discuss discovery and endeavor to resolve any disputes;

1. At the conference, the judicial officer will (1) discuss the complexity of the case; (2) encourage a cooperative discovery schedule; (3) discuss the likelihood for further motions; (4) discuss the number of anticipated percipient and expert witnesses; (5) evaluate the case and the need for early supervision of settlement discussions; (6) discuss the availability of ADR alternatives; and (7) discuss any other special factors applicable to the progress of the case.

2. At the end of the conference the judicial officer must prepare a case management order which will:

   a. Include a discovery schedule;

   b. Set a time for a further case management conference, if necessary;

   c. If appropriate, set a time for the proponent of each issue to identify expert witnesses; set a time for the responding party to identify expert witnesses in reply; set a time for the depositions of experts; set a time for the supplementation of such expert designation depending on the circumstances;

   d. Set a deadline for filing pretrial motions.

   e. Set a date for a pretrial hearing before the district judge who will try the case. The date for such hearing will be approved by the trial judge.

3. Setting of Dates.

   a. At the case management or pre-trial conference a trial date will be set by the magistrate judge if directed by the district judge assigned to the case.

   b. Senior district judges who have not referred the case to a magistrate judge will set all dates themselves.

c. The trial date must be firm and all requests for continuances of trial and motions dates will be granted only for good cause shown

d. No trial date will be continued except by written order approved by the trial judge.

4. At the case management conference, the judicial officer will set a date for a mandatory settlement conference unless it is determined that such a conference should be excused.

e. **Cases in which Status Conferences are not Required.** At the discretion of a judge assigned to the case, ENE and case management conferences need not be set in the following categories of cases:

1. Habeas corpus cases;
2. Cases reviewing administrative rulings;
3. Social Security Cases;
4. Default proceedings;
5. Cases in which a substantial number of defendants have not answered;
6. Actions to enforce judgments;
7. Bankruptcy appeals;
8. ENE conferences will not be set in Section 1983 cases.

f. **Pretrial.**

1. **Postponement of Pretrial Proceeding.**

a. **By Stipulation.** If additional time is required in which to comply with this rule, the parties may contact the court's staff and submit a timely stipulation which sets forth the reasons for their request for a continuance.

b. **By Motion.** If counsel is unable to obtain the stipulation provided by the Civil Local Rule 7.2 a motion to continue or to be relieved from compliance with any requirement of Civil Local Rule 7.1.g.1 may, upon seven (7) days written notice, be presented on the court's motion calendar.

2. **Memorandum of Contention of Fact and Law**

a. **General.** Unless the court specifies otherwise, no later than 5:00 p.m. twenty-eight (28) days prior to the pretrial hearing, each party must serve on each other party and file with the clerk a "Memorandum of Contentions of Fact and Law" which contains a concise statement of the material facts and the points of law claimed by such party and cites the authorities upon which the party intends to rely at trial.

b. **Abandoned Issues.** Each party must set forth a statement of any issues raised by the pleadings which have been abandoned.

c. **Exhibits.** Each party must set forth a list of all exhibits such party expects to offer at the trial other than those to be used for impeachment with a

description of each exhibit sufficient for identification, the list being substantially in the following form:

Case Title_____Case No_____
List of
Exhibits_____

NUMBER	DATE MARKED	DATE ADMITTED	DESCRIPTION

Each party must place the case caption at the top as shown, and show "Plaintiff's" or "Defendant's" before the word "Exhibits" and, below that, only the spaces labeled "Number" and "Description" are required to be filled in prior to trial.

Plaintiff must number plaintiff's exhibits numerically and defendant's by alphabetic letters as follows: A to Z; then AA to AZ; then BA to BZ, etc. So far as is possible, exhibits must be numbered in the order in which they will be presented and offered at trial.

The parties are to consult the judge's courtroom clerk concerning problems as to the numbering of exhibits.

d. **Witnesses.** Each party must set forth the names and addresses of all prospective witnesses, except impeaching witnesses, and, in the case of expert witnesses, a brief narrative statement of qualifications of such witness and the substance of the testimony which such witness is expected to give. Only witnesses so listed will be permitted to testify at the trial except for good cause shown.

3. **Memorandum of Contentions of Fact and Law: Specific Situations.** In negligence, wrongful death, contract, eminent domain and patent cases the memorandum must particularize items set forth below.

a. **Negligence Cases.** The plaintiff must set forth: acts of negligence claimed, specific laws and regulations alleged to have been violated, a statement as to whether the doctrine of res ipsa loquitur is relied upon, and the basis for such reliance, a detailed list of personal injuries claimed, a detailed list of permanent personal injuries claimed including the nature and extent thereof, the age of the plaintiff, the life and work expectancy of the plaintiff if permanent injury is claimed, an itemized statement of all special damages to date, such as medical, hospital, nursing, etc., expenses, with the amount and to whom paid, a detailed statement of loss of earnings claimed and a detailed list of any property damage.

The defendant must set forth any acts of comparative or contributory negligence claimed in addition to any other defense he intends to interpose.

b. **Wrongful Death Cases.** In addition to the information required by Civil Local Rule 16.1.f.3.a. , the plaintiff must set forth further information as follows: decedent's date of birth, marital status, including age of surviving spouse; employment for five years before date of death; work expectancy; reasonable probability of promotion; rate of earnings for five years before date of death; life expectancy under the mortality tables; general physical condition immediately prior to date of death; the names, dates of birth, and relationship of decedent's children and relatives; a detailed list of injuries claimed by said relatives and children; a list of decedent's dependents; the amounts of monetary contributions or their equivalent made to each of such dependents by decedent for a five-year period prior to date of death; a statement of the decedent's personal expenses and a fair allocation of the usual family expenses for decedent's living expenses for a period of at least three years prior to the date of death; and the amount claimed for care, advice, nurture, guidance, training, etc., by the deceased, if a parent, during the minority of any dependent.

The defendant must set forth any acts of comparative or contributory negligence claimed, in addition to any other defenses the defendant intends to interpose.

c. **Contract Cases.** The parties must set forth: whether the contract relied on was oral or in writing, specifying the writing, the date thereof and the parties thereto, the terms of the contract which are relied on by the party, any collateral oral agreement, if claimed, and the terms thereof, any specific breach of contract claimed, any misrepresentations of fact alleged, an itemized statement of damages claimed to have resulted from any alleged breach, the source of such information, how computed, and any books or records available to sustain such damage claim, whether modification of the contract or waiver of covenant is claimed, and if so, what modification or waiver and how accomplished.

d. **Eminent Domain Cases.** Disclosure in addition to that contained within Civil Local Rule 16.1.f.2 must be made as follows: Not later than seven (7) days in advance of pretrial hearing, each party appearing must file with the trial judge *in camera* a summary "Statement of Comparable Transactions" which contains: relevant facts as to each sale or other transaction to be relied upon as comparable to the taking, including the alleged date of such transaction, the names of all of the parties to the transaction, the consideration paid and the date of recordation, and the book, page or other identification of any record of such transaction. Such statements must be in a form and content suitable to be presented to the jury as a summary of evidence on the subject. The judge may, thereafter, release the list of comparables to opposing counsel.

At least seven (7) days prior to trial each party appearing must serve and file a “Statement as to Just Compensation” setting forth a brief schedule of contentions as to the fair market value in cash, at the time of taking, of the estate or interest taken, the maximum amount of any benefit proximately resulting from the taking, and the amount of any claimed damage proximately resulting from severance.

e. **Patent Cases.** The parties and attorneys must comply with the following:

(1) Each party must set forth a short specific statement of the party's contentions as to the teaching of the claims in the patents where it is contended the patent or patents are invalid;

(2) The party asserting the validity of the patent must set forth a short specific statement of plaintiff's contentions as to how the patent or patents are infringed;

(3) The party contesting the validity of the patent must set forth a short specific statement of defendant's contentions as to why the patent or patents are not infringed.

4. **Meetings of Counsel.**

a. Timing and Purpose of Meeting. At least twenty-one (21) days in advance of the pretrial hearing, and after each party has filed and served its memorandum of contentions of fact and law, the attorneys for the parties must convene at a suitable time and place. The purpose of the meeting is to arrive at stipulations and agreements resulting in simplification of the triable issues and to confer concerning the content of the pretrial order. Counsel for the plaintiff has the duty of arranging for meetings and for preparation of the Pretrial Order mandated by Civil Local Rule 16.1.f.6.c

b. Exchanges Between Counsel. At the meeting, all exhibits other than those to be used for impeachment must be displayed or exchanged.

c. Content of Exhibits Exchanged. Each photograph, map, drawing and the like must contain a legend on its face or reverse side. The legend must state by date the relevant matters of fact as to what the party offering such an exhibit claims is fairly duplicate.

d. Failure to Display and/or Exchange Exhibits. Failure to display and/or exchange exhibits to or with opposing counsel will permit the court to decline admission of same into evidence.

5. **Conduct of the Pretrial Hearing.** At the pretrial hearing the court will consider:

a. Pleadings and Other Documents. The pleadings, proposed amendments to the pleadings and papers and exhibits then on file including stipulations, statements and memoranda filed pursuant to Civil Local Rule 16.1.f.2 and f.3 and all matters referred to in Fed. R. Civ. P. 16.

b. Motions. All motions and other proceedings then pending.

c. Settlement and Simplification. The possibilities for settlement of the case and other matters which may be presented concerning parties, process, pleading or proof with a view to simplifying issues and bringing about a just, speedy and inexpensive determination of the matter.

d. Future Proceedings. Future and additional pretrial meetings where required and, upon termination of the final pretrial hearing, the date upon which the case will be set for trial.

e. Consent to a Magistrate Judge. Whether the parties will consent to a magistrate judge to conduct the trial.

6. **Pretrial Order.**

a. Responsibility of Plaintiff's Counsel. Counsel for the plaintiff will be responsible for preparing the pretrial order and arranging the meetings of counsel pursuant to this rule. Not less than fourteen (14) days in advance of the pretrial hearing, plaintiff's counsel must provide opposing counsel with the proposed pretrial order for review and approval. Opposing counsel must communicate promptly with plaintiff's attorney concerning any objections to form or content of the pretrial order, and both parties should attempt promptly to resolve their differences, if any, concerning the order.

b. Lodging with the Judge's Chambers. No later than seven (7) days prior to the pretrial hearing, plaintiff will lodge a Pretrial Order with the judge's chambers.

c. Format. Attorneys for all parties appearing in the case must have approved the Pretrial Order as to form and substance. The Pretrial Order will contain the following unless the court orders otherwise:

1. A statement to be read to the jury, not in excess of one page, of the nature of the case and the claims and defenses.

2. A list of the causes of action to be tried, referenced to the Complaint [and Counterclaim if applicable]. For each cause of action, the order shall succinctly list the elements of the claim, damages and any defenses. A cause of action in the Complaint [and/or Counterclaim] which is not listed will be dismissed with prejudice.

3. (a) A list of each witness counsel actually expect to call at trial with a brief statement not exceeding four sentences, of the substance of the witnesses' testimony.

(b) A list of each expert witness counsel actually expects to call at trial with a brief statement, no exceeding four sentences, of the substance of the expert witnesses' testimony.

(c) A list of additional witnesses, including experts, counsel do not expect to call at this time but reserve the right to call along with a brief statement, not to exceed four sentences, of the substance of the witnesses' testimony.

4. (a) A list of all exhibits that counsel actually expect to offer at trial with a one-sentence description of the exhibit.

(b) A list of all other exhibits that counsel do not expect to offer at this time but reserve the right to offer if necessary at trial with a one-sentence description of the exhibit.

5. A statement of all facts to which the parties stipulate. This statement must be on a separate page and will be read to and provided to the jury. The parties are directed

to meet with the assigned magistrate judge to work out as many stipulations of fact as possible.

6. A list of all deposition transcripts by page and line, or videotape depositions by section that will be offered at trial.

7. In addition to filing proposed jury instruction in accordance with Fed. R. Civ. P. 51 and CivLR 51.1, the parties shall e-mail the proposed instructions in Word or Wordperfect form to Chambers. If a party disagrees with a particular instruction, the party shall submit an alternate instruction.

8. This case will be tried by (jury) (by the court without a jury).

9. Time estimated for trial is ( ) days.

7. **Trial Counsel to be Present.** Unless otherwise ordered by the court, counsel who will conduct the trial will appear at the pretrial hearing.

8. **Penalties: Pretrial.** Failure of counsel for any party to appear before the court at pretrial proceedings or to complete the necessary preparations therefor may be considered an abandonment or failure to prosecute or defend diligently, and judgment may be entered against the defaulting party either with respect to a specific issue or on the entire case.

9. **Preparations for Trial.** Unless otherwise ordered, the parties must, not less than seven (7) calendar days prior to the date on which the trial is scheduled to commence:

a. Serve and file briefs on all significant disputed issues of the law, including foreseeable procedural and evidentiary issues, setting forth briefly the party's position and the supporting arguments and authorities;

b. (1) In Jury cases, serve and file proposed voir dire questions, jury instructions and forms of verdict which must conform to Civil Local Rule 51.1; and (2) in court cases, serve and file proposed findings of fact and conclusions of law;

c. Exchange copies of all exhibits to be offered that were not already provided under Civil Local Rule 16.1.f.5.b and all schedules, summaries, diagrams and charts to be used at the trial other than for impeachment or rebuttal. Each proposed exhibit must be pre-marked for identification in a manner clearly distinguishing plaintiff's from defendant's exhibits. Upon request, a party must make the original or the underlying documents of any exhibit available for inspection and copying. Nothing in this rule will excuse a failure to comply in good faith with the time for exchanging exhibits under Civil Local Rule 16.1.f.5.b.

Civil Rule 16.2 Status and Scheduling Conferences

Magistrate judges may hold status conference and issue scheduling orders in any case which has been referred to the magistrate judge by the district judge for that purpose.

Civil Rule 16.3 Settlement Conferences and Proceedings

a. **Mandatory Settlement Conference.** In each civil action, a mandatory settlement conference must be scheduled before the assigned magistrate judge or such other judicial officer as the assigned district judge may direct. If the judicial officer assigned to conduct the settlement conference determines that a case is ready for a settlement conference prior to the scheduled date, the judge may order the parties and counsel to appear for such a conference.

b. **Attendance of Parties.** The judge conducting the settlement conference may require the parties or representatives of a party other than counsel, who have authority to negotiate and enter into a binding settlement, to be present at the settlement conference.

c. **Disqualification of Judge.** The judge conducting the settlement conference will be disqualified from trying the case unless there is an agreement by all the parties to waive this restriction.

d. **In Camera Communications.** The judge conducting the settlement conference may receive *in camera* communications from each party and its counsel, and must maintain such in confidence unless there is a stipulation to the contrary.

e. **Follow-up Settlement Conference.** The judge conducting the settlement conference may schedule as many follow-up settlement conferences as the judge finds appropriate in light of the complexity of the matter or any circumstances in the case.

f. **Alternative Settlement Procedures.** A district or magistrate judge may order a non-binding mini-trial or summary jury trial in all cases the judge finds, after a hearing with an opportunity to be heard, that (1) the potential judgment does not exceed $250,000 and (2) that the use of this procedure will probably resolve the case. In determining whether to order a mini-trial or summary jury trial, the judge must also consider the costs of the procedure and the costs that may be saved by ordering such a non-binding trial. After considering the above and any other relevant factors, the judge may order the parties to participate in a non-binding mini-trial or summary jury trial notwithstanding that one or more of the parties has objected thereto. A district and magistrate judge may also order a non-binding mini-trial or summary jury trial in all other cases where the parties have consented to such procedure.

g. **Post Verdict Settlement Conferences.** In the event that a civil case is tried before the court or a jury and a verdict is returned, the trial judge may order the case referred to the assigned magistrate judge or such other judge the parties mutually agree upon for the purpose of scheduling a settlement conference. The settlement judge will immediately schedule the settlement conference and order the parties and counsel to be present. This conference must be held before the judgment becomes final.

h. The settlement conference will be off the record, privileged and confidential, unless otherwise ordered by the court.

Civil Rule 16.4 Assessment of Jury Costs.

If for any reason attributable to counsel or parties, including settlement, the court is unable to commence a jury trial as scheduled, where a panel of prospective jurors have reported for voir dire, they court may assess against counsel or parties responsible all or part of the cost of the panel.

Civil Rule 17.1 Actions Involving Minors or Incompetents

a. **Order of Judgment Required.** No action by or on behalf of a minor or incompetent, or in which a minor or incompetent has an interest, will be settled, compromised, voluntarily discontinued, dismissed or terminated without court order or judgment. All settlements and compromises must be reviewed by a magistrate judge before any order of approval will issue. The parties may, with district judge approval consent to magistrate judge jurisdiction under 28 U.S.C. §636(c) for entry of an order approving the entire settlement or compromise.

b. **Payment and Disbursement of Funds.**

1. Money or property recovered by a minor or incompetent California resident by settlement or judgment must be paid and disbursed in accordance with California Probate Code Section 3600, et seq. If the recipient of the money or property is not a California resident, disbursement must occur pursuant to court restrictions which are similar to those of Section 3600, et seq.

2. Should a guardian be necessary a certified copy of guardianship letters and a state court certificate must be filed with the clerk prior to any distribution to the guardian unless otherwise ordered by the court. The certificate will verify that the guardian has filed a surety bond in an amount to be determined by the court.

3. Should money or property be held in a trust for a minor or an incompetent, the proposed trust instrument must be submitted to a magistrate judge on an ex parte petition for review and approval before the settlement is approved or the judgment is entered. The magistrate judge may require approval of the form of the documents by an appropriate state judge in the jurisdiction where the minor or incompetent resides. The parties may also consent to magistrate judge jurisdiction to approve the entire settlement under 28 U.S.C. §636(c). Where the parties consent to magistrate judge jurisdiction to approve the entire settlement, the approval of the trust documents and the settlement may be consolidated in one properly noticed hearing.

4. Any withdrawals or disbursements from the trust must be made in accordance with the procedures and applicable laws of the state.

a. The Ex Parte Petition for Approval of Terms of Trust should generally contain the following information:
    1. Identity of the petitioner;
    2. The terms and total amount of the settlement and the amount to go into the trust;

3. The circumstances giving rise to the settlement or judgment and a general description of the plaintiff's injuries and needs;
4. Suggested amount of bond;
5. If for a Special Needs Trust, the petition should make the allegations to support the determinations required under California Probate Code §3600(b) for the establishment of the trust; and,
6. Any other information that may be required.

b. A Proposed Order must be submitted by the attorney for the petitioner and must comply with the requirements of this rule and California Probate Code §3600, et seq. and include the following:
   1. An order for the appropriate bond;

   2. An order that the first accounting, if required, be filed within one year of the establishment of the trust with the San Diego Superior Court. If the recipient of the money or property is not a California resident, the accounting must be made to the appropriate court in the jurisdiction where the minor or incompetent resides;

   3. If the order is for the approval of the terms of a Special Needs Trust, it should contain:
      a. A statement that the petitioner will provide that all liens have been satisfied prior to the establishment of the trust by the court; and,
      b. A statement that the "court makes no specific finding or order with respect to whether the Special Needs Trust for the Benefit of _____ satisfies or complies with applicable federal laws or regulations."

   4. The order will provide that the terms of the trust are approved and those terms will be fully set forth within said Order, not as an attachment. The parties are further directed to proceed with settlement approval hearings or the entry of judgment as appropriate.

c. A copy of the executed trust document, as approved pursuant to this rule, along with a certification by the trustee that any court ordered surety bond is in force, must be filed with the court prior to any distribution to the trust.

Civil Rule 23.1 Class Actions

In any action sought to be maintained as a class action:

a. The complaint, or other pleading asserting a class action must bear the legend "Class Action" below the docket number; and

b. The complaint must include a statement describing the class or classes on behalf of which the action is sought to be maintained.

Civil Rule 26.1 Deposition and Discovery

a. **Conference Required.** The court will entertain no motion pursuant to Rules 26 through 37, Fed. R. Civ. P., unless counsel will have previously met and conferred concerning all disputed issues. If counsel for the moving party seeks to arrange such a conference and counsel for the party against whom the motion is made willfully refuses or fails to meet and confer, the judge (in absence of a prior order dispensing good cause with such a meeting) may order a payment of reasonable expenses, including attorney's fees, pursuant to Rule 37, Fed. R. Civ. P. and Civil Local Rule 83.1. If counsel have offices in the same county, they are to meet in person. If counsel have offices in different counties, they are to confer by telephone. Under no circumstances may the parties satisfy the meet and confer requirement by exchanging written correspondence.

b. **Certificate of Compliance.** At the time of filing any motion with respect to Rules 26 through 37, Fed. R. Civ. P., counsel for the moving party must serve and file a certificate of compliance with this rule.

c. **Protective Order.** Any party or non-party against whom a motion under Rule 37(a) or Rule 45(d)(1), Fed. R. Civ. P., is being made may notice for hearing at the same time a motion for protective order under Rule 26(c), Fed. R. Civ. P.

d. **Principles Controlling Dispositions of Motions.** In the disposition of any motion made under Rules 37(a) or 26(c), Fed. R. Civ. P., the court will be guided by the rule of construction contained in Civil Local Rule 1.1.c to secure the just, efficient and economical determination of every action and proceeding.

e. **Discovery Motion.** All motions to compel discovery are referred to the magistrate judge assigned to the case. The magistrate judge maintains discretion to waive all or part of the requirements of Civil Local Rule 7.1.f in deciding discovery motions.

Civil Rule 30.1 Depositions

a. **Transcripts/Record Cost.** The deposing party must assume the cost of the record or transcription unless, upon motion or the parties' agreement, the court orders a waiver of transcription or a different apportionment of cost.

b. **Court Copy.** Whenever a deposition or any part thereof is to be read in court, counsel using same must furnish a copy to the judge, which copy must be in addition to the original filed with the court.

Civil Rule 33.1 Interrogatories

a. **Limitation on Number of Interrogatories.** No party will serve on any other party interrogatories which, including discrete subparts, number more than twenty-five interrogatories without leave of court. Any party desiring to serve additional interrogatories must submit to the court a written motion setting forth the proposed additional interrogatories and the reasons establishing good cause for their use.

b. **Answers and Objections to Interrogatories.** Answers and objections to interrogatories, objections to answers to interrogatories or motions for more definite answers pursuant to Rule 37(a), Fed. R. Civ. P. must identify and quote each interrogatory in full immediately preceding the statement of any answer or objection thereto.

c. **Filing.** Unless filing is ordered by the court on motion of a party or upon its own motion, interrogatories, requests for production and the answers thereto need not be filed unless and until they are used in the proceedings.

Civil Rule 36.1 Requests for Admission

a. **Limitation on Number of Requests for Admission.** No party will serve on any other party requests for admission which, including subparagraphs, number more than twenty-five requests for admission without leave of court. Any party desiring to serve additional requests for admission must submit to the court a written memorandum setting forth the proposed additional requests for admission and the reasons establishing good cause for their use.

b. **Answers and Objections to Requests for Admission.** Responses and objections to requests for admission or answers thereto pursuant to Rule 36, Fed. R. Civ. P. must identify and quote each request for admission in full immediately preceding the statement of any answer or objection thereto.

c. **Filing.** Unless filing is ordered by the court on motion of a party or upon its own motion, requests for admission, and requests for production and the answers thereto need not be filed unless and until they are used in the proceedings.

Civil Rule 38.1 Jury Demand

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

Any other notation on the civil cover sheet, such as those described in Civil Local Rule 3.1, will not constitute a demand for jury trial under these rules.

Civil Rule 40.1 Assignment of Civil Cases

a. **Assignment of Civil Cases.** All actions and proceedings of a civil nature must be numbered consecutively upon the filing of the first document in each such action or proceeding, and the judges will, from time to time, determine, and indicate by formal order to the clerk, the method by which each action or proceeding will be assigned to a particular judge, to the end that over a period of time each judge must be assigned substantially equal amounts of work. Neither the clerk nor any deputy will have any discretion in determining the judge to whom any matter is assigned, the action of the clerk being ministerial only. The method of assignment chosen by the judges will be such that the judge to whom any particular matter is to be assigned, in accordance with this rule, must not be known by or disclosed to the clerk, or any member of the staff, or to any other person, until after such action or proceeding has been filed and numbered.

   The judge to whom a case is assigned, or the chief judge of the district, may transfer such a case at any time to a consenting judge in the interest of efficient administration of the judicial business of the district.

b. **Assignment of Patent and Plant Variety Protection Cases.** Because the judges of the Court have elected to participate in the Patent Pilot Project established pursuant to Pub. L. No. 111-349, 124 Stat. 3674, all newly filed patent and plant variety protection cases will be assigned in accordance with the procedures set forth in the Court's General Order 598 Regarding the Assignment of Patent and Plant Variety Protection Cases, entered on August 22, 2011, and any subsequent amendments thereto.

c. **Assignments to New Judges.** Upon the induction of a new judge, the clerk will ascertain the number of cases which comprises an equal share of all cases then pending, and the number of cases assigned to each active judge. The clerk will then indicate to each active judge the number of cases to be transferred to the new judge.

   The Court will enter an order designating the number of such cases to be selected by the transferring judge and the number to be chosen randomly by the clerk. The transferring judge may decline to transfer a case and then another case will be randomly selected.
   The new judge may refuse to accept any such transfer when there are grounds for recusal, in which instance another case will be selected.

   The clerk will then add the name of the new judge to the random selection system that governs the assignment of new cases to active judges.

d. **Temporary Designation.** Absent an order to the contrary, all the judges sitting in this District are designated to handle any matters requiring action on cases assigned to a judge who is unavailable.

e. **Low Number Rule, Criteria.** The clerk must promptly examine the original complaint or petition in each civil action and proceeding hereafter filed and ascertain whether any one or more civil actions or proceedings pending or any one or more currently filed appear (1) to arise from the same or substantially identical transactions, happenings, or events; or (2) involve the same or

substantially the same parties or property, or (3) involve the same patent or the same trademark; or (4) call for determination of the same or substantially identical questions of law; or (5) where a case is refiled within one year of having previously been terminated by the Court; or (6) for other reasons would entail substantial duplication of labor if heard by different judges.

f. **Notice of Related Case, Duties of Counsel.** Whenever counsel has reason to believe that a pending action or proceeding on file or about to be filed is related to another pending action or proceeding on file in this or any other federal or state court (whether pending, dismissed, or otherwise terminated), counsel must promptly file and serve on all known parties to each related action or proceeding a notice of related case, stating the title, number and filing date of each action or proceeding believed to be related, together with a brief statement of their relationship and the reasons why assignment to a single district judge is or is not likely to effect a saving of judicial effort and other economies. The clerk will promptly notify the court of such filing. This is a continuing duty that applies not only when counsel files a case with knowledge of a related action or proceeding but also applies after the date of filing whenever counsel learns of a related action or proceeding.

g. **Definition of Related Action.** An action or proceeding is related to another action or proceeding where both of them:
   1. Involve some of the same parties and are based on the same or similar claims, or
   2. Involve the same property, transaction, patent, trademark, or event, or
   3. Involve substantially the same facts and the same questions of law.

h. **Duties of Clerk.** Whenever it appears to the clerk that any one or more of the above circumstances set forth in Civil Local Rule 40.1.e exist, it will be the duty of the clerk to report the cases in question to the judges concerned at the earliest date practicable.

   The clerk's report must set forth, as to each action or proceeding listed therein: (1) the case number, (2) the fullest practicable statement of the names of all parties, (3) a brief statement of the nature of the case and the relief sought, (4) the name of the attorney for plaintiff or petitioning party, and (5) such other information as will, in the opinion of the clerk, assist in determining whether a case should be transferred under this "low-number" rule. The clerk's report must be accompanied by an appropriate order for the signature of the judges concerned with the proposed transfer.

i. **Assignments and Transfers.** In order to avoid unnecessary duplication of judicial effort, all pending civil actions and proceedings, which are determined to be related to any other pending civil action or proceeding pursuant to the criteria set forth in Civil Local Rule 40.1.e will be assigned to the district and magistrate judge to whom the lowest numbered case was assigned, or the magistrate judge, if the parties consent, and the magistrate judge is handling the lower numbered case by consent. Orders for transfers of cases subject to this "low-numbered" rule must be made and entered at the earliest practicable date following commencement of the action or proceedings.

j. **Transfer Limitation.** No single series of cases comprising more than ten in number may be transferred to a single judge pursuant to this order without the consent of the transferee judge.

Civil Rule 40.2 Notice of Party with Financial Interest

Any non-governmental corporate party to an action in this court must file a statement identifying all its parent corporations and listing any publicly held company that owns 10% or more of the party's stock. A party will file a separate statement entitled "Notice of Party with Financial Interest" with its initial appearance in the court and will supplement the statement within a reasonable time of any change in the information.

Civil Rule 41.1 Dismissal for Want of Prosecution and for Failure to Comply with Local Rules

a. Actions or proceedings which have been pending in this court for more than six months, without any proceeding or discovery having been taken therein during such period, may, after notice, be dismissed by the court for want of prosecution, at the calling of a calendar prepared for that purpose by the clerk. Such a dismissal must be without prejudice, unless otherwise ordered.

b. Failure to comply with the provisions of the local rules of this court may also be grounds for dismissal under this rule.

JURIES

Civil Rule 47.1 Examination of Jurors

Unless otherwise ordered, the examination of trial jurors will be conducted by the judge. Counsel will submit any questions which they desire to be propounded to the jurors in accordance with Civil Local Rule 16.1.f.9.b.

Civil Rule 51.1 Filing, Service and Form of Proposed Instructions

a. **Filing.** Jury instructions must be filed in accordance with Rule 51, Fed. R. Civ. P. The judge may in the judge's discretion, receive additional requests for instructions at any time prior to the commencement of argument to the jury.

b. **Style.** Each proposed instruction must be concise, cover only one subject which must be indicated in the caption, set forth the identity of the party submitting it, be written in full on separate page, be consecutively numbered, and set forth citations to the authorities supporting it.

c. **Objections.** Objections to proposed instructions may be made in writing or orally, as time permits. Such objections should normally be accompanied by citations of supporting authority.

Prior to argument of counsel to the jury, the court must inform counsel of the instructions which will be given.

d. **Instructions.** If an instruction is submitted from a recognized book of instructions, it must be from the latest edition thereof (so noted at the bottom of the instruction); and if modified in any way, deleted material must be shown in parentheses and additions must be underscored.

Civil Rule 53.1 Special Master Reports 28 U.S.C. §636(b)(2)

Any party may seek review of, or action on, a special master's report filed by a magistrate judge in accordance with the provisions of Rule 53(e) of the Fed. R. Civ. P.

Civil Rule 54.1 Costs

a. **In General.** See 28 U.S.C. §§1920 and 1923; Rule 54(d), Fed. R. Civ. P. Unless otherwise ordered by the court, or stipulated by the parties, the prevailing party is entitled to costs. Within fourteen (14) days after entry of judgment, the party in whose favor a judgment for costs is awarded or allowed by law, and who claims costs, must file with the clerk the bill of costs, together with a notice of when the clerk will hear the application. Unless otherwise ordered by the Court, the filing of a motion under Fed. R. Civ. P. 59 or 60 does not extend the time to file the bill of costs. Prevailing party may elect to hold a telephonic hearing upon notice to the clerk and the attorney for the adverse party. It will be the responsibility of the prevailing party to initiate the conference call.

   The bill of costs must itemize the costs claimed and must be supported by a memorandum of costs, an affidavit of counsel that the costs claimed are allowable by law, are correctly stated, and were necessarily incurred, and copies of the invoices for requested costs. Cost bill forms must be made available by the clerk's office upon request.

   The notice must specify the hour and date when application to the clerk to tax the costs will be made, which must not be less than fourteen (14) nor more than twenty-one (21) days from the date of the notice. Any opposition or memorandum by the opposing party must be filed at a time specified by the clerk prior to the hearing indicated on the bill of costs.

b. **Items Taxable as Costs.** It is the custom of the court to allow certain items of costs not otherwise allowed or prohibited by statute or by specific order, as follows:

   1. **Fees for Service of Process.** Fees for service of process (whether served by the United States Marshal or other persons authorized by Fed. R. Civ. P. 4) are allowable. Fees for expedited service are allowable only if the Court ordered service to be effected on an expedited basis. Costs for service of subpoenas are taxable as well as service of summonses and complaints.

2. **Fees Incident to Transcripts – Trial Transcripts.** Except as provided below, the cost of transcripts is not normally allowable unless, before it is incurred, it is approved by a judge or stipulated to be recoverable by counsel.

   a. The cost of the original and one (1) copy of a trial transcript, a daily transcript and of a transcript of matters prior or subsequent to trial, furnished the court is taxable, when either requested by the court, or prepared pursuant to stipulation. Mere acceptance by the court does not constitute a request. Copies of transcripts for counsel's own use are not taxable in the absence of a special order of the court.
   b. The cost of transcripts necessarily obtained for appeal is allowable.
   c. The cost of a transcript of a statement by a judge from the bench which is to be reduced to a formal order prepared by counsel is allowable.

3. **Depositions.** Costs incurred in connection with taking depositions, including:

   a. The cost of an original and one copy of any deposition (including videotaped depositions) necessarily obtained for use in the case is allowable. Depositions need not be introduced in evidence or used at trial to be taxable so long as at the time it was taken it could reasonably be expected that the deposition would be used for trial preparation, rather than mere discovery. Counsel's copies (whether paper or electronic), in excess of the original and one copy are not taxable, regardless of which party took the deposition.
   b. If both video and stenographic depositions are taken, they both will be allowed as costs only if the video deposition is used at trial. The cost of electronic versions is recoverable.
   c. The reasonable expenses of the deposition reporter, and the notary or other official presiding at the taking of the depositions are recoverable, including travel and subsistence.
   d. Postage cost, including registry, for sending the original deposition to the clerk for filing is recoverable.
   e. Counsel’s fees, expenses in arranging for taking and expenses in attending the taking of a deposition are not recoverable, except as provided by statute or by the Fed. R. Civ. P.
   f. Fees for the witness at the taking of a deposition are taxable at the same rate as for attendance at trial. The witness need not be under subpoena.
   g. A reasonable fee for a necessary interpreter at the taking of a deposition is recoverable.
   h. The attendance fee of a reporter when a witness fails to appear is allowable if the claimant made use of available process to compel the attendance of the witness.

4. **Witness Fees.** 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, if the witness is served with the subpoena within California or as otherwise authorized by Fed. R. Civ. P. 45(b)(2).

      1. Such fees are taxable even though the witness does not take the stand, provided the witness necessarily attends the court.
      2. Such fees are taxable even though the witness attends voluntarily upon request and is not under subpoena.

3. If the witness comes from outside the district, the transportation expenses taxable must be based on the most direct route, and on the most economical rate reasonably available, for means of the transportation used by the witness, subject to the additional provisions of the Fed. R. Civ. P.

4. Witness fees and subsistence are taxable only for the reasonable period during which the witness is within the district.

5. If a witness appears on the same date in related cases requiring appearance in the same court, one set of fees is taxable, the single set as taxed to be divided equally among the related cases.

b. Witness fees for a party if required to attend by opposing party; and

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

d. Unless otherwise provided by law, fees for expert witnesses are not taxable in a greater amount than that statutorily allowable for ordinary witnesses.

e. The reasonable fee of a competent interpreter is taxable, if the fee of the witness involved is taxable. The reasonable fee of a competent translator is taxable if the document translated is necessarily filed, or admitted into evidence.

5. **Compensation of Court-Appointed Experts.** Compensation of court-appointed experts, compensation for interpreters, and salaries, fees, expenses and costs of special interpretation services (28 U.S.C. §§1828 and 1920(6)) are allowable.

6. **Exemplification and Copies of Papers.**

a. The cost of copies necessarily obtained for use in the case are taxable if one or more of the following criteria are met:

1. copies were provided either to the court or to opposing counsel either by court order, or rule or statue.

2. copies were used as court exhibits, either admitted into evidence, or attached to a motion.

3. The fee of an official for certification, or proof regarding nonexistence of a document is taxable.

4. The reasonable fee of a competent translated is taxable if the document translated is taxable.

5. Notary fees are taxable if actually incurred, but only for documents which are required to be notarized and which are necessarily filed.

6. The cost of patent file wrappers and prior art patents are taxable at the rate charged by the patent office. Expenses for service of persons checking patent office records to determine what should be ordered are not taxable.

b. The following copy costs are not taxable:

1. The cost of copies submitted in lieu of originals because of the convenience of offering counsel or client are not taxable.

2. The cost of reproducing copies of motions, pleadings, notices and other routine case papers is not allowable.

3. The cost of copies obtained for counsel's own use is not taxable.

c. Procedure regarding copy costs:

The party seeking recovery must present documentary evidence in the form of affidavits describing the documents copied, to whom they were provided, the number of pages copied, and the cost per page, and the use of or intended purpose for the items copied. If documents were provided only to the party seeking recovery, that party must specify the purpose of acquisition and photocopying of the documents served. In the absence of a specific showing, recovery must be denied.

7. Maps, Charts, Models, Photographs, Summaries, Computations, and Statistical Summaries.

a. The cost of preparing charts, diagrams, videotapes and other visual aids to be used as exhibits is taxable if such exhibits are reasonably necessary to assist the jury or the court in understanding the issues at the trial. An explanation of how the above related to a material issue in the case will be provided.

b. The cost of photographs, 16" x 20" in size or less, is taxable if admitted into evidence, the cost of photographs attached to documents required to be filed and served on opposing counsel is limited to 8"x10". Enlargements greater than 16" x 20" are not taxable except by order of the court.

c. The cost of models is not taxable except by order of the court.

d. The cost of compiling summaries, computations, and statistical comparisons is not taxable, except by prior approval by the court.

e. The cost of preparing material for electronic retrieval and demonstrations (i.e. CD ROM and VHS tape) is taxable only as it relates to exhibits admitted in evidence, the cost to rent the equipment for court is not taxable.

8. **Fees to Masters, Receivers and Commissioners.** Fees to masters, receivers, and commissioners are taxable as costs, unless otherwise ordered by the court.

9. **Premiums on Undertakings, Bonds or Security Stipulations.** The party entitled to recover costs will ordinarily be allowed premiums paid on undertakings, bonds or security stipulations, where the same have been furnished by reason of express requirement of the law, or on order of the court or a judge thereof, or where the same is necessarily required to enable the party to secure some right accorded him in the action or proceeding.

10. **Removed Cases.** In a case removed from the state court, costs incurred in the state court prior to removal must be recovered by the prevailing party in federal court to the extent they are covered in this rule or otherwise permitted by state law.

11. **Admiralty.** Fees for compensation, as set by general order, for keepers of boats, vessels and other property attached or libeled are taxable as costs.

c. **Costs Not Allowed.** Unless a party must substantiate the claim by reference to statutes or decisions for the following costs, the following will not ordinarily be allowed: (1) accountant's fees incurred for investigation, (2) the purchase of infringing devices in patent cases, (3) the physical examination of on opposing party, (4) courtesy copies of exhibits furnished to opposing counsel without request, and (5) rental of equipment for use at court hearings or trial.

d. **Costs Where Offer of Judgment Filed.** (See Rule 68, Fed. R. Civ. P.) If the defendant offers a judgment in a certain sum which is rejected by the plaintiff, and the case thereafter goes to trial with the resulting recovery (plus any authorized pre-offer costs and attorney's fees) of only the amount previously offered by the defendant, or less, then the defendant is the prevailing party. No costs will be allowed to either party if the court is unable to clearly determine the prevailing party.

e. **Costs Against the Government. (**See 28 U.S.C. §2412)

f. **Party Entitled to Costs.** The determination of the prevailing party will be within the discretion of the court in all cases except where such determination is inconsistent with statute or the Fed. R. Civ. P. or the rules of the appellate courts. If each side recovers in part, ordinarily the party recovering the larger sum will be considered the prevailing party. The defendant is the prevailing party upon any termination of the case without judgment for the plaintiff except a voluntary dismissal under Fed. R. Civ. P. 41(a).

g. **Method of Taxation of Costs.**

1. At the time specified in the notice, the party objecting to any item of costs contained in the bill of costs must file the objections in writing, specifying each item to which objection is made and the ground of the objection, and file any affidavit or present facts relied on which may be rebutted by the opposing party.

2. The clerk will thereupon proceed to tax the costs, and must allow such items specified in said bill of costs as are properly chargeable as costs. The clerk must make an insertion of the costs in the docket.

3. The taxation of costs made by the clerk must be final, unless modified on review as provided in Local Rule 54.1.h.

4. Notice of the clerk's taxation of costs must be given by mailing a copy of the bill as approved by the clerk to all parties in accordance with Rule 5, Fed. R. Civ. P.

5. Except as otherwise provided by law, costs will be taxed on the date set notwithstanding the fact that an appeal may have been filed.

h. **Review of Costs.** A review of the decision of the clerk in the taxation of costs may be taken to the court on motion to re-tax by any party in accordance with Rule 54(d), Fed. R. Civ. P., and Civil Local Rule 7.1.

1. A motion to retax must be served and filed within seven (7) days after receipt of the notice provided for in Civil Local Rule 54.1.g or unless within the seven (7) day period the court permits the motion to be made orally.
2. A motion to retax must particularly specify the ruling of the clerk excepted to and no others will be considered at the hearing, except that the opposing party may, within (3) days of service of the motion to retax, file a cross-motion to retax.

i. **Writ of Execution for Costs.** The clerk will, upon request, issue a writ of execution to recover costs or attorney's fees included in the judgment:

1. Upon presentation of a certified copy of the final judgment in the district court; or
2. Upon presentation of a mandate of the court of appeals to recover costs taxed by the appellate court.

Civil Rule 55.1 Default Judgments

If plaintiff(s) fail(s) to move for default judgment within thirty (30) days of the entry of a default, the clerk will prepare, with notice, an order to show cause why the complaint against the defaulted party should not be dismissed.

Civil Rule 58.1 Entry of Court-Issued Document

All orders, decrees, judgments, and proceeding of the Court will be filed in the Electronic Filing System, which will constitute entry on the docket kept by the clerk under Fed. R. Civ. P. 58 and 79. Any order or other court-issued document filed electronically without the original signature of a judge or clerk has the same force and effect as if the judge or clerk had signed a paper copy of the order and it had been entered on the docket in a conventional manner. Orders may also be issued as "text-only" entries on the docket, without an attached document. Such orders are official and binding.

Civil Rule 65.1.2 Bonds and Sureties

a. **When Required.** A judge may, upon demand of any party, where authorized by law and for good cause shown, require any party to furnish security for costs which may be awarded against such party in an amount and on such terms as are appropriate.

b. **Qualifications of Surety.** Every bond must have as surety either: (1) a corporation authorized by the Secretary of the Treasury of the United States to act as surety on official bonds under 31 U.S.C. §§9301 – 9306; (2) a corporation authorized to act as surety under the law of the State of California; (3) two individual residents in the district, each of whom owns real or personal property within the district of value sufficient to justify the full amount of the suretyship; or (4) a

cash deposit of the required amount, made with the clerk and filed with a bond signed by the principals. An individual who executes a bond as a surety pursuant to this subsection will attach an affidavit which gives the full name, occupation, residence and business address and demonstrations that the individual owns real or personal property within the district. After excluding property exempt from execution and deducing liabilities (including those which have arisen by virtue of suretyship on other bonds or undertakings), the real or personal property must be valued at no less than twice the amount of the bond.

When real property is listed in a proposed surety's affidavit, or a trust deed on real property is proposed to be posted as security for a bond required under this rule, the prospective surety must provide either a title report showing title in the name of the surety; or an opinion letter by an attorney that the legal description on the deed of trust is accurate, and that the surety has title. The value of all real property or personal property listed in a proposed surety's affidavit or otherwise posted as security must first be approved by the magistrate judge or district judge.

c. **Court Officers as Sureties.** No clerk, marshal or other employee of the court, nor any member of the bar representing a party in the particular action or proceeding will be accepted as surety on any bond or other undertaking in any action or proceeding in this court. Cash deposits on bonds may be made by members of the bar on certification that the funds are the property of a specified person who has signed as surety on the bond. Upon exoneration of the bond, such monies must be returned to the owner and not to the attorney.

Trust deeds accepted by the court must be recorded in the county where the real property is located. The trust deed must show in the upper-left hand corner the name of the attorney of record, address of this court, name of the party, and case number. The trust deed must show the United States of America as Beneficiary. Once recorded, the trust deed must be forwarded to the clerk of court. When exonerating a bond to release a trust deed and to reconvey it to the surety, releasing a passport, automobile title, or other real property, the order must be clearly entitled "order to exonerate a bond." A sample order is available from the clerk's office.

d. **Examination of Sureties.** Any party may apply for an order requiring any opposing party to show cause why it should not be required to furnish further or different security, or to require the justification of personal sureties.

e. **Approval of Bonds by Attorney and Clerk (or Judge).**

1. **Attorney.** Every recognizance, bond, stipulation or undertaking hereinafter presented to the clerk or a judge of the court for approval, where approval by the court is required, must have appended thereto a certificate of the attorney for the party for whom the bond is being filed substantially in the following form:

This bond has been examined and recommended for approval as provided in Civil Local Rule 65.1.2, and the within bond (is)(is not) required by law to be approved by a judge.

_____ _____ _____

Dated this _____ day of _____ , 20 _____

_____

Attorney

Such endorsement by the attorney will signify to the court that said attorney has carefully examined the said recognizance, bond, stipulation or undertaking, and that the attorney knows the contents thereof; and the purposes for which it is executed; that in the attorney's opinion the same is in due form, that the attorney believes the affidavits of qualification to be true and has determined whether the bond is required to be approved by a judge.

2. **Clerk (or Judge)** A recognizance, bond, stipulation or undertaking must further have appended thereto a statement of approval by the clerk or judge, if approval by the judge is required, substantially as follows:

   I hereby approve the foregoing bond.

   Dated:_____ , 20_____

   _____

   Clerk (or United States District Judge or Magistrate Judge)

f. **Supersedeas Bonds.**

1. **Approval, Filing and Service.** If eligible under Civil Local Rule 65.1.2, the bond may be approved and filed by the clerk. A copy of the bond plus notice of filing must be served on all affected parties promptly.
2. **Objections.** The court must determine objections to the form of the bond or sufficiency of the surety.
3. **Execution.** Except where otherwise provided by Fed. R. Civ. P. 62, or order of the court, execution may issue after fourteen (14) days from entry of a judgment unless a supersedeas bond has been approved by the clerk.

g. **Summary Judgment Against Sureties.**

1. **The Judgment.** Every bond within the scope of Civil Local Rule 65.1.2 will contain the surety or sureties' consent that in case of the principal's, surety or sureties' default, upon notice of not less than twenty-eight (28) days the court may proceed summarily and render judgment against them and award execution.
2. **Service.** Any indemnitee or party in interest who seeks the judgment provided by Civil Local Rule 65.1.2.g will proceed by motion and with respect to personal sureties and corporate sureties will make the service provided by Fed. R. Civ. P. 5(b) or 31 U.S.C. Section 9306, respectively.

h. **Filing.**

1. **Filing of Security.** Upon application of any party, and for good cause shown, the court may require any plaintiff, any nonresident removing defendant, or any nonresident party to a civil action transferred to this court from another district to file security for costs.
2. **Form of Security.** The security for costs must consist of a bond in the sum of $250.00 or such other amount as the court may order. It must secure the payment of all costs of the action which a party may ultimately be directed to pay to any other party.

3. **By Other Parties.** Upon good cause, the court may order original or additional security to be given by any part.

Civil Rule 66.1 Receivers

a. **Appointment of Receivers.** Application for the appointment of a receiver may be made after the complaint has been filed and the summons issued.
   1. **Temporary Receivers.** A temporary receiver may be appointed without notice to the party sought to be subjected to a receivership in accordance with the requirements and limitations of Rule 65(b), Fed. R. Civ. P.
   2. **Permanent Receivers.** A permanent receiver may be appointed after notice and hearing upon an order to show cause. This order will be issued by a judge upon appointment of a temporary receiver or upon application of the plaintiff and must be served on all parties. The defendant must provide the temporary receiver (or, if there is no temporary receiver, the plaintiff) within seven (7) days a list of the defendant's creditors, and their addresses. Not less than seven (7) days before the hearing, the temporary receiver (or, if none, the plaintiff) must mail to the creditors listed the notice of the hearing, and file the proof of mailing.
   3. **Bond.** A judge may require any receiver appointed to furnish a bond in such amount as deemed reasonable.

b. **Employment of Experts.** The receiver must not employ an attorney, accountant or investigator without an order of a judge. The compensation of all such employees must be fixed by the court.
c. **Application for Fees.** All applications for fees for services rendered in connection with a receivership must be made by petition setting forth in reasonable detail the nature of the services and must be heard in open court.
d. **Deposit of Funds.** A receiver must deposit all funds received in a depository designated by a judge, entitling the account with the name and number of the action. At the end of each month, the receiver must deliver to the clerk a statement of account and the canceled checks.
e. **Reports.** Within thirty (30) days of appointment, a permanent receiver must file with the court a verified report and petition for instructions, which must be heard on fourteen (14) days' notice to all known creditors and parties. The report must contain a summary of the operations of the receiver, an inventory of the assets and their appraised value, a schedule of all receipts and disbursements, and a list of all creditors, their addresses and the amounts of their claims. The petition must contain the receiver's recommendation as to the continuance of the receivership and the receiver's reasons. At the hearing, the judge will determine whether the receivership should be continued and, if so, will fix the time for future reports of the receiver.
f. **Notice of Hearings.** The receiver must give all interested parties at least fourteen (14) days' notice of the time and place of all pertinent hearings of all:
   1. Petitions for the payment of dividends to creditors;
   2. Petitions for confirmation of sales of property;
   3. Reports of the receiver;
   4. Applications for fees of the receiver or of any attorney, accountant or investigator, the notice to state the services performed and the fee requested; and,
   5. Applications for discharge of the receiver.

Civil Rule 67.1 Deposit and Disbursements of Registry Funds

a. **Receipt of Funds.**
   1. No money will be sent to the Court or its officers for deposit in the Court's registry without a court order signed by the presiding district or magistrate judge in the case or proceeding.
   2. The party making the deposit or transferring funds to the Court's registry will serve the order permitting the deposit or transfer on the Clerk of Court.
   3. Unless provided for elsewhere in this Local Rule, all monies ordered to be paid to the Court or received by its officers in any case pending or adjudicated will be deposited with the Treasurer of the United States in the name and to the credit of this Court pursuant to 28 U.S.C. §2041 through depositories designated by the Treasury to accept such deposit on its behalf.

b. **Investment of Registry Funds**
   1. Unless otherwise ordered by a district judge, all funds deposited in the registry of the court in which the principal equals or exceeds $5000 are to be placed in an interest-bearing account. The Court Registry Investment System ("CRIS"), administered by the Administrative Office of the United States Courts under 28 U.S.C. §2045, will be the only investment mechanism authorized.

   2. The Director of the Administrative Office of the United States Courts is designated as custodian for CRIS. The Director or the Director's designee will perform the duties of custodian. Funds held in the CRIS remain subject to the control and jurisdiction of the Court.

   3. Money from each case deposited in the CRIS will be "pooled" together with those on deposit with the Treasury to the credit of other courts in the CRIS and used to purchase Government Account Securities through the Bureau of Public Debt, which will be held at the Treasury, in an account in the name and to the credit of the Director of the Administrative Office of the United States Courts. The pooled funds will be invested in accordance with the principals of the CRIS Investment Policy as approved by the Registry Monitoring Group.

   4. An account for each case will be established in the CRIS titled in the name of the case giving rise to the investment of the fund. Income generated from fund investments will be distributed to each case based on the ratio each account's principal and earnings has to the aggregate principal and income total in the fund. Reports showing the interest earned and the principal amounts contributed in each case will be prepared and distributed to each court participating in the CRIS and made available to litigants and/or their counsel.

c. **Deduction of Fees**

   1. The custodian is authorized and directed by this Local Rule to deduct the investment services fee for the management of investments in the CRIS and the registry fee for maintaining accounts deposited with the Court.

   2. The investment services fee is assessed from interest earnings to the pool and is to be assessed before a pro rata distribution of earnings to court cases.

3. The registry fee is assessed by the custodian from each case's pro rata distribution of the earnings and is to be determined on the basis of the rates published by the Director of the Administrative Office of the United States Courts as approved by the Judicial Conference of the United States.

d. **Disbursement of Registry Funds**

1. Upon the entry of a judgment, funds, if any, on deposit in the registry of the court will be disbursed only by order of the court after the time for appeal has expired, or upon written stipulation by all parties approved by the court.

2. Each order directing the clerk to disburse funds must be clearly entitled "order to disburse funds" and must be without conditions to be met prior to disbursement of said funds. It must indicated which parties are entitled to principal and any accrued interest.

   The order must also contain the name and mailing address of the party entitled to said funds, unless forbidden elsewhere in these rules of the Court's General Order, in which case the information may be redacted and/or provided directly to the Clerk's financial office.

   Taxpayer identification numbers for the check payees must be delivered directly to the Clerk's financial office prior to disbursement.

3. A sample order is available from the Clerk's office.

Civil Rule 72.1 United States Magistrate Judges

a. Jurisdiction under 28 U.S.C. §636(a). Each United States magistrate judge of this court is authorized to perform the duties prescribed by 28 U.S.C. §636(a), and may administer oaths and affirmations and take acknowledgments, affidavits and depositions.

b. Determination of Non-Dispositive Pretrial Matters-28 U.S.C. §636(b)(1)(A). Pursuant to 28 U.S.C. §636(b)(1)(A) a magistrate judge will hear and determine any pretrial motions, including discovery motions, other than the dispositive motions which are specified in 28 U.S.C. §636(b)(1)(A).

c. Proposed Orders Regarding Case-Dispositive Motions 28 U.S.C. §636(b)(1)(B).

1. Upon the designation by district judge, a magistrate judge may submit to a district judge a proposed order containing findings of fact and recommendations for disposition by the district judge of the following pretrial motions in civil cases:

a. Motions for injunctive relief, including temporary restraining orders and preliminary and permanent injunctions;
b. Motions for judgment on the pleadings;
c. Motions for summary judgment;
d. Motions to dismiss or permit the maintenance of a class action;
e. Motions to dismiss for failure to state a claim upon which relief may be granted;
f. Motions to involuntarily dismiss an action;

2. A district judge may designate a magistrate judge to conduct hearings, including evidentiary hearings, and submit proposed findings of fact and the recommendations for the disposition by the district judge of prisoner petitions challenging the conditions of confinement.
3. A magistrate judge may determine any preliminary matters and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority conferred by this subsection.

d. Prisoner Cases under 28 U.S.C. §§2254 Not Involving the Death Penalty. Unless the district judge chooses to retain a case which does not involve the death penalty, the assigned magistrate judge is hereby designated to perform any and all of the duties specified in §2254, Rule 8.b and the rules governing proceedings in the United States district courts under §2254 of Title 28, U.S.C. and must-

1. Receive a copy of all filings and other items submitted concerning the matter;
2. Conduct all preliminary matters and issue any preliminary orders as deemed necessary;
3. Conduct any necessary evidentiary hearing, pursuant to Rule 8 of the rules governing proceedings in the United States courts under §2254 of Title 28, U.S.C., or other appropriate proceedings; and
4. Submit to a district judge of the court a report containing proposed findings of fact and recommendations for disposition of the petition by the district judge. Any order disposing of the petition on its merits may only be made by a district judge of the court.

e. Prisoner Cases under 28 U.S.C. §§2254 Involving the Death Penalty and 2255. Upon designation by a district judge, a magistrate judge may perform the duties specified in §2254, Rule 8.b and the rules governing proceedings in the United States district courts under §2254 (involving the death penalty) and §2255 of Title 28, U.S.C.. Any order disposing of the petition may only be made by a district judge.

f. Special Master References. A magistrate judge may be designated by a judge to serve as a special master in appropriate civil cases in accordance with 28 U.S.C. §636(b)(2) and Rule 53 of the Fed. R. Civ. P. Upon the consent of the parties, a magistrate judge may be designated by a judge to serve as a special master in any civil case, notwithstanding the limitations of Rule 53.b of Fed. R. Civ. P.

g. Conduct of Trials and Disposition of Civil Cases Upon Consent of the Parties - 28 U.S.C. §636(c). Upon the written consent of the parties, a full-time magistrate judge may conduct any or all proceedings in any civil case which is filed in this court, including the conduct of a jury or non- jury trial, and may order the entry of a final judgment, in accordance with 28 U.S.C. §636(c). In the course of conducting such proceedings upon consent of the parties, a magistrate judge may hear and determine any and all pretrial and post trial motions which are filed by the parties, including case-dispositive motions.

h. Other Duties.

A magistrate judge is also authorized to:

1. Exercise general supervision of civil calendars, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the district judge;
2. Conduct pretrial conferences, settlement conferences and related pretrial proceedings in civil cases, and conduct summary trials or alternative dispute resolution proceedings in civil cases;
3. Conduct voir dire and select petit juries for the court in civil cases with the consent of the parties;
4. Accept petit jury verdicts in civil cases in the absence of a district judge;

5. Issue subpoenas, writs of habeas corpus ad testificandum or habeaus corpus ad prosequendum or other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings;
6. Order the exoneration of forfeiture bonds;
7. Conduct proceedings for the collection of civil penalties of not more than $200 assessed under the Federal Boat Safety Act of 1971, in accordance with 46 U.S.C.;
8. Conduct examinations of judgment debtors in accordance with Rule 69 of the Fed. R. Civ. P.;
9. Conduct naturalization hearings. (All orders from any naturalization hearing must be submitted to a district judge of this court for approval.)
10. Perform any additional duty not inconsistent with the Constitution and laws of the United States.

Civil Rule 72.2 Assignment and Designation Procedures

a. **Order of Designation and Assignment.** A matter assigned to the magistrate judges either as a matter of course by the clerk of the United States District Court or by an order of special designation by a district judge of the court under 28 U.S.C. §636(b) or (c), precisely stating the nature of the matter, will be assigned to a specific magistrate judge as follows:

b. **Civil Matters.** The clerk must assign civil matters by lot as described in Civil Local Rule 40.1. In civil matters where reference to a magistrate judge is dependent upon the consent of the parties, such as trials, the district judge may assign the matter to a particular magistrate judge selected by the parties.

c. Upon filing, civil cases must be assigned by the clerk to a magistrate judge. The magistrate judge must hear and determine Civil Local Rule 72.1.b pretrial motions.

d. Where designated by a judge the magistrate judge may conduct additional pre-trial conferences and hear motions and perform the duties set forth in Civil Local Rule 72.1.c.

e. Each magistrate judge will be designated to perform the duties set forth in Civil Local Rule 72.1.d.

f. Where the parties consent to trial and disposition of a case by a magistrate judge under Civil Local Rule 72.1.f of these rules, such case must be set before the magistrate judge for the conduct of all further proceedings and the entry of judgment.

g. **Notice of Hearing.** A magistrate judge assigned a matter must set the time of hearing, notify all parties and make any further necessary orders consistent with the requirements of the local rules of court for the southern district.

h. Nothing in these rules preclude the court, or a district judge from reserving any proceedings for conduct by a district judge, rather than a magistrate judge. The court, moreover, may by general order modify the method of assigning proceedings to a magistrate judge as changing conditions may warrant.

Civil Rule 72.3 Assignment of §1983 Prisoner Civil Cases to United States Magistrate Judges

a. All of the District's civil §1983 prisoner caseload will be assigned to the magistrate judges for disposition, either upon consent of all parties or, in the case of an objection to magistrate judge

jurisdiction, upon submission of proposed findings and recommendations to the district judge, unless the district judge orders otherwise.

b. The magistrate judge will conduct all proceedings including a jury or bench trial and must order the entry of a final judgment upon the written consent of all parties in the case in accordance with 28 U.S.C. §636(c). No §1983 prisoner case will be assigned to a United States district judge unless a party either fails to timely consent in writing to magistrate judge jurisdiction or requests in writing that the case be assigned to a district judge.

c. The plaintiff must indicate his or her willingness to consent to magistrate judge jurisdiction for trial in writing on the court's form "Complaint Under the Civil Rights Act 42 U.S.C. §1983" or by filing a separate "Notice of Consent or Request for Reassignment Under Civil Local Rule 72.3."

d. In all §1983 prisoner cases assigned at filing to a magistrate judge, where plaintiff has filed written consent, the defendants must file a "Consent to Assignment to Magistrate Judge or Request for Reassignment to District Judge" upon their first appearance in the case.

e. The parties are free to withhold consent to a United States magistrate judge without adverse consequences in the handling of their case. If a plaintiff requests assignment to a district judge in the form complaint or by filing a written notice requesting reassignment to a district judge, or if the defendant requests a district judge in the answer or motion to dismiss, the clerk must reassign the case to a United States district judge on a random basis. Nevertheless, the assigned magistrate judge will conduct all necessary hearings and submit proposed findings of fact and recommendations for the disposition of all motions excepted from the magistrate judge's jurisdiction by 28 U.S.C. § 636(b)(1)(A), unless the district judge orders otherwise.

f. In those cases where the clerk has assigned the case to a district judge, all hearing dates for any matters on which a dispositive ruling is required must be obtained from the law clerk of the magistrate judge to whom the case has been assigned on a report and recommendation basis pursuant to 28 U.S.C. §636(b)(1)(B) and Local Civil Rule 7.1. The magistrate judge must then file his or her report and recommendations with the court and set dates for the filing of written objections pursuant to 28 U.S.C. §636(b)(1). Written objections, if any, must be directed to the district judge assigned to the case pursuant to 28 U.S.C. §636(b)(1)(C).

g. All cases will be set for a Case Management Conference as soon as practicable following the filing of the first answer. Early Neutral Evaluation Conferences will not be set in these matters; however, settlement conferences may be set when the case is determined ready for settlement by a judicial officer.

Civil Rule 73.1 Special Provision for the Disposition of Civil Cases by a Magistrate Judge on Consent of the Parties 28 U.S.C. §636(c)(2)

a. **Notice.** The clerk must notify the parties in all civil cases that they may consent to have a magistrate judge conduct any or all proceedings in the case and order the entry of a final judgment. Such notice must be handed or mailed to the plaintiff or plaintiff's representative at the time an action is filed and to other parties as attachments to copies of the complaint and summons when served. Additional notices may be furnished to the parties at later stages of the proceedings, and may be included with pretrial notices and instructions.

b. **Execution of Consent.** The clerk must not accept a consent form unless it has been signed by all the parties in a case. The plaintiff must be responsible for securing the execution of a consent form by the parties and for filing such form with the clerk. No consent form will be made available, nor will its contents be made known to any judicial officer, unless all parties have consented to the reference to a magistrate judge. A district or magistrate judge may advise the parties of the availability of a magistrate judge to try a civil case or hear a civil motion by consent. However, no action must be taken to effect the voluntariness of the parties to consent or lack of consent to the magistrate judge. The district judge must also advise the parties that they are free to withhold consent without adverse substantive consequences.

Civil Rule 77.1 Location and Hours of the Clerk

The office of the clerk of this court will be in the Federal Office Building at United States Courthouse Annex at 333 W. Broadway, San Diego. The office will be open to the bar and public between the hours of 8:30 a.m. and 4:30 p.m. each day except Saturdays, Sundays and court holidays. A drop-off box for filings and pleadings will be available at the 4th Floor of the United States Courthouse Annex at 333 W. Broadway, outside Room 420. Documents deposited in the drop-off box must be in a sealed envelope. Filings and pleadings deposited in the drop-off box prior to 6:00 p.m., Monday through Friday, except court holidays, will reflect the date of deposit. The United States Courthouse Annex closes promptly at 6:00 p.m., Monday through Friday, and is closed all day on weekends and court holidays. Matters requiring immediate judicial attention should never be placed in the drop-off box.

Civil Rule 77.2 Orders Grantable by Clerk

The clerk is authorized to sign and enter orders specifically allowed to be signed by the clerk under the Fed. R. Civ. P. and is, in addition, authorized to sign and enter the following orders without further direction of a judge:

a. Orders specifically appointing persons to serve process in accordance with Rule 4, Fed. R. Civ. P.

b. Orders on consent noting satisfaction of a judgment, providing for the payment of money, withdrawing stipulations, annulling bonds, exonerating sureties or setting aside a default

c. Orders of dismissal on consent, with or without prejudice, except in cases to which Rules 23, 23.1 or 66, Fed. R. Civ. P. apply.

d. Orders entering default for failure to plead or otherwise defend in accordance with Fed. R. Civ. P. 55(b)(1);

e. Any other orders which pursuant to Fed. R. Civ. P. 77(c) do not require direction by the court.

Civil Rule 77.3 Notice of Court Orders and Judgments

Immediately upon the entry of an order or judgment in an action within the Electronic Filing System, the Clerk will transmit to filing users a Notice of Electronic Filing. Electronic transmission of the NEF constitutes the Notice required by Fed. R. Civ. P. 77(d). The Clerk must give notice in a paper form to a person who has not consented to electronic services in accordance with the Federal Rules of Civil Procedures.

Civil Rule 77.4 Sessions of Court

The court must be in continuous session in San Diego.

Civil Rule 77.6 Court Library

The court maintains a law library for the primary use of judges and personnel of the court. In addition, attorneys admitted to practice in this court may use the library while actively engaged in actions or proceedings pending in the court. The library is operated in accordance with such rules and regulations as the court may from time to time adopt.

Civil Rule 79.1 Custody and Disposition of Exhibits and Transcripts

Unless otherwise ordered by the court, every exhibit marked for identification or introduced in evidence and all depositions and transcripts must be returned to the party who produced them at the conclusion of the trial or hearing.

It will be counsel's responsibility to produce any and all exhibits for the court of appeals, when requested by that court, if an appeal is taken, or to this court when requested.

Civil Rule 79.2 Books and Records of the Clerk

a. **Files; Custody and Withdrawal.** All files of the court must remain in the custody of the clerk and no record or paper belonging to the files of the court will be taken from the custody of the clerk without special order of a judge and a proper receipt signed by the person obtaining the record or paper. No such order will be made except in extraordinary circumstances.

b. **Sealed Documents.** Documents filed under seal in civil actions will be returned to the party submitting them upon entry of the final judgment or termination of the appeal, if any, unless otherwise ordered by the court.

c. Sealing Orders. Documents that are to be filed under seal must be accompanied by an order sealing them. If the order is also to be filed under seal, it must so state.

Civil Rule 83.1 Sanctions for Noncompliance with Rules

a. Failure of counsel or of any party to comply with these rules, with the Federal Rules of Civil or Criminal Procedure, or with any order of the court may be grounds for imposition by the court of any and all sanctions authorized by statute or rule or within the inherent power of the court, including, without limitation, dismissal of any actions, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

b. For violations of these Local Rules or of a specific court order, the court may, in imposing monetary sanctions, order that the monetary sanctions be paid to the Miscellaneous Fines, Penalties and Forfeitures, Not Otherwise Classified, fund of the United States Treasury.

Civil Rule 83.2 Security of the Court

The court, or any judge, may from time to time make such orders or impose such requirements as may be reasonably necessary to assure the security of the court and all persons in attendance.

Civil Rule 83.3 Attorneys - Admission to Practice Standards of Conduct – Duties

a. Definitions. For convenience, attorneys, proctors, advocates, solicitors, and counselors of this court will be referred to in these rules by the designation, “attorneys.”

b. Practice. Only a member of the bar of this court may enter appearances for a party, sign stipulations or receive payment or enter satisfaction of judgment, decree or order.

c. Admission of Attorneys to Practice.

1. **Requirements and Procedures.**
   a. **Admission to the Bar of this Court.** Admission to and continuing membership in the bar of this court is limited to attorneys of good moral character who are active members in good standing of the State Bar of California.

   b. **Procedure for Admission.** Each applicant for admission must present to the clerk a written petition for admission, on the form supplied by the court, stating the applicant's residence and office addresses and by what courts the applicant has been admitted to practice and the respective dates of admission to those courts.

The petition must be signed, certifying that the attorney is a member in good standing of the State Bar of California.

Upon qualification, the applicant may be admitted, upon oral motion or without appearing, as determined by the court, by signing the prescribed oath and paying the prescribed fee, together with any required assessment, which the clerk will place to the credit of the court non-appropriated funds.

2. **Practice in this court.** Except as herein otherwise provided, only members of the bar of this court will practice in this court.

3. **Attorneys for the United States.** An attorney who is not eligible for admission under Civil Local Rule 83.3.c.1.a hereof, 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, or of any territory or insular possession of the United States, may practice in this court in any matter in which the attorney is employed or retained by the United States or its agencies. Attorneys so permitted to practice in this court are subject to the jurisdiction of the court with respect to their conduct to the same extent as members of the bar of this court.

4. **Pro Hac Vice.** An attorney not eligible for admission under Civil Local Rule 83.3.c hereof, 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 or of any territory or insular possession of the United States, who is of good moral character, and who has been retained to appear in this court, may, upon written application and in the discretion of the court, be permitted to appear and participate in a particular case. Unless authorized by the Constitution of the United States or acts of Congress, an attorney is not eligible to practice pursuant to this local rule if any one or more of the following apply to the attorney: (1) resides in California, (2) is regularly employed in California, or (3) is regularly engaged in business, professional, or other activities in California.

   The pro hac vice application must be presented to the clerk, along with an admission in the amount set by the judges of this court by general order. The fees must be deposited in the non-appropriated funds of the court and divided between the library fund and the pro-bono fund in the manner designated by such general order. The application must state under penalty of perjury (1) the attorney's city and state of residence and office address, (2) by what court(s) the attorney has been admitted to practice and the date(s) of admission, (3) that the attorney is in good standing and eligible to practice in said court, (4) that the attorney is not currently suspended or disbarred in any other court, and (5) if the attorney has concurrently or within one year preceding the current application made any pro hac vice application to this court, the title and the number of each matter wherein the application was made, and the date of application, and whether or not the application was granted. The attorney must also designate in the application a member of the bar of this court with whom the court and opposing counsel may readily communicate regarding the conduct of the case and upon whom papers will be served. The attorney must file with such application the address, telephone number and written consent of such designee.

5. **Designation of Local Counsel.** A judge to whom a case is assigned may in that case, in the judge's discretion, require an attorney appearing in this court pursuant to the provisions of this rule and who maintains an office outside of this district to designate a member of the bar of this court who does maintain an office within this district as co-counsel with the authority to act as attorney of record for all purposes. The attorney must file with such designation the address, telephone number and written consent of such designee.

6. **Yuma Criminal Defense Attorneys.** Attorneys in good standing at the bar of the United States District Court for the District of Arizona who are employed by the Federal Public Defender of Arizona or who are members of the Criminal Justice Act Panel of that court, will be deemed admitted to the bar of the United States District Court for the Southern District of California for the limited purpose of providing legal services to defendants in the Southern District of California criminal proceedings heard by judicial officers at the District of Arizona Yuma point of holding court.

d. **Notice of Change of Status.** An attorney who is a member of the bar of this court, or who has been permitted to practice in this court under Civil Local Rule 83.3.c, must promptly notify the court of any change in status in another jurisdiction which would make the attorney ineligible for membership in the bar of this court under Civil Local Rule 83.3.c, or ineligible to practice in this court under Civil Local Rule 83.3.c hereof. In the event the attorney is no longer eligible to practice in another jurisdiction by reason of suspension for nonpayment of fees or enrollment as an inactive member, the attorney will immediately be suspended from practice before this court without any order of court and until the attorney becomes eligible to practice in such other jurisdiction. Any attorney seeking reinstatement may file a petition with the clerk of court with supporting documentation showing that he or she meets the requirements of 83.3.c.1.a, for determination by the chief judge.

e. **Notice of Change of Address or Facsimile Number or Email Address.** An attorney who is a member of the bar of this court, or who has been permitted to practice in this court under Civil Local Rule 83.3.c must promptly notify the court of any change of address. If the attorney has a facsimile authorization or email address on file and, if any of the information changes, the attorney must promptly notify the court.

f. **Appearances, Substitutions and Withdrawal of Attorneys.**

1. **Appearances.** Whenever a party has appeared by an attorney, the party may not afterwards appear or act in the party's own behalf in the action, or take any step in that action, unless an order of substitution has first have been made by the court, after notice to the attorney of such party, and to the opposite party; provided, that the court may in its discretion hear a party in open court, notwithstanding the fact that the party has appeared, or is represented by an attorney.

2. **Substitutions.** When an attorney of record for any person ceases to act for a party, such party must appear in person or appoint another attorney by a written substitution of attorney signed by the party, the attorney ceasing to act, and the newly appointed attorney, or by a written designation filed in the case and served upon the attorney ceasing to act, unless attorney is deceased, in which event the designation of a new attorney will so state. Until such substitution is approved by the court, the authority of the attorney of record will continue for all proper purposes.

3. **Withdrawals.**

   a. A notice of motion to withdraw as attorney of record must be served on the adverse party and on the moving attorney's client.

   b. A declaration pertaining to such service must be filed. Failure to make serve as required by this section or to file the required declaration of service will result in a denial of the motion.

4. **Special Appearances.** An attorney may make a special appearance for a limited proceeding only with the permission of the court.

g. **Ex Parte Motions and Orders.**

1. All motions to a judge of this court for ex parte orders must be made by a party appearing in propria persona or by an attorney of this court.

2. A motion for an order must not be made ex parte unless it appears by affidavit or declaration (1) that within a reasonable time before the motion the party informed the opposing party or the opposing party's attorney when and where the motion would be made; or (2) that the party in good faith attempted to inform the opposing party and the opposing party's attorney but was unable to do so, specifying the efforts made to inform them; or (3) that for reasons specified the party should not be required to inform the opposing party or the opposing party's attorney.

h. **Penalty for Unauthorized Practice.** The court may order any person who practices before it in violation of Civil Local Rule 83.3 to pay an appropriate penalty which upon payment the clerk must credit to the court library or pro bono fund as designated by the court. Payment of such sum must be an additional condition of admission or reinstatement to the bar of this court or to practice in this court.

i. **Fees.** The admission fee required of all admitted to practice before this court shall be designated by general order, and made payable to the clerk. The amount mandated by law must be deposited into the Treasury, and the remainder will be (1) deposited in the non-appropriated funds of the court, and (2) divided between the library fund and the pro-bono fund as the judges so designate by general order. Each application provided in Civil Local Rule 83.3.c must be accompanied by a receipt verifying payment to the clerk of the designated fee and assessments.

j. **Appearances by Corporations.** Only natural persons representing their individual interests in propria persona may appear in court without representation by an attorney permitted to practice pursuant to Civil Local Rule 83.3. All other parties, including corporations, partnerships and other legal entities, may appear in court only through an attorney permitted to practice pursuant to Civil Local Rule 83.3.

Civil Rule 83.4 Professionalism

a. **Code of Conduct.** The United States District Court for the Southern District of California is committed to the highest standards of professionalism and expects those standards to be observed by lawyers who practice before it. Compliance with high standards of professionalism depends

primarily upon understanding the value of clients, the legal system, the public, and lawyers of adhering to the voluntary standards. Secondarily, compliance depends upon reinforcement by peer pressure and public opinion, and finally, when necessary, by enforcement by the courts through their powers and rules already in existence. This code of conduct is not intended to be a set of rules that lawyers can use to incite ancillary litigation on the question whether the standards have been observed by an adversary, but the court may take any appropriate measures to address violations of the rules.

1. **Conduct to Follow.** An attorney in practice before this court will:

   a. Be courteous and civil in all communications, oral and written, and in all proceedings conduct herself/himself with dignity and respect.

   b. Be a vigorous and zealous advocate on behalf of a client without acting in a manner detrimental to the proper functioning of the judicial system.

   c. Attempt to resolve litigation consistent with his or her client's interests.

   d. Attempt to informally resolve disputes with opposing counsel.

   e. Agree to reasonable scheduling changes, requests for extensions of time and waivers of procedural formalities, if the legitimate interests of a client will not be adversely affected.

   f. Subject to additional provisions of Fed. R. Civ. P. 26 and Civil Local Rule 26.1, communicate with opposing counsel in an attempt to establish a discovery plan and a voluntary exchange of non-privileged information.

   g. When possible, confer with opposing counsel before scheduling or rescheduling hearings, depositions, and meetings and notify all parties and the court, as early as possible, when hearings or depositions must be cancelled.

2. **Conduct to Avoid.** An attorney in practice before this court must not:

   a. Disparage the intelligence, ethics, morals, integrity or behavior or opposing parties or counsel unless such characteristics are at issue.

   b. Disparage any person's gender, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sexual orientation.

   c. Knowingly participate in litigation or any other proceeding that is without merit or is designed to harass or drain the financial resources of the opposing party.

   d. Arbitrarily or unreasonably deny an opposing counsel's reasonable request for cooperation or accommodation.

e. Serve motions and pleadings on the opposing parties or counsel at a time or in a manner that will unfairly limit their opportunity to respond.

f. Seek sanctions against or the disqualification of any other attorney for any improper purpose.

g. Engage in excessive, abusive discovery, or delaying tactics.

b. **Standards of Professional Conduct.** Every member of the bar of this court and any attorney permitted to practice in this court must be familiar with and comply with the standards of professional conduct required of members of the State Bar of California, which are now adopted as standards of professional conduct of this court. No attorney permitted to practice before this court will engage in any conduct which degrades or impugns the integrity of the court or in any manner interferes with the administration of justice within the Court.

Civil Rule 83.5 Discipline

a. General. In the event any attorney engages in conduct which may warrant discipline or other sanctions, the court or any judge may, in addition to initiating proceedings for contempt under Title 18 U.S.C. and Rule 42, Fed. R. Crim.P., or imposing other appropriate sanctions, refer the matter to the disciplinary body of any court before which the attorney has been admitted to practice.

b. Charge of or Conviction of Felony.

1. Any attorney charged with or convicted of a felony must report the charge or conviction within fourteen (14) days to the Clerk of the Court.

2. An attorney on the court's CJA panel or one appointed by the court who is charged with a felony will not be assigned any further cases and will be relieved on cases on which he or she is appointed until further order of the court. His or her cases will be reassigned as directed by the judge supervising those cases on which he or she is relieved.

3. A non-court appointed attorney charged with a felony must show cause why he or she should not be removed from any pending civil or criminal case due to a conflict of interest. It will be the attorney's burden to demonstrate to each judge assigned a case on which the charged attorney wishes to appear that there is no conflict and the attorney can appropriately discharge his or her duties to the client.

4. Any attorney admitted to practice in this court who enters a plea of guilty to a felony, or is found guilty of a felony, must immediately be suspended from practice before this court. Upon the felony conviction becoming final, the attorney must be disbarred. The disbarred attorney may make a motion in this court within sixty days of disbarment for an order of modification of the disbarment order, as justice may require.

c. The Standing Committee on Discipline. The court will appoint from time to time, by an order entered in its minutes, a "Standing Committee on Discipline" consisting of at least five members of the bar and will designate one of the members to serve as chairperson of the committee. The members of the committee will continue in office for a period of two years or until further order of the court.

d. Discipline Following Disciplinary Proceedings in Other Courts. Upon receipt of information that an attorney admitted or permitted to practice in this court has been suspended or disbarred from practice before any court of competent jurisdiction, this court will issue an Order to Show Cause why an order of suspension or disbarment should not be imposed by this Court.

If an attorney opposes the imposition of prospective discipline, in the response to the Order to Show Cause, the attorney must set forth facts establishing one or more of the following:

(i) The procedure in the other jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
(ii) There was such 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;
(iii) Imposition of like discipline would result in a grave injustice; or
(iv) 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 of bear the burden of persuading the Court that less than the entire record will suffice.

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 Chief Judge will issue an order of suspension or disbarment.

If the attorney files a written response to the Order to Show Cause within the time specified stating that they entry of an order of suspension or disbarment is contested, then the Chief Judge will determine whether an order of suspension or disbarment should issue.

e. Original Disciplinary Investigations and Proceedings Initiated in This Court. The "Standing Committee on Discipline" will investigate any charge or information, referred by one of the judges, that any member of the bar of this court or that any attorney permitted to practice in the court has been guilty of unprofessional conduct. At the request of the committee, the chief judge

will direct the issuance of subpoenas and subpoenas duces tecum as may be required by the investigation.

In cases where a majority of the members deem it advisable, the committee will institute and prosecute a disciplinary proceeding by filing with the clerk an appropriate petition on behalf of the committee addressed to the judges of this court. Upon the filing of the petition, the proceeding will be assigned to one of the judges in the same manner as any other civil action or proceeding.

The judge to whom the proceeding is assigned will issue an order to show cause why the respondent should not be disbarred, suspended or otherwise disciplined as prayed in the petition. The order to show cause will be served upon the respondent, not less than fourteen (14) days nor more than twenty-one (21) days from the date of the order. The order will further require that a copy of the order and a copy of the petition, be served on the respondent in a manner permitted by Fed. R. Civ. P. 5(b) not less than fourteen (14) days in advance of the date specified for showing cause. Except as otherwise provided by local rule, the proceeding must be governed by the Fed. R. Civ. P. Written findings of fact and an order based thereon must be filed by the judge when dismissing the proceeding or when imposing discipline. Any investigation or proceeding in accordance with this local rule must not be public unless otherwise ordered by the court or unless and until a disbarment, suspension or public reproval has been administered.

f. **Notice to United States Attorney and to the State Bar.** The clerk must give prompt notice of any motion, petition, or order made pursuant to this local rule to the United States Attorney and to the disciplinary body of the court(s) to which the attorney has been admitted to practice.

g. **Contempt.** Disciplinary matters, proceedings and investigators under Civil Local Rule 79.2.c must not affect, or be affected by, any proceeding for contempt under Title 18 U.S.C. or Fed. R. Crim. P. 42.

Civil Rule 83.6 Gratuities

No person must directly or indirectly give or offer to give, nor must any judge, employee, or attach of this court accept, any gift or gratuity directly or indirectly related to services performed by or for the court.

Civil Rule 83.7 Free Press – Fair Trial Provisions

a. **Official Newspapers.** The "San Diego Daily Transcript" of San Diego (published by the "Daily Journal Corporation), being a newspaper of general circulation within the County of San Diego and within above district, and the "Imperial Valley Press" of El Centro, California, being a newspaper of general circulation in the County of Imperial and within the above district, are designated as the official newspapers for publication of all notices required to be published by law or order of this court.

The court may, in any case for the convenience of the parties in interest or in the interest of justice, designated any other newspaper for publication of notices as the court may determine.

b. **Publicity.** Courthouse supporting personnel, including, among others, marshals, clerks and deputies, law clerks, messengers and court reporters, will not disclose to any person information relating to any pending criminal or civil proceeding that is not part of the public records of the court without specific authorization of the court, nor will any such personnel discuss with the public the merits of such proceeding while it is pending before the court.

c. **Photographs, Broadcasts, Video Tapes and Tape Recordings Prohibited.** All forms, means and manner of taking photographs, tape recordings, videotaping, broadcasting, or televising are prohibited in the United States Courthouse Building during the course of, or in connection with, any judicial proceedings, whether the court is actually in session or not. This rule will not prohibit recordings by a court reporter provided, however, no court reporter or any other person will use or permit to be used any part of any recording of a court proceeding on, or in connection with, any radio, video tape or television broadcast of any kind. The court may permit photographs of exhibits to be taken by or under direction of counsel. The court, on motion, may permit the video taping of depositions in rooms other than courtrooms to be used for court proceedings.

d. **Publicity in Criminal Cases.** In criminal cases or proceedings before any judge of this court, prosecuting attorneys and defense counsel, as officers of this court, and their associates, assistants, agents, enforcement officers and investigators, must refrain from making, or advising or encouraging others to make to, for, or in the press, or on radio, television or other news media, statements concerning the parties, witnesses, merits of cases, probable evidence, or other matters which are likely to prejudice the ability of either the government of the defendant to obtain a fair trial.

Civil Rule 83.8 Non-appropriated Funds Plan for Administration of the Court Library Fund and Pro Bono Fund

Pursuant to the "Guidelines for Non-appropriated Funds Maintained by the Courts of the United States" issued by the Director of the Administrative Office of the United States Courts on October 1, 1981, the United States District Court for the Southern District of California has adopted the following plan for the administration and operation of the funds derived from attorney admission fees. These funds will be held by the court in appropriate depositories, separate from other monies received by the court. They will be expended at the direction of the chief judge, or in accordance with guidelines set forth in Section A of this plan, below, and in subsequent orders of the court. Unreasonable accumulations to both funds must be avoided.

a. Guidelines for Use

1. **Library Fund.** Consistent with Judicial Conference Guidelines, the fund must be used for purposes approved by the district court judges for expenses that inure to the benefit of members of the bench and the bar of the court, including, but not limited to the following:

   a. Expenses of the court library for which appropriated funds are not available at the time the expense is incurred (such as payment for publications and periodicals, filing services, temporary assistance with special projects and the computerization of library catalog);
   b. Expenses related to attorney admission proceedings;
   c. Expenses related to attorney discipline enforcement and proceedings;
   d. Lawyer lounge and other courthouse facilities benefitting the bar;
   e. Equipment and materials to assist attorneys in the courtroom;
   f. Expenses for printing court rules, manuals on practice and procedure, a slip opinion index, and other documents related to court operations given to attorneys upon admission to the bar;
   g. Attorney expenses for court committee meetings;
   h. Expenses in connection with court memorial and commendation services;
   i. Court projects and programs that interest or benefit the bar or which enhance the quality of advocacy in the court;
   j. Expenses of the collection and preservation of court records;
   k. Expenses for the development of historical and educational materials describing the court for use by the bar, including, but not limited to, the Annual Reports;
   l. Costs of special projects or acquisitions to further the administration of justice in the courts;
   m. If appropriated funds are not available, training and professional dues for court library personnel designed to enhance the administration of justice and to benefit the bar;
   n. Fees for services rendered by outside auditors in auditing the fund, in accordance with Section 4 below;
   o. Costs of the annual Southern District of California Conference, and costs associated with the court's participation in the Ninth Circuit Judicial Conference.

2. **Pro Bono Fund**
   a. The Pro Bono Fund must be used for reimbursement of out-of-pocket expenses, necessarily incurred by court-appointed attorneys representing indigents pro bono in civil cases not covered by the Criminal Justice Act, provided that approval for such expenses is first obtained from the magistrate judge assigned the case, or if for any reason the magistrate judge is unavailable, or if the total expenses in the case exceed $1,000.00, the district judge assigned the case. In the event of a showing of extraordinary circumstances, the requirement of prior approval may be waived by the magistrate judge or the district judge. Further, funds may be used to help defray or reimburse administrative costs in screening applicants referred by the court. Application for such funds must be approved by the court. Additionally, the funds may be used for purposes which enhance the purpose and goal of creating, supporting, and maintaining a group of volunteer lawyers who will assist the court in representing indigents pro bono in civil cases. Application for such funds must be approved by the court.
   In the event the party represented recovers costs, the out-of-pocket expenses allowed under this section must be redeposited into the fund.

b. The funds must not be used to pay for materials or supplies available from statutory appropriations nor to supplement the salary of any court officer or employee.

c. The funds may be used as a revolving account to pay for expenses for which the Fund will be entirely reimbursed.

b. Custodian of the Fund

1. The clerk will act as custodian of the funds and will be responsible for receiving payment of attorney admission fees and for safeguarding, depositing, disbursing and accounting for all assets of the funds. Monies paid into the funds must be kept separate and distinct from any other monies received by the court.

In particular, the custodian must:

a. Make payments from the funds for purposes authorized in accordance with Section a;
b. Establish an appropriate accounting system for the funds and maintain proper records of receipts and disbursements;
c. Prepare and submit to the court a quarterly report on funds activities, setting forth the balance, receipts, disbursements in accordance with the fiscal plan;
d. Invest funds in accordance with the guidelines set forth in Section C, below, and;
e. Perform such other duties as the court may direct.

2. Upon appointment by the court of a successor custodian, the outgoing custodian must prepare and sign the following statements in conjunction with the exit audit or inspection conducted by an auditor or disinterested inspector as designated by the court;

a. A statement of assets and liabilities;
b. A statement of operations or of receipts and disbursements since the end of the period covered by the last statement of operations and net worth; and
c. A statement of the balance in any Fund accounts as of the date of transfer to the successor custodian.

The successor custodian must execute a receipt for all funds after being satisfied as to the accuracy of the statements and records provided by the outgoing custodian. Acceptance may be conditioned upon audit and verification when the circumstances warrant.

c. Management of Fund. The district court judges will act as the advisory committee supervising the fund. Duties specified below as those of the clerk and chief judge apply also to the clerk's designee or acting chief.

1. **Library Fund.** The judges delegate to the clerk authority to authorize expenditures totaling $500 per month. If any expenditures exceed that amount, the clerk will refer the request to the chief judge who will have the authority to approve individual expenditures not exceeding $2,500. A Library Fund Committee, consisting of the current chief judge, the immediate former chief judge, and the next chief judge, will have the authority to approve individual expenditures not exceeding $5,000. In the

absence of the immediate former chief judge, the current chief judge will designate another district judge to the Library Fund Committee. Approval by a majority of the district judges is needed to authorize individual expenditures in excess of $5,000. For any check in excess of $500, the signature of the chief judge as well as the clerk is required.

2. **Pro Bono Fund.** Disbursements from the pro bono fund must be made according to the provisions of Section a. 2. Approval by the district court judges is needed to authorize general expenditures not related to a specific case in excess of $500 per month. Furthermore, for any check in excess of $500, the signature of the chief judge as well as the clerk is required.

3. **Report.** The clerk of court will distribute the quarterly report required in Section b. 1. C to the chief judge who will distribute it to the district court judges for review. Further, any other reports, such as those required in Section b.2 or Section d will be distributed by the chief judge to all district court judges for review.

d. **Audits and Inspections.** Funds are subject to audit by the Administrative Office of the United States Courts. The court may appoint an outside auditor or disinterested inspector (who may be a government employee) to conduct such additional audits as the court determines may be necessary or appropriate. The written results of each such audit or inspection must be provided to the court. Reasonable compensation may be provided from fund assets if the auditor or inspector is not a government employee acting in an official capacity.

   A terminal audit or inspection must be performed prior to the dissolution of the funds and a written accounting rendered to the court.

e. **Protection of the Fund.** All receipts must be deposited only in federally insured banks or savings institutions and whenever practical and feasible, all substantial sums must be placed in secure funds invested in government obligations. Efforts must be made to maximize the return on investments consistent with requirements of convenience and safety.

f. **Dissolution of the Fund.** The court may dissolve the funds or any portion of those funds whenever considered appropriate. Care must be taken to ensure that all outstanding obligations are liquidated prior to dissolution of the funds, including any expense resulting from the required terminal audit or inspection. In addition, efforts must be made to dispose of the assets of the funds in ways which fulfill the purposes of the funds, as set forth in Section a.1 and 2, above.

Civil Rule 83.9 Correspondence and Communications with the Judge

Except as otherwise provided by law, attorneys or parties to any action or proceeding must refrain from writing letters to the judge, or otherwise communicating with the judge unless opposing counsel is present. All matters to be called to a judge's attention should be formally submitted as hereinafter provided. Except as authorized by the judge, attorneys must not send copies to the judge of letters sent to others.

Civil Rule 83.10 Jury Selection Plan

Pursuant to 28 U.S.C. §§1861 through 1869, as amended, the following Jury Selection Plan (the "Plan") is hereby adopted by this court, subject to approval by a reviewing panel and to such rules and regulations as may be adopted from time to time by the Judicial Conference of the United States.

a. Applicability of the Plan. This Plan is applicable to the Southern District of California, which consists of the counties of San Diego and Imperial.

b. Policy. It is the policy of the court that all litigants in this court, entitled to trial by jury, will have the right to grand and petit jurors selected at random from a fair cross section of the community, and that all qualified citizens resident within the District, will have the opportunity to be considered for service on grand and petit juries and will have an obligation to serve as jurors when summoned for that purpose.

c. Management and Supervision of Jury Selection Process.

1. The clerk of court will manage the jury selection process under the supervision and control of the chief judge or authorized judge designated by the chief judge.

2. The court finds that electronic data processing methods can be advantageously used for managing this plan. Therefore, a properly programmed electronic data processing system, or a combination system employing both manual and electronic machine methods, may be used to select master wheel names, select names of persons to be sent questionnaires, select names of persons in the qualified wheel to be summoned, and to perform other clerical and record keeping functions as may be prescribed by the court.

3. In the event of computer malfunction, or any overt or obvious deviation from this Plan caused by automation, the clerk, with the approval of the court, must manually proceed from the last step correctly implemented.

4. The court finds that the persons whose names appear on the registered voter lists represent a fair cross-section of the community in the Southern District of California. Accordingly, names of grand and petit jurors serving on or after the effective date of this Plan must be selected at random from the registered voter lists of San Diego and Imperial Counties.

5. The court authorizes the clerk of court, under supervision of the court, to determine whether persons are qualified, unqualified, exempt, or excused from jury service. Questionable requests for being excused or other status determinations must be directed to the court.

d. Master Wheel.

1. The master wheel is the data base of names of those randomly selected from the list of registered voters.

2. The master wheel will be obtained as follows: The clerk must ascertain the total number of registered voters in both counties and divide that number by the number of names to be selected for the master jury wheel. For instance, if there are 500,000 registered voters and 20,000 names are needed, 500,000 will be divided by 20,000 producing the quotient of 25. Then the clerk must draw by lot a number, between zero and 26, and the name corresponding to that number from the source lists of each county, along with each 25th name corresponding to that number thereafter to the end of the source list.

The wheel must maintain a division for each county between jurors who reside in each county. Jurors may be selected for service in one county, or both as the Court may direct.

3. At the clerk's option, and after consultation with the court, the selection of names from complete source list data bases in electronic media for the master jury wheel may be accomplished by a purely randomized process through a properly programmed electronic data processing system. Similarly, a properly programmed electronic data processing system for pure randomized selection may be used to select names from the master wheel and from the qualified wheel. Such random selections of names from the master jury wheel, including source lists by data computer personnel, must ensure that each county within the district is substantially proportionately represented in the master wheel in accordance with 28 U.S.C. §1863(b)(3). The selection of names from the source list, master wheel and qualified wheel must also ensure that the mathematical odds of any single name being picked are substantially equal.

4. When requests for names to build the master wheel are issued to non-court personnel (e.g., computer personnel, local or state officials), the work must be conducted pursuant to detailed instructions by the clerk of court. Once such selection is completed, the non-court personnel must certify that the selection was completed pursuant to the instructions of the clerk of court.

5. In no event should the quantity of names placed in the master jury wheel be less than one-half of one percent of the total number of names on registered voter lists. No lists will be disclosed to any person except pursuant to the district court plan or pursuant to 28 U.S.C. §§1867 or 1868.

6. The master jury wheel must be emptied and refilled by the first of May every two years after the general national elections.

7. From time to time as required, the clerk must, after reasonable public notice, publicly draw at random from the master wheel by electronic data processing procedures, the number of persons to whom questionnaires will be sent for the purpose of examining their qualifications for jury service.

a. Jury qualification questionnaires will be mailed to the names selected at such times as the clerk finds administratively convenient. The juror qualification questionnaire required by 28 U.S.C §§1864(a) and 1869(h) of the Act must be in the form prescribed by the

Administrative Office of the United States Courts and approved by the Judicial Conference of the United States.

b. After completed questionnaires are returned by prospective jurors they will be evaluated, and final determinations respecting the ineligibility of individual person will be noted. The record of names and addresses of eligible jurors will constitute the "qualified wheel."

c. Persons failing to reply to the jury qualification questionnaire within fourteen (14) days, or submitting replies indicating need for further investigation, may be summoned for personal interviews before the clerk should other means of communication fail to elicit or clarify replies. Except for extraordinary cause shown, such appearances will be without payments of attendance fee or travel allowance.

e. **Qualified Jury Wheel.**

1. The clerk must maintain a qualified jury wheel, or data base, for this district by county and must place in said wheel the names of all persons drawn from the master jury wheel not disqualified, exempt or excused pursuant to this Plan. Names drawn from the qualified jury wheel must not be made public except by order of court. The clerk must provide copies of the information cards respecting the petit jury panel members who are selected for service in this court to the U.S. Attorney, and to Federal Defenders of San Diego, and to the District Court Library for the use of civil and other criminal practitioners. The cards will have jurors' Social Security Numbers, addresses and telephone numbers blocked out. The clerk must provide copies of information cards to the U.S. Attorney of grand jurors who are selected for service.

2. **Excuses on Individual Request.** The district court hereby finds that jury service by members of the following occupational classes or groups of persons would entail undue hardship or extreme inconvenience to the members of those classes or groups, and the excuse of such members will not be inconsistent with the Act and must be granted upon individual request:

a. Persons over 70 years of age.

b. Any person having active care and custody of a child or children under 10 years of age whose health and/or safety would be jeopardized by absence of such person for jury service; or a person who is essential to the care of aged or infirm persons.

c. Persons who have served as a grand or petit juror in a federal court within the past two years.

d. Volunteer safety personnel. For purposes of this subparagraph, the term "volunteer safety personnel" means individuals serving a public agency (as defined in Section 1203(6) of Title I of the Omnibus Crime Control and Safe Streets Act of 1968) in an official capacity, without compensation, as firefighters or members of a rescue squad or ambulance crew.

3. **Hardship Excuses.** In addition to the members of groups and occupational classes subject to excuse from jury service on individual request as provided in this section, any person summoned for jury service may, on request, be excused upon a showing of undue hardship or extreme

inconvenience, for such period as the court deems necessary, at the conclusion of which such person must be notified again for jury service unless excused permanently if the court so directs. "Undue hardship or extreme inconvenience" as a basis for excuse from immediate jury service under this section will mean great distance, either in miles or travel time, from the place of holding court; grave illness in the family or any other emergency which outweighs in immediacy and urgency the obligation to serve as a juror when summoned; in situations where it is anticipated that a trial or grand jury proceeding may require more than thirty days of service, the court may consider, as a further basis for temporary excuse, severe economic hardship to an employer which would result from the absence of a key employee during the period of such service; or any other factor which the court determines to constitute an undue hardship or to create an extreme inconvenience to the juror.

4. **Exemption from Jury Service.** In accordance with 28 U.S.C. §1863(b)(6) members of the following groups are exempt from jury service:

a. Members in active service in the Armed Forces of the United States.

b. Members of the fire or police departments of any municipality, county or district.

c. Public officers in the executive, legislative or judicial branches of the government of the United States, or any state, district, territory or possession or subdivision of those branches, states, districts, territories, or possessions, who are actively engaged in the performance of official duties. "Public officer" will mean a person who is either elected to public office or who is directly appointed by a person or persons elected to public office.

5. **Qualification.** Any person must be deemed qualified to serve on grand and petit juries in this court unless such person:

a. Is not a citizen of the United States, at least 18 years old, who has resided for a period of one year within this judicial district;

b. Is unable to read, write and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;

c. Is unable to speak the English language;

d. Is incapable, by reason of mental of physical infirmity, to render satisfaction jury service; or

e. Is the subject of a charge pending for the commission of, or has been convicted in a state or federal court of record of, a crime punishable by imprisonment for more than one year, and such person's civil rights have not been restored. (Written proof of restoration of civil rights must be received before a convicted felon may serve as a juror.)

6. **Method of Excuse.** The court or the clerk will determine solely on the basis provided on the juror qualification form and other competent evidence whether a person is unqualified for or exempt or to be excused from jury service. Record of such determination must be kept by the clerk.

7. **Drawing from Qualified Wheel.**

a. **Grand Jurors.** From time to time, the clerk will cause to be drawn at random such names as may be required from the qualified jury wheel. Grand jurors will be randomly drawn from both counties maintaining the proportional relationship between the two counties. From those summoned, 23 names will be chosen at random in the presence of a judge of the court on the day when said jurors report in response to summons. These must serve as members of a grand jury. The remaining jurors summoned must serve as replacement grand jurors or as petit jurors.

b. **Petit Jurors.** From time to time, the clerk must cause to be drawn at random such names as may be required from the qualified jury wheel for the trial of jury cases.

8. In any two-year period, no person will be required to:

a. Serve or attend court for prospective service as a petit juror for a total of more than thirty days, except when necessary to complete service in a particular case;

b. Serve on more than one grand jury; or

c. Serve as both a grand and petit juror.

Civil Rule 83.11 Persons Appearing Without an Attorney In Propria Persona

a. Any person who is appearing propria persona, (without an attorney) (i.e. pro se) must appear personally for such purpose and may not delegate that duty to any other person, including husband or wife, or another party on the same side appearing without an attorney. Any person appearing propria persona is bound by these rules of court and by the Fed. R. Civ. P. or Fed. R. Crim.P., as appropriate. Failure to comply therewith may be ground for dismissal or judgment by default.

b. A party proceeding pro se must keep the court and opposing parties advised as to current address. If mail directed to a pro se plaintiff by the clerk at the plaintiff's last designated address is returned by the Post Office, and if such plaintiff fails to notify the court and opposing parties within 60 days thereafter of the plaintiff's current address, the court may dismiss the action without prejudice for failure to prosecute.

Civil Rule HC.1 Habeas Corpus Proceedings – Venue

The provisions of 28 U.S.C. §2241(d) provide for the filing of petitions in more than one judicial district. However, this court will make an independent determination of whether venue is appropriate in this district.

Civil Rule HC.2 Habeas Corpus Proceedings (28 U.S.C. §2254) -- Petitions Not Involving the Death Penalty

a. Assignment to Judges. The petition will be assigned to a district judge and a magistrate judge. In accordance with Local Rule 72.1.d and 28 U.S.C. §636(b), the magistrate judge must conduct any and all of the duties specified in Rule 8 of the Rules Governing §2254 Cases. If a petitioner has previously sought relief in this district with respect to the same conviction, the petition, if possible, will be assigned to the district judge who was assigned to the prior petition.

b. Form of the Petition. Pursuant to Rule 2(d) of the Rules Governing §2254 Cases, the form of the petition must substantially follow the form prescribed by this court. The Clerk will make this form available to petitioners without charge.

c. Procedures for Considering the Petition.

1. Written requests for enlargement must be made before the expiration of the time period to be extended and must show good cause for the extension. The request for an enlargement of time must be served on the opposing party and a proof of service filed.

2. To assist the court in exercising its duties under Rule 8 of the rules governing §2254 cases, a party may make a request for an evidentiary hearing. The request must include a specification of which factual issues require a hearing and a summary of the evidence the party proposes to offer. Any opposition to the request for an evidentiary hearing must be made within fourteen (14) days from the service of the request.

d. Evidentiary Hearing. If an evidentiary hearing is held, the court may order the preparation of a transcript of the hearing. Upon the preparation of the transcript, the court may establish a reasonable schedule for further briefing and argument of the issues considered at the hearing.

e. Dispositive Rulings on the Merits.

1. In accordance with Civil Local Rule 72.1 and 28 U.S.C. §636(b), the magistrate judge must submit to a district judge proposed findings of fact and recommendations for disposition. The magistrate judge must file proposed findings and recommendations with the court and a copy must be mailed to all parties. Within the time period set forth in the magistrate judge's report and recommendation, but not less than fourteen (14) days, any party may serve and file written objections to the proposed findings and recommendations by timely filing an original and one (1) copy of the objections and a proof of service showing that the objections were served on the opposing party. The district judge must make a de novo determination of those portions of the report or specified proposed findings or recommendations to which an objection is made. A district judge may accept, reject, seek clarification or modify in whole or in part any findings or recommendations made by the magistrate judge.

2. The district judge may also issue a separate written opinion which will be filed or state an oral opinion on the record in open court, which must be promptly transcribed and filed.

Civil Rule HC.3 Habeas Corpus Proceedings (28 U.S.C. §2254) – Petitions Involving Death Penalty

a. Applicability. This rule will govern the procedures for a first petition for a writ of habeas corpus filed pursuant to 28 U.S.C. §2254 in which a petitioner seeks relief from a judgment imposing the penalty of death. A subsequent filing may be deemed a first petition under these rules to a particular petition if the original filing was not dismissed on the merits. The application of this rule may be modified by the judge to whom the petition is assigned. These rules will supplement the Rules Governing §2254 Cases and do not in any regard alter or supplant those rules.

b. Notices from California Attorney General. The California Attorney General will send the following reports:

1. **Report Upon Setting of Execution Date**. Whenever an execution date is set, the California Attorney General must send prompt notice to the Clerk of this Court and Chief Judge of this District Court, within seven (7) days; and

2. **Semi-Annual Report.** The California Attorney General must electronically send to the Chief Judge of this District Court and designated recipients a semi-annual report that lists:
   a. all scheduled executions in California;
   b. all capital cases, pending on direct appeal before the California Supreme Court;
   c. all capital cases affirmed on direct appeal and pending before the California Supreme Court on first state habeas corpus petitions; and
   d. the county of conviction for each case.

c. Notice from Petitioner's Counsel. Whenever counsel determines that a petition will be filed in this court, counsel must promptly file with the clerk of this court and send to the California Attorney General a written notice of intention to file a petition. The notice must state the name of the petitioner, the district in which petitioner was convicted, the place of petitioner's incarceration, and the status of petitioner's state court proceedings. The notice is for the information of the court only, and the failure to file the notice will not preclude the filing of the petition.

d. Counsel.

1. **Appointment of Counsel.** Each indigent petitioner must be represented by counsel unless petitioner has clearly elected to represent himself and the court is satisfied, after hearing, that petitioner's election is intelligent and voluntary. Unless petitioner is represented by retained counsel, counsel must be appointed in every such case at the earliest practicable time. A panel of attorneys qualified for appointment in death penalty cases will be certified by a selection board appointed by the chief judge of the district. This board will consist of a

federal defender, a member of the California Appellate Project (CAP), a member of the state bar, and a representative of the state public defender.

When a death judgment is affirmed by the California Supreme Court and any subsequent proceedings in the state courts have concluded, California Appellate Project will forward to the selection board the name of state appellate counsel and, if counsel is willing to continue representation on federal habeas corpus, California Appellate Project's evaluation of counsel's performance in the state courts and recommendation on whether counsel should be appointed in federal court.

If state appellate counsel is available to continue representation into federal courts, and is deemed qualified to do so by the selection board, there is a presumption in favor of continued representation except when state appellate counsel was also counsel at trial.

In light of this presumption, it is expected that appointed counsel who is willing to continue representation and who has been certified by the selection board as qualified to do so would ordinarily file a motion for appointment of counsel on behalf of the client together with the client's federal habeas corpus petition. If, however, counsel for any reason wishes to confirm the appointment before preparing the petition, counsel may move for appointment, as described above, before filing the petition.

If state appellate counsel is not available to represent petitioner on federal habeas corpus or if appointment of state appellate counsel would be inappropriate for any reason, the court must appoint counsel upon application of petitioner. The clerk of court must have available forms for such application. Counsel may be appointed from the panel of qualified attorneys certified by the selection board, or the court may appoint any other attorney under 18 U.S.C. § 3599. Either California Appellate Project or the selection board may suggest one or more counsel for appointment. The court may also request suggestion of one or more counsel from California Appellate Project or the selection board. If application for appointed counsel is made before a petition has been filed, the application must be assigned to a district judge in the same manner that a petition would be assigned, and counsel must be appointed by the assigned judge. The judge so assigned must be the judge assigned when counsel files a petition for writ of habeas corpus.

2. **Second Counsel.** Appointment and compensation of second counsel will be governed by § 2.11 of Volume VII of the Guide to Judiciary Policies and Procedures, Appointment of Counsel in Criminal Cases.

e. Assignment to Judges. Notwithstanding the general assignment plan of this court, petitions must be assigned to judges of the court as follows:

1. The clerk of the court must establish a separate category for these petitions, to be designated with the title "Capital case".
2. All active or combination of active and senior judges of this court must participate in the assignments without regard to intra district venue.
3. Petitions in the capital case category must be assigned blindly and randomly by the clerk of the court to each of the active or combination of active and senior judges of the court.

4. If the assigned judge has filed a certificate of unavailability with the clerk of the court which is in effect on the date of assignment, a new random assignment will be made to another judge immediately.
5. If a petitioner has previously sought relief in this court with respect to the same conviction, the petition will be assigned to the judge who was assigned to the prior proceeding.
6. Pursuant to 28 U.S.C. §636(b)(1)(B), and not inconsistent with law, magistrate judges may be designated by the court to perform all duties under these rules, including evidentiary hearings.

f. Transfer of Venue. 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.

If an order for the transfer of venue is made, the judge will order a stay of execution which must continue until such time as the transferee court acts upon the petition or the order of stay.

g. Stays of Execution.

1. **Stay Pending Final Disposition.** Upon the filing of a habeas corpus petition, unless the petition is patently frivolous, the district court must issue a stay of execution pending final disposition of the matter.

2. **Temporary Stay for Appointment of Counsel.** Where counsel in state court proceedings withdraws at the conclusion of the state court proceedings or is otherwise not available or qualified to proceed, the selection panel will designate an attorney from the panel who will assist an indigent petitioner in filing *pro se* applications for appointment of counsel and for temporary stay of execution. Upon the filing of this application the district court must issue a temporary stay of execution and appoint counsel from the panel of attorneys certified for appointment. The temporary stay will remain in effect for forty-five (45) days unless extended by the court.

3. **Temporary Stay for Preparation of the Petition.** Where counsel new to the case is appointed, upon counsel's application for a temporary stay of execution accompanied by a specification of nonfrivolous issues to be raised in the petition, the district court must issue a temporary stay of execution unless no nonfrivolous issues are presented. The temporary stay will remain in effect for one hundred twenty (120) days to allow newly appointed counsel to prepare and file the petition. The temporary stay may be extended by the court upon a subsequent showing of good cause.

4. **Temporary Stay for Transfer of Venue.** (See paragraph f.)

5. **Temporary Stay for Unexhausted Claims.** If the petition indicates that there are unexhausted claims from which the state court remedy is still available, petitioner may be granted a thirty (30) day period in which to commence litigation on the unexhausted claims in state court. During the proceedings in state court, the proceedings on the petition will be

stayed. After the state court proceedings have been completed, petitioner may amend the petition with respect to the newly exhausted claims.

6. **Stay Pending Appeal.** If the petition is denied and a certificate of probable cause for appeal is issued, the court will grant a stay of execution which will continue in effect until the court of appeals acts upon the appeal of the order of stay.

7. **Notice of Stay.** Upon the granting of any stay of execution, the clerk of the court will immediately notify the warden of San Quentin Prison and the California Attorney General. The California Attorney General must assure that the clerk of the court has a twenty-four hour telephone number to the warden.

h. Procedures for Considering the Petition. Unless the judge summarily dismisses the petition under Rule 4 of the Rules Governing §2254 Cases, the following schedule and procedures must apply, subject to modification by the judge. Requests for enlargement of any time period in this rule must comply with the applicable local rules of the court.

1. Respondent must as soon as practicable, but in any event on or before twenty-one (21) days from the date of service of the petition, lodge with the court the following:

   a. Transcripts of the state trial court proceedings.
   b. Appellant's and respondent's briefs on direct appeal to the California Supreme Court, and the opinion or orders of that court.
   c. Petitioner's and respondent's briefs in any state court habeas corpus proceedings, and all opinions, orders and transcripts of such proceedings.
   d. Copies of all pleadings, opinions and orders in any previous federal habeas corpus proceeding filed by petitioner which arose from the same conviction.
   e. An index of all materials described in paragraphs (A) through (D) above. Such materials are to be marked and numbered so that they can be uniformly cited. Respondent must serve this index upon counsel for petitioner.

   If any items identified in paragraphs (A) through (D) above are not available, respondent must state when, if at all, such missing material can be filed.

2. 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 must immediately notify the court in writing, with a copy to respondent. Copies of any missing documents will be provided to counsel for petitioner by the court.

3. Respondent must file an answer to the petition with accompanying points and authorities within thirty (30) days from the date of service of the petition. Respondent must include in the answer the matters defined in Rule 5 of the Rules Governing §2254 Cases and must attach any other relevant documents not already filed.

4. No discovery will be had without leave of the court.

5. Unless extended by the court at any time, a request for an evidentiary hearing by either party must be made within fourteen (14) days from the filing of the answer to the petition. The request must include specification of which factual issues require a hearing and a summary of what evidence petitioner proposes to offer. Any opposition to the request for an evidentiary hearing must be made within fourteen (14) days from the filing of the request. The court will then give due consideration to whether an evidentiary hearing will be held.

i. **Evidentiary Hearing.** If an evidentiary hearing is held, the court will order the preparation of a transcript of the hearing, which is to be immediately provided to petitioner and respondent for use in briefing and argument. Upon the preparation of the transcript, the court may establish a reasonable schedule for further briefing and argument of the issues considered at the hearing.

j. **Rulings.** The court's rulings may be in the form of a written opinion which will be filed, or in the form of an oral opinion on the record in an open court, which must be promptly transcribed and filed.

The clerk of the court will 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 will 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 probable cause for appeal, or (b) the denial of a stay of execution.

When a notice of appeal is filed, the clerk of the court will transmit the available records to the court of appeals immediately.

Civil Rule A.1 Scope of Rules for Admiralty and Maritime Claims

Application. These rules apply to claims governed by the Supplemental Rules for Certain Admiralty and Maritime Claims of the Fed. R. Civ. P., which are referred to within these rules as Rules A through F.

Civil Rule B.1 Attachment and Garnishment Provisions

a. **Attachment and Garnishment.** The verification of a complaint containing a prayer for process under Rule B, if made by plaintiff's attorney or other agent not having personal knowledge or knowledge acquired in the ordinary course of business of the facts alleged in the complaint as grounds of the claim, must state the circumstances making it necessary for such attorney or other agent to make the verification and the sources of the information.

b. **Affidavit of Defendant's Absence.** The affidavit of plaintiff or plaintiff's attorney that defendant cannot be found within the district, required by Rule B, must state with particularity the efforts made to locate the defendant in the district.

c. **Judicial Authorization for Issuance of Writ.** Before the clerk will issue process of attachment and garnishment in accordance with Rule B, the verified complaint and affidavit required by Rule B must be reviewed by a district judge or magistrate judge and, if probable cause be found to exist under Rule B, an order so stating and authorizing issuance of process must issue. Alias process may thereafter be issued by the clerk upon application without further order of the court.

d. **Hearing and Summary Release of Property.** Except in actions by the United States for forfeitures based upon federal statutory violations and actions by seamen for wages, whenever property is attached, any person claiming an interest in the property will be entitled to a prompt hearing before a district or magistrate judge upon written notice to plaintiff, and to an order vacating the attachment immediately and granting other appropriate relief unless plaintiff shows cause at the hearing why such an order should not issue.

Civil Rule C.1 Actions in Rem

a. **Actions in Rem.** If, before or after commencement of suit, plaintiff accepts any written undertaking to respond on behalf of the vessel or other property sued in return for foregoing the arrest or stipulating to the release of such vessel or other property, the undertaking will become a defendant in place of the vessel or other property sued and be deemed referred to under the name of the vessel or other property in any pleading, order or judgment in the action referred to in the undertaking. The preceding must apply to any such undertaking, subject to its own terms and whether or not it complies with Civil Local Rule 65.1.2 and has been approved by a judge or clerk.

b. **Publication of Notice of Action and Arrest.** Plaintiff will cause the notice required by Rule C(4) to be published once in the official newspaper of the court. The notice must contain the title and number of the action or proceeding, the date of the arrest, the identity of the property arrested, the name of the marshal, and the name and address of the attorney for plaintiff. It must also contain a statement that claims of persons entitled to possession must be filed with the district court and served upon the attorney for plaintiff within fourteen (14) days after publication; that answers to the complaint must be filed and served within twenty-one (21) days after the filing of the claim, or within such additional time as may be allowed by a judge; that in lieu of an answer, default may be noted and condemnation ordered ; and that applications for intervention under Rule 24, Fed. R. Civ. P., by persons claiming maritime liens or other interests, may be untimely if not filed within the time allowed for claims to possession.

c. **Intangible Property; Summons Under Rules C(3) and E(4)(c).** The summons issued pursuant to Rule C(3) must direct the person having control of funds (consisting of freight, the proceeds of property sold, or other intangible property that is the subject of the action) to show cause why such funds or property should not be delivered to the court to abide the judgment. This showing

may be made by filing with the clerk and serving on the attorney for plaintiff (1) within fourteen (14) days after the date of publication of notice of action and arrest or within such additional time as may be allowed, a claim under Rule C(6); and (2) within twenty-one (21) days after filing of the claim, an answer to the complaint. If claim and answer are not to be interposed, such person must deliver or pay over to the marshal the property or funds claimed by plaintiff with interest and costs. Service of such summons will have the effect of an arrest of the property and will bring it within the control of the court.

Civil Rule E.1 Actions in Rem and Quasi in Rem

a. Judgment by Default.

1. No default judgment will be entered by the clerk in any Admiralty proceeding, unless ordered by the court.

2. On the expiration of the time to answer, if no answer or exceptions have been filed, the plaintiff or petitioner may have an ex parte hearing of the cause and a judgment without notice, except that;

3. If the claimant has appeared by attorney, seven (7) days' notice of the hearing must be given. In actions by the United States for forfeitures based upon federal statutory violations, the notice to an owner or other known potential claimants must be by certified or registered mail with return service to the last known mailing address.

4. If there has been no appearance by the owner of arrested or attached property, final judgment must not enter against such owner or property until it is shown by affidavit that notice of the suit has been given pursuant to Fed.R.Civ. P. Supp. B(2) and to:

a. The owner of the property (other than a vessel) if known to the plaintiff or petitioner, and otherwise the owner's agent, if known;

b. The owner, or managing owner, if more than one, of the vessel arrested or attached if known, and the owner or managing owner, if more than one, recorded as such in the records of the United States Coast Guard, in the case of a documented vessel of the United States or in the records of the California Department of Motor Vehicles, in a case where it has issued a certificate of ownership, and if notice cannot be given to such owner, the agent of the vessel, if any be known, within the district;

c. Any holder of a security interest in the vessel arrested or attached whose interest is recorded as described in (b) above.

The notice to an owner or agent must be by personal service within the district, or if that cannot be done, by first class mail with return service, if available, to the mailing address of record, or in the absence of a recorded address, to the last known address. Notice to others may be by either of the foregoing methods. Failure to give notice as provided by this rule will be grounds for setting aside default under applicable rules, but will not affect the title to property sold under a judgement.

b. Security for Costs and Marshal's Fees and Expenses; Forfeiture Actions Brought by the United States.

1. **Costs.** In an action covered by Rule E, a party may serve upon an adverse party and file notice to post security for costs and expenses. Unless otherwise ordered by a judge, the amount of the security will be $500.00. The party notified must post security within five days after service, unless exempted by law or by order of a judge upon good cause shown. Should the party fail to do so, it may neither file additional papers nor participate further in proceedings, except for the purpose of seeking relief from this Rule. In actions by the United States for forfeitures for federal statutory violations, security for costs must be paid pursuant to the procedures established in the customs laws, 19 U. S. C. §§1607 and 1608.

2. **Marshal's Fees and Expenses.** The marshal is not required to execute process in an action within Rule E unless deposit has been made covering fees and expenses of seizing and keeping the property arrested or attached for a minimum of fourteen (14) days. The party requesting execution of process must advance any additional fees and expenses from time to time as the marshal requests until the property is released or disposed of pursuant to Rule E.

c. Execution of Process; Custody of Property.

1. **Property in Custody of an Officer of the United States.** Where property in the custody of an officer or employee of the United States is to be arrested or attached, the marshal must deliver a copy of the complaint and warrant for arrest or summons and process of attachment to such officer or employee, or if the officer or employee is not found within the district, then to the custodian of the property within the district, and must notify such officer, employee or custodian not to relinquish such property from custody except to the marshal, subject to further order of a judge.

2. **Custody of Vessels; Keepers; Security; Expenses**. Upon arrest or attachment of a vessel under process issued by the court, the marshal must place one or more keepers thereon who must remain aboard until the vessel is released or disposed of pursuant to Rule E, unless otherwise ordered.

   On motion of any party, made after notice to the marshal and all parties who have appeared, a judge may order that custody of the vessel be given to the operator of a marina or similar facility, repair yard, or company regularly carrying on the business of ship's agent, if a judge finds that such firm or person can and will safely keep the vessel and has in effect adequate insurance to cover any liability for failure to do so. If the vessel must be moved to the place where custody will be maintained, a judge may also require insurance or other security to protect those having an interest in the vessel, as well as those claiming against her, from loss

of or damage to the res, or liability of the vessel, incurred during the movement. The order allowing such custody must fix fees to be charged therefor and for any other services to be rendered the vessel and must provide for their payment to the marshal in advance. The provisions of this rule requiring insurance or security do not apply to the United States or to an officer, employee or agent thereof.

3. **Vessel Operations.** The marshal, deputies and keepers of a vessel arrested or attached must not interfere with the conduct of cargo and other operations normal to a vessel in berth, repair work, dry-docking or undry-docking (in the case of a vessel in a shipyard) unless a judge so orders. Neither the United States nor the marshal will be liable for the consequences of the continuation of any such activities during the arrest or attachment. Upon motion of any interested party (which may be made ex parte when the urgency of the matter requires) and for good cause shown, a judge may order the marshal to prevent or require the conduct of any operations of a vessel under arrest or attachment.

d. Appraisement of Property for Purpose of Bonding. Orders for the appraisement of arrested or attached property for the purpose of bonding and sale may be entered as a matter of course by the clerk of the district court at the request of any interested party. If the parties do not agree in writing upon an appraiser, the clerk will name one. Any party having a claim to the property may appeal immediately to the judge from such appointment. The appraiser must be sworn to the faithful and impartial discharge of duties before any federal or state officer authorized by law to administer oaths. The appraiser must give one day's notice of the time and place of making the appraisement to the attorneys of record in the proceeding, and must file the appraisement, when made, with the clerk of the district court.

e. Sales.

1. Notice. Notice of a sale of arrested or attached property must be in accordance with 28 U.S.C. §§2001 – 2004. Unless otherwise ordered by a judge upon a showing of urgency or impracticality, notice of the sale of property must be published daily for at least seven (7) days immediately before the date of sale.

2. Confirmation. Unless otherwise provided in the order, in all public auction sales by the marshal under orders of sale in admiralty and maritime claims, the marshal must require of the last and highest bidder at the sale a minimum deposit in cash, certified check or cashier's check, of the full purchase price not to exceed $500, and otherwise $500 or ten percent of the bid, whichever is greater. The balance, if any, of the purchase price must be paid in cash, certified check or cashier's check before confirmation of the sale or within three days of dismissal of any filed opposition. When the court determines on the merits that a plaintiff or plaintiff in intervention has a valid claim senior in priority to all other parties, that plaintiff in intervention foreclosing a properly recorded and endorsed preferred mortgage on, or other valid security interest in the vessel may bid, without payment of cash, certified check or cashier's check, up to the total amount of the secured indebtedness as established by affidavit filed and served on all other parties no later than seven (7) days prior to the date of sale.

At the conclusion of the sale, the marshal must forthwith file a written report to the judge of the fact of sale, the price obtained and the name and address of the buyer. The clerk of the

district court must endorse upon such report the time and date of its filing. If within three days, exclusive of Saturdays, Sundays, and legal holidays, no written objection is filed ,the sale will stand confirmed as of course, without the necessity of any affirmative action thereon by a judge; except that no sale will stand confirmed until the buyer has complied fully with the terms of the purchase. If no opposition to the sale is filed, the expenses of keeping the property pending confirmation of sale must be charged against the party bearing expenses before the sale (subject to taxation as costs), except that if confirmation is delayed by the purchaser's failure to pay any balance which is due on the price, the cost of keeping the property subsequent to the three-day period hereinabove specified must be borne by the purchaser. A party filing an opposition to the sale, whether seeking the reception of a higher bid or a new public sale by the marshal, must give prompt notice to all other parties and to the purchaser. Such party must also, prior to filing an opposition, secure the marshal's endorsement upon it acknowledging deposit with the marshal of the necessary expense of keeping the property for at least five days. Pending the judge's determination of the opposition, such party must also advance any further expense at such times and in such amounts as the marshal will request, or as a judge orders upon application of the marshal or the opposing party. Such expense may later be subject to taxation as costs. In the event of failure to make such advance, the opposition must fail without necessity for affirmative action thereon by a judge. If the opposition fails, the expense of keeping the property during its pendency must be borne by the party filing the opposition.

3. **Sale of Forfeited Property.** In actions by the United States for forfeitures based upon federal statutory violations, the United States marshal must sell or dispose of forfeited property or property to be sold pursuant to an order for interlocutory sale, in a commercially reasonable manner and in accordance with law unless otherwise provided in the order.

Civil Rule F.1 Limitation of Liability

Limitation of Liability – Security for Costs. Unless otherwise ordered by a judge, the amount of the security for costs required to be filed in an action for limitation of liability under Rule F (1) is $500. In such an action, the security for costs may be combined with the security for value and interest.

PATENT LOCAL RULES

1. Scope of Rules

1.1 Title.
These are the Local Rules of Practice for Patent Cases before the United States District Court for the Southern District of California. They should be cited as "Patent L.R. _____."

1.2 Effective Date.
These Patent Local Rules take effect on December 1, 2009, and will apply to any case filed thereafter.

1.3 Scope and Construction.
These Patent Local Rules apply to all civil actions filed in or transferred to this court which allege infringement of a utility patent in a complaint, counterclaim, cross-claim or third party claim, or which seek a declaratory judgment that a utility patent is not infringed, is invalid or is unenforceable. The court may accelerate, extend eliminate, or modify the obligations or deadlines set forth in these Patent Local Rules based on the court's schedule or the circumstances of any particular case, including, without limitation, the complexity of the case or the number of patents, claims, products, or parties involved. If any motion filed prior to the Claim Construction Hearing provided for in Patent L.R. 4.5 raises claim construction issues, the court may, for good cause shown, defer the motion until after completion of the disclosures, filings, or ruling following the Claim Construction Hearing. The Civil Local Rules of this court also apply to these actions, except to the extent they are inconsistent with these Patent Local Rules.

1.4 Application of Rules When No Specified Triggering Event.
If the filings or actions in a case do not trigger the application of these Patent Local Rules, as soon as any party ascertains that circumstances exist to make applications of these Patent Local Rules appropriate to the case, that party should notify the assigned magistrate judge so the matter may be scheduled for a Case Management Conference.

1.5 Notice of Related Patent Case. Civil Local Rule 40.1 applies to patent cases. The parties must notify the Court of any other cases in the district involving the same patent.

2. General Provisions

2.1 Governing Procedure.

a. **Early Neutral Evaluation ("ENE") Conference.** Within sixty (60) days of a defendant making its first appearance in the case, counsel and the parties will appear before the assigned magistrate judge for an ENE conference pursuant to Civ. L.R. 16.1.c.1. No later than twenty-one (21) days before the ENE, the parties will meet and confer pursuant to Fed. R. Civ. P. 26(f).

If no settlement is reached at the ENE Conference, the magistrate judge will proceed with the Initial Case Management Conference. At the end of the conference, the magistrate judge must prepare a case management order which will include:

1. A discovery schedule, including an initial date for the substantial completion of document discovery including electronically stored information ("ESI"), and a later date for the completion of all fact discovery;
2. A date for the Claim Construction Hearing within nine(9) months of the date of a defendant's first appearance;
3. A trial date within eighteen (18) months of the date the complaint was filed, if practicable, for "standard" cases (defined as typically having one or two defendants and one or two patents); and, within twenty-four (24) months for complex cases, if practicable;
4. A dispositive motion filing cutoff date to include any motions addressing any Daubert issues;
5. A date for the Mandatory Settlement Conference; and
6. All other pretrial dates, as required in Civ. L.R. 16.1.d.2, as appropriate.

b. Initial Case Management Conference. When the parties confer with each other pursuant to Fed. R. Civ.P 26(f), in addition to matters covered by Fed. R. Civ.P 26, the parties must discuss and address in the Joint Discovery Plan filed pursuant to Fed. R. Civ. P. 26(f), the following topics:

1. Proposed modification of the deadlines provided for in these Patent Local Rules, and the effect of any such modification on the date and time of the Claim Construction Hearing, if any;
2. The need for and specific limits on discovery relating to claim construction, including depositions of percipient and expert witnesses; and
3. The need, if any, to phase damage discovery.

c. Settlement Conferences

1. The judge conducting the settlement conference may require the parties or representatives of a party other than counsel, who have authority to negotiate and enter into a binding settlement, be present at the settlement conference.

2. When ordered to appear, each party, claims adjusters for insured defendants, in addition to any other representatives with "full authority" to enter into a binding settlement, as well as the principal attorney(s) responsible for the litigation, must be present and legally and factually prepared to discuss and resolve the case at the Settlement Conference. Any variation from this Rule or special arrangements desired in cases must be proposed no later than twenty-one (21) days in advance of the settlement conference to the settlement judge.

3. "Full authority" means that the individuals at the settlement conference be authorized to fully negotiate settlement terms and to agree at that time to any settlement terms acceptable to the parties, and to bind the party, without the need to call others not present at the conference for authority or approval.

4. No later than fourteen (14) days before the settlement conference, each party will designate in writing to all other parties, the person(s) and their title(s) or position(s) with the party who will attend and have settlement authority at the conference.

2.2 Confidentiality

If any document or information produced under these Patent Local Rules is deemed confidential by the producing party and if the court has not entered a protective order, until a protective order is issued by the court, the document will be marked "Confidential" or with some other confidential designation (such as "Confidential-Outside Attorneys Eyes Only") by the disclosing party and disclosure of the confidential document or information will be limited to each party's outside attorney(s) of record and the employees of such outside attorney(s). An approved model form of protective order is available on the Court's website (www.casd.uscourts.gov) and may be amended by the Court over time as deemed appropriate.

If a party is not represented by an outside attorney, disclosure of the confidential document or information will be limited to a designated "in house" attorney, whose identity and job functions will be disclosed to the producing party five court days prior to any such disclosure. The person(s) to whom disclosure of a confidential document or information is made under this Patent Local Rule will keep it confidential and use it only for purposes of litigating the case.

A document may not be filed under seal unless authorized by an order entered by the judge before whom the hearing or proceeding related to the proposed sealed document will take place.

2.3 Certification of Initial Disclosures.

All statements, disclosures, or charts filed or served in accordance with these Patent Local Rules must be dated and signed by counsel of record. Counsel's signature will constitute a certification that to the best of his or her knowledge, information and belief, formed after an inquiry that is reasonable under the circumstances, that information contained in the statement, disclosure, or chart is complete and correct at the time it is made.

2.4 Admissibility of Disclosures.

Statements, disclosures, or charts governed by these Patent Local Rules are admissible to the extent permitted by the Federal Rules of Evidence or Federal Rules of Civil Procedure. However, the statements or disclosures provided for in Patent Local Rules 4.1 and 4.2 are not admissible for any purpose other than in connection with motions seeking an extension or modification of the time periods within which actions contemplated by these Patent Local Rules must be taken.

2.5 Relationship to Federal Rules of Civil Procedure.

Except as provided in this paragraph or as otherwise ordered, it will not be a legitimate ground for objecting to an opposing party's discovery request (*e.g.*, interrogatory, document request, request for admission, deposition question), or declining to provide information otherwise required to be disclosed pursuant to Fed. R. Civ. P. 26(a)(1), that the discovery request or disclosure requirement is premature in light of, or otherwise conflicts with, these Patent Local Rules. A party may object, however, to responding to the following categories of discovery requests on the ground that they are premature in light of the timetable provided in the Patent Local Rules:

a. Requests seeking to elicit a party's claim construction position;

b. Requests seeking to elicit from the patent claimant a comparison of the asserted claims and the accused apparatus, product, device, process, method, act, or other instrumentality;

c. Requests seeking to elicit from an accused infringer a comparison of the asserted claims and the prior art; and

d. Requests seeking to elicit an opinion of counsel, and related documents, upon which a party intends to rely for any patent-related claim or defense.

Where a party properly objects to a discovery request as set forth above, that party must provide the requested information on the date on which it is required to provide, the requested information to an opposing party under these Patent Local Rules, unless another legitimate ground for objection exists.

2.6 Model Order for Electronically Stored Information ("ESI")

The Court has approved a Model Order for ESI that applies to all Patent Cases in this District as defined in Patent L.R. 1.3 unless otherwise ordered by a judge assigned to the case. The Model Order is available on the Court's website, and may be amended by the Court over time as deemed appropriate.

3. Patent Disclosures

3.1 Disclosure of Asserted Claims and Infringement Contentions.

Not later than fourteen (14) days after the Initial Case Management Conference, a party claiming patent infringement must serve on all parties a "Disclosure of Asserted Claims and Infringement Contentions." Separately for each opposing party, the "Disclosure of Asserted Claims and Infringement Contentions" must contain the following information:

a. Each claim of each patent in suit that is allegedly infringed by each opposing party;

b. Separately for each asserted claim, each accused apparatus, product, device, process, method, act, or other instrumentality ("Accused Instrumentality") of each opposing party of which the party is aware. This identification must be as specific as possible. Each product, device and apparatus must be identified by name or model number, if known. Each method or process must be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;

c. A chart identifying specifically where each element of each asserted claim is found within each Accused Instrumentality, including for each element that such party contends is governed by 35 U.S.C. §112(6), the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function;

d. For each claim which is alleged to have been indirectly infringed, an identification of any direct infringement and a description of the acts of the alleged indirect infringer that contribute to or are inducing that direct infringement. Insofar as alleged direct infringement is based on joint acts of multiple parties, the role of each such party in the direct infringement must be described.

e. Whether each element of each asserted claim is claimed to be literally present and/or present under the doctrine of equivalents in the Accused Instrumentality;

f. For any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled;

g. If a party claiming patent infringement asserts or wishes to preserve the right to rely, for any purpose, on the assertion that its own apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention, the party must identify, separately for each asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim; and

h. If a party claiming infringement alleges willful infringement, the basis for such allegation.

3.2 Document Production Accompanying Disclosure.

With the "Disclosure of Asserted Claims and Infringement Contentions," the party claiming patent infringement must produce to each opposing party or make available for inspection and copying, the following documents in the possession, custody or control of that party:

a. Documents (*e.g.*, contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreements, and third party or joint development agreements) sufficient to evidence each discussion with, disclosure to, or other manner of providing to a third party, or sale of or offer to sell, the claimed invention prior to the date

of application for the patent in suit. A party's production of a document as required within these rules does not constitute an admission that such document evidences or is prior art under 35 U.S.C. §102;

b. All documents evidencing the conception, reduction to practice, design and development of each claimed invention, which were created on or before the date of application for the patent in suit or the priority date identified pursuant to Patent L.R. 3.1.e, whichever is earlier;

c. A copy of the file history for each patent in suit and each application to which a claim for priority is made under Patent L.R. 3.1.e.

d. Documents sufficient to evidence ownership of the patent rights by the party asserting patent infringement; and

e. If a party identifies instrumentalities pursuant to Patent L.R. 3.1.g, documents sufficient to show the operation of any aspects of elements of such instrumentalities the patent claimant relies upon as embodying any asserted claims.

The producing party must separately identify by production number which documents correspond to each category. If the documents identified above are not in the possession, custody or control of the party charged with production, that party must use its best efforts to obtain all responsive documents and make a timely disclosure.

3.3 Invalidity Contentions.

Not later than sixty (60) days after service upon it of the "Disclosure of Asserted Claims and Infringement Contentions," each party opposing a claim of patent infringement must serve on all parties its "Invalidity Contentions," which must contain the following information:

a. The identity of each item of prior art that allegedly anticipates each asserted claim or renders it obvious. This includes information about any alleged knowledge or use of the invention in this country prior to the date of invention of the patent. Each prior art patent must be identified by its number, country of origin, and date of issue. Each prior art publication must be identified by its title, date of publication, and where feasible, author and publisher. Prior art under 35 U.S.C. §102(b) must be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took place or the information became known, and the identity of the person or entity that made the use or that made and received the offer, or the person or entity that made the information known or to whom it was made known. Prior art under 35 U.S.C. §102(f) must be identified by providing the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived. Prior art under 35 U.S.C. §102(g) must be identified by providing the identities of the person(s) or entities involved in and the circumstances surrounding the making of the invention before the patent applicant(s);

b. Whether each item of prior art anticipates each asserted claim or renders it obvious. If obviousness is alleged, an explanation of why the prior art renders the asserted claim obvious, including an identification of any combinations of prior art showing obviousness;

c. A chart identifying where specifically in each alleged item of prior art each element of each asserted claim is found, including for each element that such party contends is governed by 35 U.S.C. §112(6), the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function;

d. Any grounds of invalidity based on indefiniteness under 35 U.S.C. §112(2) of any of the asserted claims;

e. Any grounds of invalidity based on lack of written description, lack of enabling disclosure, or failure to describe the best mode under 35 U.S.C. §112(1).

3.4 Document Production Accompanying Invalidity Contentions

With the "Invalidity Contentions," the party opposing a claim of patent infringement must produce or make available for inspection and copying:

a. Source code, specifications, schematics, flow charts, artwork, formulas, or other documentation sufficient to show the operation of any aspects or elements of any Accused Instrumentality identified by the patent claimant in its Patent L.R. 3.1.c chart; and

b. A copy of each item of prior art identified pursuant to Patent L.R. 3.3.a which does not appear in the file history of the patent(s) at issue. To the extent any such item is not in English, an English translation of the portion(s) relied upon must be produced.

3.5 Disclosure Requirements in Patent Cases for Declaratory Relief.

a. **Invalidity Contentions if No Claim of Infringement**. In all cases in which a party files a complaint or other pleading seeking a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable, Patent Local Rules 3.1 and 3.2 will not apply unless and until a claim for patent infringement is made by a party. If the defendant does not assert a claim for patent infringement in answer to the complaint, no later than fourteen (14) days after the Initial Case Management Conference the party seeking a declaratory judgment must serve upon each opposing party Invalidity Contentions that conform to Patent L.R. 3.3 and produce or make available for inspection and copying the documents described in Patent L.R. 3.4.

b. **Inapplicability of Rule.** This Patent L.R. 3.5 does not apply to cases in which a request for declaratory judgment that a patent is not infringed, is invalid, or is unenforceable, is filed in response to a complaint for infringement of the same patent.

3.6 Amended and Final Contentions.

a. As a matter of right, a party asserting infringement may serve Amdended Infringement Contentions no later than the filing of the parties' Joint Claim Construction Chart. Thereafter, absent undue prejudice to the opposing party, a party asserting infringement may only amend its infringement contentions:

   1. If, not later than thirty (30) days after service of the court's Claim Construction Ruling, the party asserting infringement believes in good faith that amendment is necessitated by a claim construction that differs from that proposed by such party; or

   2. Upon a timely motion showing good cause.

b. As a matter of right, a party opposing a claim of patent infringement may serve "Amended Invalidity Contentions" no later than the completion of claim construction discovery. Thereafter, absent undue prejudice to the opposing party, a party opposing infringement may only amend its validity contentions:

   1. if a party claiming patent infringement has served "Amended Infringement Contentions," and the party opposing a claim of patent infringement believes in good faith that the Amended Infringement Contentions so require;

   2. if, not later than fifty (50) days after service of the court's Claim Construction Ruling

   3. upon a timely motion showing good cause.

This rule does not relieve any party from its obligations under Fed.R. Civ.P 26 to timely supplement disclosures and discovery responses.

3.7 Advice of Counsel

Not later than thirty (30) days after filing of the Claim Construction Order, each party relying upon advice of counsel as part of a patent-related claim or defense for any reason must:

a. Produce or make available for inspection and copying the opinion(s) and any other documentation relating to the opinion(s) as to which that party agrees the attorney-client or work product protection has been waived; and

b. Provide a written summary of any oral advice and produce or make available for inspection and copying that summary and documents related thereto for which the attorney-client and work product protection have been waived; and

c. Serve a privilege log identifying any other documents, except those authored by counsel acting solely as trial counsel, relating to the subject matter of the opinion(s) which the party is withholding on the grounds of attorney-client privilege or work product protection.

A party who does not comply with the requirements of Patent L.R. 3.7 will not be permitted to rely on advice of counsel for any purpose, absent a stipulation of all parties or by order of the court, which will be entered only upon showing of good cause.

4. Claim Construction Proceedings

4.1 Exchange of Preliminary Claim Construction and Extrinsic Evidence.

a. Not later than fourteen (14) days after the service of the "Invalidity Contentions" pursuant to Patent L.R. 3.3, the parties will simultaneously exchange a preliminary proposed construction of each claim term, phrase, or clause which the parties have identified for claim construction purposes. Each such "Preliminary Claim Constructions" will also, for each element which any party contends is governed by 35 U.S.C. §112(6), identify the structure(s), act(s), or material(s) described in the specification corresponding to that element.

b. Simultaneously with exchange of the "Preliminary Claim Constructions," the parties must also provide a preliminary identification of extrinsic evidence, including without limitation, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses they contend support their respective claim constructions. The parties must identify each such item of extrinsic evidence by production number or produce a copy of any such item not previously produced. With respect to any such witness, percipient or expert, the parties must also provide a brief description of the substance of that witness's proposed testimony.

c. Not later than fourteen (14) days after the service of the "Preliminary Claim Constructions" pursuant to Patent L.R. 4.1.a, the parties will simultaneously exchange "Responsive Claim Constructions" identifying whether the responding party agrees with the other party's proposed construction, or identifying an alternate construction in the responding party's preliminary construction, or setting forth the responding party's alternate construction.

d. Simultaneous with exchange of the "Responsive Claim Constructions" pursuant to Patent L.R. 4.1.c, the parties must also provide a preliminary identification of extrinsic evidence, including without limitation, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses they contend support any responsive claim constructions. The parties must identify each such item of extrinsic evidence by production number or produce a copy of any such item not previously produced. With respect to any such witness, percipient or expert, the parties must also provide a brief description of the substance of that witness's proposed testimony.

e. The parties must thereafter meet and confer for the purposes of narrowing the issues and finalizing preparation of a Joint Claim Construction Chart, Worksheet and Hearing Statement.

4.2 Joint Claim Construction Chart, Worksheet and Hearing Statement.

Not later than fourteen (14) days after service of the "Responsive Claim Constructions" pursuant to Patent L.R. 4.1.c, the parties must complete and file a Joint Claim Construction Chart, Joint Claim Construction Worksheet and Joint Hearing Statement.

a. The Joint Hearing Statement must include an identification of the terms whose construction will be most significant to the resolution of the case up to a maximum of ten (10) terms. The parties must also identify any term among the ten (10) whose construction will be case or claim dispositive. If the parties cannot agree on the ten (10) most significant terms, the parties must identify the ones which they do agree are most significant and then they may evenly divide the remainder with each party identifying what it believes are the remaining most significant terms. However, the total terms identified by all parties as most significant cannot exceed ten (10). For example, in a case involving two (2) parties, if the parties agree upon the identification of five (5) terms as most significant, each may only identify two (2) additional terms as most significant; if the parties agree upon eight (8) such terms, each party may only identify only one (1) additional term as most significant.

b. The Joint Claim Construction Chart must have a column listing complete language of disputed claims with the disputed terms in bold type and separate columns for each party's proposed construction of each disputed term. Each party's proposed construction of each disputed claim term, phrase, or clause, must identify all references from the specification or prosecution history that support that construction, and identify any extrinsic evidence known to the party on which it intends to rely either to support its proposed construction of the claim or to oppose any party's proposed construction of the claim, including, but not limited to, as permitted by law, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses. For every claim with a disputed term, each party shall identify with specificity the impact of the proposed constructions on the merits of the case.

c. The parties' Joint Claim Construction Worksheet must be in the format set forth in Appendix A and include any proposed constructions to which the parties agree, as well as those in dispute. The parties must jointly submit the Joint Claim Construction Worksheet on computer disk in both Word and WordPerfect format or in such other format as the court may direct.

d. The Joint Hearing Statement must include:

1. The anticipated length of time necessary for the Claim Construction Hearing;

2. Whether any party proposes to call one or more witnesses, including experts, at the Claim Construction Hearing, the identify of each such witness, and for each expert, a summary of each opinion to be offered in sufficient detail to permit a meaningful deposition of that expert; and

3. The order of presentation at the Claim Construction Hearing.

e. At the court's discretion, within seven (7) days of the submission of the Joint Claim Construction Chart, Joint Claim Construction Worksheet and Joint Hearing Statement, the court will hold a status conference with the parties, in person or by telephone, to

discuss scheduling, witnesses and any other matters regarding the Claim Construction Hearing.

4.3 Completion of Claim Construction Discovery.

Not later than twenty-eight (28) days after service and filing of the Joint Claim Construction Chart, Joint Claim Construction Worksheet and Joint Hearing Statement, the parties must complete all discovery, including depositions of any percipient or expert witnesses that they intend to use in the Claim Construction Hearing. Fed.R.Civ. P. 30 applies to depositions taken pursuant to Patent L.R. 4.3, except as to experts. An expert witness identified in a party's Joint Hearing Statement pursuant to Patent L.R. 4.2.c, may be deposed on claim construction issues. The identification of an expert witness in the Joint Hearing Statement may be deemed good cause for a further deposition on all substantive issues.

4.4 Claim Construction Briefs.

a. Not later than fourteen (14) days after close of claim construction discovery, the parties will simultaneously file and serve opening briefs and any evidence supporting their claim construction.

b. Not later than fourteen (14) days after service of the opening briefs, the parties will simultaneously file and serve briefs responsive to the opposing party's opening brief and any evidence directly rebutting the supporting evidence contained in the opposing party's opening brief.

c. Absent leave of Court, the provisions of Civ. L.R. 7.1.h for length of briefs for supporting and reply memoranda shall apply to the length of opening and responsive claim construction briefs.

4.5 Claim Construction Hearing.

Not later than twenty-eight (28) days after service of responsive briefs and subject to the convenience of the court's calendar, the court will conduct a Claim Construction Hearing, if the court believes a hearing is necessary for construction of the claims at issue. The court may also order in its discretion a tutorial hearing, to occur before, or on the date of, the Claim Construction Hearing.

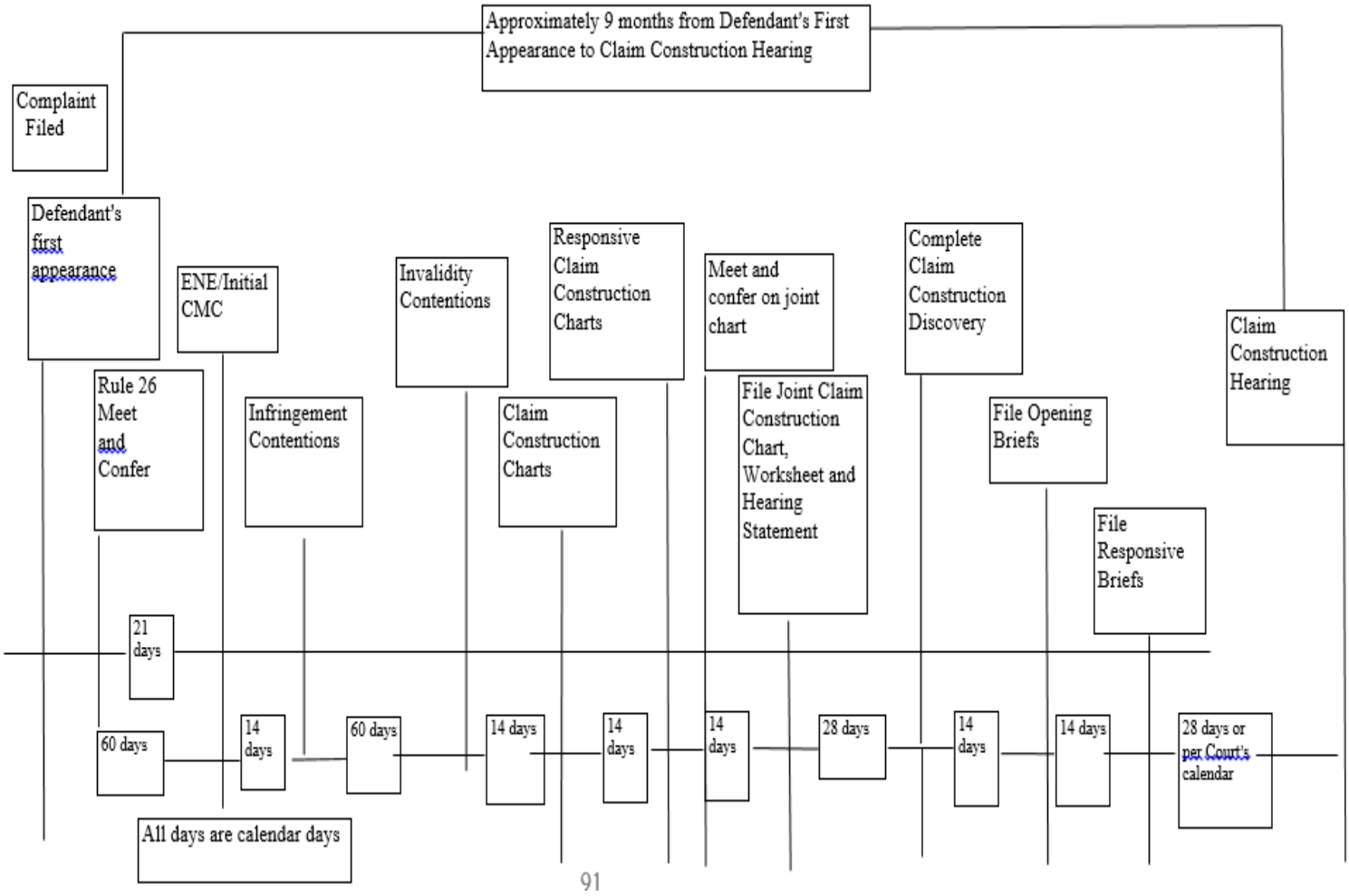
Attached as Appendix B is a time line illustrating the exchange and filing deadlines set forth in these Patent Local Rules.

APPENDIX A: APPROVED FORM OF JOINT CLAIM CONSTRUCTION WORKSHEET

JOINT CLAIM CONSTRUCTION WORKSHEET

PATENT CLAIM	AGREED PROPOSED CONSTRUCTION	PLAINTIFF'S PROPOSED CONSTRUCTION	DEFENDANT'S PROPOSED CONSTRUCTION	COURT'S CONSTRUCTION
1. Claim language as it appears in the patent **with terms and phrases to be construed in bold.**	Proposed construction if the parties agree**.**	Plaintiff's proposed construction if parties disagree.	Defendant's proposed construction if parties disagree.	Blank column for Court to enter its construction.
2. Claim language as it appears in the patent **with terms and phrases to be construed in bold.**	Proposed construction if the parties agree.	Plaintiff's proposed construction if parties disagree.	Defendant's proposed construction if parties disagree.	Blank column for Court to enter its construction.
3. Claim language as it appears in the patent **with terms and phrases to be construed in bold.**	Proposed construction in the parties agree.	Plaintiff's proposed construction if parties disagree.	Defendant's proposed construction if parties disagree.	Blank column for Court to enter its construction

APPENDIX B: TIMELINE FOR PATENT CASES IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA



MODEL PROTECTIVE ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Plaintiff, Plaintiff, vs. Defendant, Defendant.	CASE NO. 00cv0000 PROTECTIVE ORDER

The Court recognizes that at least some of the documents and information ("materials") being sought through discovery in the above-captioned action are, for competitive reasons, normally kept confidential by the parties. The parties have agreed to be bound by the terms of this Protective Order ("Order") in this action.

The materials to be exchanged throughout the course of the litigation between the parties may contain trade secret or other confidential research, technical, cost, price, marketing or other commercial information, as is contemplated by Federal Rule of Civil Procedure 26(c)(7). The purpose of this Order is to protect the confidentiality of such materials as much as practical during the litigation. THEREFORE:

DEFINITIONS

1. The term "Confidential Information" will mean and include information contained or disclosed in any materials, including documents, portions of documents, answers to interrogatories, responses to requests for admissions, trial testimony, deposition testimony, and transcripts of trial testimony and depositions, including data, summaries, and compilations derived therefrom that is

deemed to be Confidential Information by any party to which it belongs.

2. The term "materials" will include, but is not be limited to: documents; correspondence; memoranda; bulletins; blueprints; specifications; customer lists or other material that identify customers or potential customers; price lists or schedules or other matter identifying pricing; minutes; telegrams; letters; statements; cancelled checks; contracts; invoices; drafts; books of account; worksheets; notes of conversations; desk diaries; appointment books; expense accounts; recordings; photographs; motion pictures; compilations from which information can be obtained and translated into reasonably usable form through detection devices; sketches; drawings; notes (including laboratory notebooks and records); reports; instructions; disclosures; other writings; models and prototypes and other physical objects.

3. The term "counsel" will mean outside counsel of record, and other attorneys, paralegals, secretaries, and other support staff employed in the law firms identified below:_____

_____

["Counsel" also includes_____, in-house attorneys for [Plaintiff] and _____, in-house attorneys for [Defendant].]

GENERAL RULES

4. Each party to this litigation that produces or discloses any materials, answers to interrogatories, responses to requests for admission, trial testimony, deposition testimony, and transcripts of trial testimony and depositions, or information that the producing party believes should be subject to this Protective Order may designate the same as "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY."

a. Designation as "CONFIDENTIAL": Any party may designate information as "CONFIDENTIAL" only if, in the good faith belief of such party and its counsel, the unrestricted disclosure of such information could be potentially prejudicial to the business or operations of such party.

b. Designation as "CONFIDENTIAL - FOR COUNSEL ONLY": Any party may

designate information as "CONFIDENTIAL - FOR COUNSEL ONLY" only if, in the good faith belief of such party and its counsel, the information is among that considered to be most sensitive by the party, including but not limited to trade secret or other confidential research, development, financial or other commercial information.

5. In the event the producing party elects to produce materials for inspection, no marking need be made by the producing party in advance of the initial inspection. For purposes of the initial inspection, all materials produced will be considered as "CONFIDENTIAL - FOR COUNSEL ONLY," and must be treated as such pursuant to the terms of this Order. Thereafter, upon selection of specified materials for copying by the inspecting party, the producing party must, within a reasonable time prior to producing those materials to the inspecting party, mark the copies of those materials that contain Confidential Information with the appropriate confidentiality marking.

6. Whenever a deposition taken on behalf of any party involves a disclosure of Confidential Information of any party:

a. the deposition or portions of the deposition must be designated as containing Confidential Information subject to the provisions of this Order; such designation must be made on the record whenever possible, but a party may designate portions of depositions as containing Confidential Information after transcription of the proceedings; [A] party will have until fourteen (14) days after receipt of the deposition transcript to inform the other party or parties to the action of the portions of the transcript to be designated "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY."

b. the disclosing party will have the right to exclude from attendance at the deposition, during such time as the Confidential Information is to be disclosed, any person other than the deponent, counsel (including their staff and associates), the court reporter, and the person(s) agreed upon pursuant to paragraph 8 below; and

c. the originals of the deposition transcripts and all copies of the deposition must bear the legend "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY," as appropriate, and the original or any copy ultimately presented to a court for filing must not be filed unless it can be accomplished under seal, identified as being subject to this Order, and protected from being opened except by order of this Court.

7. All Confidential Information designated as "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY" must not be disclosed by the receiving party to anyone other than those persons designated within this order and must be handled in the manner set forth below and, in any event, must not be used for any purpose other than in connection with this litigation, unless and until such designation is removed either by agreement of the parties, or by order of the Court.

8. Information designated "CONFIDENTIAL - FOR COUNSEL ONLY" must be viewed only by counsel (as defined in paragraph 3) of the receiving party, and by independent experts under the conditions set forth in this Paragraph. The right of any independent expert to receive any Confidential Information will be subject to the advance approval of such expert by the producing party or by permission of the Court. The party seeking approval of an independent expert must provide the producing party with the name and curriculum vitae of the proposed independent expert, and an executed copy of the form attached hereto as Exhibit A, in advance of providing any Confidential Information of the producing party to the expert. Any objection by the producing party to an independent expert receiving Confidential Information must be made in writing within fourteen (14) days following receipt of the identification of the proposed expert. Confidential Information may be disclosed to an independent expert if the fourteen (14) day period has passed and no objection has been made. The approval of independent experts must not be unreasonably withheld.

9. Information designated "CONFIDENTIAL" must be viewed only by counsel (as defined in paragraph 3) of the receiving party, by independent experts (pursuant to the terms of

paragraph 8), and by the additional individuals listed below, provided each such individual has read this Order in advance of disclosure and has agreed in writing to be bound by its terms:

(a) Executives who are required to participate in policy decisions with reference to this action;

(b) Technical personnel of the parties with whom Counsel for the parties find it necessary to consult, in the discretion of such counsel, in preparation for trial of this action; and

(c) Stenographic and clerical employees associated with the individuals identified above.

10. With respect to material designated "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY," any person indicated on the face of the document to be its originator, author or a recipient of a copy of the document, may be shown the same.

11. All information which has been designated as "CONFIDENTIAL" or "CONFIDENTIAL -FOR COUNSEL ONLY" by the producing or disclosing party, and any and all reproductions of that information, must be retained in the custody of the counsel for the receiving party identified in paragraph 3, except that independent experts authorized to view such information under the terms of this Order may retain custody of copies such as are necessary for their participation in this litigation.

12. Before any materials produced in discovery, answers to interrogatories, responses to requests for admissions, deposition transcripts, or other documents which are designated as Confidential Information are filed with the Court for any purpose, the party seeking to file such material must seek permission of the Court to file the material under seal.

13. At any stage of these proceedings, any party may object to a designation of the materials as Confidential Information. The party objecting to confidentiality must notify, in writing, counsel for the designating party of the objected-to materials and the grounds for the objection. If the dispute is not resolved consensually between the parties within seven (7) days of receipt of such a notice of

objections, the objecting party may move the Court for a ruling on the objection. The materials at issue must be treated as Confidential Information, as designated by the designating party, until the Court has ruled on the objection or the matter has been otherwise resolved.

14. All Confidential Information must be held in confidence by those inspecting or receiving it, and must be used only for purposes of this action. Counsel for each party, and each person receiving Confidential Information must take reasonable precautions to prevent the unauthorized or inadvertent disclosure of such information. If Confidential Information is disclosed to any person other than a person authorized by this Order, the party responsible for the unauthorized disclosure must immediately bring all pertinent facts relating to the unauthorized disclosure to the attention of the other parties and, without prejudice to any rights and remedies of the other parties, make every effort to prevent further disclosure by the party and by the person(s) receiving the unauthorized disclosure.

15. No party will be responsible to another party for disclosure of Confidential Information under this Order if the information in question is not labeled or otherwise identified as such in accordance with this Order.

16. If a party, through inadvertence, produces any Confidential Information without labeling or marking or otherwise designating it as such in accordance with this Order, the designating party may give written notice to the receiving party that the document or thing produced is deemed Confidential Information, and that the document or thing produced should be treated as such in accordance with that designation under this Order. The receiving party must treat the materials as confidential, once the designating party so notifies the receiving party. If the receiving party has disclosed the materials before receiving the designation, the receiving party must notify the designating party in writing of each such disclosure. Counsel for the parties will agree on a mutually acceptable manner of labeling or marking the inadvertently produced materials as "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY" - SUBJECT TO PROTECTIVE ORDER.

17. Nothing within this order will prejudice the right of any party to object to the production of any discovery material on the grounds that the material is protected as privileged or as attorney work product.

18. Nothing in this Order will bar counsel from rendering advice to their clients with respect to this litigation and, in the course thereof, relying upon any information designated as Confidential Information, provided that the contents of the information must not be disclosed.

19. This Order will be without prejudice to the right of any party to oppose production of any information for lack of relevance or any other ground other than the mere presence of Confidential Information. The existence of this Order must not be used by either party as a basis for discovery that is otherwise improper under the Federal Rules of Civil Procedure.

20. Nothing within this order will be construed to prevent disclosure of Confidential Information if such disclosure is required by law or by order of the Court.

21. Upon final termination of this action, including any and all appeals, counsel for each party must, upon request of the producing party, return all Confidential Information to the party that produced the information, including any copies, excerpts, and summaries of that information, or must destroy same at the option of the receiving party, and must purge all such information from all machine-readable media on which it resides. Notwithstanding the foregoing, counsel for each party may retain all pleadings, briefs, memoranda, motions, and other documents filed with the Court that refer to or incorporate Confidential Information, and will continue to be bound by this Order with respect to all such retained information. Further, attorney work product materials that contain Confidential Information need not be destroyed, but, if they are not destroyed, the person in possession of the attorney work product will continue to be bound by this Order with respect to all such retained information.

22. The restrictions and obligations set forth within this order will not apply to any information that: (a) the parties agree should not be designated Confidential Information; (b) the parties agree, or the Court rules, is already public knowledge; (c) the parties agree, or the Court rules,

has become public knowledge other than as a result of disclosure by the receiving party, its employees, or its agents in violation of this Order; or (d) has come or will come into the receiving party's legitimate knowledge independently of the production by the designating party. Prior knowledge must be established by pre-production documentation.

23. The restrictions and obligations within this order will not be deemed to prohibit discussions of any Confidential Information with anyone if that person already has or obtains legitimate possession of that information.

24. Transmission by facsimile is acceptable for all notification purposes within this order.

25. This Order may be modified by agreement of the parties, subject to approval by the Court.

26. The Court may modify the terms and conditions of this Order for good cause, or in the interest of justice, or on its own order at any time in these proceedings. The parties prefer that the Court provide them with notice of the Court's intent to modify the Order and the content of those modifications, prior to entry of such an order.

IT IS SO ORDERED this _____ day of _____, _____

_____
Judge, United States District Court

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

+	)	
	)	
Plaintiffs,	)	AGREEMENT TO BE BOUND
v.	)	BY PROTECTIVE ORDER
	)	
	)	
	)	
Defendant.	)	
_____	)	

I, _____ , declare and say that:

1. I am employed as _____ by _____.

2. I have read the Protective Order entered in _____v. _____, Case No. _____, and have received a copy of the Protective Order.

3. I promise that I will use any and all "Confidential" or "Confidential - For Counsel Only" information, as defined in the Protective Order, given to me only in a manner authorized by the Protective Order, and only to assist counsel in the litigation of this matter.

4. I promise that I will not disclose or discuss such "Confidential" or "Confidential - For Counsel Only" information with anyone other than the persons described in paragraphs 3, 8 and 9 of the Protective Order.

5. I acknowledge that, by signing this agreement, I am subjecting myself to the jurisdiction of the United States District Court for the Southern District of California with respect to enforcement of the Protective Order.

6. I understand that any disclosure or use of "Confidential" or "Confidential - For Counsel Only" information in any manner contrary to the provisions of the Protective Order may subject me to sanctions for contempt of court.

I declare under penalty of perjury that the foregoing is true and correct.

Date:_____

_____

MODEL ORDER GOVERNING DISCOVERY OF ESI

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Plaintiff, Plaintiff, v. Defendant, Defendant.	Case No. 00cv000 MODEL ORDER GOVERNING DISCOVERY OF ELECTRONICALLY STORED INFORMATION IN PATENT CASES

The Court ORDERS as follows:

1. This Order supplements all other discovery rules and orders. It streamlines Electronically Stored Information ("ESI") production to promote a "just, speedy, and inexpensive determination" of this action, as required by Federal Rule of Civil Procedure 1.

2. This Order may be modified for good cause. If the parties cannot resolve their disagreements regarding modifications, the parties may submit their competing proposals and a summary of their dispute. Proposed modifications or disputes regarding ESI that counsel for the parties are unable to resolve will be presented to the Court at the initial case management conference, Fed. R. Civ. P. Rule 16(b) Scheduling Conference, or as soon as possible thereafter.

3. Costs will be shifted for disproportionate ESI production requests pursuant to Federal Rule of Civil Procedure 26. Likewise, a party's nonresponsive or dilatory discovery tactics will be cost-shifting considerations.

4. A party's meaningful compliance with this Order and efforts to promote efficiency and reduce costs will be considered in cost-shifting determinations.

5. General ESI production requests under Federal Rules of Civil Procedure 34 and 45 must not include metadata absent a showing of good cause. However, fields showing the date and time that the document was sent and received, as well as the complete distribution list, must generally be included in the production.

6. Each requesting party will limit its ESI production requests to a total of ten custodians per producing party for all such requests, excluding requests for email which are addressed in paragraphs 8-12. A custodian may be identified by job description or function so long as it identifies a single person. The parties may jointly agree to modify this limit without the Court's leave. The Court will consider contested requests for additional custodians per producing party, or requests for searches of servers, databases or other systems not maintained by a single person, upon showing of good cause and distinct need based on the size, complexity, and issues of this specific case. Should a party serve ESI production requests for additional custodians beyond the limits agreed to by the parties or granted by the Court pursuant to this paragraph, the requesting party may bear all reasonable costs caused by such additional discovery. While there is no *per se* limit on quantity of search terms for the identified custodians for non-email ESI, a party may not request more than twenty search terms absent consent or Order of the Court granted for good cause shown. Parties must meet and confer to limit ESI custodians and search terms prior to approaching the Court for assistance on any ESI matters. Each party must use a common set of search terms for all custodians of another party from whom it seeks ESI.

7. General ESI production requests under Federal Rules of Civil Procedure 34 and 45 must not include email or other forms of electronic correspondence (collectively "email"). To obtain email parties must propound specific email production requests.

8. Email production requests will only be propounded for specific issues, rather than general discovery of a product or business.

9. Email production requests must be phased to occur after the parties have exchanged initial disclosures and basic documentation about the patents, the prior art, the accused instrumentalities, and the relevant finances. While this provision does not require the production of such information, the Court encourages prompt and early production of this information to promote efficient and economical streamlining of the case.

10. Email production requests will identify the custodian, search terms, and time frame. The parties will cooperate to identify the proper custodians, proper search terms and proper time frames.

11. Each requesting party must limit its email production requests to a total of five custodians per producing party for all such requests. The parties may jointly agree to modify this limit without the Court's leave. The Court will consider contested requests for additional custodians per producing party, upon showing of good cause and distinct need based on the size, complexity, and issues of this specific case. Should a party serve email production requests for additional custodians beyond the limits agreed to by the parties or granted by the Court pursuant to this paragraph, the requesting party may bear all reasonable costs caused by such additional discovery.

12. Each requesting party will limit its email production requests to a total of five search terms per custodian per party. The parties may jointly agree to modify this limit without the Court's leave. The Court will consider contested requests for additional search terms per custodian, upon showing a distinct need based on the size, complexity, and issues of this specific case. The search terms must be narrowly tailored to particular issues. Indiscriminate terms, such as the producing company's name or its product name, are inappropriate unless combined with narrowing search criteria that sufficiently reduce the risk of overproduction. A conjunctive combination of multiple words or phrases (e.g., "computer" and "system") narrows the search and will count as a single search term. A disjunctive combination of multiple words or phrases (e.g., "computer" or "system") broadens the search, and thus each word or phrase will count as a

separate search term unless they are variants of the same word. Use of narrowing search criteria (e.g., "and," "but not," "w/x") is encouraged to limit the production and must be considered when determining whether to shift costs for disproportionate discovery. Should a party serve email production requests with search terms beyond the limits agreed to by the parties or granted by the Court pursuant to this paragraph, the requesting party may bear all reasonable costs caused by such additional discovery.

13. The receiving party must not use ESI that the producing party asserts is attorney-client privileged or work product protected to challenge the privilege or protection.

14. Pursuant to Federal Rule of Evidence 502(d), the inadvertent production of a privileged or work product protected ESI is not a waiver in the pending case or in any other federal or state proceeding.

15. The mere production of ESI in a litigation as part of a mass production will not itself constitute a waiver for any purpose.

IT IS SO ORDERED this _____ day of _____, _____.

_____

United States Magistrate Judge

SDI-137568v1

CRIMINAL LOCAL RULES

Criminal Rule 1.1 Scope and Availability of Local Rules

a. **Title and Citation.** These are the Local Rules of Practice in Criminal proceedings before the United States District Court for the Southern District of California. They may be cited as "CrimLR ____."

b. **Effective Date.** These Rules become effective on December 1, 2009.

c. **Scope of Rules; Construction, Definitions**. The rules under this title govern criminal proceedings in the United States District Court for the Southern District of California. The rules under this title, issued pursuant to Rule 57, Fed.R.Crim.P. supplement the Federal Rules of Criminal Procedure and must be construed in harmony with the Federal Rules.

d. **Waiver of Rules.** A judge may on application, in any case for the convenience of the parties in interest, or in the interest of justice, waive the applicability of these rules.

e. **Applicable Civil Rules.** The provisions of the following Civil Local Rules will apply to all criminal actions and proceedings, except where they may be inconsistent with the Federal Rules of Criminal Procedure or provisions of law specifically applicable to criminal cases:

1.	Rule 1.1	Scope and Availability of Local Rules
2.	Rule 1.2	Availability of Local Rules
3.	Rule 3.2	Actions in Forma Pauperis
4.	Rule 4.5	Fee Schedule
5.	Rule 5.1	Form, paper, Legibility; Nature of Documents to be Filed
6.	Rule 5.3	Fax Filings
7.	Rule 5.4	Electronic Case Filings
8.	Rule 7.2	Stipulations
9.	Rule 15.1	Amended Pleadings
10.	Rule 16.4	Assessment of Jury Costs
11.	Rule 40.1.c	Temporary Designation
12.	Rule 47.1	Examination of Jurors
13.	Rule 51.1	Filing, Service and Form of Proposed Jury Instructions
14.	Rule 67.1	Disbursement of Registry funds
15.	Rule 77.1	Location and Hours of Clerk
16.	Rule 77.4	Sessions of Court
17.	Rule 77.6	Court Library
18.	Rule 79.1	Custody and disposition of Exhibits and Transcripts
19.	Rule 79.2	Books and Records of the Clerk
20.	Rule 83.2	Security of Court
21.	Rule 83.3	Attorney Admissions, Standards
22.	Rule 83.4	Professionalism
23.	Rule 83.5	Discipline
24.	Rule 83.6	Gratuities
25.	Rule 83.7	Free Press, Fair Trial
26.	Rule 83.8	Non-appropriated Funds
27.	Rule 83.9	Correspondence and Communications with the Judge

28. Rule 83.10 Jury Selection Plan

Criminal Rule 10.1 Arraignments

Except where otherwise ordered by a district judge, all arraignments in criminal cases must be conducted by the magistrate judge assigned to the case.

Criminal Rule 11.1 Referral of Felony Cases to Magistrate Judges for Taking of Guilty Pleas

All guilty pleas in felony cases may be referred to the assigned magistrate judge to administer the allocution pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

a. Consent or Report and Recommendation
The magistrate judge will proceed with the taking of the guilty plea upon such referral from the district judge with the written consent of the defendant, the defendant's attorney, and the Assistant U.S. Attorney, or upon referral from the district court for a report and recommendation.

b. Findings
The magistrate judge must make written findings as to each of the subjects set forth in Rule 11 of the Federal Rules of Criminal Procedure, the voluntariness of the guilty plea and the sufficiency of the factual basis establishing each of the essential elements of the offense. In a prosecution under 8 U.S.C. §1326, the magistrate judge must also make a written finding as to whether the defendant admitted being deported and removed subsequent to the date set forth in the indictment or information.

c. Recommendation
The magistrate judge must make a recommendation, in writing, to the assigned district judge as to whether or not the district judge should accept the defendant's plea of guilty.

d. Objections
Objections to the magistrate judge's findings and recommendation must be filed within fourteen (14) days of the entry of the magistrate judge's findings and recommendation.

e. Sentencing
The magistrate judge must set the sentencing hearing on the calendar of the assigned district judge.

f. Transcripts
The clerk may order a transcript of the Rule 11 allocation and provide the district judge with a copy of the transcript at least seven (7) days before sentencing hearing if requested by the district judge.

Criminal Rule 12.1 Rule 12 Motions

Motions under Rule 12, Fed.R.Crim.P must not be made prior to entry of a not guilty plea at initial arraignment.

Criminal Rule 16.1 Pleadings and Motions Before Trial Defenses and Objections

Discovery Motions. All criminal discovery motions must be made to the assigned district judge. The district judge may refer a discovery motion to a magistrate judge for determination. A magistrate judge may hear motions to preserve evidence before a case is assigned to a district judge, and thereafter as requested by the assigned district judge. A magistrate judge may order discovery when necessarily incident to any hearing the judge is conducting.

Criminal Rule 17.1 Subpoenas

a. **Payment of Costs.** As authorized by Rule 17(b), Fed.R.Crim.P., the court orders that the cost incurred for the service of process and witness fees for each witness subpoenaed by defense counsel appointed under the Criminal Justice Act must be paid in the same manner in which similar costs and fees are paid in case of witnesses subpoenaed in behalf of the government. All subpoenas issued under this rule must bear the name of defense counsel who will cause to be placed thereon after counsel's name the words: "appointed under Criminal Justice Act".

b. **Production.** No subpoena in a criminal case may require the production of books, papers, documents or other objects at a date and time or place other than the date, time and place at which the trial, hearing or proceeding at which these items are to be offered in evidence is scheduled to take place, unless the court has entered an order under Rule 17(c) of the Federal Rules of Criminal Procedure authorizing the issuance of such subpoena. Any motion for the issuance of a subpoena under Rule 17(c) must be made to the magistrate judge assigned to criminal duty at the time of the filing of the motion, unless otherwise ordered by a district judge assigned to the case, and must be returnable in no less than seven (7) days from the filing of the motion. Except for good cause shown, all motions for a subpoena *duces tecum* under Rule 17(c) must be served on all parties who may file an opposition or response not less than seventy-two (72) hours prior to the return date of the motion. Motions seeking subpoenas *duces tecum* under this subsection must be supported by an affidavit or declaration establishing that: (1) the documents or objects sought are evidentiary and relevant; (2) that the documents or objects sought are not otherwise reasonably procurable in advance of the trial, hearing or proceeding by exercise of due diligence; (3) that the moving party cannot properly prepare for trial without such production and inspection in advance of trial and the failure to obtain such inspection may tend unreasonably to delay the trial, and (4) that the application is made in good faith and is not intended for the purpose of general discovery. Any subpoena *duces tecum* issued under this subsection must be returnable and the items sought thereunder must be produced before the magistrate judge. The clerk must

maintain the items produced pursuant to such subpoenas but must make them available for the inspection of the parties and the attorneys.

Criminal Rule 23.1 Trial Briefs

Unless otherwise ordered by the court, counsel for the government and for each defendant may file a trial brief prior to commencement of trial. Copies must be provided for the trial judge and adverse counsel. The brief should set forth any reasonably foreseeable point of law bearing on the issues upon which either party relies that are unusual or which otherwise require support, with citation of relevant statutes, ordinances, rules, cases and other authorities.

Criminal Rule 28.1 Interpreters

a. **Courtroom Proceedings.** Only officially designated interpreters may interpret official courtroom proceedings. Regardless of the presence of a private interpreter, such official interpreter must interpret all proceedings in the courtroom.

b. **Out-of-Court Interpreting.**
   1. **Interviews.** Official interpreters must also be available when needed to interpret at interviews between the attorney and the non-English speaking client and witnesses outside of court.

   2. **Compensation for Out-of-Court Interpreters.** Compensation for such interpreting must be at the rate listed in the miscellaneous fee schedule. In court-appointed cases, the interpreter must submit a separate CJA Form 21 (or CJA Form 31 in federal capital prosecutions and in death penalty federal habeas corpus proceedings) for payment in each case.

Criminal Rule 30.1 Jury Instructions

a. **Proposed Instructions.** In all jury trials, counsel for the government and for each defendant must serve and file proposed written instructions prior to the beginning of trial. Copies must be provided for the trial judge and adverse counsel. Each requested instruction must be numbered, indicated which party presents it, and cite the source of the instruction together with additional supporting authority.

b. **Source Identification.** If an instruction is submitted from a recognized book of instructions it must be from the latest edition of the book of instructions (so noted at the bottom of the instructions); and if modified in any way, deleted material must be shown in parentheses and additions must be underscored.

c. **Objections.** Objections to requested instructions may be made either in writing or orally as time permits. Such objections should normally be accompanied by citation of supporting authority.

d. **Additional Instructions.** Additional requested instructions and objections may be received by the court, in its discretion, at any time prior to counsels' arguments to the jury. The court must in accordance with Rule 30, Fed. R. Crim.P., inform counsel of its proposed action upon the requests prior to their argument.

Criminal Rule 32.1 Sentence, Judgment and Probation

a. Presentence Reports

1. **Time for Hearing.** Probation and sentencing hearings will normally be scheduled seventy-seven (77) days (that is, eleven (11) weeks) following the conviction if the conviction occurs on a Monday, or seventy-seven (77) days following the Monday subsequent to the conviction should the conviction not occur on a Monday. If an evidentiary hearing is necessary, a subsequent date and time may be fixed by the sentencing judge. Counsel should check with the trial judge as to whether counsel should have witnesses available on the scheduled sentencing date.

2. **Modification of Schedule.** For good cause shown, the court may modify the time schedule for sentencing hearing of the filing requirements.

3. **Presentence Report.** The presentence report is to be completed, filed with the court, and mailed (or made available to defense counsel who make pickup arrangements) thirty-five (35) days (that is, five weeks) prior to the date fixed for the sentencing hearing. It must include the sentencing summary chart following this rule.

4. **Review.** Defense counsel must review the presentence report with the defendant prior to and sufficiently in advance of the time for filing objections and requests for departure other than United States Sentencing Commission, Guidelines Manual, §5K1.1 (5K1.1), if any, so as to meet the deadlines set forth below. In cases where the defendant is acting as his/her own counsel (pro per), service is to be made by mailing a copy of the presentence report to an out-of-custody defendant, with a specific notice attached advising the individual defendant of the filing dates for the filings described in this order which must be filed and served on the court, U.S. Attorney and Probation Office.

5. **Objections.** Fourteen (14) days prior to the date fixed for the sentencing hearing, all objections, if any, to the presentence report must be filed and served by the government and counsel for the defendant. If the presentence report is not timely filed -- that is, thirty-five (35) days prior to the scheduled sentencing date -- then the defendant and the government must have seventeen (17) days following the actual date on which the presentence report is filed within which to file and serve. Objections should not include arguments for aggravation or leniency, unless based on claimed errors in the presentence report.

6. **Motions for Departure.** Unless otherwise ordered by the Court, any motions for departure (other than 5K1.1) must be filed and served by the moving party no less than fourteen (14) days before the sentencing hearing. The departure motion and supporting memorandum must set forth a summary of the factual and legal bases for the requested departure. Opposition to motions for departure must be filed and served no less than seven (7) days before the sentencing hearing. If no opposition is filed, the departure motion will be deemed unopposed.

7. **Other Matters.** Matters other than objections, motions for departure, and responses to those objections & motions may be addressed in a sentencing memorandum filed and served no less than seven (7) days before the sentencing hearing date. If the parties have executed a written plea agreement, it must be summarized in a sentencing memorandum, and filed no less than seven (7) days *before* the sentencing hearing.

8. **Motions for Departure under 5K1.1.** Motions for departure under 5K1.1 and any written materials relating to those motions, including notice by sentencing summary chart, must be delivered to the chambers of the sentencing judge and copies made available to opposing counsel seven (7) days before the sentence hearing date. Service on pro per defendants will be accomplished on an ad hoc basis at the direction of the sentencing judge. Such motions and supporting written materials will not be filed in the court clerk's file unless specifically so ordered by the sentencing judge after the opportunity to be heard has been afforded to counsel for the government and for the defendant.

9. **Sentencing Summary Chart.** Counsel must file their completed sentencing summary charts no later than seven (7) days before the sentencing hearing. If the district judge assigned to the case is a district judge from another district sitting in this court by designation, the parties must clearly indicate the name of the visiting judge on their respective sentencing summary chart and file it with the Clerk's Office. The sentencing summary chart must contain all pertinent calculations to summarize counsel's requested analysis of the guidelines application in the case. The court may promulgate by general order a sentencing summary chart form that it deems appropriate.

10. **Addendum Addressing Objections.** No less than seven (7) days before the scheduled sentencing hearing, the Probation Department must file and serve an addendum addressing all objections, if any, which have been timely filed by any party. Such report may additionally address any departure requests where probation is able to assist the court further.

11. **Form.** The sentencing date and time must appear on the cover page of any objections, and replies to those objections, to the presentence report, and any sentencing memoranda, in the space opposite the caption below the file number.

12. **Time Line Chart.** Following this rule is a schematic diagram of the procedure delineated in this rule. The purpose of the diagram is to provide pictorial assistance to those involved in

the sentencing process. The actual procedures, however, are those specified in the narrative of the Rule, not the diagram.

13. **Late Filings Unacceptable.** All counsel are advised that the filing dates set forth in this rule are critical. Absent a showing of good cause, any late filings by counsel will not be considered by the court. Log these dates and comply.

Criminal Rule 44.1 Right to and Assignment of Counsel

a. **Right to and Appointment of Counsel.** If a defendant, appearing without counsel in a criminal proceedings, desires to obtain retained counsel, a reasonable continuance for arraignment, not to exceed seven (7) days at any one time, will be granted for that purpose. If the defendant requests appointment of counsel by the court, or fails for an unreasonable time to appear with retained counsel, the assigned district judge or magistrate judge must, subject to the applicable financial eligibility requirements, appoint counsel, unless the defendant elects to proceed without counsel and signs and files the court-approved form of waiver of right to counsel. In that case the judge or magistrate judge must nevertheless designate counsel to advise and assist defendant to the extent defendant might thereafter desire. Appointment of counsel must be made in accordance with the plan of this court adopted pursuant to the Criminal Justice Act of 1964 and on file with the clerk.

b. **Appearance and Withdrawal of Counsel.** An attorney appearing for a defendant in a criminal case, whether retained or appointed, must promptly file with the clerk a written appearance. An attorney who has appeared may thereafter withdraw only upon notice to the defendant and all parties to the case, and an order of court finding that good cause exists and granting leave to withdraw. Failure of defendant to pay agreed compensation must not be deemed good cause for withdrawal. If an attorney seeks to withdraw after the arraignment, such application must be made to the assigned district judge. No magistrate judge will relieve counsel after arraignment unless the district judge has specifically referred the application to withdraw to the magistrate judge.

   Unless such leave is granted, the attorney must continue to represent the defendant until the case is dismissed, the defendant is acquitted or convicted, or the time for making post-trial motions and for filing notice of appeal, as specified in Rule 4(b) Fed.R.App.P has expired. If an appeal is taken, the attorney must continue to serve until leave to withdraw is granted by the court having jurisdiction of the case or until other counsel is appointed by that court as provide in 18 U.S.C. §3006A and in "Provisions for the Representation on Appeal of Defendants Financially Unable to Obtain Representation" as adopted by the Judicial Council of the Ninth Circuit.

c. No attorney appointed by the court to represent a defendant under the Criminal Justice Act will retain or hire any person related to that attorney by blood or marriage within the degree of first cousin including the relatives described in 5 U.S.C. §3110(a)(3), as an interpreter, investigator, paralegal, associate attorney, expert or other person to be compensated under the Criminal Justice

Act. The court will not approve any compensation under the Criminal Justice Act for the services of any such person.

SENTENCING SUMMARY CHART

USPO _____
AUSA _____
DEF _____

Defendant's Name: _____ Docket No. _____

Attorney's Name: _____ Phone No.: _____

Guideline Manual Used: _____ Agree with USPO Calc.: _____

Base Offense Level: (Drug Quantity, If Applicable:) _____ _____

Special Offense Characteristics:

_____ _____

_____ _____

_____ _____

Victim Related Adjustment: _____

Adjustment for Role in the Offense: _____

Adjustment for Obstruction of Justice: _____

Adjustment for Reckless Endangerment During Flight: _____

Adjusted Offense Level: _____

☐ Combined (Mult. Counts) ☐ Career Off. ☐ Armed Career Crim.

Adjustment for Acceptance of Responsibility: _____

Total Offense Level: _____

Criminal History Score: _____

Criminal History Category: _____

☐ Career Offender ☐ Armed Career Criminal

Guideline Range: from _____ months

(Range limited by: ☐ minimum mandatory ☐ statutory maximum) to _____ months

Departures:

_____ _____

_____ _____

Resulting Guideline Range: Adjusted Offense Level from _____ months

to _____ months

RECOMMENDATION: _____

TIME LINE FOR U.S. DISTRICT COURT SOUTHERN DISTRICT LOCAL RULE RE: SENTENCING GUIDELINES

1 _____ 77 DAYS TOTAL _____
2 _____ 35 days before sentencing _____
3 _____ 14 days before sentencing _____
4 _____ 14 days before sentencing _____
5 _____ 7 days before sentencing _____

	2) 35 Days before Sentencing	3) 14 Days before Sentencing	4) 14 Days before Sentencing	5) 7 Days before Sentencing
1 CONVICTION DATE VERDICT OR GUILTY PLEA PSR IS ASSIGNED TO PROBATION OFFICER (P.O.)	2 PSR FILED WITH COURT BY P.O. SERVED ON/(DISCLOSED TO) AUSA AND DEFENSE COUNSEL 35 DAYS BEFORE SENTENCING	3 OBJECTIONS FILED WITH COURT AND SERVED ON OPPOSING COUNSEL AND PROBATION 14 DAYS AFTER FILING OF PSR	4 MOTION TO DEPART FILED BY GOVERNMENT AND DEFENSE WITH SUPPORTING MEMORANDUM	5 PSR ADDENDUM, PLEA AGREEMENT, SUMMARIES, SENTENCING MEMORANDUM, LETTERS, FILED AND SERVED 7 DAYS BEFORE SENTENCING, 5K FURNISHED
				SENTENCING HEARINGS ON DISPUTED POINTS (EXCEPT EVIDENTIARY HEARINGS) ARGUMENTS AND OBJECTIONS TO DEPARTURE, ETC.

NOTES:

1. Except for the filing of objections, days are counted back from the sentencing date, i.e. the PSR is to be filed 35 days before the date for sentencing, replies, 7 days before.
2. Defense counsel must review PSR with defendant. In pro se cases, service must be made on defendant.
3. Objections should not include arguments for aggravation, lenience, or departures, unless based on errors in the PSR and are to be filed 14 days before sentencing.
4. Sentencing memos, reference letters, plea agreements summaries, 5K materials, etc., must be received no less than 7 days before sentence.
5. Evidentiary hearings on contested matters will generally not be conducted on the sentencing date, but will be scheduled at a later time.

Criminal Rule 46.1 Release From Custody

a. Bail, Conditions of Release.

1. **Release.** In all criminal cases where a defendant is ordered released, other than on defendant's own recognizance, the district or magistrate judge setting the condition of release must enter a written order setting forth the conditions of the defendant's release. A judge ordering a defendant's release may refer the case to a magistrate judge to prepare the Order of Conditions for Release. A copy of the order must be provided to the defendant by the clerk.

2. **Posting Bail.** A defendant posting bail in a criminal case must have the following documents delivered to the clerk:

   a. Personal Appearance Bonds

   1. Properly completed personal appearance bond on the form designated by the court;

   2. A copy of the order of conditions for release signed by the judge setting bail;

   3. The advice of penalties and sanctions form signed by the defendant;

   4. Any cash or other collateral required by the court to be posted;

   5. Properly completed bail and surety information sheets approved by an Assistant United States Attorney on the forms designated by the court; and

   6. If real property is to be posted as a security for the bond then the defendant must deliver to the clerk:
      Either a title report showing title in the name of sureties; or an opinion letter by an attorney that the legal description on the deed of trust is accurate, and the sureties have title;

      A copy of a properly recorded deed of trust signed by all owners of the property.

      The value of real property to be posted as security must first be approved by the judge setting conditions of release.

   b. Corporate Surety Bonds

   1. A properly executed surety bond on the form approved by the court from a surety accepted by the clerk.
   2. A properly completed bail information sheet approved by an Assistant United States Attorney, on the form designated by the court; and
   3. An advice of penalties and sanctions form signed by the defendant.

3. **Approval.** The required bail documents must be reviewed by both the counsel for the defendant and the government and if in compliance with the rules they must place their initials in the upper right corner of the bond. Upon receipt of the above documents fully completed and in proper form, the clerk must initial the bond and transmit it to the judge for approval. Upon approval, the clerk must issue a release.

   For good cause shown, a judge may waive any requirement of this rule by specific order.

b. **Motions to Modify Bail.** Except as otherwise ordered by a district judge, magistrate judges must, subject to the provisions of 18 U.S.C. §§3141 et. seq., hear and determine all motions to modify bail.

c. Posting Security. When the release of a defendant is conditioned upon the deposit of cash or other security with the court, such deposit must be made with the clerk.

d. Bail Review. A magistrate judge must hear the first bail review, including bail review after indictment unless bail was previously set in open court by a district judge after hearing. If bail is set by a district judge after an adversary hearing, the magistrate judge must be specifically authorized by that district judge to thereafter hear a bail review. If the conditions of release are not amended at the review hearing, the magistrate judge must set forth in writing the reasons for continuing the requirements if requested by either party. Further review by a district judge must be heard upon the record of the reasons for the bail set forth in writing by the magistrate judge, together with additional information that may be presented. The hearing must take place no sooner than 48 hours after the magistrate judge's final ruling.

e. Approval of Bonds and Sureties. A judge must approve all bail bonds prior to the release of a defendant. The signatures of sureties on personal appearance bonds must be witnessed by counsel for the defendant, a defense investigator, a notary, a deputy clerk, or any attorney admitted to practice law before the courts of the state of California.

f. Bonds on Appeal. Except as otherwise ordered by a judge of the court, all bonds on appeal must be approved by a judge.

g. Exoneration of Bond and Release of Collateral. When the judicial officer has exonerated a bond involving collateral of any kind, the defense attorney must file with the court a proposed order for release and/or reconveyance of the collateral. All motions for release of collateral will be handled by the magistrate judge who set the bond unless the bond was set by the district judge or if the district judge orders otherwise. When a defendant moves for release of collateral, and the Assistant United States Attorney does not object, the parties will file a joint motion and proposed order for release and/or reconveyance of the collateral with the assigned magistrate judge. If the Assistant United States Attorney does object, then the defense attorney will file a noticed motion for release and/or reconveyance of the collateral. If the assigned magistrate judge is no longer with the , then such motions will be filed with the presiding magistrate judge. Any proposed order releasing and/or reconveying property will identify with specificity the collateral involved.

Criminal Rule 47.1 Motions

a. Motions Before Judge. All hearing dates for any motions must be obtained from the courtroom deputy of the judge to whom the case is assigned.

b. Filing Moving Papers.

1. **Filing.** The original of all motions, including all attached exhibits, on behalf of any defendant, or on behalf of any moving party except the United States, must be filed with the clerk at least fourteen (14) days prior to the date for which the motion is noticed unless the court, for good cause and by order only, shortens that time. The noticed hearing date and time must appear on the cover page of each motion, and any opposition, in the space opposite the caption, below the file number.

2. **Service.** Other criminal motions must be served upon the adverse party, or the party's attorney, and filed with the clerk at least fourteen (14) days prior to the date for which the motion is noticed unless the court, for good cause and by order only, shortens such time.

3. **Accompaniments.** Each motion must be accompanied by a separate notice of motion and another separate document captioned memorandum of points and authorities or memorandum of law in support of the motion. Where appropriate a separate statement of material facts upon which the motion is based must be supplied.

4. **Untimely Motions.** The clerk's office is directed not to file untimely motions and responses thereto without the consent of the judicial officer assigned to the case.

c. Time for Filing Opposition. Each party opposing the motion must not later than seven (7) days prior to the hearing, serve upon the adverse party, or the party's attorney, and file with the clerk either an opposition containing a brief and complete statement of all reasons in opposition to the position taken by the movant, an answering memorandum of points and authorities and copies of all documentary evidence upon which the party in opposition relies; or, a written statement that the party will not oppose the motion.

d. Joinders in Motions.

1. The clerk must refuse to accept for filing any joinder in motions if there are no pending motions on file.

2. Each joinder must specifically identify the particular motion(s) to which the joinder applies and the basis for the defendant's standing to raise such motion, where necessary.

e. **Length of Brief in Support of or in Opposition to Motions.** Briefs of memoranda in support of or in opposition to all motions noticed for the same motion day must not exceed twenty-five (25) pages in length total for all such motions without leave of a district judge.

f. **Disposition after Motions are Calendared.** Any time a case is calendared for motions and counsel for either side knows that a disposition is to take place, counsel has a duty to call the court clerk of the appropriate judge at the earliest available time to inform the court of the disposition.

g. **Declarations in Support of and In Opposition to Criminal Motions.**

1. **When Declarations Required.** Criminal motions requiring a predicate factual finding must be supported by declaration(s). When an opposing party contests a representation of fact contained in a moving declaration, opposition must likewise be supported by a declaration which places that representation into dispute. When an opposing party does not contest such a representation, but argues instead that additional facts render that representation moot or immaterial, the opposing party must support its argument with declaration(s) setting forth such additional facts. The court need not grant an evidentiary hearing where either party fails to properly support its motion or opposition.

2. **Contents of Declarations.** Each declaration must set forth, under penalty of perjury, all facts then known and upon which it is contended the motion should be granted or denied. Each declaration must show affirmatively that the declarant is competent to testify to the matter stated therein, must avoid argument and conclusions of law and must in all other respects contain only such representations as would be admissible under the Federal Rules of Evidence.

3. **Timely Filing of Declarations.** Declarations submitted in support of and in opposition to criminal motions must be filed in a timely manner in accordance with the filing deadlines set forth in Criminal Local Rules 47.1.b and 47.1.c.

4. **Availability of Declarants.** Each declarant in support of and in opposition to criminal motions must be made available for cross-examination at the hearing of the motion, unless the opposing party does not dispute the facts contained in the declaration.

Criminal Rule 49.1 Service of Motions and Notice of Court Orders

a. **Consequences of Electronic Filing.** Electronic transmission of a document to the Electronic Filing System in the manner prescribed by the Court's Administrative Policies and Procedures Manual, together with the transmission of an NEF from the Court, constitutes filing of the document for all purposes of the Federal Rules of Criminal Procedure, including Fed. R. Crim. P. 49(d), and constitutes entry of document on the docket kept by the Clerk in accordance with Fed. R. Crim. P. 55.

b. Service of Papers. The NEF that is automatically generated by the Court's Electronic Filing System constitutes service of the filed document on Filing Users. Parties who are not Filing Users must be served with a copy of any pleading or other document filed electronically in accordance with the Federal Rules of Civil Procedure and these Local Rules. A certificate of service is required when a party electronically files a document, and must state the manner in which service or notice was accomplished on each party.

c. Notice of Court Orders. All orders, decrees, judgments, and proceedings of the Court will be filed in the Electronic Filing System, which will constitute entry on the docket kept by the clerk under the Fed. R. Crim. P. 49(c) and 55. Any order or other court-issued document filed electronically without the original signature of a judge or clerk has the same force and effect as if the judge or clerk had signed a paper copy of the order and it had been entered on the docket in a conventional manner.

Criminal Rule 57.1 Sanctions for Noncompliance with Rules

a. Failure of counsel or of any party to comply with these rules, with the Federal Rules of Criminal Procedure, or with any order of the court may be grounds for imposition by the court of any and all sanctions authorized by statute or rule or within the inherent power of the court.

b. Failure to comply with these local rules governing criminal proceedings in this court will not be ground for dismissal of charges against the defendant.

c. For violations of these Local Rules or of a specific court order, the court may, in imposing monetary sanctions, order that the monetary sanctions be paid to the Miscellaneous Fines, Penalties and Forfeitures, Not Otherwise Classified, fund of the United States Treasury.

Criminal Rule 57.2 Assignment

a. Criminal cases must be numbered consecutively upon the filing of the indictment or information in each such action or proceeding. The judges will, from time to time, determine, and indicate by formal order to the clerk the method by which each action or proceeding will be assigned to a particular judge, to the end that over a period of time each judge must be assigned substantially an equal amount of work. Neither the clerk nor any deputy clerk or magistrate judge will have any discretion in determining the judge to whom any matter is assigned, the action of the clerk being ministerial only. The method of assignment chosen by the judges must be such that the judge to whom any particular matter is to be assigned, in accordance with this rule, must not be known by or disclosed to the clerk or magistrate judge or any member of their staff, or to any other person, until after such action or proceeding has been assigned.

b. The judge to whom a case is assigned or the chief judge of the district, may transfer such case at any time to a consenting judge in the interest of efficient administration of the judicial business of the district.

Criminal Rule 57.2.1 Related Cases

a. Definition of Related Action.

1. Criminal cases are deemed related when (a) more than one indictment or information is filed or pending against the same defendant or defendants, or (b) prosecution against different defendants arises from (i) a common wiretap, (ii) a common search warrant, or (iii) activities that are part of the same alleged criminal event or transaction, that is, the cases involve substantially the same facts and the same questions of law.

2. If a civil forfeiture proceeding is filed concerning a criminal defendant, or a defendant is charged in a criminal case while a civil forfeiture proceeding is pending concerning that defendant, the civil and criminal cases are to be deemed related.

3. Criminal cases are also deemed related when a case is dismissed, with or without prejudice, and a subsequent case involving the same parties and related to the same subject matter is filed within one year of having been previously terminated by the court.

4. A case is considered "pending" until one year after all named defendants have been sentenced. A case is also considered pending if it is one of the cases listed in paragraphs 5, 6, or 7 herein.

5. If a defendant is serving a term of probation or supervised release on a case in this district and the defendant is charged with a new offense in this district, the new case is deemed related to the case in which the defendant is on such term of probation or supervised release if the defendant is the sole defendant in the new case.

6. If a defendant is accused of an offense charged in this district and is on probation or supervised release in another district, and that district transfers jurisdiction over the supervision to this district, any revocation proceedings will be deemed related to the new case pending in this district.

7. If a defendant is charged with escape under 18. U.S.C. §751 from a sentence imposed by a judge of this court, the escape charge will be deemed related to the case in which the sentence from which the defendant allegedly escaped was imposed.

b. Form

At the time of returning an indictment or filing of an information, the United States Attorney must, on a form submitted to the Clerk, file a Notice of Related Case, indicating the name(s) and docket number(s) of any related cases pending in this Court, and certifying the particular reason(s) for the case-related designation.

c. **Assignment**
Related cases must be assigned in the following manner: The Clerk must assign the new case to the judge to whom the oldest, pending related case is assigned. If a judge who is assigned a case under this procedure determines that the cases in question are not related to one of the judge's pending cases, the judge may transfer the new case to the Clerk of reassignment. A senior judge may elect to decline the assignment of a new related case.

Criminal Rule 57.3 Assignment and Designation Procedures Matters to Magistrate Judges

Order of Designation and Assignment. A matter assigned to the magistrate judges either as a matter of course by the clerk of the United States District Court or by an order of special designation by a district judge of the court under 28 U.S.C. §636(b) or (c), precisely stating the nature of the matter, must be assigned to a specific magistrate judge as follows:

a. **Criminal Cases.**

1. **Criminal Matters.** Where the case has previously been assigned to a specific magistrate judge during the court of criminal complaint duty, the matter will be referred to that magistrate judge
.
2. **Misdemeanor Cases.** All misdemeanor cases must be assigned, upon the filing of an information, complaint or violation notice, or the return of an indictment, to a magistrate judge, who will proceed in accordance with the provisions of 18 U.S.C. §3401 and Rule 58 of the Federal Rules of Criminal Procedure.

3. **Felony Cases.** Upon the return of an indictment or the filing of an information, all felony cases must be assigned to a magistrate judge for the conduct of an arraignment and such other pretrial proceedings, or hearings as the assigned district judge will designate.

4. **Proceedings.** Magistrate judges must conduct all proceedings under Rule 3, 4, 5, and 4.1 of the Federal Rules of Criminal Procedure.

5. **Notice of Hearing.** A magistrate judge assigned a matter must set the time of hearing, notify all parties and make any further necessary orders consistent with the requirements fo the local rules of the court for the Southern District.

6. **Appointment of Counsel.** Magistrate judges must appoint counsel for indigent defendants. A magistrate judge may not relieve counsel for a defendant once the case has been set on the

calendar of a district judge unless the district judge has specifically referred the matter to the magistrate judge for consideration of relieving counsel and appointing new counsel.

7. **Other than**
   a. Modifying or revoking conditions of release or other applications relating to release;
   b. Applications to allow persons assisting counsel to enter the facility where the defendant is confined;

   c. Applications for writs of habeas corpus ad testificandum, and application under Criminal Local Rule 17.1;

   A magistrate judge will not hear any application or motion in a criminal case on a district judge's calendar unless the district judge refers such application or matter to the magistrate judge for disposition.

b. General.
Nothing in these rules will preclude the court, or a district judge from reserving any proceedings for conduct by a district judge, rather than a magistrate judge. The court, moreover, may by general order modify the method of assigning proceedings to a magistrate judge as changing conditions may warrant.

Criminal Rule 57.4 United States Magistrate Judges

a. Jurisdiction Under 28 U.S.C. §636(a). Each United States magistrate judge of this court is authorized to perform the duties prescribed by 28 U.S.C. §636(a), and may:

1. Exercise all the powers and duties conferred or imposed on United States magistrate judges by law and the Federal Rules of Criminal Procedure;

2. Administer oaths and affirmations, impose conditions of release or orders of detention under 18 U.S.C. §3141 et. seq. and take acknowledgments, affidavits, and depositions;

3. Conduct extradition proceedings, in accordance with 18 U.S.C §3184.

b. Proposed Orders Regarding Case-Dispositive Motions 28 U.S.C. §636(b)(1)(B).

1. Upon designation by a district judge, a magistrate judge may submit to a district judge a proposed order containing findings of fact and recommendations for disposition by the district judge of the following pretrial motions in criminal cases:

   a. Motions to dismiss or quash an indictment or information made by a defendant; and

   b. Motions to suppress evidence in a criminal case.

2. A magistrate judge may determine any preliminary matters and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority conferred by this subsection.

c. Other Duties.

A magistrate judge is also authorized to:

1. Conduct arraignments in criminal cases not triable by the magistrate judge and take not guilty pleas in such cases;

2. Receive grand jury returns in accordance with Rule 6(f) of Fed.R.Crim.P;

3. Accept waivers of indictment, pursuant to Rule 7(b) of Fed.R.Crim.P;

4. Conduct necessary proceedings leading to the potential revocation of probation or supervised release;

5. Issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings;

6. Order the exoneration of appearance bonds and the release and/or reconveyance of collateral;

7. Conduct proceedings for initial commitment of narcotic addicts under Title III of the Narcotic Addict Rehabilitation Act;

8. Perform the functions specified in 18 U.S.C. §§4107, 4108 and 4109, regarding proceedings for verification of consent by offenders to transfer to or from the United States and the appointment of counsel for those proceedings;

9. Hear motions and enter orders for examinations to determine mental competency under 18 U.S.C. §4241;

10. Grant motions to dismiss in criminal cases when made by the United States attorney or at any other time when authorized by statute or rule and when such dismissal is within the jurisdiction of the magistrate judge or pursuant to a plea agreement entered into before the magistrate judge;

11. Perform any additional duty not inconsistent with the Constitution and laws of the United States.

Criminal Rule 57.5 Procedure in Imperial County Cases

a. **Initial Appearance.** The magistrate judge in Imperial County will conduct the initial appearance under Rule 5, Fed.R.Crim.P of each defendant brought before him charged with a felony criminal offense.

b. **Further Proceedings.** The magistrate judge in Imperial County will conduct such duties as are assigned by the Court.

c. **Transfer of File.** Upon completion of the proceedings before the magistrate judge in Imperial County, California, the complete magistrate judge's file will be forwarded to the clerk's office.

Criminal Rule 58.1 Misdemeanors

a. **Designation of Magistrate Judges.** Subject to the limitation of 18 U.S.C. §3401, magistrate judges are specially designated to try persons accused of, and sentence persons convicted of misdemeanor offenses committed within this district. In addition, magistrate judges may dispose of misdemeanor offenses which are transferred to this district under Rule 20, Fed.R.Crim.P. A magistrate judge may direct the probation office to conduct a presentence investigation of any person convicted of a misdemeanor offense and to render a report to the magistrate judge prior to the imposition of sentence.

b. **Appeal from Conviction by Magistrate Judge.**

1. **Notice of Appeal.** Pursuant to Rule 58(g), Federal Rules of Criminal Procedure, a defendant who has been convicted by a magistrate judge may appeal to a judge by filing a timely notice of appeal.

2. **Record.** A transcript, if desired, must be ordered except that, in the absence of a reporter, the transcript must be ordered as directed by the clerk of court. Applications for orders pertaining to a transcript must be made to the magistrate judge.

   Within thirty (30) days after a transcript has been ordered, the original and one copy must be filed with the magistrate judge and all recordings must be returned to the clerk of court. If not ordered withing fourteen (14) days. If not ordered within fourteen (14) days after the notice of appeal is filed, the record on appeal will be deemed complete.

3. **Notice of Hearing.** The clerk must assign the appeal to a district judge and notify the parties of the time set for oral argument. Argument must be scheduled not less than sixty nor more than ninety (90) days after the date of the notice. However, an earlier date may be set upon application of a party for good cause to the judge to whom the appeal has been assigned.

4. **Time for Serving and Filing Briefs.** The appellant must serve and file the brief within twenty-one (21) days after the notice of hearing. The appellee must serve and file the brief within twenty-one (21) days after service of the brief of the appellant. The appellant may

serve and file a reply brief within seven days after service of the brief of the appellee. These periods may be altered by order of the assigned judge.

c. **Orders and Judgments in Misdemeanor Cases.** Any party may seek review or appeal of a decision by a magistrate judge in a misdemeanor case pursuant to Rule 58(g) of the Federal Rules of Criminal Procedure.

Criminal Rule 58.2 Disposition of Misdemeanor Cases, 18 U.S.C. §3401

A magistrate judge may:

a. Try persons accused of, and sentence persons convicted of, misdemeanors committed within this district in accordance with 18 U.S.C. § 3401;

b. Direct the probation office of the court to conduct a presentence investigation in any misdemeanor case; and

c. Conduct a jury trial in any misdemeanor case where the defendant so requests and is entitled to trial by jury under the Constitution and laws of the United States.