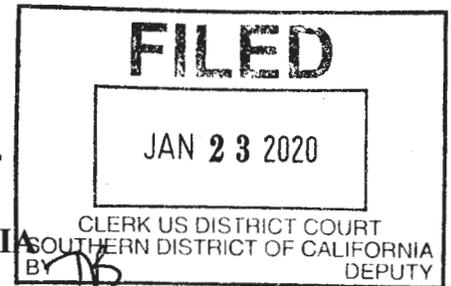


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA



In the matter of)
)
PROPOSED LOCAL RULE)
CHANGES)
_____)

General Order No. 725

After considering any public comment, the Court will consider amending the following Local Rules as follows:

[Proposed new CivLR 2.1 Professionalism]

Civil Local Rule 2.1 Professionalism

a. **Code of Conduct.** The following Code of Conduct establishes the principles of civility and professionalism that will govern the conduct of all participants in cases and proceedings pending in this court. It is to be construed in the broadest sense and governs conduct relating to such cases and proceedings, whether occurring in the presence of the court or occurring outside of the presence of the court. 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, but the court may take any appropriate measures to address violations, including, without limitation, as set forth in Civil L. Rule 2.2.

1. **Principles of Civility.** To borrow from others who have considered the importance of civility in our state and federal courts, we should all understand that the law preserves our freedom, and it is the courts that preserve our laws. Fair, impartial and accessible courts are fundamental to the preservation of our democracy. We—judges, lawyers, court staff, parties—all have a responsibility in ensuring that we preserve the legacy of this institution by conducting ourselves according to the Golden Rule—to treat others as we ourselves would like to be treated.

In seeking justice through the courts, attorneys and parties subject themselves to an inherently adversarial system. Although adversarial, the

experience does not have to, and should not, be antagonistic or hostile. Civility is paramount and not to be confused with weakness. Civility in action and words is fundamental to the effective and efficient functioning of our system of justice and public confidence in that system.

The Federal Rules and this court's Local and Chambers' Rules serve as safeguards to ensure that the principles of equity and fairness govern the procedural course of all litigation. At the same time, these resources, without more, may not sufficiently quell incivility amongst those who litigate in this court. The court has therefore adopted the following Code of Conduct. No one is above the law and, equally important, no one is entitled to act in such a way that erodes the public's trust in the administration of justice, impartiality, and the search for truth. Civility should not only be aspirational, but rather it should be inherent within us all. Nevertheless, this Code of Conduct serves as the court's reminder that we owe it to ourselves, one another, and our justice system to act in accordance with the principles of fairness and equal treatment that underpin the law of our land.

This court is committed to ensuring that all who work within it and come before it treat each other with decency, dignity, and respect. As such, the court expects that all who practice in this court will adhere to this Code of Conduct in all of their interactions within the courts of this judicial district, in order to nurture, rather than tarnish, the practice of law and to maintain the public's faith in the legitimacy of our judicial system. The Court acknowledges the substantial work of the San Diego County Bar Association in developing the Association's Attorney Civility and Practice Guidelines, which this Court has adopted, in substantial part, in this Code of Conduct.

2. Duties Owed to the Court.

- a. We expect lawyers to be courteous and respectful to the court and all court and court-related personnel.
- b. We expect lawyers arguing for an extension of existing law to clearly state that fact and state why.
- c. We expect lawyers appearing in court to dress neatly and appropriately and encourage their clients to do the same.

- d. We expect lawyers to be on time and adhere to time constraints.
- e. We expect lawyers to be prepared for all court appearances.
- f. We expect lawyers to attempt to resolve disputes promptly, fairly and reasonably, with resort to the court for judicial relief only if necessary.
- g. We expect lawyers to discourage and refuse to accept a role in litigation that is meritless or designed primarily to harass or drain the financial resources of the opposing party.
- h. We expect lawyers to honor and maintain the integrity of our justice system, including by not impugning the integrity of its proceedings, or its members.

3. **Duties Owed to Other Lawyers, Parties and Witnesses.**

- a. We expect lawyers to address legal arguments with other lawyers professionally, and not personally.
- b. We expect lawyers to treat adverse witnesses, litigants and opposing counsel with courtesy, fairness and respect.
- c. We expect lawyers to conduct themselves in the discovery process as if a judicial officer were present.
- d. We expect lawyers to not arbitrarily or unreasonably withhold consent to a reasonable request for cooperation or accommodation.
- e. We expect lawyers to refrain from attributing to an opponent a position the opponent has not clearly taken.
- f. We expect lawyers to be accurate in written communications intended to make a record.

- g. We expect lawyers to refrain from proposing a stipulation in the presence of the court or trier of fact unless the other parties have previously agreed to it.
- h. We expect lawyers to refrain from interrupting an opponent's legal argument unless making an appropriate objection for a legitimate basis.
- i. We expect lawyers in court to address opposing lawyers through the court.
- j. We expect lawyers to seek sanctions sparingly, and not to obtain a tactical advantage or for any other improper purpose.
- k. We expect lawyers to refrain from seeking to disqualify opposing counsel for any improper purpose or for any reason not supported by fact or law.
- l. We expect lawyers to encourage other lawyers to conform to the standards in this Code of Conduct.
- m. We expect lawyers to conduct themselves so that they may conclude each case amicably with the opposing lawyer or party.

[Move existing provisions of CivLR 83.5 to new CivLR 2.2]

Civil Local Rule 2.2 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. 401 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 that attorney is appointed until further order of the court. The attorney's cases will be reassigned as directed by the judge supervising those cases on which the attorney is relieved.
3. A non-court appointed attorney charged with a felony must show cause why they 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 their 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 or 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 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 reproof has been administered.

The clerk will give prompt notice of any motion, petition, or order made under Civil Local Rule 83.5.e to the United States Attorney and to the disciplinary body of the court(s) to which the attorney has been admitted to practice.

- f. **Contempt.** Disciplinary matters, proceedings and investigations under Civil Local Rule 83.5 will not affect, or be affected by, any proceeding for contempt under Title 18 U.S.C. 401 or Fed. R. Crim. P. 42.

[Proposed amendment to CivLR 83.3(c), new subsection CivLR 83.3(c)(1)(c)]

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/or office address, the applicant's email address, and California State Bar Number, 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.

- c. Each attorney admitted to this Court must adhere to the Code of Conduct set forth in Civ. L.R. 2.1 and Crim. L.R. 2.1, respectively.**

[Proposed amendment to CivLR 83.3(c)(4)]

- 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, and who agrees to adhere to this court's rules, including without limitation, the court's Code of Conduct under Civ. L. R. 2.1 and Crim. L.R. 2.1, 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, (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 and (6) that the attorney has read, understands and agrees to adhere to each of this court's Rules, including, without limitation, the court's Code of Conduct under Civ. L. R. 2.1 and Crim. L.R. 2.1. 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.

[Delete existing provisions of CivLR 83.4 Professionalism]

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. Secondly, 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.~~

[Delete existing provisions of CivLR 83.5 Professionalism, move to new CivLR 2.2]

Civil Local 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. 401 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.~~
- ~~e. **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:~~

- ~~(v) The procedure in the other jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;~~
- ~~(vi) 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;~~
- ~~(vii) Imposition of like discipline would result in a grave injustice;~~
~~or~~
- ~~(viii) Other substantial reasons exist so as to justify not accepting the other jurisdiction's conclusion(s).~~

~~In addition, at the time the response is filed, the attorney must produce a certified copy of the entire record from the other jurisdiction or bear the burden of persuading the Court that less than the entire record will suffice.~~

~~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 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 reproof has been administered.~~

~~The clerk will give prompt notice of any motion, petition, or order made under Civil Local Rule 83.5.e to the United States Attorney and to the disciplinary body of the court(s) to which the attorney has been admitted to practice.~~

~~f. Contempt. Disciplinary matters, proceedings and investigations under Civil Local Rule 83.5 will not affect, or be affected by, any proceeding for contempt under Title 18 U.S.C. 401 or Fed. R. Crim. P. 42.~~

[Proposed new CrimLR 2.1]

Criminal Rule 2.1 Professionalism

The provisions of Civil Local Rule 2.1 (Professionalism) are incorporated herein by reference in their entirety and shall govern the conduct of all participants in all criminal cases and proceedings pending in this Court.

[Proposed new CrimLR 2.2]

Criminal Rule 2.2 Discipline

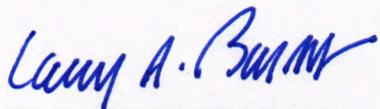
The provisions of Civil Local Rule 2.2 (Discipline) are incorporated herein by reference in their entirety and shall govern the conduct of all participants in all criminal cases and proceedings pending in this Court.

The period of public comment will be until February 19, 2020. Absent further order of this Court, the effective date of the Rule amendments is March 18, 2020. Any comments should be submitted to the Clerk of the Court, United States District Court, at 333 West Broadway, Room 420, San Diego, California 92101.

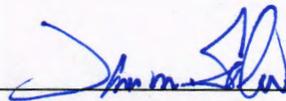
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IT IS SO ORDERED.

Dated: 1-23-20



LARRY ALAN BURNS,
Chief Judge
United States District Court

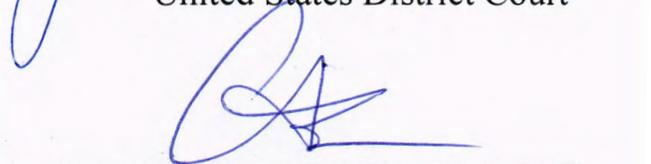


DANA M. SABRAW, Judge
United States District Court


WILLIAM Q. HAYES, Judge
United States District Court

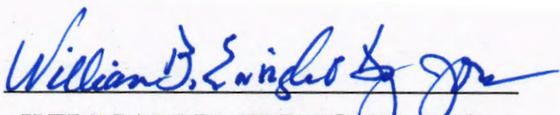

JANIS L. SAMMARTINO, Judge
United States District Court


ANTHONY J. BATTAGLIA, Judge
United States District Court


CATHY ANN BENCIVENGO, Judge
United States District Court

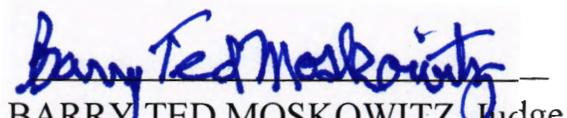

GONZALO P. CURIEL, Judge
United States District Court


CYNTHIA BASHANT, Judge
United States District Court


WILLIAM B. ENRIGHT, Judge
United States District Court

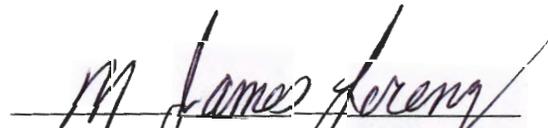
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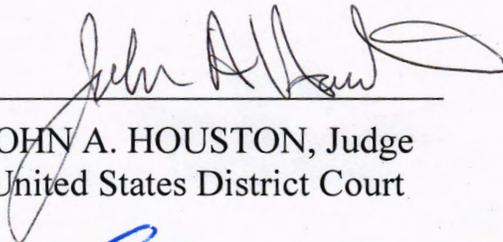

MARILYN L. HUFF, Judge
United States District Court


BARRY TED MOSKOWITZ, Judge
United States District Court

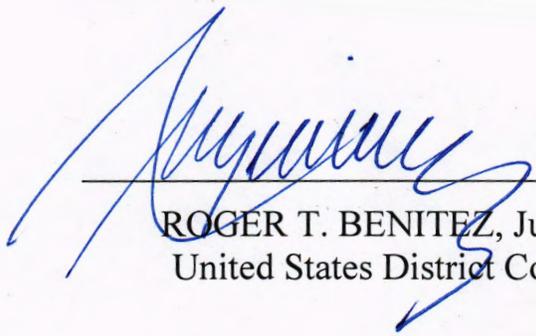

JEFFREY T. MILLER, Judge
United States District Court


THOMAS J. WHELAN, Judge
United States District Court


M. JAMES LORENZ, Judge
United States District Court



JOHN A. HOUSTON, Judge
United States District Court



ROGER T. BENITEZ, Judge
United States District Court



MICHAEL M. ANELLO, Judge
United States District Court

2019

WILLIAM Q. HAYES, Judge
United States District Court

JANIS L. SAMMARTINO, Judge
United States District Court

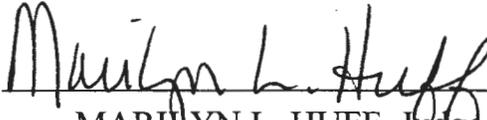
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