UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CIVIL JUSTICE EXPENSE AND DELAY

REDUCTION PLAN

December 1, 1993

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CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

INTRODUCTION

This Civil Justice Expense and Delay Reduction Plan (the Plan) has been adopted by the Court after considering: (i) the Report and recommendations of the Advisory Group, appointed by the Chief Judge, pursuant to 28 U.S.C. § 478; (ii) a recommended plan, prepared by the Court's CJRA Committee, which was prepared after consideration of the Advisory Group's recommendations; (iii) the Local Rules and practices under which civil cases are now managed; and (iv) comments received from the public regarding the proposed Plan.

The Central District of California (the District) is the largest district court in the country, in terms of civil cases. In 1992, approximately 13 percent of all civil cases filed in the district courts throughout the country were filed in this District. Although this District has a heavy civil caseload, the Advisory Group has concluded that this caseload is now being effectively managed:

> *The statistics indicate that, by most measures, the efficiency with which the Central District disposes of cases compares favorably with other district courts throughout the country. The record is particularly striking in that few other districts have a docket which approaches that of the Central District in terms of*

either sheer numbers of cases or complexity of litigation.

Advisory Group Report (Report) at 10. The Advisory Group does, however, express a "note of caution," that "the Court is beginning to lose ground in some respects" in its ability promptly to dispose of civil cases. Ibid.

The court agrees with these underlying observations of the Advisory Group. It is losing ground. For example, the percentage of available trial time devoted to the trial of civil cases has steadily decreased over the last five years, as the following table illustrates.

PERCENT OF TRIAL TIME DEVOTED TO CIVIL TRIALS

CENTRAL DISTRICT OF CALIFORNIA[1]

Year	Total Trial Hrs.	Civil Trial Hrs.	% Civil
1988	10,409	6,625.5	63.65
1989	10,862.5	6,031.5	55.53
1990	10,572.5	5,545.5	52.45
1991	10,309	5,431.5	48.03
1992	11,499.5	5,753	50.03
1993	9,238	3,915	42.38

Unfortunately, however, the causes of concern are not such as to lend themselves to amelioration by adoption of a "civil justice" plan. For the truth is that a number of factors outside the

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[1]Source: Statistics Division, Administrative Office of the United States Courts. Data given are for the 12-month period ending June 30 in the year indicated, except that 1993 data are for the nine-month period ending June 30.

control of the Court are the major causes in bringing about the recent deterioration in the Court's ability promptly to dispose of civil cases.

The first factor is more and more extensive legislation in recent years federalizing common law crimes where no particular federal interest is involved. The latest in this line of legislation is making "carjacking" a federal crime. Carjacking is nothing more than a species of armed robbery. There is no apparent greater federal interest in carjacking than there is in, say, a robbery occuring at a liquor store.

Closely related to the federalization of the criminal law are the innumerable crimes, particularly offenses under Title 21 of the U.S. Code, for which statutory minimum sentences have been mandated. In addition to other effects statutory minima have on the criminal justice system, they have turned out to be a strong force in driving dual crimes -- acts which are crimes under both state and federal law -- from state court to federal court, by virtue of the exercise of prosecutorial discretion. Because predictably higher sentences are available in federal court, local prosecutors uniformly defer to, and local law enforcement agencies urge, federal prosecution of dual crimes.

The third factor is the great increase in federal investigative and prosecutorial resources (under politically popular "war on crime" or "war on drugs" or "war on savings and loan fraud" rubrics) without a concomitant increase in judicial resources. As an example, in this District, in the last five

years, the number of federal prosecutors has increased by 60 to 70 percent, while the number of authorized active judgeships has increased by approximately 25 percent.

Finally, as the Advisory Group Report (at 33-34) recognizes, one of the principal causes of delay is the failure promptly to fill judicial vacancies. The same law which enacted the Civil Justice Reform Act of 1990, also enacted the Federal Judgeship Act of 1990. Titles I & II, Judicial Improvements Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089, 5090 & 5098. The latter Act authorizes five additional judgeships for this District. Id. § 203(a)(3), 104 Stat. at 5099. *It is somewhat of an irony that of the five judgeships authorized on December 1, 1990, by the same legislation that mandated the adoption of this Plan, only one has been filled,* i.e., *four have remained vacant for three years.*

With respect to the discrete principles and guidelines espoused by the Civil Justice Reform Act of 1990 (the CJRA), the Court already utilizes and has been a pioneer in the development of many of those principles, as the Advisory Group Report recognizes (at 45-60). A few examples:

- *This Court has long engaged in "early and ongoing control of the pretrial process through involvement of a judicial officer." 28 U.S.C. § 473(a)(2). It has done this by requiring an Early Meeting of Counsel, Local Rule 6.1, a report to the court of that meeting, Local Rule 6.2, and by the use of status conferences, Local Rule 6.4, together with a rigorous pretrial conference rule.*

Local Rule 9.

- *This Court has required "cost-effective discovery through . . . [the early] exchange of information among litigants and their attorneys," 28 U.S.C. § 473(a)(4), by the mandatory exchange of documents and other evidence at the early meeting of counsel. Local Rules 6.1.1 - 6.1.4.*
- *This Court's rule governing discovery motions was adopted 10 years ago for the purpose of "conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by" a meet and confer stipulation. 28 U.S.C. § 473(a)(5); Local Rule 7.15.*

Many of the other principles and guidelines for the reduction of expense and delay set forth in the CJRA and in the recommendations of the Advisory Group have not been adopted in this Plan, not because the Court disagrees with them, but because the Court has concluded that these matters are better left to the discretion of individual judges to be applied on a case-by-case basis. This is true, for example, of differential case management, limitations on discovery,[2] referral of discovery motions to magistrate judges,[3] and the use of special masters. All of these procedures, and many others, are currently being utilized by the judges of this Court in individual cases.

The CJRA's goal of reducing expense and delay in civil

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[2]Other than a limitation on the number of interrogatories, which are limited to 30 by Local Rule 8.2.1.

[3]Such referral is expressly authorized by General Order No. 194 and Local Magistrate Rule 1.7.19.

litigation is a laudable one and one in which the Court joins. In formulating this Plan, we have sought to identify problems of cost and delay in civil litigation which can be alleviated by principles, guidelines or practices adopted by the Court. We first state a "principle" to be followed in implementing a solution to the problem. In appropriate cases, we adopt a rule of court to enforce the principle. The "commentary" following the statement of each "principle" summarizes the reasons and justification for the adoption of the principle of expense and delay reduction.

THE PLAN

The Court hereby adopts the following principles of expense and delay reduction as its Civil Justice Expense and Delay Reduction Plan.

Principle #1:

Much of the increase in the cost of civil litigation is a function of delay, including delay resulting from continuing a trial date. Adhering to scheduled trial dates will result in avoiding an increase in the cost of litigation. Therefore, it is the policy of the Court to make every reasonable effort to maintain, as recommended by the Advisory Group, firm trial dates in civil cases, especially in complex cases.

If any judge believes that he or she will be unable to meet this goal with respect to the trial of a complex civil case because of the requirement to try a complex criminal case, such judge may call upon the Chief Judge, or the committee designated by the Chief Judge for assistance in meeting his or her trial obligations. Among the forms of assistance which the Chief Judge or the Committee shall consider is the advisibility of seeking the assistance of other judges of the Court, including senior judges, or a visiting judge, sitting by assignment, to try either the complex criminal case or the complex civil case.

Commentary:

The Advisory Group Report (at 63-65) identifies the preempting of pre-set trial dates in civil cases by later-set criminal trials as one of the primary causes of delay and increased expense in the

trial of civil cases in this District. As a solution to this problem, the Advisory Group recommends that the work of the Court be split between civil and criminal divisions. We reject the recommended civil/criminal division because a reallocation of the existing workload will not solve the problem. Absent an increase in judicial resources to meet the increased demand for trial time or a decrease in the Court's criminal caseload, the trial of criminal cases will, more and more, continue to preempt trial dates in civil cases.

While we reject the Advisory Group's recommendation as infeasible and unlikely to remedy the problem, we agree that the problem exists. The problem, simply put, is that the demand for criminal trial time has steadily increased in the last few years and has cut substantially into the time available for the trial of civil cases. Also bearing on the problem are the requirements of the Speedy Trial Act which virtually require that precedence be given to the trial of criminal cases.

The trial of a complex criminal case[4] is the kind of trial that will substantially curtail the availability of trial time for civil cases and likely to upset a judge's civil trial calendar. At the same time, it is the complex civil case in which substantial trial preparation costs are incurred, and lost, when a trial date is vacated. Thus, it is when these two factors converge that

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[4]A "complex criminal case," as used in this Plan, means a criminal case in which the government estimates that the time required for the presentation of evidence in its case-in-chief exceeds 16 days.

assistance to the trial judge is most likely to benefit cost and delay reduction efforts. It is in this situation that this principle calls for the Court to assist the over-burdened trial judge.

Principle #2:

The Court hereby adopts as part of its Local Criminal Rules, Local Criminal Rule 13, appended hereto as Exhibit "A" (at page 15), which provides a rule to govern settlement conferences in complex criminal cases.

Commentary:

Because of the conscientiousness of both defense counsel and the United States Attorney's Office, most cases which are amenable to disposition without trial are, in fact, disposed of by a plea agreement without judicial intervention. However, occasionally, the participation of a judicial officer will be helpful in assisting the parties in reaching a disposition. This is particularly true in complex cases charging economic crimes. Also, it is the complex cases which occupy a disproportionate amount of the judges' time, both in trial and in pretrial proceedings. Thus, facilitation of settlement of these complex criminal cases will make additional judicial time and resources available for the speedier resolution of civil cases.

The Court is mindful of the admonition of Fed.R.Crim.P. 11(e)(1)(C) that "The court shall not participate in any such [plea agreement] discussions." However, it is the consensus of the judges of this Court that the term "court" in Rule 11(e)(1)(C)

refers to the judge to whom the case is assigned (and any other judge who may make rulings in the case). It does not apply to any other judge of the Court who has no judicial duties to perform in connection with the case. From time to time, individual judges of this Court have utilized essentially the same settlement procedures authorized by this rule.

Recently, a similar rule of the Southern District of California was before the Ninth Circuit. Although the validity of the rule was not directly in issue, the Court of Appeals did not question the validity of the rule. See United States v. Torres, No.92-50549 slip op. at 7723 (9th Cir. Jul. 21, 1993).

Principle #3:

The Court hereby adopts as part of its Local Rules, Local Rule 23, appended hereto as Exhibit "B" (at page 19), which provides for the holding of a mandatory settlement conference in every civil case, unless exempted or excused.

Commentary:

The Advisory Group makes two separate recommendations on this subject. First, it recommends that a mandatory settlement conference (MSC) be required in every civil case. Report at 77-80. Second, it separately recommends that the court encourage, but not require, alternative dispute resolution (ADR). Id. at 97; see also id. at 73-75 (early neutral evaluation for "standard" cases). Rule 23 treats these recommendations together.

It imposes a MSC requirement and authorizes resort to various ADR techniques as a means of satisfying the MSC requirement.

The rule recognizes that not all judges are alike, that not all lawyers are alike and that all cases are not alike. Therefore, the rule encourages counsel to select a method of fulfilling their MSC obligations best suited to the needs of their case. Only in cases where counsel fail to fulfill their MSC obligation bilaterally will the court intervene. Under the rule, the Court retains the option to require further settlement procedures even after counsel have fulfilled their initial MSC obligation.

Principle #4:

The Court hereby adopts as part of its Local Rules, Local Rule 27A, appended hereto as Exhibit "C" (at page 24), which provides a rule to protect litigants from vexatious litigation. This rule is adopted as a principle of differential case management. 28 U.S.C. § 473(a)(1).

Commentary:

Vexatious litigation contributes to the increase of expense and delay in two ways. First, it forces the victims of such vexatious conduct to incur needless expense (often unrecoverable even if an award of costs is received) and to be subjected to continued harassment. Second, to the extent that the court is required to devote its time and energy to the disposition of vexatious litigation, less judicial resources are available for the handling of meritorious and non-frivolous cases.

As its policy statement denotes, the purpose of this rule is to discourage the filing of repeated, unfounded and frivolous complaints by vexatious litigants and to protect against such

conduct. This rule is also responsive in part, with respect to the more extreme cases, to the recommendation of the Advisory Group that the court should keep the problem of frivolous pleadings under continuous scrutiny. See Report at 101-03.

Principle #5:

The judges of the Court shall refrain from adopting their own rules, in the form of Standing Orders or otherwise, that are inconsistent with or conflict with the Local Rules or the Fed.R.Civ.P.

Commentary:

The Advisory Group's Report complains that the already-significant cost of complying with the Local Rules "is exacerbated because the vast majority of judges have adopted their own rules -- which are superimposed on the Local Rules." Report at xi. This principle prohibits that practice. Moreover, such "local-local" rules may be of doubtful validity to the extent they are inconsistent with the Local Rules.[5]

Any judge who is dissatisfied with any of the Local Rules may seek to amend the rules through the court's internal processes. The judges of the Court are encouraged to pursue this remedy when dissatisfied with a local rule, rather than adoption of the judge's own rule on the subject. The Rules Committee of the Court will have the responsibility to monitor all "local-local" rules for compliance with this principle.

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[5]Fed.R.Civ.P. 78 provides that "district judges and magistrates may regulate their practice in any manner not inconsistent with these rules or those of the district in which they act."

Principle #6:

In cooperation with the Lawyer Delegates of the District to the Ninth Circuit Judicial Conference, the court, through its Committee on Civility and Professionalism, has developed guidelines on civility and professionalism to guide the conduct of lawyers and judges in this District. The *Civility and Professionalism Guidelines* have been approved by the Court and adopted as a part of this Plan, and are appended hereto as EXHIBIT "E".

Commentary:

There is widespread agreement within the Bar that there has been a noticeable decline in civility and professionalism among lawyers. This topic was addressed at the 1992 Ninth Circuit Judicial Conference, which adopted a resolution on improving civility. The Court's Civility and Professionalism Committee was formed in response to that resolution.

The Advisory Group Report makes two separate recommendations on this topic. First, it recommends that a standing order be issued, defining inappropriate conduct during depositions. Id. at 84-86. It also recommends court endorsement of guidelines for the conduct of litigation Id. at 98-99.

This principle is responsive to both of the Advisory's Group recommendations, as well as to the Conference resolution. The Court believes that if lawyers observe these guidelines in the

conduct of litigation pending in this Court, it will contribute to a reduction of cost and delay in civil litigation.

Principle #7:

The Court hereby adopts as part of its Local Rules, an amendment to Local Rule 3.11, appended hereto as Exhibit "D" (at page 26), which provides that certain stipulations will no longer require court approval.

Commentary:

The adoption of Local Rules 3.11.1 and 3.11.2 will ease the burden on counsel and, concomitantly, reduce the cost on litigants of seeking court approval of the most routine of stipulations -- the first extension of time within which to answer a complaint, and stipulations extending the time within which to make discovery responses or continuing depositions. Heretofore, all of these required the preparation of a stipulation and proposed order for presentation to the court for approval.

Local Rule 3.11 will continue to require court approval of all other stipulations "affecting the progress of the case." Thus, the judge will continue to retain control over the progress of the case. This amendment will not interfere with the Court's case management objectives.

LOCAL CRIMINAL RULES OF COURT
CENTRAL DISTRICT OF CALIFORNIA

RULE 13 SETTLEMENT CONFERENCES IN COMPLEX CRIMINAL CASES

13.1 POLICY - It is the policy of the Court to facilitate the parties' efforts to dispose of criminal cases without trial. It is also the policy of the Court that the judge assigned to preside over a criminal case (the trial judge) shall not participate in facilitating settlement. Participation in settlement conferences under this rule shall be completely voluntary. The court anticipates that this rule will be invoked by the parties primarily in complex cases.

13.1.1 DEFINITION - A "complex case" is a criminal case in which the government estimates that the presentation of evidence in its case-in-chief will require more than 16 days.

13.2 REQUEST FOR CONFERENCE - A settlement conference can be requested only by the attorney for the government and the attorney for the defendant acting jointly. (This rule does not require that all defendants in a multi-defendant case join in the request.)

13.2.1 TIME OF REQUEST - A settlement conference may be requested at any time up to the settlement conference cutoff date established by the trial judge. If no cutoff date is established, a settlement conference request may be made at any time up to 14 days before the date scheduled for the commencement of trial, unless a later request is permitted by the trial judge.

13.2.2 FORM OF REQUEST - The request for a settlement conference shall be in writing and shall be signed by both the attorney for the government and the attorney for the defendant, and

the defendant personally. It shall list the dates on which counsel are available for the conference and may, but need not, suggest a judicial officer or officers to preside over the conference. It shall be filed in the case.

13.2.3 RESPONSE TO REQUEST - Upon a timely request for a settlement conference in a complex case, the trial judge shall designate a settlement judge in accordance with Rule 13.3. In all other cases, whether or not to conduct settlement proceedings with judicial assistance shall be at the discretion of the trial judge.

13.2.4 WITHDRAWAL OF REQUEST - A request for a settlement conference may unilaterally be withdrawn any time. A withdrawal shall be in writing, shall be signed by the attorney and shall be filed in the case.

13.3 PRESIDING OFFICER - The settlement conference shall be presided over by a settlement judge, other than the trial judge, who shall be an Article III judge designated by the trial judge. The designation shall be filed in the case.

No settlement judge shall be designated without his or her consent. If requested by the trial judge, the Chief Judge shall assist the trial judge in the selection of a settlement judge.

13.4 CONDUCT OF CONFERENCE

13.4.1 AVAILABILITY OF DEFENDANT - The defendant shall not be present during settlement discussions, unless otherwise ordered by the settlement judge. However, the defendant shall be available **(a)** in the courtroom of the settlement judge, if the defendant is on pretrial release, or **(b)** in the Marshal's lock-up, if the defendant is under pretrial detention, unless the

defendant's availability is waived by the settlement judge.

13.4.2 CRIMINAL HISTORY - If so requested by either counsel at least ten (10) days before the settlement conference, the Probation Officer, without order of the court, shall provide a summary of the defendant's criminal history to both counsel within seven (7) days of the request.

13.4.3 NON-RECORDATION - The settlement conference shall not be reported, unless requested by the defendant and consented to by the settlement judge. If the defendant requests that the conference be reported and the settlement judge does not concur, the conference shall be terminated.

13.4.4 WRITTEN AGREEMENT - If a settlement is agreed to by both counsel and approved by the defendant, the plea agreement shall be reduced to writing and executed by the parties within 24 hours of the settlement conference.

13.5 RESTRICTIONS ON PARTICIPANTS

13.5.1 SETTLEMENT JUDGE - The settlement judge shall not take a guilty plea from and shall not sentence any defendant in the case. She or he shall not communicate any of the substance of the settlement discussions to the trial judge, except as provided in Rule 13.5.3(d).

13.5.2 STATEMENTS INADMISSIBLE AT TRIAL - No statement made by any participant at the settlement conference shall be admissible at the trial of any defendant in the case.

13.5.3 COUNSEL - Neither counsel shall disclose the substance of the settlement discussions or the comments and

recommendations of the settlement judge to the trial judge, except as provided for by this rule.

(a) If a plea agreement is reached, either counsel may make such disclosures to the trial judge as are expressly permitted by the terms of a written plea agreement.

(b) At sentencing, whether after a plea of guilty or after trial, and whether or not any plea agreement so provides, the attorney for the defendant may bring to the trial judge's attention any comments or recommendations made by the settlement judge.

(c) In the event the defendant exercises his, her or its option under subparagraph (b), above, the attorney for the government may also bring to the trial judge's attention at sentencing any comments or recommendations made by the settlement judge.

(d) In the event of a disagreement between counsel as to the substance of the settlement judge's comments or recommendations on any particular issue, the trial judge may either **(i)** refer the matter back to the settlement judge for a finding of fact on the disputed issue, or **(ii)** not consider such disputed comment or recommendation as a factor in sentencing and so state on the record.

13.6 DISCRETION OF TRIAL JUDGE - Nothing in this rule shall be construed to limit in any way the discretion of the trial judge under Fed.R.Crim.P. 11(e).

LOCAL RULES OF COURT
CENTRAL DISTRICT OF CALIFORNIA

RULE 23 MANDATORY SETTLEMENT PROCEDURES

RULE 23.1 - POLICY - It is the policy of the Court to encourage disposition of civil litigation by settlement when such is in the best interest of the parties. The Court favors any reasonable means to accomplish this goal. Nothing in this rule shall be construed to the contrary. The parties are urged first to discuss and to attempt to reach settlement among themselves without resort to these procedures.

RULE 23.2 - PROCEEDING MANDATORY - Unless exempted by this rule or otherwise ordered by the Court, the parties in each civil case shall participate in one of the settlement procedures authorized by this rule.

23.2.1 - EXEMPTIONS - The following categories of cases are exempted from compliance with this rule:

(a) Petitions filed under 28 U.S.C. §§ 2242, 2254 and 2255, or their equivalent.

(b) Any case in which a party is appearing *pro se*. In cases where there are multiple parties on either side and less than all parties on a side are appearing *pro se*, this exemption shall apply only with respect to *pro se* parties.

23.2.2 - EXCUSES - A judge either on application of a party or *sua sponte* may excuse counsel in any case from compliance with this rule.

RULE 23.3 - TIME FOR PROCEEDINGS - No later than 45 days before the final Local Rule 9 pretrial conference, the parties shall participate in one of the approved settlement procedures set

forth in this rule and selected by the parties. Except in the case of Settlement Procedure No. 1, a Notice of Settlement Procedure Selection, signed by counsel for both sides, shall be filed not later than 14 days before the date scheduled for the settlement procedure. The notice shall state the settlement procedure selected, the name of the settlement officer and the date, time and place of the settlement procedure.

RULE 23.4 - COURT-ORDERED PROCEEDINGS - If the parties do not file a timely Notice of Settlement Procedure Selection (and the Court has not consented to engage in Settlement Procedure No. 1), the Court may order the parties to participate in any of the settlement procedures approved by this rule.

RULE 23.5 - APPROVED SETTLEMENT PROCEDURES

23.5.1 - SETTLEMENT PROCEDURE NO. 1 - With the consent of all parties and the concurrence of the Court, the parties shall appear before the judge assigned to the case for such settlement proceedings as the judge may conduct.

23.5.2 - SETTLEMENT PROCEDURE NO. 2 - With the consent of the Court, the parties shall appear before a judge of the Court, other than the judge assigned to the case, or a magistrate judge for settlement proceedings.

23.5.3 - SETTLEMENT PROCEDURE NO. 3 - The parties shall appear before an attorney for settlement proceedings. If the parties agree on this procedure but are unable to agree upon an attorney to conduct it, an attorney shall be appointed by the court.

23.5.4 - SETTLEMENT PROCEDURE NO. 4 - The parties shall appear before a retired judicial officer or other private or non-profit dispute resolution body for mediation-type settlement proceedings.

RULE 23.6 - REQUIREMENTS FOR SETTLEMENT PROCEDURES - Regardless of the settlement procedure selected, the parties shall:

23.6.1 - Submit in writing to the settlement officer, *in camera* (but not file), a letter (not to exceed five pages) setting forth the party's statement of the case and the party's settlement position, including the last offer or demand made by that party and a separate statement of the offer or demand the party is prepared to make at the settlement conference. This confidential settlement letter shall be delivered to the settlement officer, at least five (5) days before the date of the conference. Such confidential settlement letters shall be returned to the submitting party at the conclusion of the settlement proceedings.

23.6.2 - Each party shall appear at the settlement proceeding in person or by a representative with full authority to settle the case, except that parties residing outside the District may have such an authorized representative available by telephone during the entire proceeding.

23.6.3 - Each party shall be represented at the settlement proceeding by the attorney who is expected to try the case, unless excused by the settlement officer.

23.6.4 - Each party shall have made a thorough analysis of the case prior to the settlement proceeding and shall

be fully prepared to discuss all economic and non-economic factors relevant to a full and final settlement of the case.

RULE 23.7 - OPTIONAL REQUIREMENTS FOR SETTLEMENT PROCEDURES - Without limitation, the settlement officer may require any of the following procedures in any settlement proceeding:

(a) An opening statement by each counsel.

(b) With the agreement of the parties, a "summary" or "mini-trial," tried either to the settlement officer or to a jury.

(c) Presentation of the testimony, summary of testimony or report of expert witnesses.

(d) A closing argument by each counsel.

(e) Any combination of the foregoing.

RULE 23.8 - REPORT OF SETTLEMENT - If a settlement is reached it shall (i) be reported immediately to the judge'e Courtroom Clerk, and (ii) timely memorialized.

RULE 23.9 - CONFIDENTIALITY OF PROCEEDINGS - All settlement proceedings shall be confidential and no statement made therein shall be admissible in any proceeding in the case, unless the parties otherwise agree. No part of a settlement proceeding shall be reported, or otherwise recorded, without the consent of the parties, except for any memorialization of a settlement.

RULE 23.10 - RULE NON-EXCLUSIVE - Nothing in this rule shall preclude or replace any settlement practice used by any judge or magistrate judge of the Court. The provisions of this rule are not exclusive and nothing in this rule shall preclude any judge or

magistrate judge of the Court from dispensing with any provision of this rule as to any case or category of cases, as the judge, in his or her discretion, determines to be appropriate.

LOCAL RULES OF COURT
CENTRAL DISTRICT OF CALIFORNIA

RULE 27A VEXATIOUS LITIGANTS

27A.1 - POLICY - It is the policy of the Court to discourage vexatious litigation and to provide persons who are subjected to vexatious litigation with security against the costs of defending against such litigation and appropriate orders to control such litigation. It is the intent of this rule to augment the inherent power of the court to control vexatious litigation and nothing in this rule shall be construed to limit the court's inherent power in that regard.

27A.2 - ORDERS FOR SECURITY AND CONTROL - On its own motion or on motion of a party, after opportunity to be heard, the court may, at any time, order a party to give security in such amount as the court determines to be appropriate to secure the payment of any costs, sanctions or other amounts which may be awarded against a vexatious litigant, and may make such other orders as are appropriate to control the conduct of a vexatious litigant. Such orders may include, without limitation, a directive to the Clerk not to accept further filings from the litigant without payment of normal filing fees and/or without written authorization from a judge of the court or a magistrate judge, issued upon such showing of the evidence supporting the claim as the judge may require.

27A.3 - FINDINGS - Any order issued under Rule 27A.2 shall be based on a finding that the litigant to whom the order is issued has abused the court's process and is likely to continue

such abuse, unless protective measures are taken.

27A.4 - REFERENCE TO STATE STATUTE - Although nothing in this rule shall be construed to require that such a procedure be followed, the court may, at its discretion, proceed by reference to the Vexatious Litigants statute of the State of California, Cal. Code Civ. Proc. §§ 391 - 391.7.

LOCAL RULES OF COURT
CENTRAL DISTRICT OF CALIFORNIA

Local Rule 3.11 is amended by adding thereto the underlined portions (Local Rules 3.11.1 and 3.11.2) set forth below:

3.11 STIPULATIONS - Stipulations will be recognized as binding only when made in open Court, on the record at a deposition, or when filed in the proceeding. Written stipulations affecting the progress of the case shall be filed with the Court, be in the form provided by Local Rule 14.8, and will not be effective until approved by the judge, except as provided in this rule.

3.11.1 - RESPONSE TO INITIAL COMPLAINT - A stipulation extending the time within which to answer or otherwise respond to the initial complaint in an action by not more than 30 days need not be approved by the judge, but shall be filed. This rule shall not apply to answers, replies or other responses to cross-claims, counterclaims, third-party complaints or any amended or supplemental pleadings.

3.11.2 - RESPONSE TO DISCOVERY REQUEST - A stipulation extending the time within which to respond or object to a discovery request or to take a deposition need not be approved by the judge, provided that the extended date by which the response is due or on which the deposition is to be taken is prior to the discovery cutoff date established for the case or is at least 30 days prior to the date set for the Local Rule 9 pretrial conference, whichever is earlier. Stipulations under this rule shall not be filed unless there is a proceeding in which the stipulation is in issue, as provided in Local Rule 8.3.

EXHIBIT "D"

Civility and Professionalism Guidelines for the Central District of California

Preamble

In its purest form, law is simply a societal mechanism for achieving justice. As officers of the court, judges and lawyers have a duty to use the law for this purpose, for the good of the people. Even though "justice" is a lofty goal, one which is not always reached, when an individual becomes a member of the legal profession, he or she is bound to strive towards this end.

Unfortunately, many do not perceive that achieving justice is the function of law in society today. Among members of the public and lawyers themselves, there is a growing sense that lawyers regard their livelihood as a business, rather than a profession. Viewed in this manner, the lawyer may define his or her ultimate goal as "winning" any given case, by whatever means possible, at any cost, with little sense of whether justice is being served. This attitude manifests itself in an array of obstinate discovery tactics, refusals to accommodate the reasonable requests of opposing counsel re: dates, times, and places; and other needless, time-consuming conflicts between and among adversaries. This type of behavior tends to increase costs of litigation and often leads to the denial of justice.

EXHIBIT "E"

The Central District recognizes that, while the majority of lawyers do not behave in the above-described manner, in recent years there has been a discernible erosion of civility and professionalism in our courts. This disturbing trend may have severe consequences if we do not act to reverse its course. Incivil behavior does not constitute effective advocacy; rather, it serves to increase litigation costs and fails to advance the client's lawful interests. Perhaps just as importantly, this type of behavior causes the public to lose faith in the legal profession and its ability to benefit society. For these reasons, we find that civility and professionalism among advocates, between lawyer and client, and between bench and bar are essential to the administration of justice.

The following guidelines are designed to encourage us, the members of the bench and bar, to act towards each other, our clients, and the public with the dignity and civility that our profession demands. In formulating these guidelines, we have borrowed heavily from the efforts of others who have written similar codes for this same purpose. The Los Angeles County Bar Association Litigation Guidelines, guidelines issued by other county bar associations within the Central District, the Standards for Professional Conduct within the Seventh Federal Judicial Circuit, and the Texas Lawyer's Creed all provide excellent models for professional behavior in the law.

We expect that judges and lawyers will voluntarily adhere to these standards as part of a mutual commitment to the elevation of

the level of practice in our courts. These guidelines shall not be used as a basis for litigation or for sanctions or penalties. Nothing in these guidelines supersedes or modifies the existing Local Rules of the Central District, nor do they alter existing standards of conduct wherein lawyer negligence may be determined and/or examined.

I. Guidelines

A. Lawyers' Duties to Their Clients

1. We will practice our profession with a continuing awareness that our role is to advance the legitimate interests of our clients. We will endeavor to achieve our clients' lawful objectives in legal transactions and in litigation as quickly and economically as possible.

2. We will be loyal and committed to our clients' lawful objectives, but we will not permit that loyalty and commitment to interfere with our duty to provide objective and independent advice.

3. We will advise our clients that civility and courtesy are expected and are not a sign of weakness.

4. We will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that we act in an abusive manner or indulge in any offensive conduct.

5. We will advise our clients that we will not pursue conduct that is intended primarily to harass or drain the financial resources of the opposing party.

6. We will advise our clients that we reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect our clients' lawful objectives. Clients have no right to instruct us to refuse reasonable requests made by other counsel.

7. We will advise our clients regarding availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.

8. We will advise our clients of the contents of this creed when undertaking representation.

B. Lawyers' Duties to Other Counsel

1. Communications with Adversaries

a. We will adhere to all express promises and to agreements with other counsel, whether oral or in writing, and will adhere in good faith to all agreements implied by the circumstances or local customs.

b. When we reach an oral understanding on a proposed agreement or a stipulation and decide to commit it to writing, the drafter will endeavor in good faith to state the oral understanding accurately and completely. The drafter will provide the other counsel with the

opportunity to review the writing. As drafts are exchanged between or among counsel, changes from prior drafts will be identified in the draft or otherwise explicitly brought to the attention of other counsel. We will not include in a draft matters to which there has been no agreement without explicitly advising other counsel in writing of the addition.

c. We will not write letters for the purpose of ascribing to opposing counsel a position he or she has not taken, or to create "a record" of events that have not occurred. Letters intended only to make a record should be used sparingly and only when thought to be necessary under all of the circumstances. Unless specifically permitted or invited by the court, letters between counsel should not be sent to judges.

2. **Scheduling Issues**

a. We will not use any form of discovery or discovery scheduling as a means of harassment.

b. We will consult other counsel regarding scheduling matters in a good faith effort to avoid scheduling conflicts.

c. We will endeavor to accommodate previously scheduled dates for hearings, depositions, meetings, conferences, vacations, seminars, or other functions that produce good faith calendar conflicts on the part of other counsel, where it is possible to do so without prejudicing the client's rights. If we have been given an accommodation because of a calendar conflict, we will notify those who have accommodated us as soon as the conflict has been removed.

d. We will notify other counsel and, if appropriate, the court or other persons, at the earliest possible time when hearings, depositions, meetings, or conferences are to be canceled or postponed. Early notice avoids unnecessary travel and expense of counsel and may enable the court to use the previously reserved time for other matters.

e. Unless time is of the essence, as a matter of courtesy we will grant first requests for reasonable extensions to time to respond to litigation deadlines. After a first extension, any additional requests for time will be considered by balancing the need for expedition against the deference one should ordinarily give to an opponent's schedule of personal and professional engagements, the reasonableness of the length of extension requested, the

opponent's willingness to grant reciprocal extensions, the time actually needed for the task, and whether it is likely a court would grant the extension if asked to do so.

f. We will not request an extension of time solely for the purpose of unjustified delay or to obtain a tactical advantage.

g. We will not attach to extensions unfair and extraneous conditions. We may impose conditions for the purpose of preserving rights that an extension might jeopardize, or for seeking reciprocal scheduling concessions. We will not, by granting extensions, seek to preclude an opponent's substantive rights, such as his or her right to move against a complaint.

3. **Service of Papers**

a. We will not time the filing or service of motions or pleadings in any way that unfairly limits another party's opportunity to respond.

b. We will not serve papers sufficiently close to a court appearance so as to inhibit the ability of opposing counsel to prepare for that appearance or, where permitted by law, to respond to the papers.

c. We will not serve papers in order to take advantage of an opponent's known absence from the office or at a time or in a manner designed to inconvenience an adversary, such as late on a Friday afternoon or the day preceding a secular or religious holiday.

d. When it is likely that service by mail, even when allowed, will prejudice the opposing party, we will effect service personally or by facsimile transmission.

4. **Depositions**

a. We will take depositions only when actually needed to ascertain facts or information or to perpetuate testimony. We will not take depositions for the purpose of harassment or to increase litigation expense.

b. We will not engage in any conduct during a deposition that would be inappropriate in the presence of a judge.

c. During depositions we will ask only those questions we reasonably believe are necessary for the prosecution or defense of an action. We will not inquire into a deponent's personal affairs or question a deponent's integrity where such inquiry is irrelevant to the subject matter of the deposition. We will refrain from

repetitive or argumentative questions or those asked solely for purposes of harassment.

d. When defending a deposition, we will limit objections to those that are well founded and necessary to protect our client's interests. We recognize that most objections are preserved and need be interposed only when the form of a question is defective or privileged information is sought.

e. When a question is pending, we will not, through objections or otherwise, coach the deponent or suggest answers.

f. We will not direct a deponent to refuse to answer questions unless they seek privileged information or are manifestly irrelevant or calculated to harass.

g. When we obtain documents pursuant to a deposition subpoena, we will make copies of the documents available to opposing counsel at his or her expense, even if the deposition is canceled or adjourned.

5. **Document Demands**

a. We will carefully craft document production requests so they are limited to those documents we reasonably believe

are necessary for the prosecution or defense of an action. We will not design production requests to harass or embarrass a party or witness or to impose an undue burden or expense in responding.

b. We will respond to document requests in a timely and reasonable manner and not strain to interpret the request in an artificially restrictive manner to avoid disclosure of relevant and non-privileged documents.

c. We will withhold documents on the grounds of privilege only where it is appropriate to do so.

d. We will not produce documents in a disorganized or unintelligible manner, or in a way designed to hide or obscure the existence of particular documents.

e. We will not delay document production to prevent opposing counsel from inspecting documents prior tc scheduled depositions or for any other tactical reason.

6. **Interrogatories**

a. We will carefully craft interrogatories so that they are limited to those matters we reasonably believe are

necessary for the prosecution or defense of an action, and we will not design them to harass or place an undue burden or expense on a party.

b. We will respond to interrogatories in a timely and reasonable manner and will not strain to interpret them in an artificially restrictive manner to avoid disclosure of relevant and non-privileged information.

c. We will base our interrogatory objections on a good faith belief in their merit and not for the purpose of withholding or delaying the disclosure of relevant information. If an interrogatory is objectionable in part, we will answer the unobjectionable part.

7. **Settlement and Alternative Dispute Resolution**

a. Except where there are strong and overriding issues of principle, we will raise and explore the issue of settlement in every case as soon as enough is known about the case to make settlement discussion meaningful.

b. We will not falsely hold out the possibility of settlement as a means for adjourning discovery or delaying trial.

c. In every case, we will consider whether the client's interest could be adequately served and the controversy more expeditiously and economically disposed of by arbitration, mediation, or other forms of alternative dispute resolution.

8. **Written Submissions to a Court, Including Briefs, Memoranda, Affidavits, Declarations, and Proposed Orders**

a. Before filing a motion with the court, we will engage in more than a mere pro forma discussion of its purpose in an effort to resolve the issue with opposing counsel.

b. We will not force our adversary to make a motion and then not oppose it.

c. In submitting briefs or memoranda of points and authorities to the court, we will not rely on facts that are not properly part of the record. We may present historical, economic, or sociological data, if such data appears in or is derived from generally available sources.

d. In civil actions, we will stipulate to relevant matters if they are undisputed and if no good faith advocacy basis exists for not stipulating.

e. Unless directly and necessarily in issue, we will not disparage the intelligence, morals, integrity, or personal behavior of our adversaries before the court, either in written submissions or oral presentations.

f. We will not, absent good cause, attribute bad motives or improper conduct to other counsel or bring the profession into disrepute by unfounded accusations of impropriety.

g. We will not move for court sanctions against opposing counsel without first conducting a reasonable investigation and unless fully justified by the circumstances and necessary to protect our client's lawful interests.

h. We will not cause any default or dismissal to be entered without first notifying opposing counsel, when we know his or her identity.

i. When a draft order is to be prepared by counsel to reflect a court ruling, we will draft an order that accurately and completely reflects the court's ruling. We will promptly prepare and submit a proposed order to other counsel and attempt to reconcile any differences before the draft order is presented to the court.

9. **Ex Parte Communications With the Court**

a. We will avoid ex parte communication on the substance of a pending case with a judge (or his or her law clerk) before whom such case is pending.

b. Even where applicable laws or rules permit an ex parte application or communication to the court, before making such an application or communication we will make diligent efforts to notify the opposing party or his or her attorney. We will make reasonable efforts to accommodate the schedule of such attorney, so that the opposing party may be represented on the application.

c. Where the rules permit an ex parte application or communication to the court in an emergency situation, we will make such an application or communication only where there is a bona fide emergency such that the lawyer's client will be seriously prejudiced by a failure to make the application or communication on regular notice.

C. Lawyers' Duties to the Court

1. We will speak and write civilly and respectfully in all communications with the court.

2. We will be punctual and prepared for all court appearances so that all hearings, conferences, and trials may commence on time; if delayed, we will notify the court and counsel, if possible.

3. We will be considerate of the time constraints and pressures on the court and court staff inherent in their efforts to administer justice.

4. We will not engage in any conduct that brings disorder or disruption to the courtroom. We will advise our clients and witnesses appearing in court of the proper conduct expected and required there and, to the best of our ability, prevent our clients and witnesses from creating disorder or disruption.

5. We will not write letters to the court in connection with a pending action, unless invited or permitted by the court.

6. Before dates for hearing or trials are set, or if that is not feasible, immediately after such date has been set, we will attempt to verify the availability of necessary participants and witnesses so we can promptly notify the court of any likely problems.

7. We will act and speak civilly to court marshals, court clerks, court reporters, secretaries, and law clerks with an awareness that they, too, are an integral part of the judicial system.

D. Judges' Duties to Others

1. We will be courteous, respectful, and civil to the attorneys, parties, and witnesses who appear before us. Furthermore, we will use our authority to ensure that all of the attorneys, parties, and witnesses appearing in our courtrooms conduct themselves in a civil manner.

2. We will do our best to ensure that court personnel act civilly toward attorneys, parties, and witnesses.

3. We will not employ abusive, demeaning, or humiliating language in opinions or in written or oral communications with attorneys, parties, or witnesses.

4. We will be punctual in convening all hearings, meetings, and conferences.

5. We will make reasonable efforts to decide promptly all matters presented to us for decision.

6. While endeavoring to resolve disputes efficiently, we will be aware of the time constraints and pressures imposed on attorneys by the exigencies of litigation practice.

7. Above all, we will remember that the court is the servant of the people, and we will approach our duties in this fashion.