



**Federal Bar  
Association**  
San Diego Chapter

# **Introduction to Federal Court**

MCLE Written Materials

June 24, 2021

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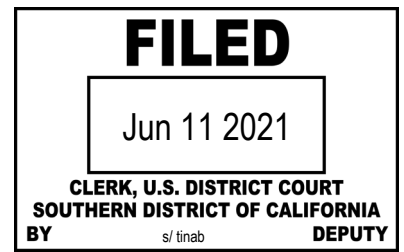
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

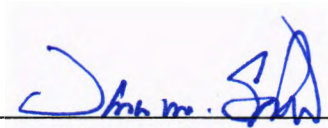
In the matter of )  
 )  
SUPPLEMENT TO DISTRICT ) **Order of the**  
TRIAL REOPENING PLAN ) **Chief Judge No. 36-C**  
 )  
\_\_\_\_\_ )

The attached plan is adopted as a supplement to the "CASD TRIAL REOPENING PLAN" under Chief Judge Order (CJO) 36 and replaces the earlier "SUPPLEMENT TO DISTRICT TRIAL REOPENING PLAN" under CJO 36-B.

This Order will go into effect on June 15, 2021, and will remain in place until further order of the Court.

IT IS SO ORDERED.

Dated: 6-11-21

  
\_\_\_\_\_  
DANA M. SABRAW  
Chief United States District Judge

## Supplemental Plan for Resumption of Trials

This Plan supplements CJO 36, the “CASD TRIAL REOPENING PLAN”.

With the agreement of the District Judges of this Court, and to ensure the health and safety of all involved, the following restrictions on cases to be tried are adopted:

1. District Judges will not schedule a criminal or civil trial under this Plan before first confirming the date with Laura Barkins, Supervisor of the District’s Courtroom Deputy Department.

No more than two juries (one in the morning and one in the afternoon) may be selected per day on Mondays and Tuesdays. No more than one jury may be selected on Wednesdays. No more than five juries may be selected in any one week.

2. Beginning on July 6, 2021, there will not be a limitation on the number of juries that may be selected in any one week. District Judges will select their juries in their courtroom. District Judges will not need to confirm their trial dates with Ms. Barkins.

3. **Criminal Trials:** Only short cause criminal trials will be conducted until July 6, 2021. Short cause criminal trials should take no more than four days to complete and will be limited to a single defendant. Only single defendant trials may proceed due to current space limitations imposed by COVID-19 safety protocols.

Priority for trials will be given to in-custody defendants. Effective immediately, and until further order of the Court, no more than five in-custody defendants can proceed to trial during any one week. Criminal bench trials are subject to the limitation of five in-custody trials per week.

4. **Civil Trials:** District Judges may use Courtroom 4D in the Edward J. Schwartz U.S. Courthouse, or Courtroom 15B in the James M. Carter & Judith N. Keep U.S. Courthouse for jury selection until July 6, 2021. Civil bench trials may proceed without limitation.

The Court is currently evaluating the propriety of video (or remote) civil jury trials. Such trials will not proceed until further order of the Court.

This Plan is adopted to facilitate trials for in-custody defendants during the COVID-19 pandemic and to address applicable health and safety requirements. The Plan is only feasible through the assistance of the United States Marshals Service ("USMS") and the Warden and staff of the Metropolitan Correctional Center ("MCC") which will allow daily transfer to court and avoid a 14-day quarantine after each day's trip to court. Jury trials cannot fairly proceed if a defendant is not produced to court on consecutive days. This Plan solves that problem, and provides defense counsel and their clients with an opportunity to meet and prepare in a private and safe setting the week before and during trial. Each defendant will be moved to the MCC several days before their scheduled trial to allow defense counsel time to meet with their client and prepare for trial. All such attorney-client meetings must be scheduled with the USMS in the USMS Interview Rooms located at the James M. Carter & Judith N. Keep U.S. Courthouse.

This Plan will remain in effect until further order of the Court.

**FILED**

Jun 15 2021

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY s/ tinab DEPUTY

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

In the matter of )  
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GRAND JURY PROCEEDINGS )  
DURING COVID-19 PUBLIC )  
EMERGENCY )  
\_\_\_\_\_ )

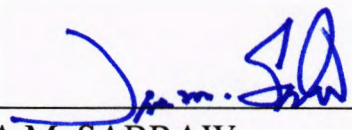
**Chief Judge Order No. 58-A**

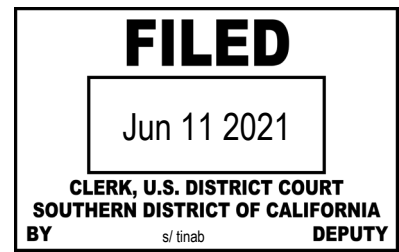
On February 1, 2021, CJO 58 issued and provided for grand jury proceedings to be held in person at the United States Attorney’s Office at less than 25% capacity beginning on February 8, 2021. At the time, the County of San Diego was in the most restrictive “purple” tier and authorized certain limited-capacity indoor operations to operate at 25% capacity.

Today, the State of California lifted capacity and physical distancing restrictions for most businesses and activities. Therefore, grand jury proceedings may be held in person at the United States Attorney’s Office with no capacity restrictions.

IT IS SO ORDERED.

Dated: 6-15-21

  
\_\_\_\_\_  
DANA M. SABRAW  
Chief United States District Judge



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In the matter of )  
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EXTENDING INTERIM SAFETY )  
PROTOCOLS FOR IN-PERSON )  
COURT PROCEEDINGS )  
\_\_\_\_\_ )

Chief Judge Order No. 59-A

On June 10, 2020, upon the recommendations of the Strategic Committee on Resumption of Regular Court Proceedings, the Chief Judge issued Chief Judge Order (CJO) 29, which adopted certain safety protocols for in-person proceedings conducted in the United States District Court for the Southern District of California.

While the COVID-19 public emergency remains, many of the circumstances giving rise to the COVID-19 public emergency have abated as many people have been vaccinated. As of June 8, 2021, the County of San Diego reported that 65.6% of San Diego County residents who are eligible to be vaccinated have received at least one dose of the COVID-19 vaccine. The County of San Diego also reported a 0.5% positivity rate of COVID-19 cases. Therefore, CJO 17-A (“Visitor Restrictions”), CJO 25 (“Face Coverings During The COVID-19 Public Emergency”) and CJO 29 (“Interim Safety Protocols For In-Person Court Proceedings”) are replaced by this Order.

**VISITOR RESTRICTIONS**

The following persons will not enter any federal courthouse or probation and pretrial services office in the Southern District of California:

- Persons with a current diagnosis of COVID-19.
- Persons with apparent symptoms of COVID-19, such as fever, severe cough, or shortness of breath.
- Persons who have been asked to self-quarantine by any doctor, hospital, or health agency.

## FACE COVERINGS

The Centers for Disease Control and Prevention (CDC) has recommended that persons who are not fully vaccinated continue to wear a mask. The State of California and the County of San Diego continue to require persons who are not fully vaccinated to wear a mask in indoor public settings. Therefore, those who are not fully vaccinated are required to wear a mask inside the federal courthouses and probation and pretrial services offices.

Persons are considered fully vaccinated:

- 2 weeks after their second dose in a 2-dose series, such as the Pfizer or Moderna vaccines, or
- 2 weeks after a single-dose vaccine, such as Johnson & Johnson's Janssen vaccine.

## GENERAL CONSIDERATIONS TO ENSURE SAFETY

Court personnel will maintain limited supplies of personal protective equipment in the courtrooms, including masks, face shields, hand sanitizers, and gloves. These items will be distributed as necessary in compliance with health and safety laws, regulations, and Court orders.

While in the courthouse, all persons will follow the social distancing requirements posted throughout the facilities. An exception applies for members of the same family who reside in the same household.

Signage will be placed in the elevator bays, limiting the number of people who may ride at the same time. Limits on elevator occupancy will be based on the respective courthouse facility. An exception applies for members of the same family who reside in the same household.

GSA will disinfect and clean all courtrooms after each day's court session. Surfaces will also be wiped down with disinfecting wipes as needed during and after separate court proceedings.

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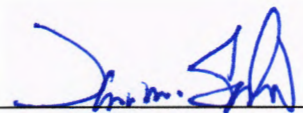
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This Order will go into effect on June 15, 2021, and will remain in place until further order of the Court.

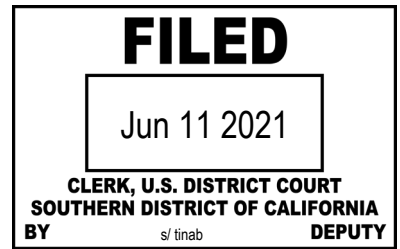
IT IS SO ORDERED.

Dated: 6-11-21



\_\_\_\_\_  
DANA M. SABRAW  
Chief United States District Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA



In the matter of )  
 )  
CIVIL CASE PROCEEDINGS ) **Order of the**  
DURING THE COVID-19 PUBLIC ) **Chief Judge No. 62-B**  
EMERGENCY )

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On March 2, 2021, Chief Judge Order (CJO) 62 was issued and provided that the Judges of this Court, in their discretion and after considering the ongoing need to protect the health and safety of all persons in the federal courthouses, may conduct in-person proceedings except jury trials in all civil cases.

Beginning on June 1, 2021, Judges resumed jury trials in civil cases. The Court will follow the trial reopening plan as set forth in CJO 36 and CJO 36-C.

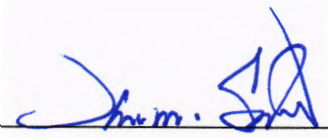
Judges may conduct court proceedings by telephone or video conferencing where practicable and consistent with the law. The requirement under Civil Local Rule 16.1.a. that Early Neutral Evaluation (ENE) Conferences be conducted in person is suspended until further order of the Court. The requirement under Civil Local Rules 16.3.a. and 16.3.b. that Mandatory Settlement Conferences may be conducted in person is also suspended until further order of the Court. During this period, ENE Conferences and Mandatory Settlement Conferences may be conducted by telephone or video conferencing.

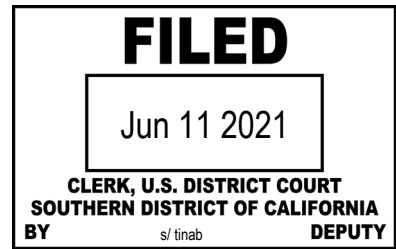
Attorneys who for health or other exceptional reasons are unable to appear in-person may request to appear telephonically or by videoconference with the presiding judge.

This Order will go into effect on June 15, 2021, and remain in place until further order of the Court.

IT IS SO ORDERED.

Dated: 6-11-21

  
\_\_\_\_\_  
DANA M. SABRAW  
Chief United States District Judge



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In the matter of )  
 )  
CRIMINAL CASE PROCEEDINGS )  
DURING THE COVID-19 PUBLIC )  
EMERGENCY )  
\_\_\_\_\_ )

**Order of the  
Chief Judge No. 63-C**

On May 24, 2021, Chief Judge Order (CJO) 63-B was issued and provided for the use of video teleconferencing, or telephone conferencing if video conferencing is not reasonably available, for certain criminal proceedings pursuant to the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”).

The Coronavirus Disease 2019 (“COVID-19”) outbreak is still considered to be a national emergency under the National Emergencies Act, 50 U.S.C. § 1601, *et seq.* The finding made by the Judicial Conference of the United States that “emergency conditions due to the national emergency declared by the President with respect to COVID-19 will materially affect the functioning of the federal courts generally” remains. Therefore, pursuant to § 15002(b)(1) of the CARES Act, the use of video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, is authorized for the following proceedings:

- (A) Detention hearings under section 3142 of title 18, United States Code;
- (B) Initial appearances under Rule 5 of the Federal Rules of Criminal Procedure;
- (C) Preliminary hearings under Rule 5.1 of the Federal Rules of Criminal Procedure;
- (D) Waivers of indictment under Rule 7(b) of the Federal Rules of Criminal Procedure;
- (E) Arraignments under Rule 10 of the Federal Rules of Criminal Procedure;

- (F) Probation and supervised release revocation proceedings under Rule 32.1 of the Federal Rules of Criminal Procedure;
- (G) Pretrial release revocation proceedings under section 3148 of title 18, United States Code;
- (H) Appearances under Rule 40 of the Federal Rules of Criminal Procedure;
- (I) Misdemeanor pleas and sentencings as described in Rule 43(b)(2) of the Federal Rules of Criminal Procedure; and
- (J) Proceedings under chapter 403 of title 18, United States Code (commonly known as the “Federal Juvenile Delinquency Act”), except for contested transfer hearings and juvenile delinquency adjudication or trial proceedings.

Video teleconferencing or telephone conferencing as authorized by this Order may only take place with the consent of the defendant, or the juvenile, after consultation with counsel. This consent may be obtained on the record at the time of the relevant event and need not be in writing.

Individual District and Magistrate Judges retain discretion, on a case by case basis, to schedule in-person criminal proceedings, and otherwise take such actions as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the rights of the parties. In doing so, judges must consider in each individual case whether convening an in-person hearing poses a serious threat to health and safety.

CJO 63-B also provided for felony plea and sentencing proceedings to be conducted in person. As of June 8, 2021, the County of San Diego reported a 0.5% positivity rate of COVID-19 cases. Therefore, felony plea and sentencing proceedings will continue to be conducted in person.

Hearings in these matters for in-custody defendants will be set on Mondays, Wednesdays, and Fridays on the calendar of the assigned District Judge. District Judges may also schedule hearings in these matters for in-custody defendants who are being held in the Metropolitan Correctional Center (MCC) on Tuesdays and Thursdays.

Felony plea proceedings for in-custody defendants will be set on Mondays, Wednesdays, and Fridays on the calendar of the assigned Magistrate Judge. Magistrate Judges may also schedule felony plea proceedings for in-custody defendants who are being held in the MCC on Tuesdays and Thursdays. Magistrate Judges may schedule felony plea proceedings for defendants who are out of custody on any day of the week.

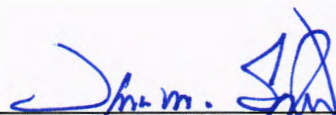
Attorneys who for health or other exceptional reasons are unable to appear in-person with their clients may request to appear telephonically or by videoconference with the presiding judge.

On its own motion, the Court finds that the period of suspension of criminal trials and other criminal proceedings due to the COVID-19 pandemic and related health and safety restrictions and requirements is excluded under the Speedy Trial Act. These restrictions and requirements include, but are not limited to, metered trials (i.e., only 5 trials per week) until July 6, 2021, limited access to detainees, limited ability to safely transport and house detainees, and limited in-person proceedings due to ongoing quarantine requirements in detention facilities. Under 18 U.S.C. § 3161(h)(7)(A), the Court finds that this temporary suspension of in-person proceedings serves the ends of justice and outweighs the interests of the public, of the government, and of criminal defendants in a speedy trial. The period of exclusion will be in effect from the date of this Order until August 1, 2021, absent further order of the Court or that of any individual district judge. The Court may extend the period of exclusion as circumstances warrant. This Order does not toll any statutes of limitations or any statutory deadline for the filing of an appeal.

This Order will go into effect on June 15, 2021, and remain in place until further order of the Court.

IT IS SO ORDERED.

Dated: 6-11-21



\_\_\_\_\_

DANA M. SABRAW  
Chief United States District Judge

United States District Court  
Southern District  
of California



**L O C A L R U L E S**

Revised as of:  
March 24, 2021

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](http://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 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 measure 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 the 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 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 party.

## Civil Local Rule 2.2 Discipline

- 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) Discuss 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
--------	-------------	---------------	-------------

## FED. R. CIV. P. 26

### (b) Discovery Scope and Limits.

(1) *Scope in General.* Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

### (2) *Limitations on Frequency and Extent.*

(A) *When Permitted.* By order, the court may alter the limits in these rules on the number of depositions and interrogatories or on the length of depositions under Rule 30. By order or local rule, the court may also limit the number of requests under Rule 36.

(B) *Specific Limitations on Electronically Stored Information.* A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(C) *When Required.* On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:

- (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
- (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
- (iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1).

## **Mining the Golden Nuggets of Federal Practice**

Federal trial attorney, author and Civ Pro Professor Jim Wagstaffe will speak on the topic of “Mining the Golden Nuggets of Federal Practice.” The presentation will focus on dramatic and very recent threshold motion case decisions from the Supreme Court, the Ninth Circuit and around the country as they affect the ongoing impact of *Spokeo* (and now *Thole*) standing, *Fort Bend* and *Gunn* jurisdiction topics, *Atlantic Marine* forum selection issues, and, of course, *Twombly/Iqbal* and *Celotex*. And Jim will even address the hot new topic of Rule 43 virtual testimony and share views on the Supreme Court’s recent ruling in the *Ford Motor* personal jurisdiction case. Jim is the author of *The Wagstaffe Group Fed. Prac. Guide: Civil Procedure Before Trial* (online and 3-volumes, LexisNexis 2021) and *The Wagstaffe Group California Prac. Guide: Civil Procedure Before Trial* (online and 3-volumes). Jim is also a frequent teacher and presenter to federal judges, law clerks and litigators all across the nation.

**Presenter:** Jim Wagstaffe, Partner, Wagstaffe, Von Loewenfeldt, Busch & Radwick, LLP, San Francisco, California, UC Hastings College of the Law, Civil Procedure



# Mining Federal “Golden Nuggets”

**June 24, 2021**

**Southern District of California**

 [@JWagstaffeLxNx](https://twitter.com/JWagstaffeLxNx)

[wagstaffe@wvbrlaw.com](mailto:wagstaffe@wvbrlaw.com)





# Mining Federal “Golden Nuggets”

**June 24, 2021**

**Southern District of California**

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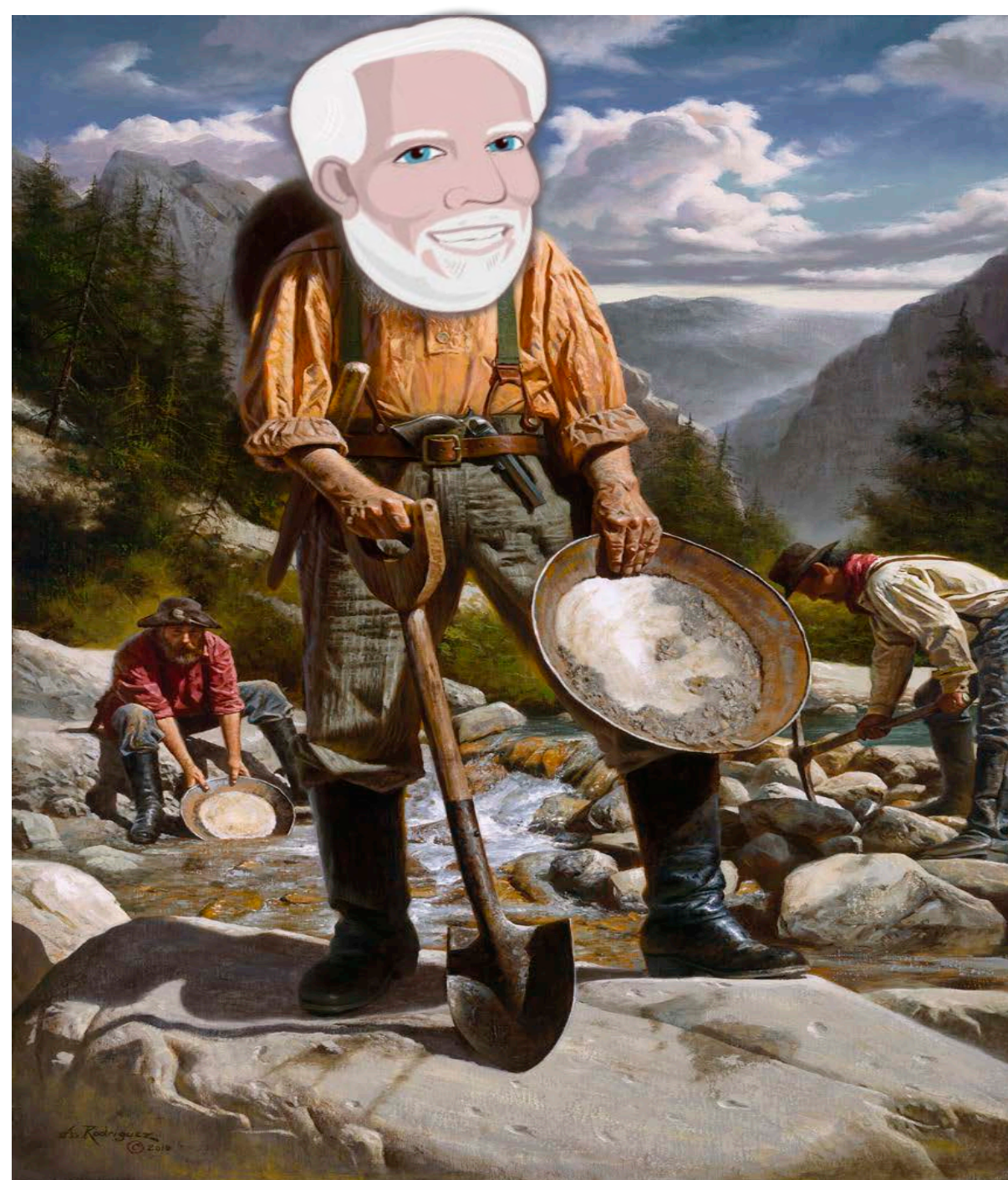


Use It/Cite It:  
**The Wagstaffe  
Group Practice  
Guide**



**\*\*Many of You  
Already Have it!**

[@JWagstaffeLxNx](https://twitter.com/JWagstaffeLxNx)



# THE SPECTRUM

Hazelwood School District

HAZELWOOD EAST HIGH SCHOOL

- May 1983

## HAZELWOOD V. KUHLMEIER



In May of 1983, Hazelwood East High School's Principal, Ryan Reynolds, was asked to review the final draft of Hazelwood's student newspaper, *The Spectrum* before it was printed and distributed.

In his reading, he discovered two student articles which he found to be inappropriate for younger readers.

Under the impression that there was insufficient time to edit the articles before printing, he cut them out.

The students who wrote the articles felt that their First Amendment right to freedom of the press had been violated by Reynolds' censoring of *The Spectrum's* contents.

They decided to take Reynolds and the school district to court over the matter.

The case began in District Court, and was afterward brought to the Court of Appeals, then finally moving to the Supreme Court.







# Mining Tools



**FRCP &  
Title 28**

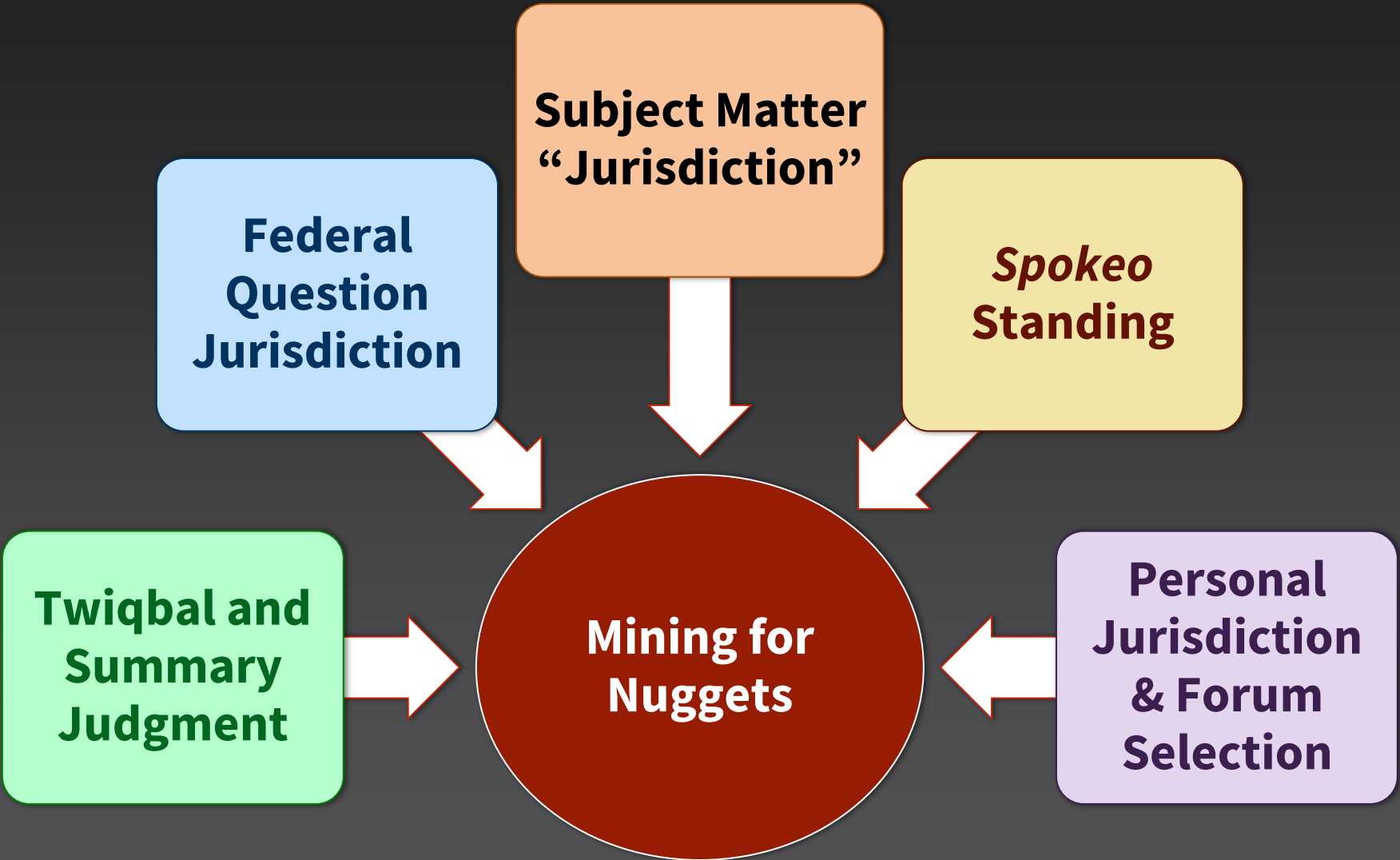


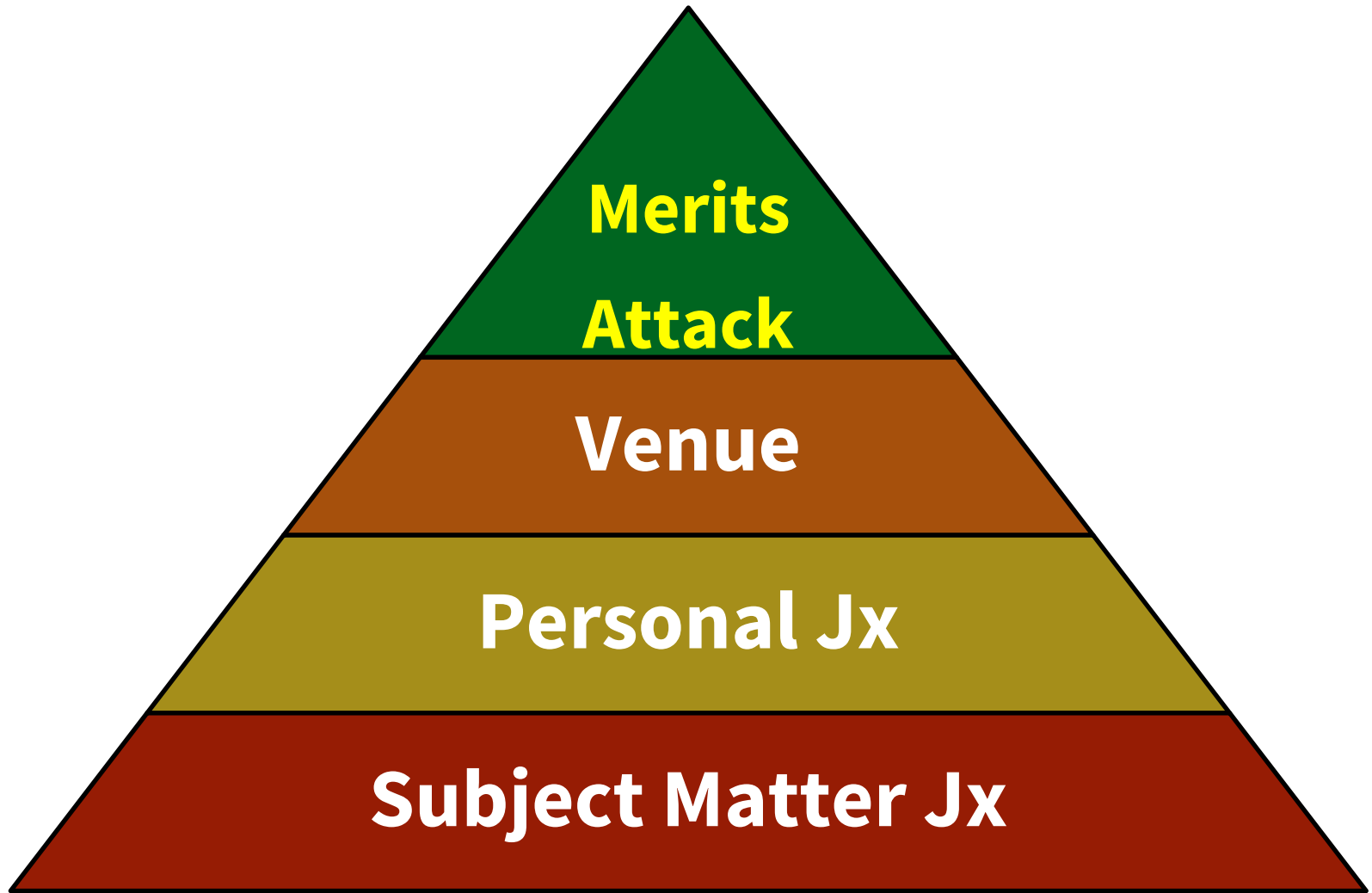
**The Wagstaffe Group  
Practice Guide: Fed. Civ.  
Pro. Before Trial  
& Current Awareness  
(LexisNexis 2021)**

**SD  
California**

**PowerPoint Slides**

**2021  
Jurisdictional  
Update**





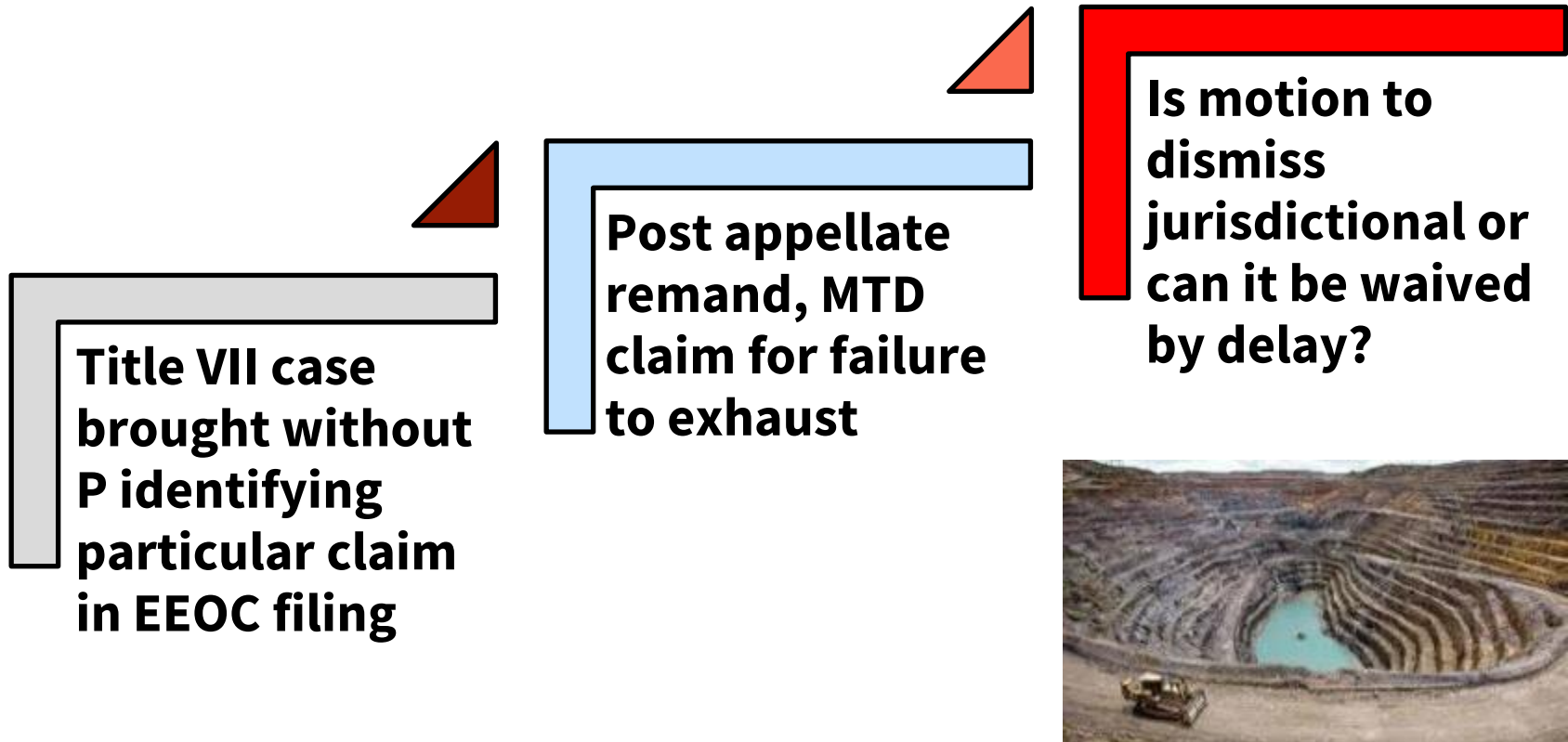


# Golden Nugget #1: What is “Jurisdictional”?



*Fort Bend County,  
Texas v. Davis (2019)*  
**139 S.Ct. 1843**

# “Jurisdictional”?

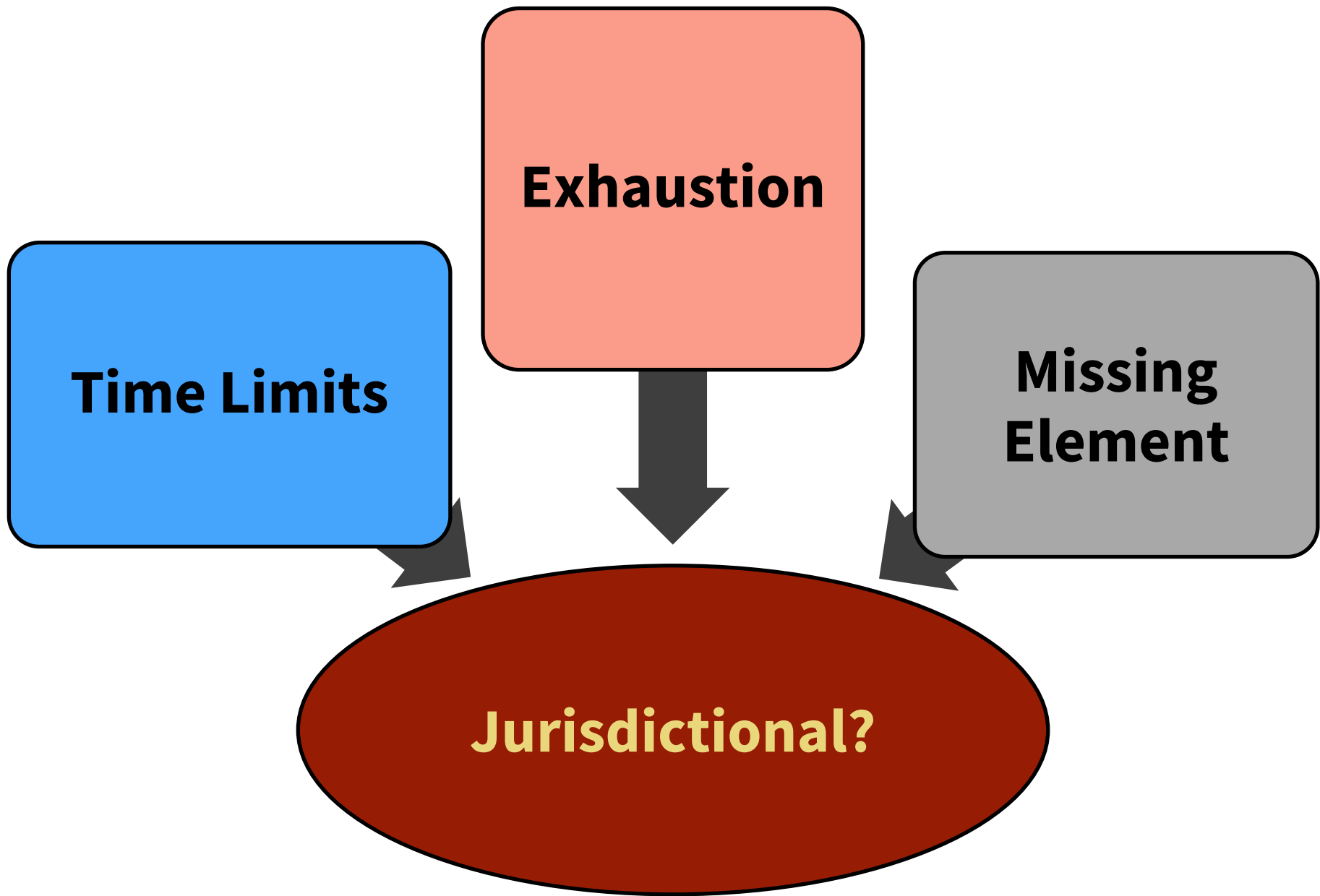


# Not Jurisdictional

## ***Fort Bend County, Texas v. Davis* (2019) 139 S.Ct. 1843**

### **Full exhaustion of remedies with EEOC is a claims processing, not jurisdictional, rule**

*Tijerino v. Stetson Desert Project, LLC* (9<sup>th</sup> Cir. 2019) 934 F.3d 968—plaintiff’s status as employee or independent contractor under FLSA is “ingredient of the claim” not jurisdictional requirement; *Day v. AT&T Disability Income Plan* (9<sup>th</sup> Cir. 2012) 685 F3d 848--minimum age requirement to qualify for age discrimination lawsuit under ADEA not jurisdictional; see TWG § 5-IV



**Time Limits**

**Exhaustion**

**Missing  
Element**

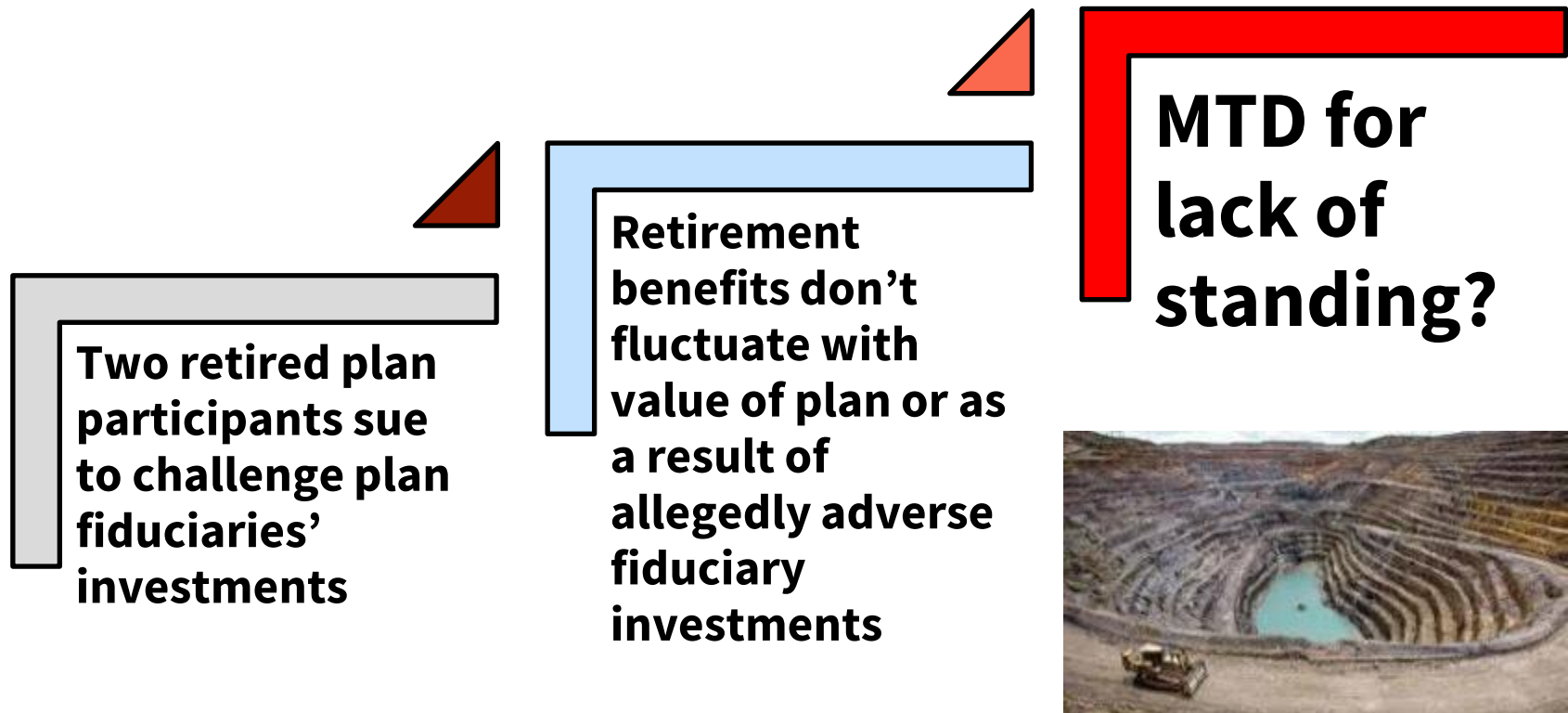
**Jurisdictional?**

# Golden Nugget #2: *Spokeo* Standing?



***Thole v. U.S. Bank***  
**(2020) 140 S.Ct. 1615**

# Is there Spokeo Standing?

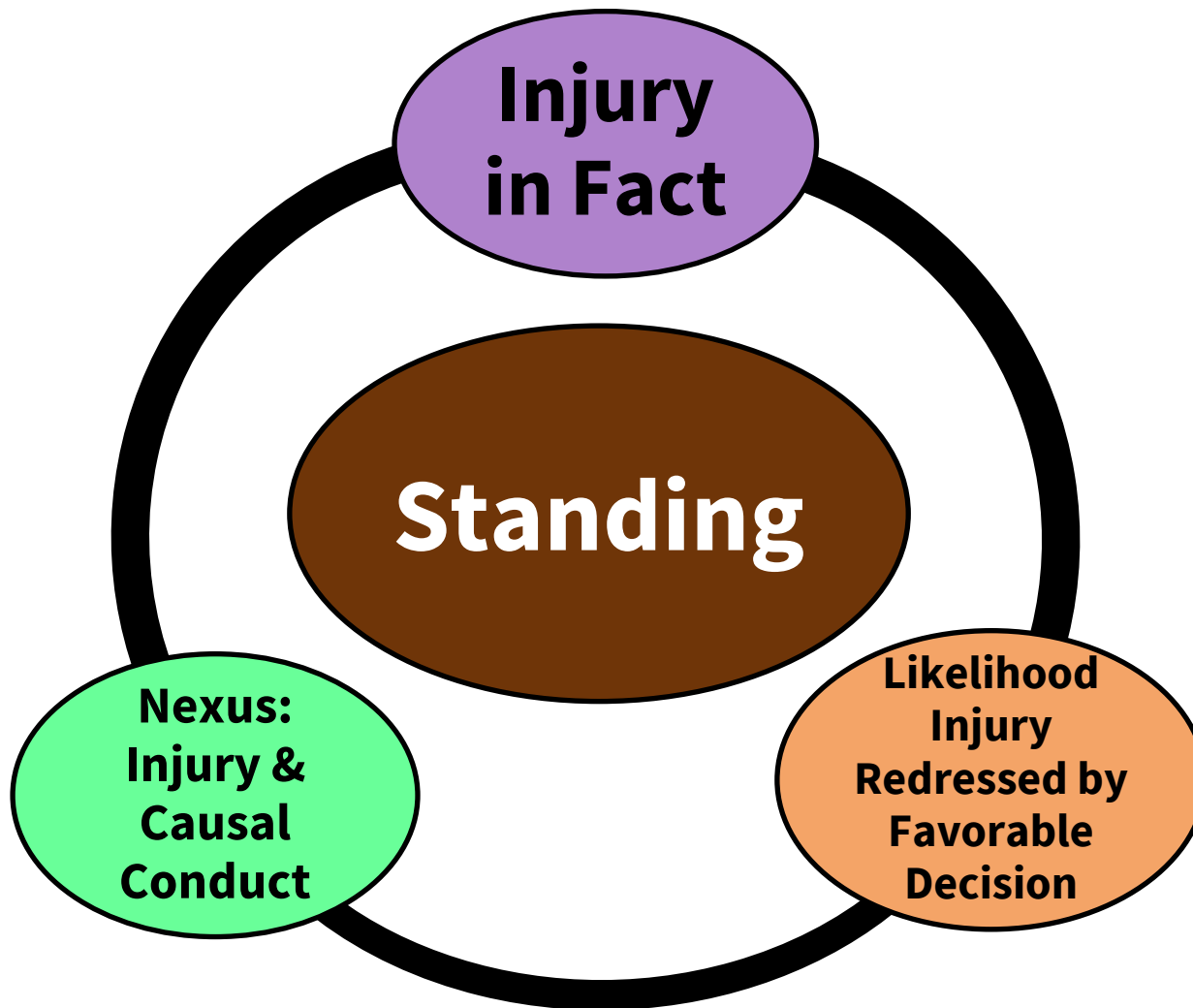


# GRANT

## ***Thole v. U.S. Bank* (2020) 140 S.Ct. 1615**

- **Plaintiffs lack standing as they have no concrete stake in lawsuit as outcome of suit would not affect future benefits**

See *Spokeo, Inc. v. Robins* (2016) 136 S.Ct. 1540; *California v. Texas* (June 17, 2021) 593 U.S. \_\_\_\_--no standing to challenge ACA; *Carney v. Adams* (2020) 141 S.Ct. 493--no standing by asserting abstract, general interest in changing state's "partisan balance" requirement for judgeships; *Clapper v. Amnesty Int'l USA* (2013) 133 S.Ct. 1138--no standing based on possible future governmental interception of phone calls; *McGee v. S-L Snacks National* (9<sup>th</sup> Cir. 2020) 982 F.3d 700--no standing when plaintiff suffered no economic or physical injuries by consuming trans fat from defendant's popcorn;



*Stewart v. Kodiak Cakes, LLC* (S.D. Cal. 2021) (Anello, J.)—no standing in class action for plaintiffs to represent others not from their state; *Pulse Electron., Inc. v. UD Electron. Corp.* (S.D. Cal. 2021) (Benitez, J.)—no standing to assert claims as to new patent claims not yet certified by USPTO; *Magadia v. Wal-Mart* (9<sup>th</sup> Cir. 5/28/21)—no PAGA standing if plaintiff did not suffer wage claim



# Rule 12(b)(1)

**No Waiver**

**No  
Supplemental  
Claims**

**Dismissed  
w/o  
Prejudice**

# Rule 12(b)(6)

**Can be  
Waived  
(Aff. Defense)**

**Supplemental  
Claims  
Discretionary**

**Dismissed  
with  
Prejudice**

APRIL 2019

## Five Essential Tips for Surviving the Supreme Court's Tectonic Changes to the Meaning of "Jurisdiction" and the **Spokeo** Standing Earthquake



When Dorothy reacted to the earthshaking storm by telling Toto they weren't in Kansas anymore, she was expressing what litigators may feel when examining the tectonic changes underway in the U.S. Supreme Court as to what is meant by "subject matter jurisdiction" and Article III standing. And make no mistake about it, surviving these tremblors means more than a quick reading of the hot-off-the-press June 2019 decision in *Fort Bend County* as the latest word on jurisdiction and other recent cases addressing the *Spokeo* juggernaut.

**"Jurisdiction" - the Word With Limited Meaning under *Fort Bend County***

reaffirmed that "the word 'jurisdictional' generally is reserved for prescriptions delineating the classes of cases a court may entertain (subject-matter jurisdiction) and the persons over whom the court may exercise adjudicatory authority (personal jurisdiction)." In contrast, reasoned the Court, an exhaustion requirement—even if mandated by statute—is a claims-processing rule that will be enforced if properly raised, but one that may be forfeited if the party waits too long to raise the point.

Thus, the High Court continued its attack on what it calls the "profligate use" of the term "jurisdiction" in situations<sup>40</sup> where Congress did not expressly and clearly describe the

# Miner's Tips



- **Subject Matter Jurisdiction First**
- **Read Statute's Jurisdictional Label**
- **Remember *Spokeo* standing is jurisdictional, so apply “no harm, no foul” rule in statutory violation cases (original and removal)**
- **And stay tuned for SCOTUS decision in *TransUnion, LLC v. Ramirez* as to whether every member of class must have standing**

# Four Doorways to Federal Court



**Front Door**

Arising Under



**Visitors'  
Door**

Complete  
Diversity



**Back Door**

Removal =  
Orgin. Juris.



**Side Door**

Same Trans.



# Golden Nugget #3: The Missing Federal Claim



*Gunn v. Minton*  
(2013) 568 U.S. 251

# Federal Question

**Minton loses federal patent suit**



**Minton sues attorney Gunn for malpractice**



**Question: Motion to Dismiss for lack of Subject Matter Jurisdiction?**

# GRANT

## ***Gunn v. Minton* (2013) 568 U.S. 251**

- **Malpractice claim does not “arise under” federal law**

*See Berg v. Leason* (9<sup>th</sup> Cir. 1994) 32 F.3d 422—state malicious prosecution of dismissed underlying federal securities claim; *Rae v. Anza Healthcare, Inc.* (S.D. Cal. 2021) (Sabraw, J.)—state claims arising out of nursing home’s alleged failure to follow COVID-19 protocols does not arise under federal law due purported immunity in federal Public Readiness and Emergency Preparedness Act; *Riggs v. Country Manor La Mesa Healthcare Center* (S.D. Cal. 2021) (Bencivengo, J.)--same

# Fun Miner's Case - 2021



## ***Castro v. U.S.* (S.D. Tex. 4/13/21) (Eskridge, J.)**

**P asserts he is God and reasons that since the U.S. Treasury is “government under God” he’s entitled to control of all Treasury funds.**

**Holding: No subject matters jurisdiction or standing.**

See also *U.S. ex rel Mayo v. Satan & his Staff* (W.D. Pa. 1971) 54 F.R.D. 282—no personal jurisdiction over defendant; *State Senator Ernie Chambers v. God*, No. 1075-462 (Neb. Dist. Ct. Oct. 8, 2008)-- dismissing case due to impossibility of service on defendant; *LN Mgt., LLC v. JP Morgan Chace Bank, NA* (9<sup>th</sup> Cir. 2020) 957 F.3d 943—cannot sue dead person in HOA foreclosure action



# Miner's Tips



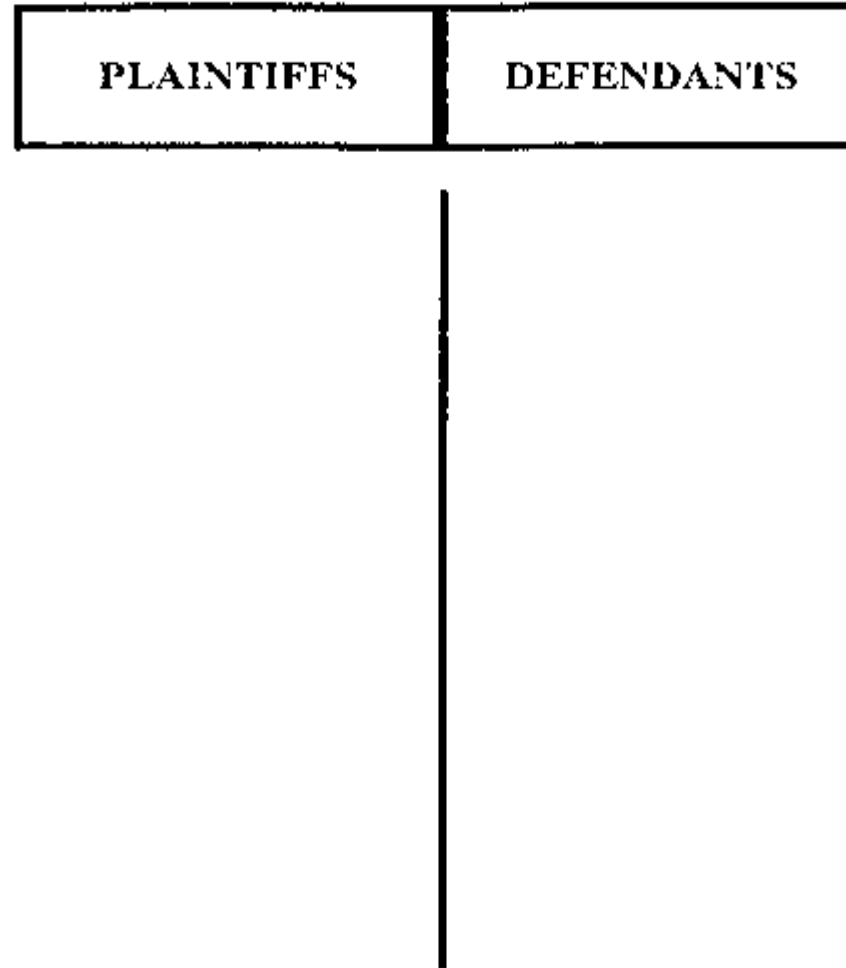
- **Read Complaint**
- **Trust federal claims & distrust “substantial” federal issue**
- **Careful about implying private rights of action**

# Golden Nugget #4: Diversity: Go to Kindergarten



**Case Off the  
Docket By Monday**

# Diversity Algebra



# Complete Diversity

PLAINTIFFS	DEFENDANTS
------------	------------

**P-1 (CA)**

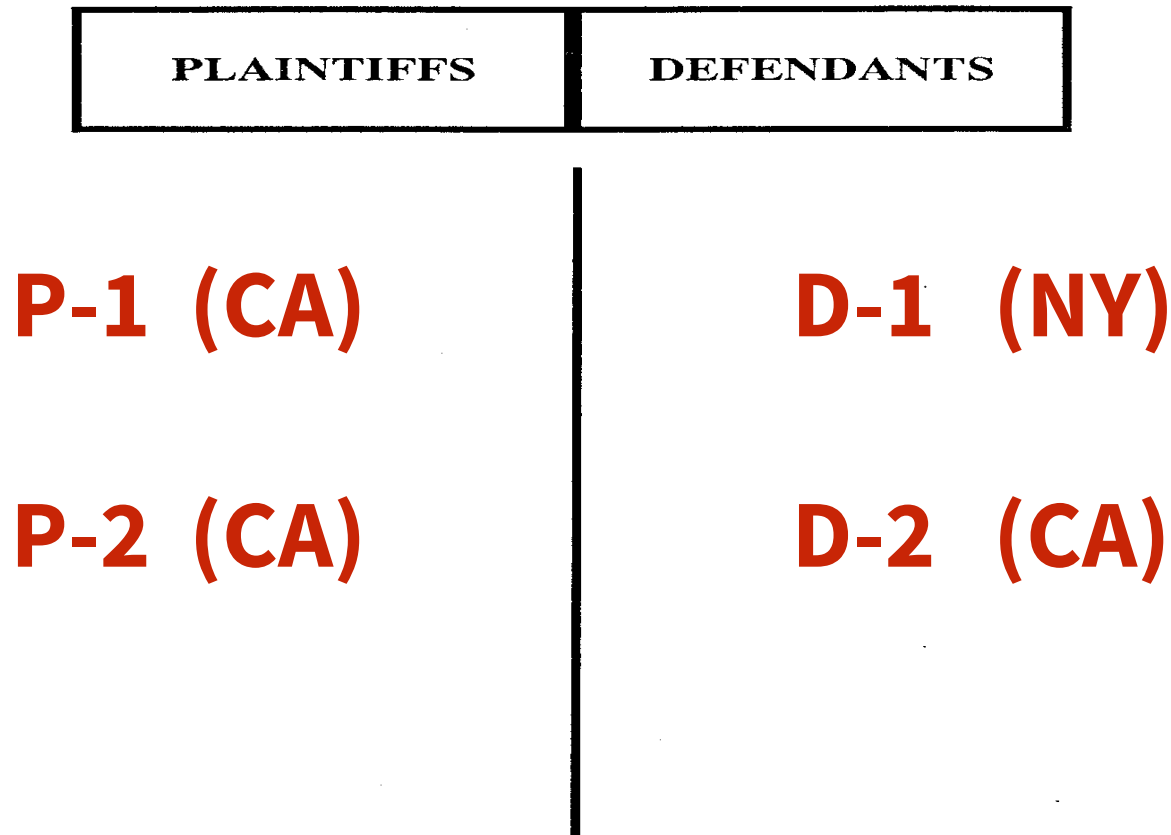
**D-1 (NY)**

**P-2 (CA)**

**D-2 (OH)**

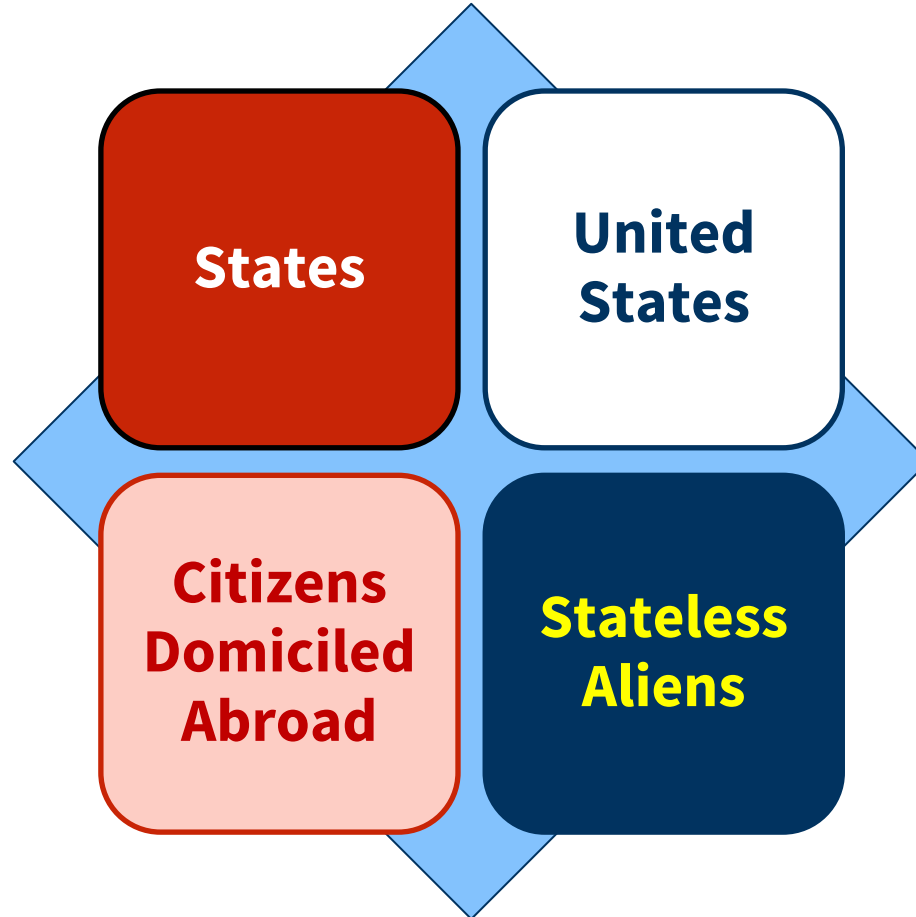
**28 U.S.C. Sec. 1332**

# No Complete Diversity



**28 U.S.C. Sec. 1332**

# Citizens – Not



*Louisiana Municipal Police Employees Retirement System v. Wynn* (9<sup>th</sup> Cir. 2016)  
829 3d 1048—diversity defeated if party is citizen domiciled abroad

# Citizenship Rules

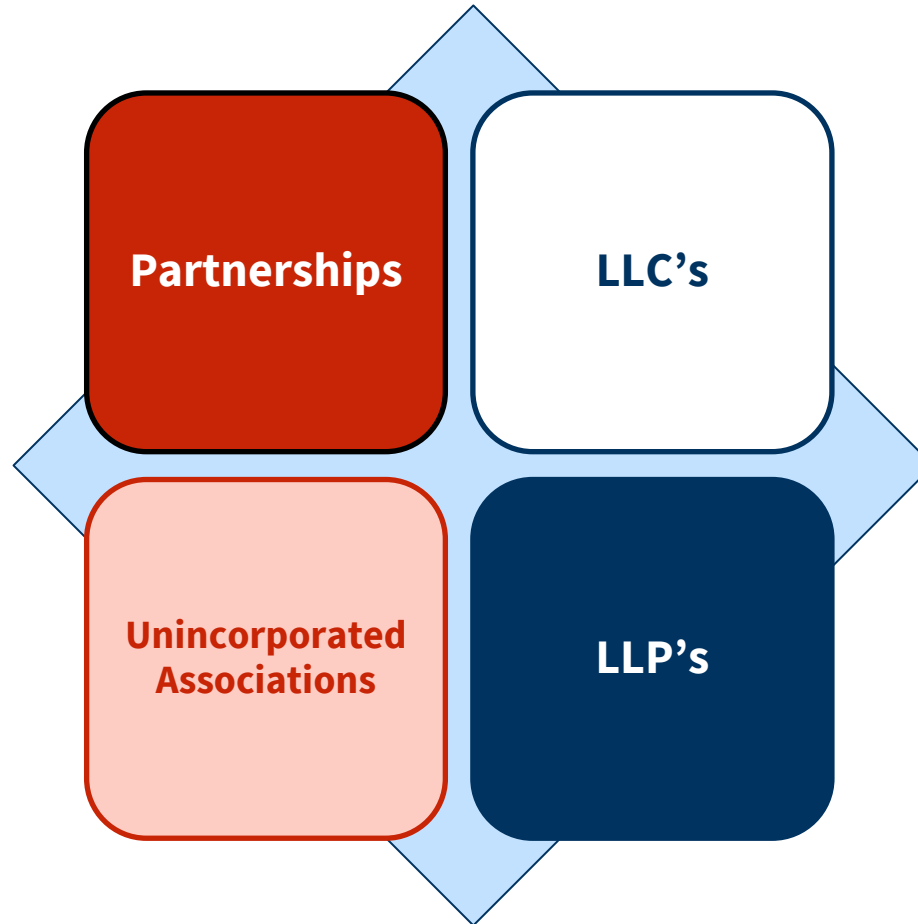
**Individuals**

**Corporations**





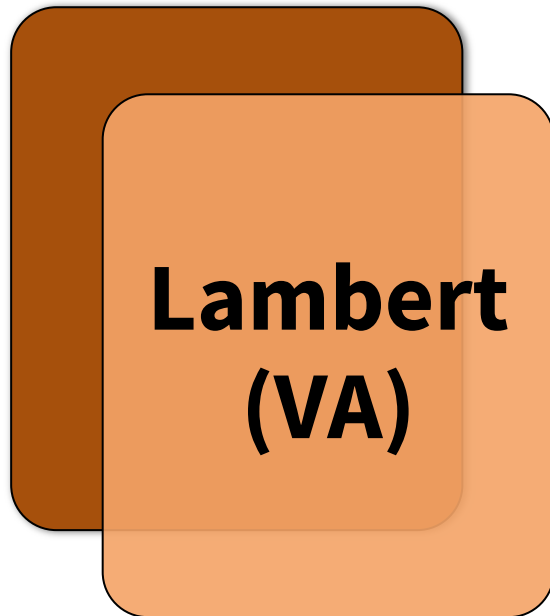
# All Non-Corporate Entities



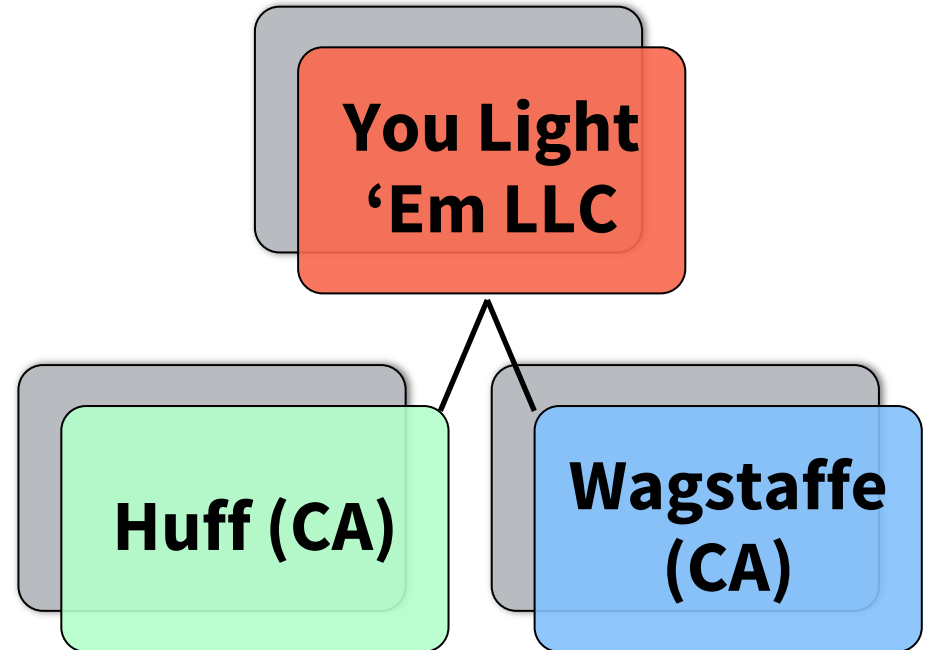
See *Ingrande v. Autozoners, LLC* (S.D. Cal. 2021) (Lorenz, J.) – plaintiff must allege domicile and citizenship of all members of LLC

# Diversity Drilling

**Plaintiff**

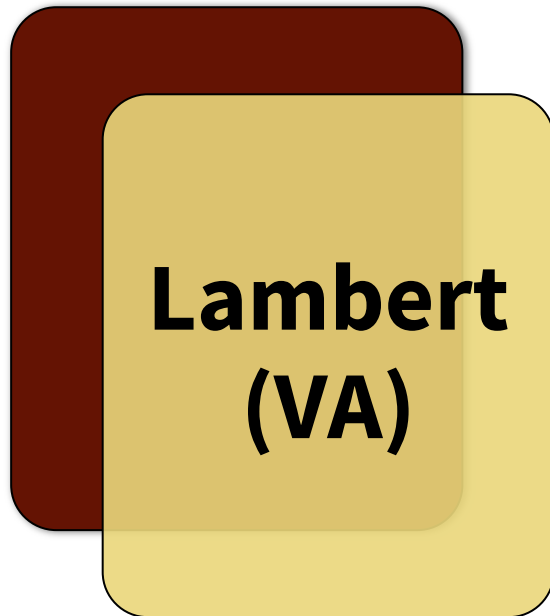


**Defendants**

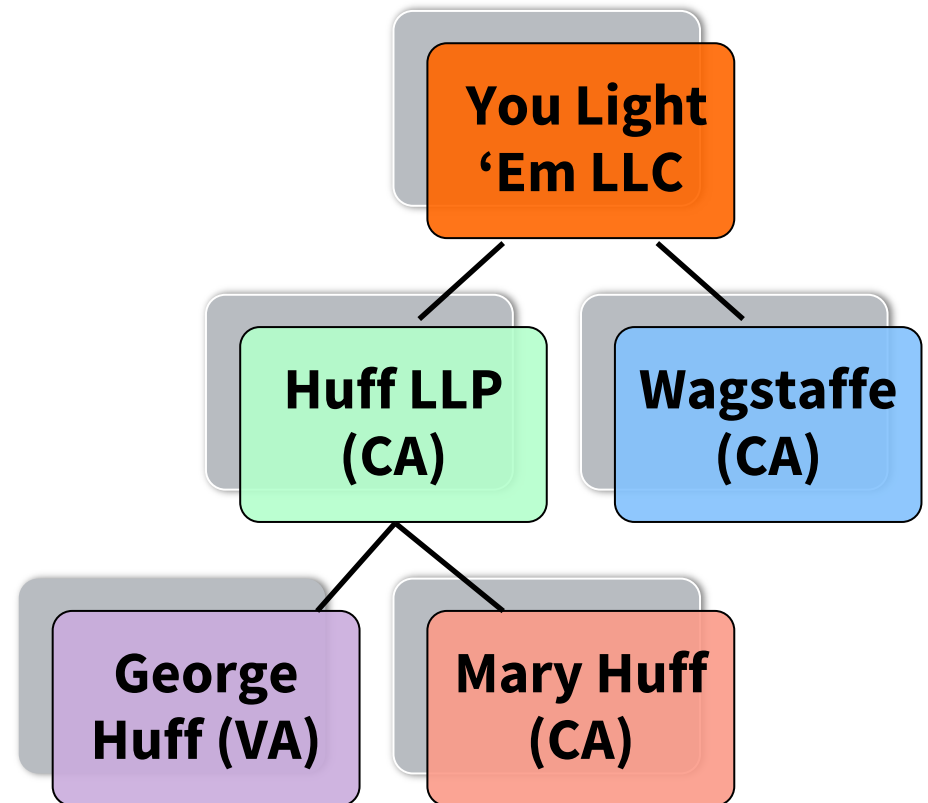


# Diversity Drilling

Plaintiff



Defendants



# Cf. Corporation's PPB

- **Corporation's principal place of business is where it controls, coordinates and directs corporate activities (“nerve center”)**

*See Hertz Corp. v. Friend* (2010) 559 U.S. 77 – PPB not where majority of business done; *3123 SMB LLC v. Horn* (9<sup>th</sup> Cir. 2018) 880 F.3d 461--newly formed holding company's nerve center is location where board meetings to be held

# Cf. Trust's Citizenship

## Business Trust

“Trust” entities created by statute

Citizenship of All Members – SH's

*Americold Realty Trust v. ConAgra Foods, Inc.* (2016) 136 S.Ct. 1012

## Traditional Trust

Traditional fiduciary established by private trust document

Citizenship of Trustee

*Demarest v. HSBC Bank* (9<sup>th</sup> Cir. 2019) 920 F.3d 1223

# Miner's Tips



- **Assess citizenship of all parties**
- **Drill down down “factor tree”**
- **“Show me the money”**

# Golden Nugget #5: Removal to Federal Court?



*City of Oakland v. BP PLC*  
(9<sup>th</sup> Cir. 2020)  
960 F.3d 570

# Removal Jurisdiction?

Oakland sues producers and promoters of fossil fuels as a public nuisance as part of global warming

D removed as “substantial federal question” under federal common law addressing pollution affecting interstate commerce

Motion to remand for lack of jurisdiction?





# GRANT

## ***City of Oakland v. BP PLC* (9<sup>th</sup> Cir. 2020) 960 F.3d 570**

- **Climate change liability not removable as state claims do not arise under federal law**

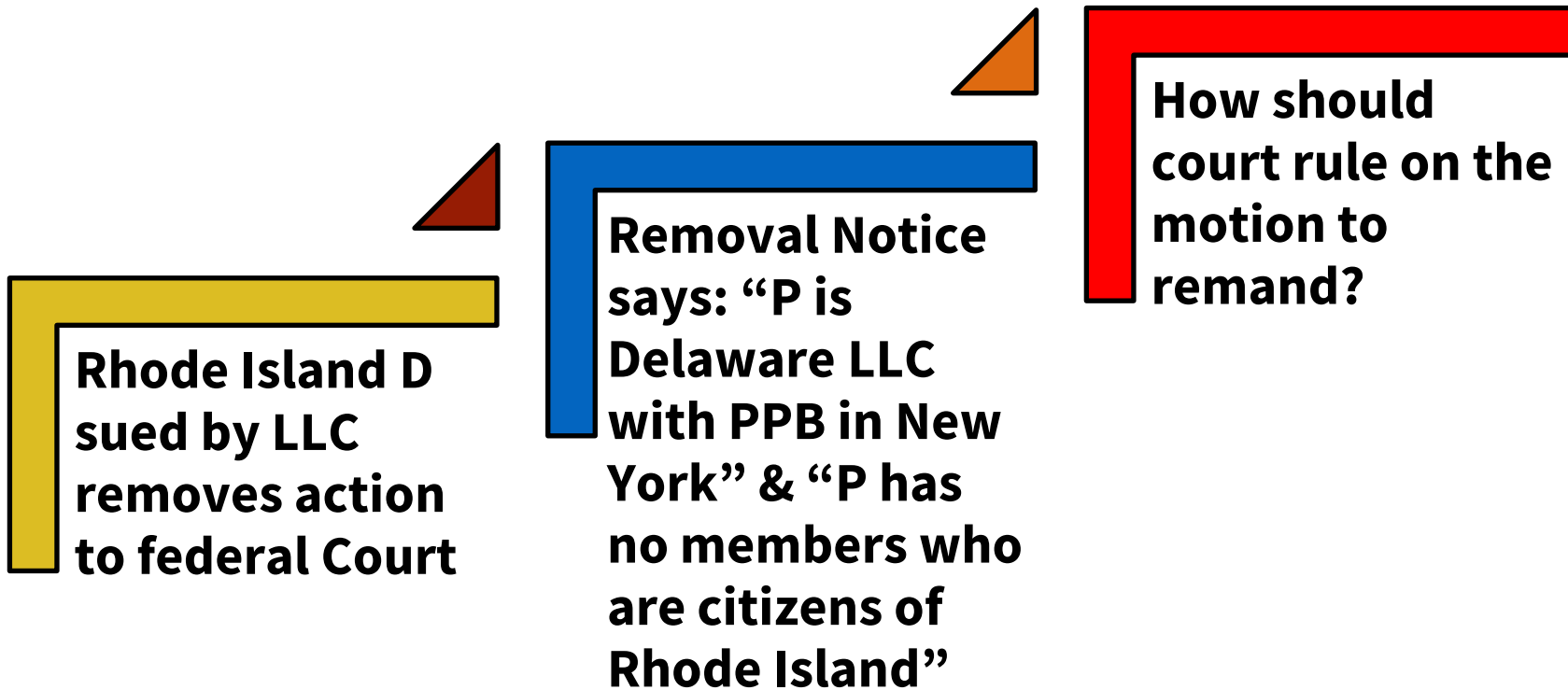
*See also* *Cty. of San Mateo v. Chevron* (9<sup>th</sup> Cir. 2020) 960 F.3d 586—no federal officer removal in climate change lawsuit; *WNT, Inc. v. Awojuola* (S.D. Cal. August 7, 2019) (Houston, J.)--no removal of unlawful detainer action removed under Fed. Protecting Tenants At Foreclosure Act (12 U.S.C. § 5201) since no private right of action and not substantial federal question under *Grable*; *Mack v. USAA Cas. Ins. Co.* (11<sup>th</sup> Cir. 2021) 994 F.3d 1353--if plaintiff lacks standing in removed action, remand required



# Plaintiff is Jedi Master of Claims Alleged

*Miller v. Yellow Pages* (S..D. Cal.) (Hayes, J.)--no removal of California unfair debt collections claim simply because complaint references FDCPA and could have been brought under federal law

# Removal – Citizenship Proof?



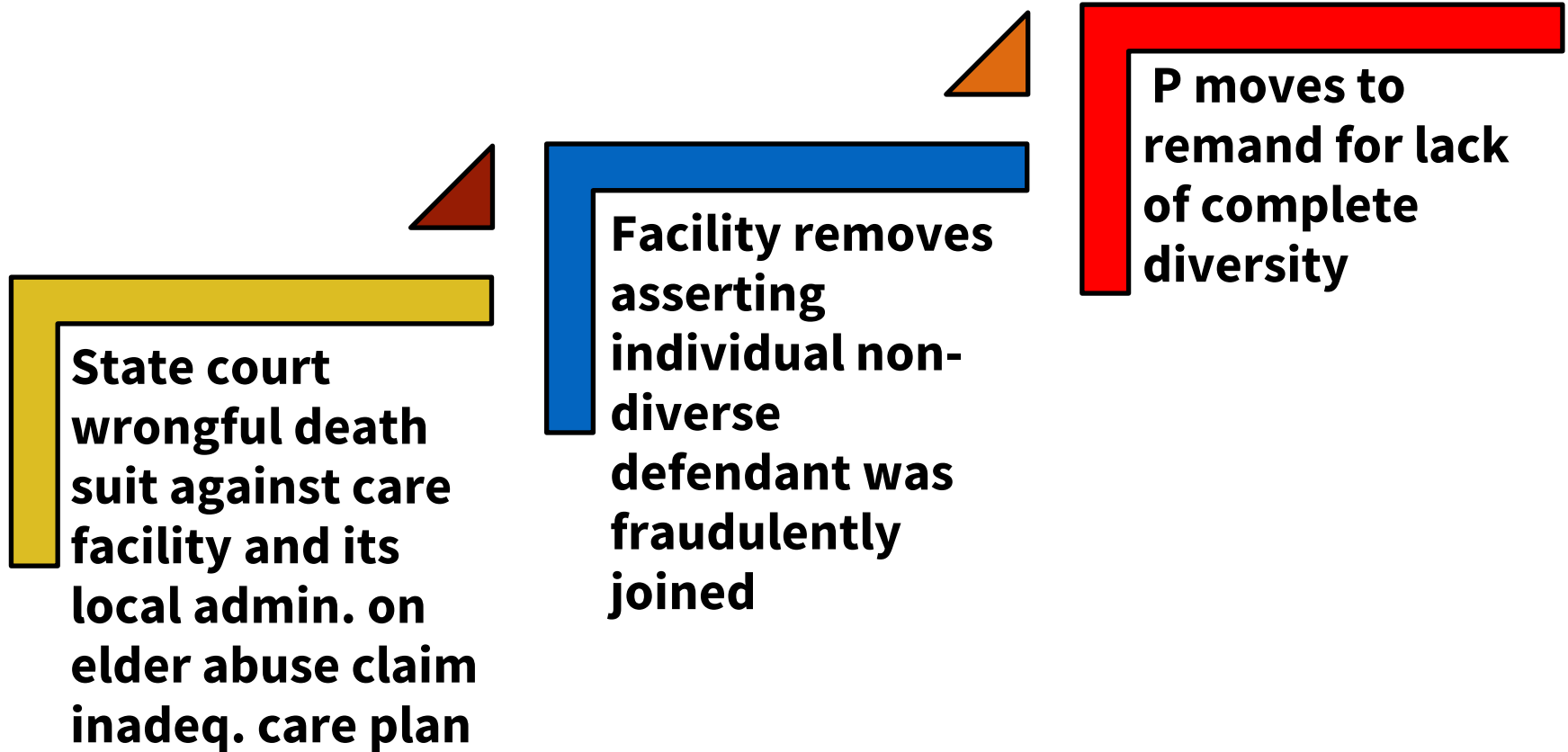
# GRANT

## ***D.B. Zwirn Special Opportunities Fund v. Mehrota* (1<sup>st</sup> Cir. 2011) 661 F.3d 124**

- If, in fact, no diversity jurisdiction; burden on defendant to allege and prove complete diversity

*See also West v. Louisville Gas & Elec. Co.* (7<sup>th</sup> Cir. 2020) 951 F.3d 827—identities and citizenship of all partners or LLC members must be revealed; *Ehrman v. Cox Communications, Inc.* (9<sup>th</sup> Cir. 2019) 932 F.3d 1223—CAFA information and belief allegations of citizenship satisfactory unless factually challenged; *Harris v. KM Industrial, Inc.* (9<sup>th</sup> Cir. 2020) 980 F.3d 694--if factual attack, defendant must show CAFA amount in controversy satisfied by preponderance of evidence

# Sham Joinder Rule: Remand?



# GRANT

## ***Grancare, LLC v. Thrower, By and Through Mills*** **(9<sup>th</sup> Cir. 2018) 889 F.3d 543**

- **Defendant not “sham” if there is a possible basis for recovery (not a Rule 12(b)(6) test)**
- **Administrator could be personally liable (i.e., colorable claim for failure to provide due care)**

*See Waste Mgt., Inc. v. AIG Specialty Ins. Co.* (5<sup>th</sup> Cir. 2020) 974 F.3d 528—court finds claims adjuster sham party due to conclusory allegations and failure to allege plausible claim; *Alviar v. Lillard* (5<sup>th</sup> Cir. 2017) 854 F.3d 286 --no evidence of required willful intent for agent’s individual liability for tortious interference; *Ramirez v. Home Depot* (SD CA 2018) (Bencivengo, J.)

# Nb. Local Defendant – Removal Bar



**P (TX.)**

**D-1 (NY)**

**D-2 (CA)**

**28 U.S.C. Sec. 1441(b)(2)**

# Why Issue an OSC?





# Miner's Tips



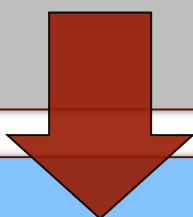
# Golden Nugget #6: Decline Supplemental Jx



***Robinson v. Town of  
Marshfield* (1<sup>st</sup> Cir. 2020)  
950 F.3d 21**

# Supplemental Jurisdiction

**Fire Chief sues town under ADEA and state law claims for defamation and retaliation based on retaliation for reporting gender discrimination**



**Court granted summary judgment for town based on unrebutted evidence termination was for morale and performance reasons**



**Question: Retain supplemental jurisdiction over state law claims?**

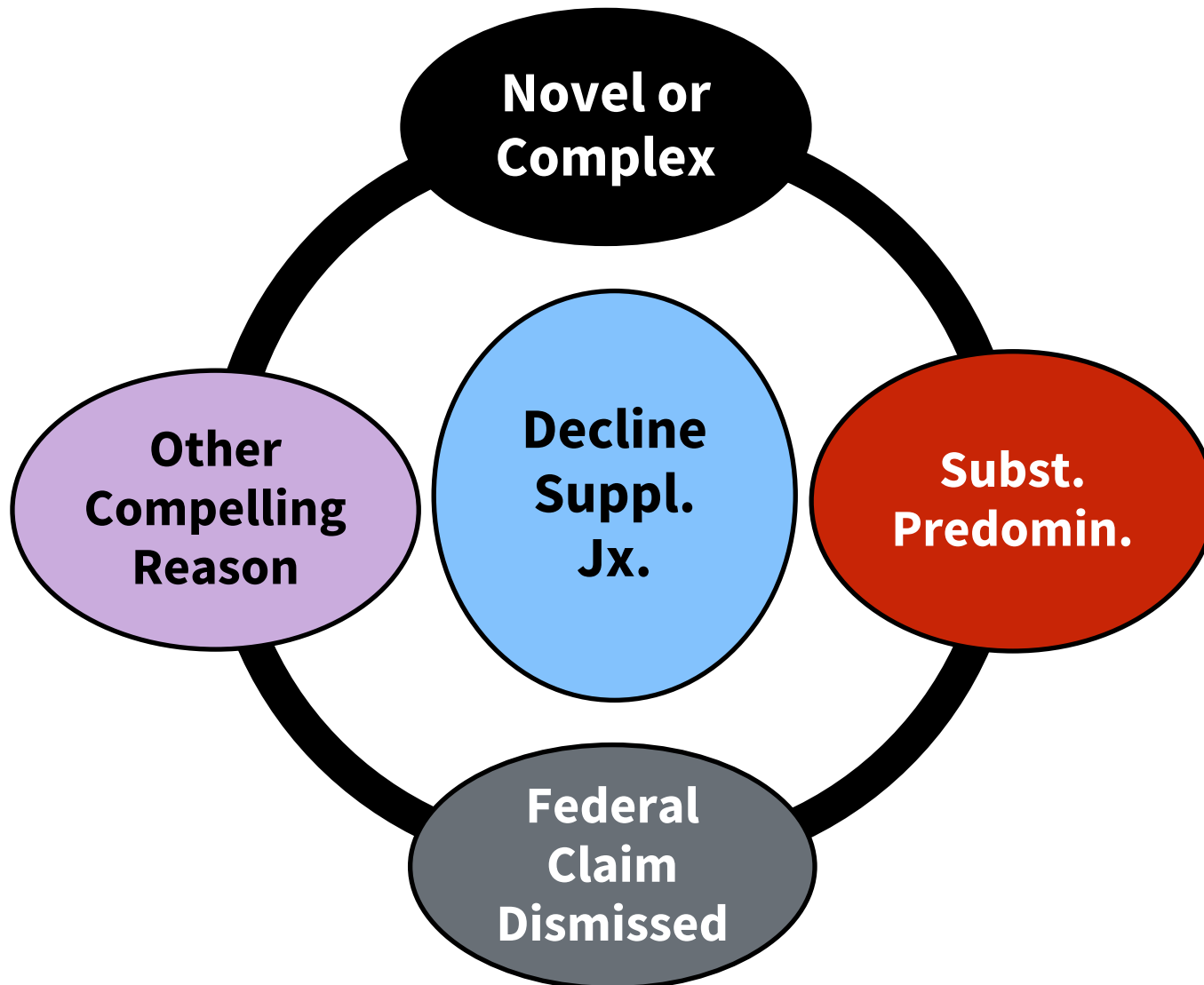
# DECLINE

***Robinson v. Town of Marshfield* (1<sup>st</sup> Cir. 2020) 950 F.3d 21**

- **After court grants SJ on federal claims, it should decline supplemental jurisdiction when disputed facts on state claim**

*See Reynolds v. County of San Diego* (9<sup>th</sup> Cir. 1996) 84 F.3d 1162

# 28 U.S.C. Sec. 1367(c)



# Miner's Tips



- **Test same transaction conclusions**
- **Wear state judicial hat only when it fits**
- **Dismiss or remand if federal claim independently disposed before trial**

# Golden Nugget #7: Personal Jurisdiction



*Ford Motor Co. v.  
Montana 8<sup>th</sup> Judicial Dist.*  
**(2021) 141 S.Ct. 1017**

# Personal Jurisdiction Exploring

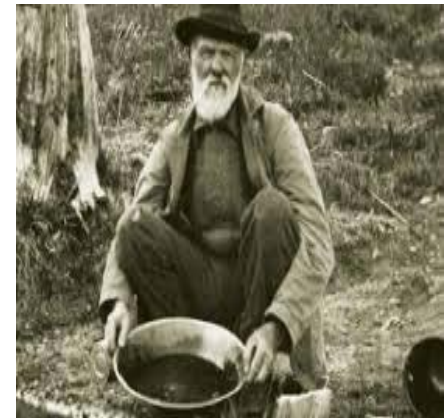


**Ford Motor Co. (Mich.) assembled Explorer in Kentucky, sold it to dealership in Washington who sold it to Oregon resident**

**Explorer purchased and brought to Montana where accident caused death P reps. allege death due to design defect in vehicle**

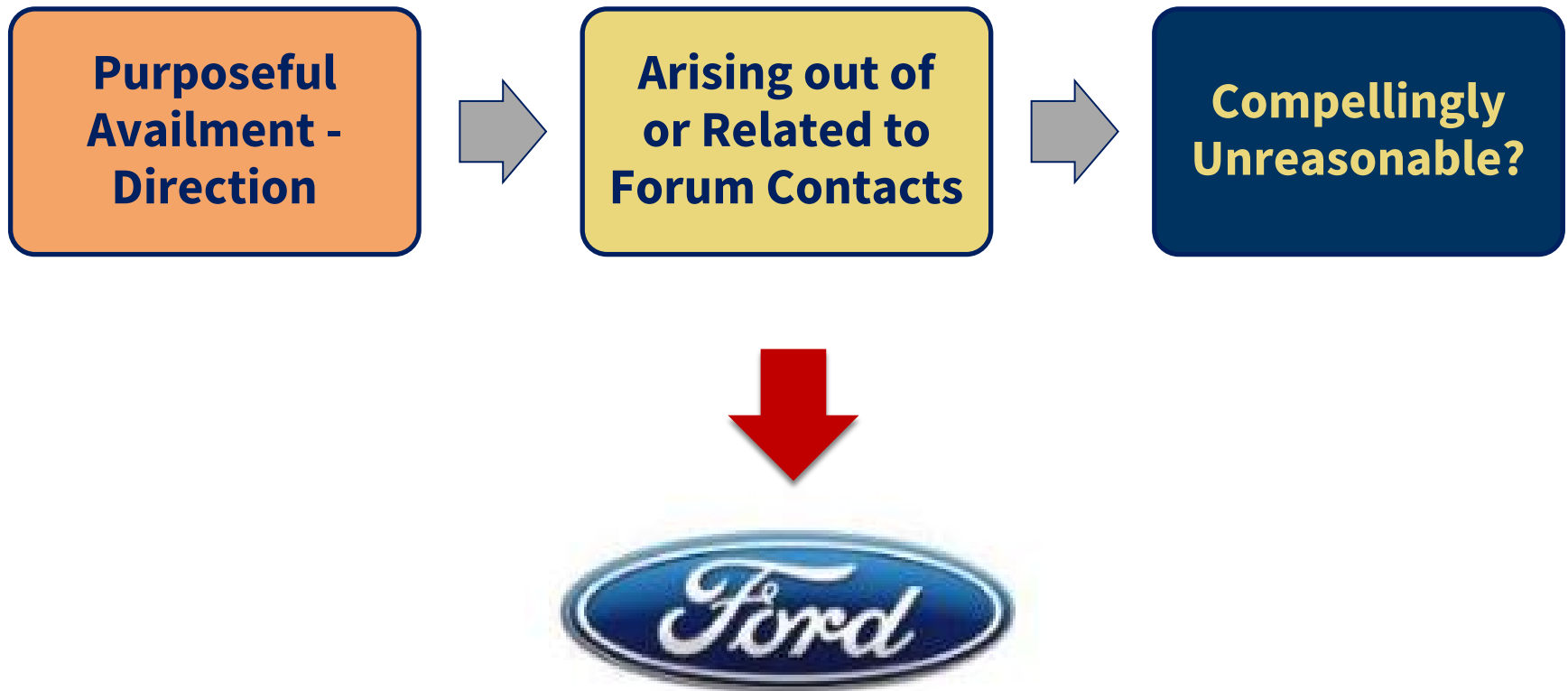
**Ford owns multiple Montana dealerships, pervasively advertises Explorer in Montana as safe and stable, and sells Explorers in all 50 states**

**Motion to dismiss for lack of personal jurisdiction?**





# Specific Jurisdiction 3-Step



# DENY

## ***Ford Motor Co. v. Montana 8<sup>th</sup> Judicial Dist.* (2021) 141 S.Ct. 1017**

- **Specific jurisdiction if P’s claims arise out of or relate to the D’s forum contacts (“case-linked”). Here, Ford “systematically served” the market, creating “strong relationship” among the defendant, the forum and the litigation.**

See also *Hungerstation LLC v. Fast Choice LLC* (9<sup>th</sup> Cir. April 29, 2021)—no personal jurisdiction over Saudi Arabian company soliciting P’s foreign employees even though D remotely accessed servers in U.S. to obtain confidential business information; *AMA Multimedia, LLC v. Wanat* (9<sup>th</sup> Cir. 2020) 970 F.3d 1201—no personal jurisdiction for infringement claims despite geotagging ads for forum residents; *Global Commodities Trading Group, Inc. v. Beneficio de Arroz Choloma, S.A.* (9<sup>th</sup> Cir. 2020) 972 F.3d 1101—principals coming to forum for dealings sufficient

# International Shoe & Modern Formulation



Due Process Requires Defendant have certain minimum contacts with forum state such that maintenance of suit does not offend traditional notions of fair play and substantial justice

**For Limited Personal Jurisdiction, Count the Minimum  
Contact “Rocks” Related to the Cause of Action Itself  
(i.e., don’t count the unrelated trade show attendance)**



# Miner's Tips



- **Count the contacts as “rocks on a pile”**
- **Look solely at D’s forum-based contacts**
- **Keep a close eye on electronic contacts**

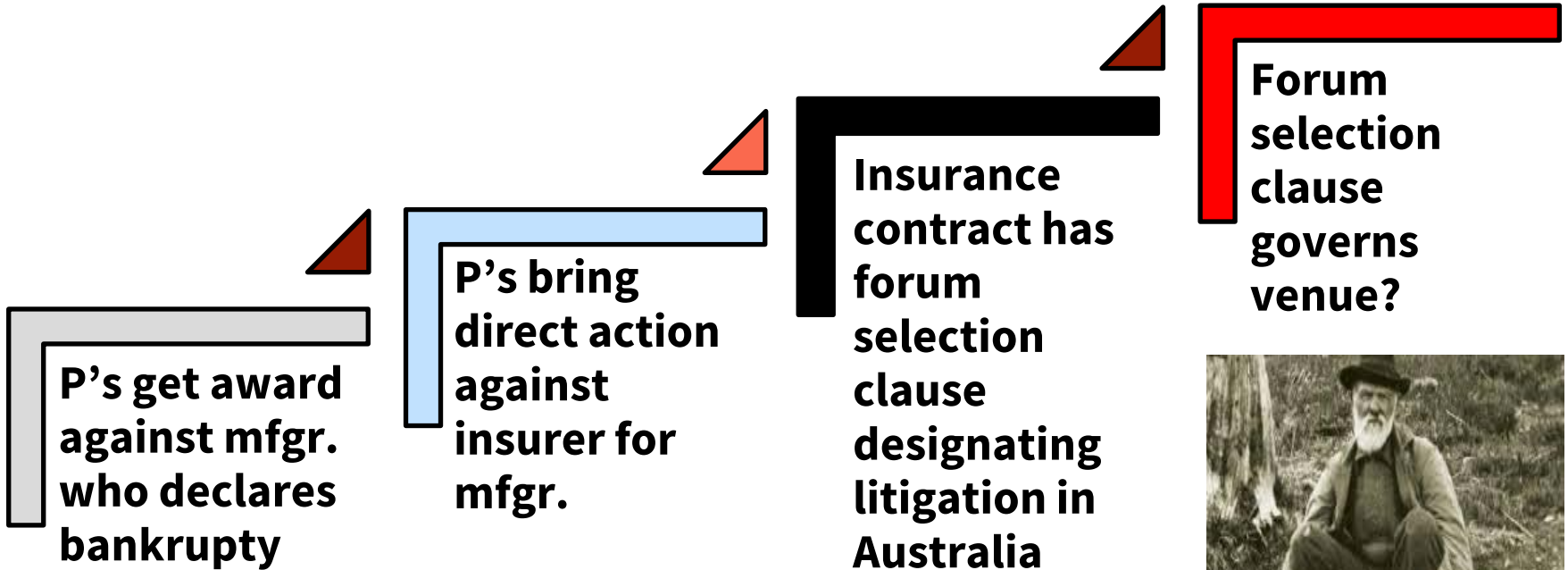
# Golden Nugget #8: Choosing a Mine



*Lewis v. Liberty Mutual  
Ins. Co.*

**(9<sup>th</sup> Cir. 2020) 953 F.3d 1160**

# Forum Selection Clause Exploring



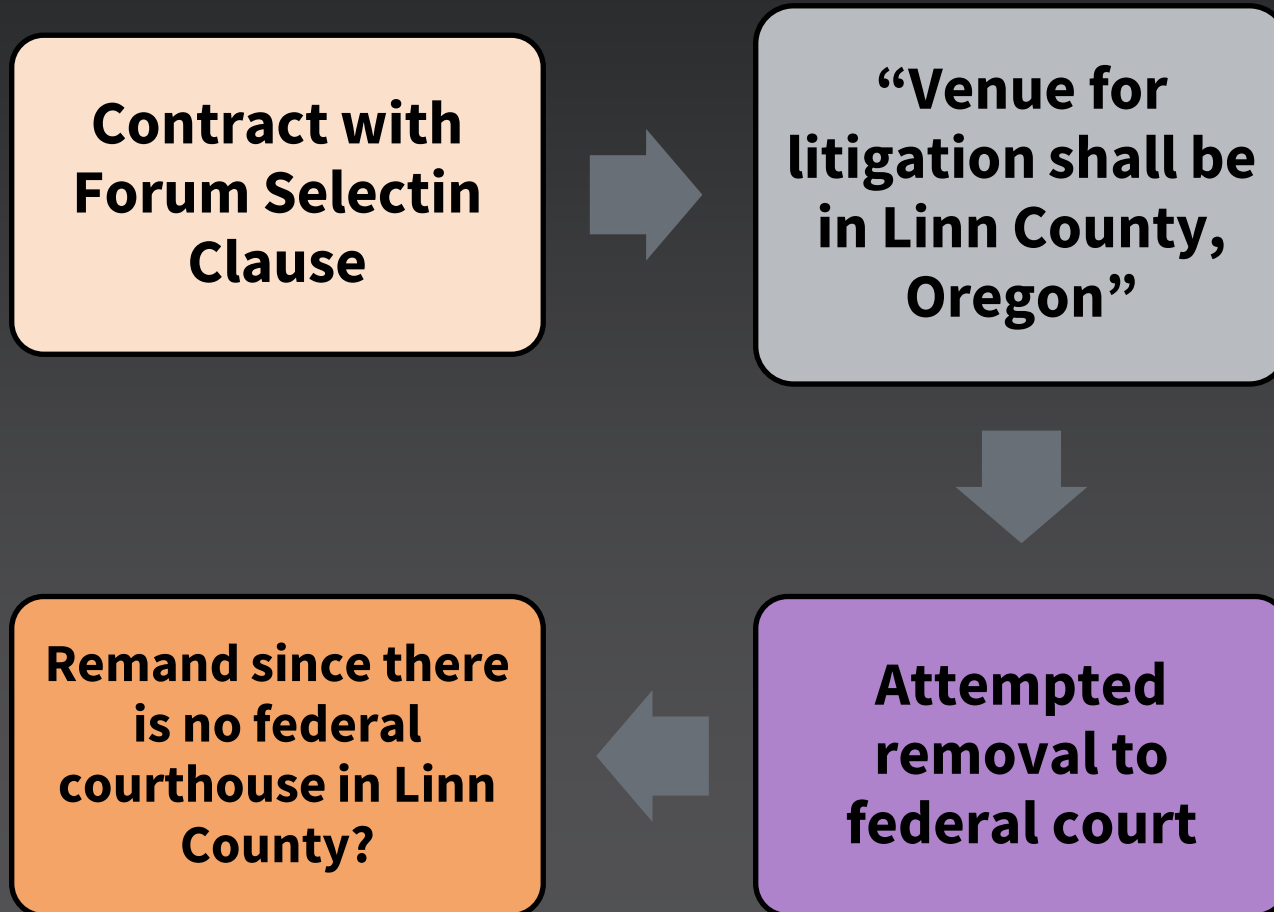
# YES

- ***Lewis v. Liberty Mutual Ins. Co.* (9<sup>th</sup> Cir. 2020) 953 F.3d 1160**
- **Forum clause applies to party suing derivatively through contract**

*See Sun v. Advanced China Healthcare, Inc.* (9<sup>th</sup> Cir. 2018) 901 F.3d 1081—clause enforced as part of share purchase agreement; *Gemini Technologies, Inc. v. Smith & Wesson Corp.* (9<sup>th</sup> Cir. 2019) 931 F.3d 911—Idaho’s strong statutory public policy against contractual provisions that restrict rights renders forum selection clause unenforceable; *Howmedica Osteonics Corp.* (3d Cir. 2017) 867 F.3d 390—clause analyzed involving non-signatories



# Waiver of Removal By Contract?



# REMAND

## ***City of Albany v. CH2M, Inc.*** **(9th Cir. 2019) 924 F.3d 1306**

- **Clear and unequivocal waiver of right to remove**

See also *Simonoff v. Expedia, Inc.* (9<sup>th</sup> Cir. 2011) 643 F.3d 1202—removal allowed if clause says “courts IN King County”; *Grand View v. Helix Electric* (5<sup>th</sup> Cir. 2017) 847 F.3d 255—if clause says “exclusively” in state court, no removal; see also *Autoridad de Energia v. Vitol, S.A.* (1<sup>st</sup> Cir. 2017) 859 F.3d 140—removal waived if co-defendant’s forum selection clause vests exclusive jurisdiction in “courts of Commonwealth of Puerto Rico”; ; *but see Kamm v. ITEX* (9<sup>th</sup> Cir. 2009) 568 F.3d 752—motion to remand based on forum selection clause not a “defect” under statute so 30-day time limit for motion does not apply

# Miner's Tips



- **Always, always read the forum selection clause**
- **Remember, such clauses are presumptively enforceable (and trump private interests)**
- **Forum clause can preclude (or require) federal court venue**

# Golden Nugget #9

## Twiqbal



*Wysong Corp. v.  
Apri Inc.*

**(6<sup>th</sup> Cir. 2018)**  
**889 F.3d 267**

# A Twiqbal Case

**Lanham Act  
claim - false  
advertising of  
dog food**

**Ads display  
photos of  
prime cuts of  
meat, chicken  
& fish**

**MTD:  
Implausible  
per judicial  
experience &  
common sense**



# GRANT

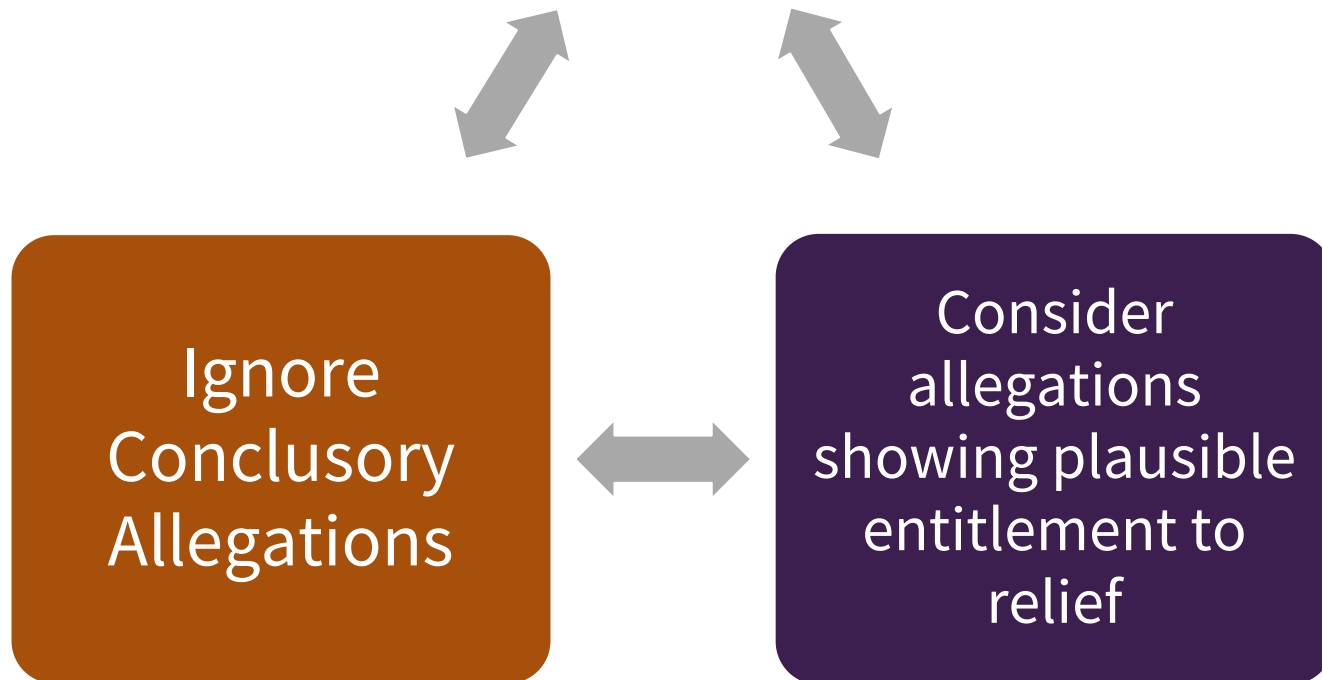
## ***Wysong Corp. v. Apri, Inc.*** **(6<sup>th</sup> Cir. 2018) 889 F.3d 267**

**“The defendant’s product is dog food. Common sense dictates that reasonable consumers are unlikely to expect that dog food is made from the same meat as people eat.”**

See *Levitt v. Yelp* (9<sup>th</sup> Cir. 2014) 765 F.3d 1123—implausible that ISP deliberately made false posts to increase ad revenues; *Tomasella v. Nestle USA* (1<sup>st</sup> Cir. 2020) 962 F.3d 60-- no plausible liability for ad omitting that worst form of child labor used to make chocolate product; *Whitaker v. Tesla Motors, Inc.* (9<sup>th</sup> Cir. 2021) 985 F.3d 1173-- allegations in ADA case against Tesla that it “failed to provide accessible service counters” was conclusory; *Walker v. Beaumont Indpt. Sch. Dist.* (5<sup>th</sup> Cir. 2019) 936 F.3d 724—conclusory allegation so actual malice in defamation suit insufficient

# Twombly/Iqbal: Two-Step

## TI - TWO STEP



# Find the Answers

## Plausibility & Affirmative Defenses

- **Lawyer Question**: Does the plausibility standard of *Iqbal*/*Twombly* apply to affirmative defenses?
- **Search Query**: “affirmative defense /5 plausible”
- **Results**: Click highlighted “affirmative defense” and it takes you to ¶19.190 “Pleading Plausible Affirmative Defense” and a brief scroll up to ¶19.187 reflects the court decisions on this question.
- **Answer**: **GEOMC Co. v. Calmare Therapeutics, Inc. (2d Cir. 2019) 918 F.3d. 92—*Twombly*/*Iqbal* apply to pleading of affirmative defenses (e.g. comparative negligence, failure to join a necessary party)**



# THINGS I HATE

1. VANDALISM

2. IRONY

3. LISTS

# Miner's Tips



**Conspiracy**

**Bad Faith**

**Alter Ego**

**Qualified  
Immunity**

**Color of Law**

**Malice**

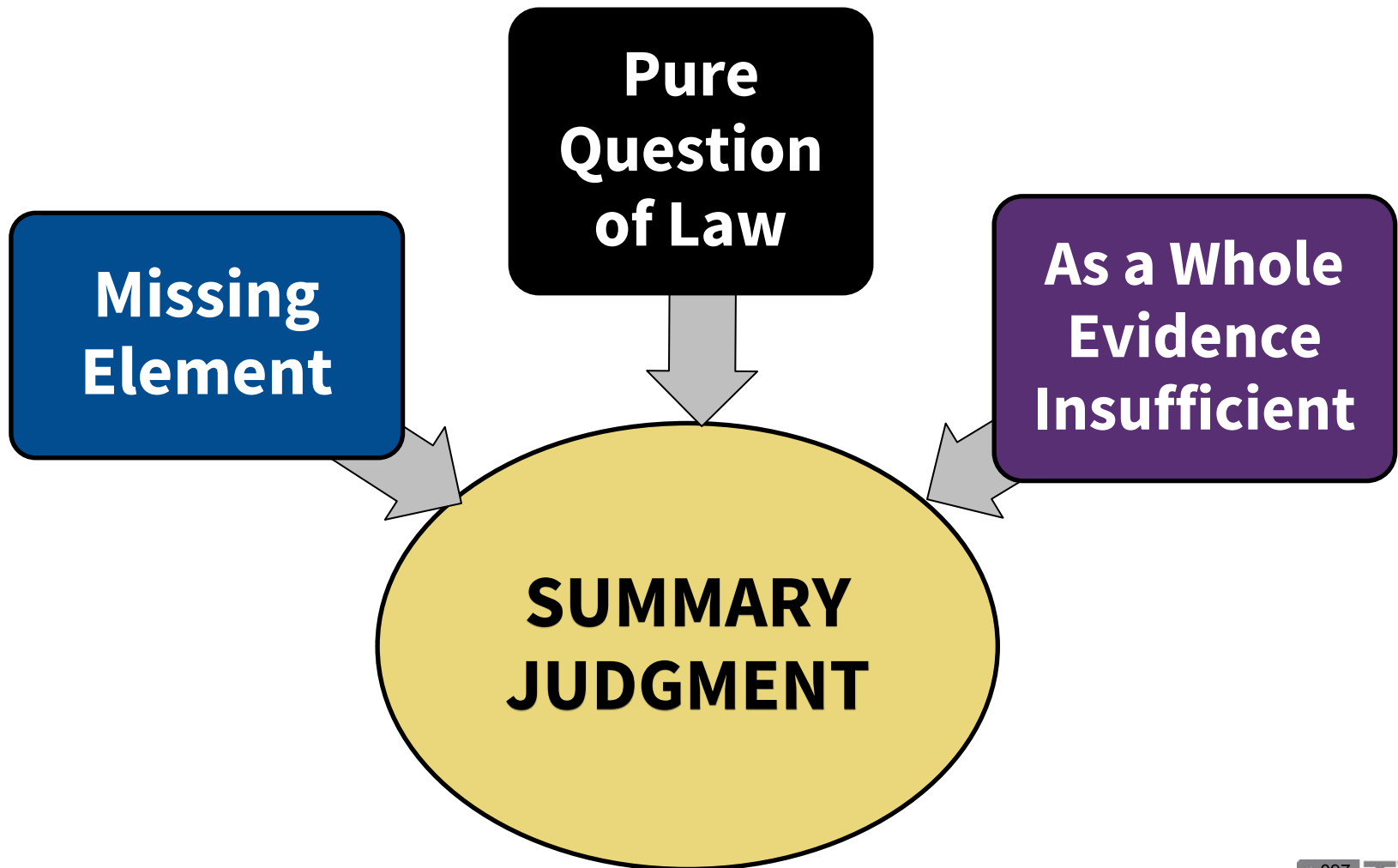
**Monell Policy**

**Multiple  
Defendants**

**Retaliation**

**Complex  
Claims**

# Miner's Tip – Summary Judgment



# Other Recent Developments



**Staying  
Ahead**

# Hot New Golden Nugget Rule 30(b)(6)



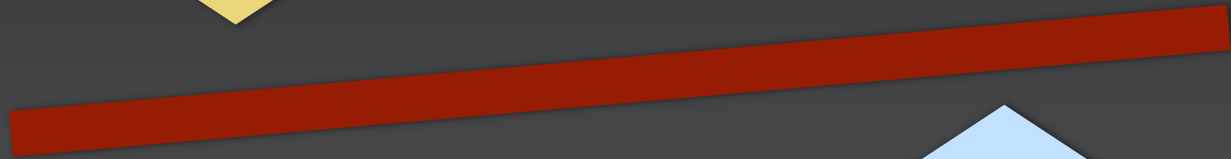
**Amendment  
Effective:**

**December 1, 2020**

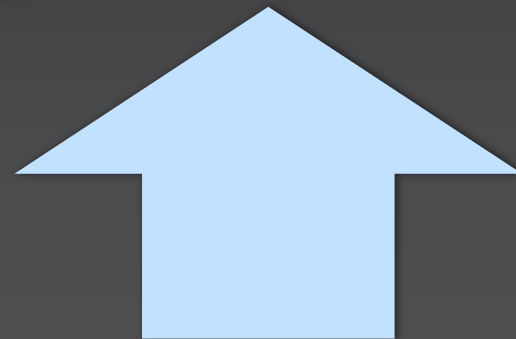
# NEW RULES AND PRACTICES 2021



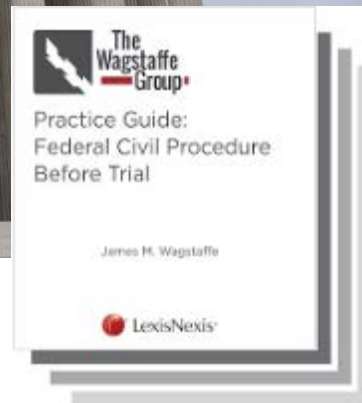
**Conferral  
Mandate for  
Corporate  
Designee Depos**



**Re: Confer in Good Faith  
About the Matters for  
Examination**



# Modern Mining



## Virtual World Litigation

# Appear Virtually



**Courts**

**Arbitrations**

**Mediations**

**“7 Steps to Romancing the Virtual Classroom”**

J. Wagstaffe ( [LAW360](#) ), May 2020)



# Testify Virtually



**Trials**  
**(FRCP 43(a))**

**Depositions**  
**(FRCP 30(b)(4))**

*See J. Wagstaffe, “Presenting Witnesses Virtually in 21<sup>st</sup> Century Trials” (LexisNexis Advance, Aug. 2019); M. Hindman, FJC Research Appendix on Remote Testimony (2017)*

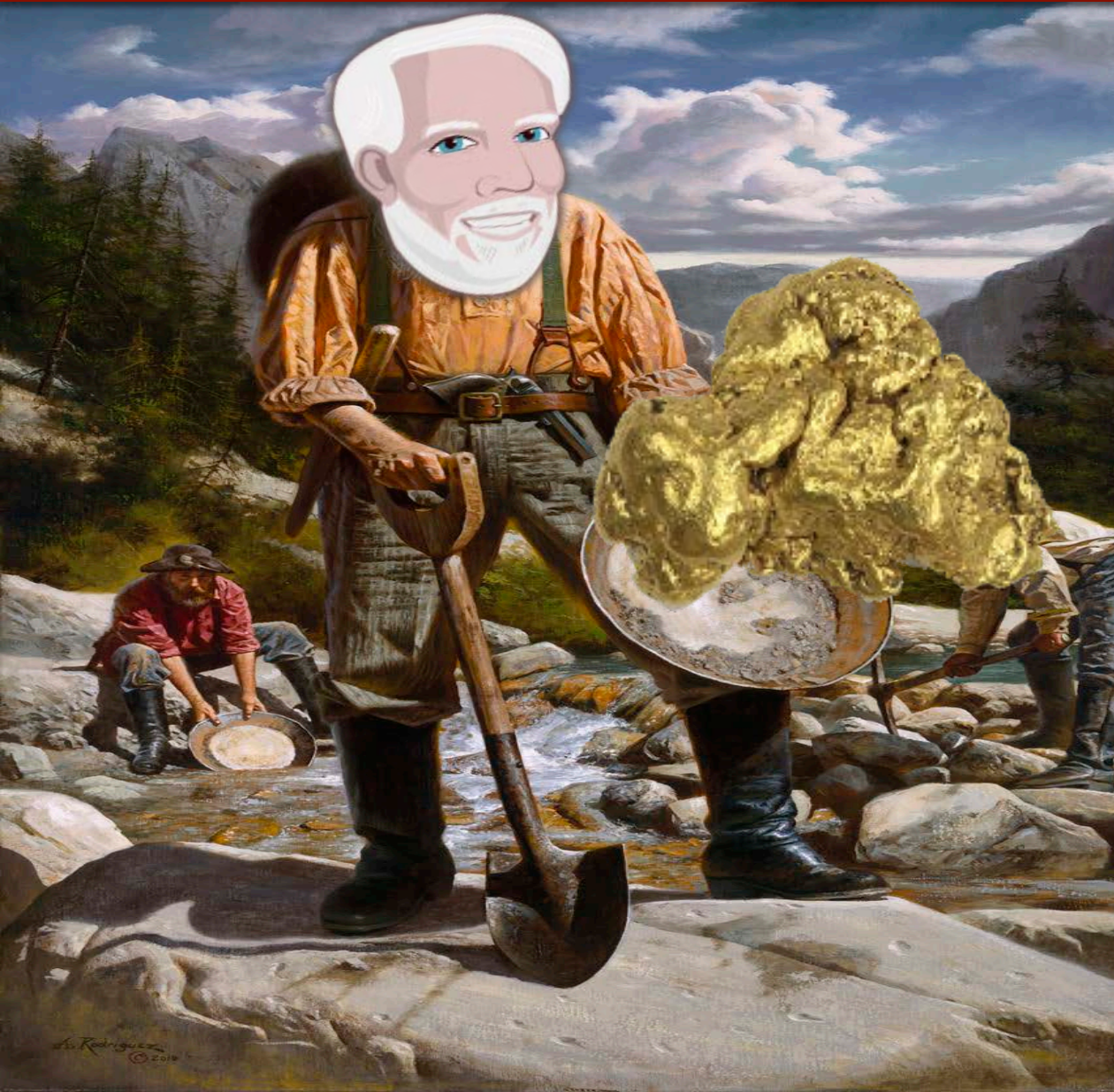
# Miner's Tips



**Don't Live in the Past**



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- **2021 Monthly Articles – new trends, new cases**



# Subject Matter Jurisdiction Update – 2021



**Jim Wagstaffe**

**The Wagstaffe Group Prac. Guide:  
Fed. Civ. Proc. Before Trial (LN 2021)**



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# ***SUBJECT MATTER JURISDICTION UPDATE - 2021***

## **JIM WAGSTAFFE**

*The Wagstaffe Group Prac. Guide: Fed. Civ. Proc. Before Trial* (LN 2021)

Twitter Handle: @JWagstaffeLxNx

[wagstaffe@wvbrlaw.com](mailto:wagstaffe@wvbrlaw.com)

### **Jurisdiction v. Claim-Processing Requirements and Elements**

- **Statutory Time Limits Generally Not Jurisdictional:** Statutory time limitations generally are not jurisdictional. [*Walby v. United States* (Fed. Cir. 2020) 957 F.3d 1295--time for filing tax refund claim (I.R.C. §7422(a)) not jurisdictional; *T Mobile Northeast LLC v. City of Wilmington* (3d Cir. 2019) 913 F.3d 311--time limit for seeking district court review of zoning authority's zoning decision in telecommunications matter not jurisdictional; *Edmonson v. Eagle Nat'l Bank*, (4<sup>th</sup> Cir. 2019) 922 F.3d 535—RESPA's one year SOL is not jurisdictional and thus subject to equitable tolling; *Maalouf v. Islamic Republic of Iran* (D.C. Cir. 2019) 923 F.3d 1095--statutes of limitation generally are not jurisdictional and court will not raise sua sponte; *Neutraceutical Corp. v. Lambert* (2019) 139 S.Ct. 710—Rule 23(f)'s 14-day time limit for seeking permission to appeal (since found in procedural rule not a statute) is not jurisdictional, though also not subject to equitable tolling; *U.S. v. Kwai Fun Wong* (2015) 135 S.Ct. 1625—timing for presenting claim and bringing subsequent FTCA claim (28 U.S.C. § 2401(b)) not jurisdictional; *Jackson v. Modly* (D.C. Cir. 2020) 949 F.3d 763--§ 2401(a) also non-jurisdictional; *Chance v. Zinke* (10<sup>th</sup> Cir. 2018) 898 F.3d 1025--same]
  - **Compare—time limits jurisdictional:** *Organic Cannabis Foundation, LLC v. Comm'r of Internal Revenue* (9<sup>th</sup> Cir. 2020) 962 F.3d 1082—time to challenge IRS deficiency determination jurisdictional; *Duggan v. 4100 15 L Comm'r of Internal Revenue* (9<sup>th</sup> Cir. 2018) 879 F.3d 1029--review of levy jurisdictional, as time limit was within jurisdiction-granting section of 26 U.S.C. §6330(d)(1); *Rubel v. Rubel* (3d Cir. 2017) 856 F.3d 301--ex-spouse challenge to tax liability is jurisdictional per statute; *Bowles v. Russell* (2007) 551 U.S. 205—timing of filing notice of original appeal jurisdictional, 28 U.S.C. § 2107(a); see also *Groves v. United States*, 941 F.3d 315 (7<sup>th</sup> Cir. 2019) (Barrett, J.) (10-day time limit to petition appellate court 28 U.S.C. § 1292(b) interlocutory review is jurisdictional—time limits transferring adjudicatory authority from one Article III court to another is jurisdictional]
- **Exhaustion of remedies:** Courts had been split as to whether and under what circumstances exhaustion of remedies requirements are jurisdictional. However, the Supreme Court's decision on the subject may render asunder such splits (unless Congress clearly delineates the exhaustion requirement as jurisdictional, it is not jurisdictional). [*Fort Bend County, Texas v. Davis* (2019) 139 S.Ct. 1843--Title VII exhaustion not jurisdictional]
  - **Non-Jurisdictional:** *United States v. Alam* (6<sup>th</sup> Cir. 2020) 960 F.3d 831--failure to exhaust remedies by seeking modification of prison term first to Bureau of Prisons (18 U.S.C. § 3582(c)) not jurisdictional; *AI Diabetes & Med. Supply v. Azar* (6<sup>th</sup> Cir. 2019) 937 F.3d 613—exhaustion requirement before seeking court review of administrative Medicare decision (42 U.S.C. § 405(h)) not jurisdictional; *LULAC v. Wheeler* (9<sup>th</sup> Cir. 2018) 899 F.3d 814—FFDCA's exhaustion requirement not jurisdictional (21 U.S.C. §

346a(h)(1)); *Delgado v. Merit Systems Protection Bd.* (7<sup>th</sup> Cir. 2018) 880 F.3d 913--first filing whistleblower complaint with Office of Special counsel not jurisdictional (5 U.S.C. § 1214(a)(3)); *Goldberg v. U.S.* (7<sup>th</sup> Cir. 2018) 881 F.3d 529—exhaustion not jurisdictional and can be waived in damage actions against IRS for unauthorized tax collections (26 U.S.C. § 7433); *Staudner v. Robinson Aviation, Inc.* (4<sup>th</sup> Cir. 2018) 910 F.3d 141—exhaustion of § 301(a) collective bargaining agreement grievance not jurisdictional.

- **Jurisdictional:** *Seaway Bank & Trust Co. v. J&A Series I, LLC* (7<sup>th</sup> Cir. 2020) 962 F.3d 926--exhaustion requirement of FIRREA (12 U.S.C. § 1821(d)) is jurisdictional prerequisite to suit in district court; *Perna v. Health One Credit Union* (6<sup>th</sup> Cir. 2020) 983 F.3d 258—exhaustion rule overcome by clear statement in Federal Credit Union Act (12 U.S.C. § 1787(b)(13)(D)) that federal courts lack jurisdiction over claims against covered credit unions asserted outside its exclusive framework); *Daly v. Citigroup, Inc.* (2d Cir. 2019) 939 F.3d 415--failure to exhaust OSHA remedies is a jurisdictional defect in Dodd-Frank whistleblower claim (18 U.S.C. § 1514A(b)(1)); *Vazquez v. Sessions* (5<sup>th</sup> Cir. 2018) 885 F.3d 862--requirement that alien exhaust administrative remedies (8 U.S.C. § 1252(d)(1)) is a jurisdictional bar; *Lin v. U.S. Attorney General* (11<sup>th</sup> Cir. 2018) 881 F.3d 860—same]
- **Statutory Elements:** Generally, whether a complaint satisfies the elements of a claim set forth in a statute is a non-jurisdictional defect to be raised by a Rule 12(b)(6), not a Rule 12(b)(1) motion. [See *Arbaugh v. Y & H Corp.* (2006) 546 U.S. 500—Title VII’s numerosity requirement not jurisdictional; *Day v. AT&T Disability Income Plan* (9<sup>th</sup> Cir. 2012) 685 F.3d 848--minimum age requirement to qualify for age discrimination lawsuit under ADEA not jurisdictional; *Montes v. Janitorial Partners* (D.C. Cir. 2017) 859 F.3d 1079—failure to opt-in in FLSA case not jurisdictional; but see *Brownback v. King* (2021) 141 S.Ct. 740—every element of FTCA claim considered to be “jurisdictional”; *Flores v. Pompeo* (5<sup>th</sup> Cir. 2019) 936 F.3d 273—since residence requirement when seeking declaration of citizenship (8 U.S.C. § 1503(a)) is clearly defined by statute as “jurisdictional” it is]

These principles apply in the following illustrative areas:

- **ERISA:** Whether a claim involves an ERISA “plan” is a non-jurisdictional defect giving rise to a FRCP 12(b)(6) motion only. [*Sanzone v. Mercy Health* (8<sup>th</sup> Cir. 2020) 954 F.3d 1031; *Smith v. Regional Transit Authority* (5<sup>th</sup> Cir. 2014) 756 F.3d 340; *Dahl v. Charles F. Dahl Defined Benefit Pension* (10<sup>th</sup> Cir. 2014) 744 F.3d 623; also whether a plaintiff is a “plan participant” within the meaning of ERISA is a non-jurisdictional defect treated as a missing element of the claim. *North Jersey Brain & Spine Center* (3<sup>rd</sup> Cir. 2015) 801 F.3d 369; *Leeson v. Transamerica Disability Income Plan* (9<sup>th</sup> Cir. 2012) 671 F.3d 969--same]
- **False Claims Act:** The original source requirement has been held to be jurisdictional. [*U.S. ex rel. Hanks v. U.S.* (2d Cir. 2020) 961 F.3d 131; *Amphastar Pharm. v. Aventis Pharma* (9<sup>th</sup> Cir. 2017) 856 F.3d 656-- same; *U.S. ex rel. Antoon v. Cleveland Clinic Found.* (6<sup>th</sup> Cir. 2015) 788 F.3d 605—same; but see *In re Plavix Marketing, Sales Practices & Products* (3d Cir. 2020) 974 F.3d 228--first to file rule (31 USC § 3730(b)(5)) does not raise jurisdictional defect; *U.S. ex rel. Carter v. Halliburton co.* (4<sup>th</sup> Cir. 710 F.3d 171, 181—contra; *U.S. ex rel. Ambrosecchia v. Paddock Labs* (8<sup>th</sup> Cir. 2017) 855 F.3d 949--public disclosure bar for FCA not jurisdictional; *U.S. v. Majestic*

*Blue Fisheries* (3<sup>rd</sup> Cir. 2016) 812 F.3d 294—same; *U.S. v. Humana* (11<sup>th</sup> Cir. 2015) 776 F.3d 805—same]

- **Jurisdiction Stripping Statutes:** If Congress passes a specific “jurisdiction stripping” statute a court lacks subject matter jurisdiction to decide the matter. [*Patchak v. Zinke* (2018) 138 S.Ct. 897—since Congress in Gun Lake Act, 128 Stat. 1913, stated such a case “shall not be filed or maintained in a Federal court” it imposed “jurisdictional” consequences; see also *Franchise Tax Bd. of Cal. v. Hyatt* (2019) 139 S.Ct. 1485—States have sovereign immunity from being sued in the courts of other states; *Perna v. Health One Credit Union* (6<sup>th</sup> Cir. 2020) 983 F.3d 258—statute stripped federal courts of jurisdiction over covered credit unions (12 U.S.C. § 1787(b)(13)(D)]

### **Other Elemental Defects:**

- In Lanham Act case raising alleged absence of protectable mark not jurisdictional. [*Wickfire, L.L.C. v. Woodruff* (5<sup>th</sup> Cir. 2021) 989 F.3d 343]
- Federal tax exception to Declaratory Judgment Act (28 U.S.C. § 2201(a)) is a jurisdictional defect. [*Rivero v. Fid. Invs., Inc.* (5<sup>th</sup> Cir. June 10, 2021) F.3d ]
- Dispute over existence of contract and assignability of trademark are not jurisdictional. [*SM Kids, LLC v. Google, LLC* (2d Cir. 2020) 963 F.3d 206]
- Liability limitation in contract is not jurisdictional. [*Cooper v. Tokyo Elec. Power Co.* (9<sup>th</sup> Cir. 2020) 960 F.3d 549]
- Depositing full amount at stake in statutory interpleader action is a jurisdictional prerequisite. [*Acuity v. Rex, LLC* (8<sup>th</sup> Cir. 2019) 929 F.3d 995]
- Anti-Terrorism Act “act of war” exception not jurisdictional. [*Kaplan v. Central Bank of Islamic Republic of Iran* (D.C. Cir. 2018) 896 F.3d 501]
- Foreign Sovereign Immunities Act (FSIA) and immunities thereunder are jurisdictional. [*Bolivarian Republic of Venezuela v. Helmerich & Payne* (2017) 137 S.Ct. 1312]
- Extraterritorial reach of antitrust laws is not jurisdictional. [*Biocad JSC v. F. Hoffmann-La Roche* (2d Cir. 2019) 942 F.3d 88; see also *SEC v. Scoville* (10<sup>th</sup> Cir. 2019) 913 F.3d 1204—extraterritorial reach of antifraud provisions of federal securities laws not jurisdictional]
- Religious organization exemption to Title VII is not jurisdictional. [*Garcia v. Salvation Army* (9<sup>th</sup> Cir. 2019) 918 F.3d 997; *Sanzone v. Mercy Health* (8<sup>th</sup> Cir. 2020) 954 F.3d 1031--same for religious exemption under ERISA]
- Whether plaintiff is employee or independent contractor under the FLSA (29 U.S.C. § 216(b)) is an “ingredient of the claim” and not a jurisdictional requirement. [*Tijerino v. Stetson Desert Project, LLC* (9<sup>th</sup> Cir. 2019) 934 F.3d 968]



- Whether a defendant is an “enterprise engaged in commerce” subject to the overtime requirements of the FLSA is not jurisdictional. [*Biziko v. Van Horne* (5<sup>th</sup> Cir. 2020) 981 F.3d 418]

### Compare—Sovereign Immunity

- If a governmental defendant has sovereign immunity, that goes to the power of the court to adjudicate, and therefore a dismissal will be for want of subject matter jurisdiction. [See, e.g., *Gaetano v. United States* (6<sup>th</sup> Cir. April 9, 2021) 2021 U.S. App. LEXIS 10253 --action to quash IRS summons is action against U.S. requiring waiver of sovereign immunity; *Robinson v. United States Dep’t of Educ.* (4<sup>th</sup> Cir. 2019) 917 F.3d 799—since U. S. Department of Education is not a “person” within meaning of the FCRA, case dismissed for lack of jurisdiction due to sovereign immunity]

## Federal Question Jurisdiction

### Jurisdiction First – No Hypothetical Jurisdiction

- The court should ordinarily first decide issues of subject matter jurisdiction, then issues of personal jurisdiction and venue (which are subject to waiver), and only then issues addressing the merits. [*Kaplan v. Central Bank of Islamic Republic of Iran* (D.C. Cir. 2018) 896 F.3d 501--ordinarily decide personal jurisdiction before merits issues; *Erwin-Simpson v. AirAsia Berhad* (5<sup>th</sup> Cir. 2021) 985 F.3d 883—discretion of court to decide personal jurisdiction issue before subject matter jurisdiction via remand motion; *Estate of Cummings v. Community Health Systems, Inc.* (10<sup>th</sup> Cir. 2018) 881 F.3d 793—same; see also *Dimondstein v. Stidman* (D.C. Cir. 2021) 986 F.3d 870—personal jurisdiction decided before venue; *Hamilton v. Bromley* (3<sup>rd</sup> Cir. 2017) 862 F.3d 329—court must decide Article III mootness issue before *Younger* abstention]
- However, “there is no unyielding jurisdictional hierarchy” such that courts can choose among varying jurisdictional threshold grounds for “denying audience to a case on the merits.” [*Hill v. Warsewa* (10<sup>th</sup> Cir. 2020) 947 F.3d 1305; see also *Butcher v. Wendt* (2d Cir. 2020) 975 F.3d 236--court may dismiss case on merits before reaching *statutory* jurisdictional grounds, e.g. *Rooker-Feldman* dismissal]

### “Arising Under” – General Rules

- **State law claim with “substantial” federal question:** In certain circumstances, and even in the absence of a federally-created cause of action, “arising under” jurisdiction exists if there is a “substantial federal question.” [*Grable & Sons v. Darue Eng.* (2005 ) 546 U.S. 308] However, such jurisdiction is “a password opening federal courts to any state action embracing a point of federal law” only when the claim “necessarily raises a stated federal issue, [that is] actually disputed and substantial, [and] which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities.” [*Id.* at 314]; see also *Sarauer v. Int’l Ass’n of Machinists and Aerospace Workers, Dist. No. 10* (7<sup>th</sup> Cir. 2020) 966 F.3d 661--“embedded federal question” doctrine applies to whether a CBA was renewed, modified or extended]

- **Cases Finding “Substantial Federal Question”:** *Wullschleger v. Royal Canin USA, Inc.* (8<sup>th</sup> Cir. 2020) 953 F.3d 519—claim citing state antitrust law but explicitly claiming violation of FDCA raised substantial federal question; *Hornish Joint Living Trust v. King County* (9<sup>th</sup> Cir. 2018) 899 F.3d 680—state claims to declare property rights in railway corridor raised substantial federal question under National Trails System Act due to federal interest to preserve shrinking rail trackage; *Bd. of Comm’rs v. Tenn. Gas Pipeline Co.* (5<sup>th</sup> Cir. 2017) 850 F.3d 714—suit by local flood protection authority alleging oil companies’ activities damaged coastal lands raises substantial federal question since federal law provides standard of care; *Turbeville v. Financial Industry Regulatory Authority* (11<sup>th</sup> Cir. 2017) 874 F.3d 1268—removal jurisdiction existed over case against FINRA for defamation based on its federally regulated disclosure and investigation; *North Carolina v. Alcoa Power Generating, Inc.* (4<sup>th</sup> Cir. 2017) 853 F.3d 140—questions of navigability for determining state riverbed title are governed by federal law; *State of New York ex rel Jacobson v. Wells Fargo* (2<sup>nd</sup> Cir. 2016) 824 F.3d 308—state false claims act raises substantial federal question since proving false statement required proof of violation of federal tax laws]
  
- **Cases Not Finding “Substantial Federal Question”:** *Intellisoft, Ltd. v. Acer American Corp.* (Fed. Cir. 2020) 955 F.3d 927—state claim for trade secret infringement asserting defendant incorporated into patent application does not arise under federal law; *Miller v. Bruenger* (6<sup>th</sup> Cir. 2020) 949 F.3d 986—dispute over benefits under life insurance policy issued to federal worker and governed by Federal Employees’ Group Life Insurance Act does not raise a substantial federal question; *Burrell v. Bayer Corp.* (4<sup>th</sup> Cir. 2019) 918 F.3d 372—product liability case not federal question simply because medical device regulated by FDA; *Inspired Development Group v. Inspired Products Group* (Fed. Cir. 2019) 938 F.3d 1355—contract and unjust enrichment claims based on licensing of a patented product does not raise substantial federal question; *Naragansett Indian Tribe v. Rhode Island Department of Transportation* (1<sup>st</sup> Cir. 2018) 903 F.3d 26—Indian tribe’s claim federal agency alleged breach contract on historic bridge project not substantial federal question; *Mays v. City of Flint* (6<sup>th</sup> Cir. 2017) 871 F.3d 437—no substantial federal question over tainted drinking water case simply because state officers working with EPA; *Webb v. Financial Industry Regulatory Authority* (7<sup>th</sup> Cir. 2018) 889 F.3d 853—whether FINRA breached its arbitration agreement does not raise substantial federal question]
  
- **Mere reference to federal law insufficient:** Merely because a state law claim makes a reference to federal law generally does not equal “arising under” federal question jurisdiction. [See *Jackson County Bank v. Dusablon* (7<sup>th</sup> Cir. 2019) 915 F.3d 422—trade secret violation suit by bank against former employee not federal question just because case may involve securities law; *NeuroRepair, Inc. v. Nath Law Grp.* (Fed. Cir. 2015) 781 F.3d 1340, 1342—malpractice claim arising out of federal patent infringement claim; see also *Cook Cty. Republican Party v. Sapone* (7<sup>th</sup> Cir. 2017) 870 F.3d 709—political party’s declaratory relief action regarding seating of elected individual did not raise federal question despite First Amendment defense]
  
- **Considerations:** A substantial federal question is more likely to be present if one of the following exists: (1) a pure issue of federal law is dispositive of the case; (2) the court’s resolution of the issue will control numerous other cases; or (3) the government has a direct interest in the availability of a federal forum to vindicate its

own administrative action. [*Inspired Dev. Grp., Ltd. Liab. Co. v. Inspired Prods. Grp., Ltd. Liab. Co.* (Fed. Cir. 2019) 938 F.3d 1355, 1364]

- **Declaratory relief cases**

In a declaratory relief action, the court will look to the coercive action anticipated by the action and then determine if *that* claim (not any defense) arises under federal law. [*Patel v. Hamilton Med. Ctr., Inc.* (11<sup>th</sup> Cir. 2020) 967 F.3d 1190—declaratory relief action seeking determination that defendant enjoys no immunity from damages under federal statute does not arise under federal law]

- **Jurisdiction over federally chartered corporation:** Generally, if a federally chartered corporation has a charter that provides that the entity may “sue and be sued” in federal court, federal jurisdiction exists. [*Federal Home Loan Bank of Boston v. Moody’s Corp.* (1<sup>st</sup> Cir. 2016) 821 F.3d 102, 109; however if the charter provides that the entity can sue or be sued in “any court of competent jurisdiction, State or Federal” there is no arising under jurisdiction because the language constitutes “a reference to a court with an existing source of subject-matter jurisdiction”-- *Lightfoot v. Cendant Mortgage Corp.* (2017) 137 S.Ct. 553--Fannie Mae’s charter providing for jurisdiction in “any court of competent jurisdiction” does *not* provide for federal jurisdiction since it contemplates court in which there is an otherwise existing source of subject matter jurisdiction]

#### **“Arising Under” – Native American Rights**

- Cases relating to Native American rights are said to “arise under” federal common law due to the need for uniform federal policies to govern Indian affairs. [*Cook Inlet Region, Inc. v. Rude* (9<sup>th</sup> Cir. 2012) 690 F.3d 1127, 1131—claims by corporation formed under Alaska Native Claims Settlement Act against its shareholders for violations of Act’ *see also Gilmore v. Weatherford* (10<sup>th</sup> Cir. 2012) 694 F.3d 1160-, 1173—discussing whether state law accounting claims asserted by tribal members constitute “substantial federal question”; *see also Knighton v. Cedarville Rancheria* (9<sup>th</sup> Cir. 2019) 922 F.3d 892--tribal jurisdiction over accident on Indian land even if involving non-tribal member]
  - **Compare--intratribal disputes:** Disputes between tribal members regarding tribal affairs do not arise under federal law and must be resolved by tribal, not federal, courts. [*Longie v. Spirit Lake Tribe* (8<sup>th</sup> Cir. 2005) 400 F3d 586, 590-591]
  - **Compare state law claims:** No jurisdiction over state law claims relating to contract to provide energy and mineral services to Indian tribe. [*Becker v. Ute Indian Tribe of the Uintah and Ouray Reservation* (10<sup>th</sup> Cir. 2014) 770 F.3d 944; compare *Michigan v. Bay Mills Indian Community* (2014) 134 S. Ct. 2024, 2030-2035--courts do not have jurisdiction in suits against *tribes* for acts on land outside the Native American reservation because such suits are barred by tribal sovereign immunity; *Narragansett Indian Tribe v. Rhode Island Dept. of Transp.* (1<sup>st</sup> Cir. 2018) 903 F.3d 26—no federal question jurisdiction in Tribe’s claim state broke promise concerning bridge reconstruction over historic tribal land since no claim made under National Historic Preservation Act (54 U.S.C. § 300101)]

- **Compare—scope of tribal immunity:** If a lawsuit arises from personal conduct of the defendant and not from the official duties of a tribal official, there is no sovereign immunity. [*Lewis v. Clarke* (2017) 137 S.Ct. 1285—no sovereign immunity for limo driver sued for injuries from a traffic accident occurring while transporting customers to an Indian casino, even if the tribe indemnified him from the liability]

### **Jurisdiction Over Cases Reviewed After Arbitration**

- **Petitions to Compel Arbitration:** There will be federal question jurisdiction in actions seeking to compel arbitration when, if one “looks through” the petition, it is predicated on an action that arises under federal law. [*Vaden v. Discover Bank* (2009) 556 U.S. 49, 62— inquiry is whether, save for the arbitration agreement, jurisdiction exists. *McCormick v. Amer. Online, Inc.* (4<sup>th</sup> Cir. 2018) 909 F.3d 677--same]

**Petitions to Vacate or Confirm:** There is a split as to whether there is federal jurisdiction on the “look through” approach when the matter involves a petition to vacate or confirm an arbitration. *Ortiz-Espinosa v. BBVA Securities of Puerto Rico, Inc.* (1<sup>st</sup> Cir. 2017) 852 F.3d 36—look through approach and allows jurisdiction; *Doscher v. Sea Port Securities, LLC* (2d Cir. 2016) 832 F.3d 372—same; contra *Magruder v. Fid. Brokerage Servs. LLC* (7<sup>th</sup> Cir. 2016) 818 F.3d 285—no look through jurisdiction for review or enforcement of arbitration award; *Goldman v. Citigroup Glob. Mkts. Inc.* (3d Cir. 2016) 834 F.3d 242—same;

*Warning:* The Supreme Court has granted certiorari to resolve this dispute: *Badgerow v. Walters*, No. 20-1143, *cert. granted* (May 17, 2021.)

## **Diversity Jurisdiction**

### **Domicile of individuals**

- The domicile of individuals is determined by where the person is domiciled and intends to remain permanently. [*See, e.g., Hearts with Haiti, Inc. v. Kendrick* (1<sup>st</sup> Cir. 2017) (856 F.3d 1 (Souter, J.)—missionary from Iowa is domiciled in Haiti (and hence no diversity) since living there for 20 years and a permanent resident despite being registered to vote and having driver’s license in Iowa; *Eckerberg v. Inter-State Studio & Publishing Co.* (8<sup>th</sup> Cir.2017) 860 F.3d 1079 – that military person assigned to various places did not change his original Florida domicile; *Van Buskirk v. United Grp. Of Cos.* (2d Cir. 2019) 935 F.3d 49—declaration generally stating plaintiff had moved to Florida insufficient]

### **Status of state as real party in interest (defeating diversity)**

- Where statutory fees are payable to counties and not to the state, diversity is not defeated in a false claim act case. [*Bates v. Mortgage Electronic Registration System, Inc.* (9<sup>th</sup> Cir. 2012) 694 F.3d 1076, 1080; *In re Fresenius Granuflo/Naturalyte Dialsysate Prod. Liab. Litig.* (D. Mass. 2015) 76 F.Supp.3d 268--if state is real party to action, it is “jurisdictional spoiler” for diversity]
- State, not citizens thereof, was the real party in interest of *parens patriae* consumer protection suit against mortgage lenders, despite possibility of restitution for thousands of state citizens. [*Nevada v. Bank of Am. Corp.* (9<sup>th</sup> Cir. 2012) 672 F.3d 661, 671-672; *AU Optronics Corp. v.*

*South Carolina* (4<sup>th</sup> Cir. 2012) 699 F.3d 385, 391-392—same; see also *Lamar Co. v. Mississippi Transp. Com’n* (5<sup>th</sup> Cir. 2020) 976 F.3d 524—state commission not independent of state and hence as alter ego of state, its presence as party defeats diversity; *Grace Ranch, LLC v. BP America Production Co.* (5<sup>th</sup> Cir. 2021) 989 F.3d 301--state not party to the citizen enforcement suit even if state ultimately benefits from suit to remedy contaminated land]

### **Bar on Diversity in Suits Between Aliens**

- If there is otherwise no complete diversity of citizenship, if there is an alien plaintiff suing an alien defendant, there is no diversity or alienage jurisdiction. [*Vantage Drilling Co. v. Su* (5<sup>th</sup> Cir. 2014) 741 F.3d 535; *Peninsula Asset Mgt. v. Hankouk* (6<sup>th</sup> Cir. 2007) 509 F.3d 271, 272-273—same; *Baylay v. Etihad Airways* (7<sup>th</sup> Cir. 2018) 881 F.3d 1032--no diversity when alien plaintiff sues citizens and alien]
- **Compare citizen domiciled abroad** – If any of the parties are citizens but domiciled abroad, then there can be no diversity jurisdiction. [*Louisiana Municipal Police Employees Retirement System v. Wynn* (9<sup>th</sup> Cir. 2016) 829 3d 1048--finding jurisdiction lacking but dismissing nondiverse, dispensable party to preserve jurisdiction]

### **Pleading Diversity**

- If complete diversity is disputed, party invoking federal jurisdiction must submit actual evidence to support allegation. [*See West v. Louisville Gas & Elec. Co.* (7<sup>th</sup> Cir. 2020) 951 F.3d 827—citizenship of all partners and LLC members must be identified; *Platinum-Montaur Life Scis., LLC v. Navidea Biopharmaceuticals, Inc.* (2d Cir. 2019) 943 F.3d 613—party invoking diversity jurisdiction (defendant on removal) has burden of establishing citizenship of all members of non-corporate artificial entities; *Midcap Media Finance, L.L.C. v. Pathway Data, Inc.* (5<sup>th</sup> Cir. 2019) 929 F.3d 310—same; *Purchasing Power, LLC v. Bluestem Brands, Inc.* (11<sup>th</sup> Cir. 2017) 851 F.3d 1218; *compare Carolina Casualty Ins. Co. v. Team Equipment, Inc.* (9<sup>th</sup> Cir. 2014) 741 F.3d 1082--allegation of LLC’s members on information and belief authorized if jurisdictional facts within defendant’s possession and not reasonably available to plaintiff—jurisdictional issue to be resolved post-filing on defendant’s motion and giving plaintiff leave to amend]

### **Corporation’s Principal Place of Business**

- Under *Hertz* test, a corporation’s principal place of business for diversity purposes is the center of its overall direction, control and coordination, i.e., its “nerve center” where officers make significant corporate decisions and set corporate policy (in contrast to where it conducts its day-to-day activities). [*Hoschar v. Appalachian Power Co.* (4<sup>th</sup> Cir. 2014) 739 F.3d 163; *Gu v. Invista Sarl* (5<sup>th</sup> Cir. 2017) 739 F.3d 163; *Harrison v. Granite Bay Care, Inc.* (1<sup>st</sup> Cir. 2016) 811 F.3d 36; *Johnson v. SmithKline Beecham* (3<sup>rd</sup> Cir. 2013) 724 F.3d 337, 352—corporate holding company (as member of LLC) has principal place of business where it, not UK parent company, makes corporate decisions; *3123 SMB LLC v. Horn* (9<sup>th</sup> Cir. 2018) 880 F.3d 461--newly formed holding company’s nerve center is location where board meetings to be held; see *CostCommand, LLC v. WH Administrators* (D.C. Cir. 2016) 830 F.3d 19—single director controlled corporate decisions; *Bearbones, Inc. v. Peerless Indemnity Insurance* (1<sup>st</sup> Cir. 2019) 936 F.3d 12—corporate citizenship challenged for first time on appeal; see also *Hawkins v. i-TV Digitalis Tavkozlesi zrt* (4<sup>th</sup> Cir. 2019) 935 F.3d 211—in examining whether foreign entity is a “corporation” depends on comparing entity’s substantive features to American corporation]

### **Citizenship of Federal Corporation**

A federally chartered corporation (e.g. federal credit union) is a corporation for diversity purposes, but since it is neither incorporated by a state or a foreign nation, its citizenship is only where it has its principal place of business. [*Navy Federal Credit Union v. Ltd Financial Services, LP* (4th Cir. 2020) 972 F.3d 344—use of word “and” in defining corporate citizenship for diversity means “in addition to”]

### **Citizenship of Dissolved Corporations**

- Dissolved (or inactive) corporations have no principal place of business such that only their place of incorporation is used for determining diversity jurisdiction. [*Holston Investments, Inc. v. LanLogistics Corp.* (11th Cir. 2012) 677 F.3d 1068; see also *Athena Automotive, Inc. v. DiGregorio* (4th Cir. 1999) 166 F.3d 288]

### **Citizenship of Foreign Corporations**

- All corporations are considered citizens of both the place of incorporation and the principal place of business. Thus, this results in denial of diversity jurisdiction for plaintiffs who are citizens of either the principal place of business or the place of incorporation of a corporation irrespective of whether it is within or outside of the U.S. [28 USC §1332(c)(1); *Caron v. NCL (Bahamas), Ltd.* (11th Cir. 2018) 910 F.3d 1359—no diversity jurisdiction in suit between foreign plaintiff and defendant incorporated in foreign country even if PPB is in United States]

### **Citizenship of LLC's**

- The citizenship of each member of an LLC is critical not only because if *any* LLC member is a citizen of the same state as an opposing party diversity is lacking, but also because if one of the LLC's members is a "stateless alien" courts also will not have diversity jurisdiction. [*Soaring Wind Energy, L.L.C. v. Catic USA Inc.* (5th Cir. 2020) 946 F.3d 742; *Purchasing Power, LLC v. Bluestem Brands, Inc.* (11th Cir. 2017) 851 F.3d 1218; *Jet Midwest Int'l Co., Ltd. v. Jet Midwest Group, LLC* (8th Cir. 2019) 932 F.3d 1102, 1104]

### **Citizenship of Partnerships**

- Like LLC's, the citizenship of a partnership ordinarily is determined by considering the citizenship of every partner, and if the partnership is a named or indispensable party in the case, the partnership will take on the citizenship of each of its members. [See *Moss v. Princip* (5th Cir. 2019) 913 F.3d 508—in suit between partners court can dismiss partnership as dispensable party; *West v. Louisville Gas & Elec. Co.* (7th Cir. 2020) 951 F.3d 827—insufficient to say generally “no one on our side is a citizen of the opposing litigant's side”]

### **Citizenship of Trusts and Trustees**

- The citizenship of a real estate investment trust (REIT) is treated as a non-corporate entity taking on the citizenship, not of its trustee, but of each of its members (including its shareholders). [*Americold Realty Trust v. ConAgra Foods, Inc.* (2015) 136 S.Ct. 1012, 1015; *RTP LLC v. Orix Real Estate Capital* (7th Cir. 2016) 827 F.3d 689; *Zoroastrian Center v. Rustam Guiv Found.* (4th Cir. 2016) 822 F.3d 739, 748-750]

- The rule is different if the case involves a “traditional” trust in the sense that a fiduciary duty has been created by the private creation of a trust; in such cases courts have looked solely to the citizenship of the trustee as the trust has no standing to sue or be sued. [*Demarest v. HSBC Bank* (9<sup>th</sup> Cir. 2019) 920 F.3d 1223; *Alliant Tax Credit 31 v. Murphy* (11<sup>th</sup> Cir. 2019) 924 F.3d 1134; *GBForefront, L.P. v. Forefront Mgm’t Group, LLC* (3d Cir. 2018) 888 F.3d 29; *Raymond Loubier Irrevocable Trust v. Loubier* (2<sup>nd</sup> Cir. 2017) 858 F.3d 719; see also *SGK Properties LLC v. U.S. Bank Nat’l Ass’n* (5<sup>th</sup> Cir. 2018) 881 F.3d 933--when Bank sued in capacity of trustee, look only to citizenship of trustee; *Byname v. Bank of New York Mellon* (5<sup>th</sup> Cir. 2017) 866 F.3d 351—when traditional trust is real party in interest, look to citizenship of trustee; *Doermer v. Oxford Financial Group* (7<sup>th</sup> Cir. 2018) 884 F.3d 643--same; *Wang v. New Mighty U.S. Trust* (D.C. Cir. 2016) 843 F.3d 487—same]

### Citizenship of Indian Tribes

- Indian tribes are generally considered not to be citizens of any state, and therefore they destroy complete diversity of parties for the purposes of the diversity statute. [*Narragansett Indian Tribe v. Rhode Island Dept. of Transp.* (1<sup>st</sup> Cir. 2018) 903 F.3d 26]

### Amount in Controversy

- **Legal Certainty Test:** To warrant dismissal, it must appear to a legal certainty that the claim is really less than the jurisdictional amount. [*Bronner v. Duggan* (D.C. Cir. 2020) 962 F.3d 596—professors’ individual suit against academic association for endorsing Israeli boycott did not satisfy amount in controversy; *Maine Community Health Options v. Albertsons Cos.* (9<sup>th</sup> Cir. March 31, 2021) 2021 WL 1205006—amount in controversy as to subpoena enforcement action under FAA measured by either benefit to plaintiff or detriment to defendant]
- **Validity of Insurance Policy:** If a declaratory relief action involves the validity of the insurance policy, then the full policy limits constitute the amount in controversy. [*Elhouty v. Lincoln Beneficial Life* (9<sup>th</sup> Cir. 2018) 886 F.3d 752]
- **Future damages included:** While jurisdiction is assessed at the time it is invoked originally or by way of removal, future damages recoverable in the action are included in determining the amount in controversy. [*Chavez v. JP Morgan Chase & Co.* (9<sup>th</sup> Cir. 2018) 888 F.3d 463—future lost wages recoverable in actions included; *Arias v. Residence Inn by Marriott* (9<sup>th</sup> Cir. 2019) 936 F.3d 920--in assessing amount in controversy defendant is permitted to rely on a chain of reasoning that includes assumptions]
- **Petitions re Arbitration:** There is a split of authority as to calculating the amount in controversy in actions to confirm or vacate arbitration results, with some courts following the award approach and others looking at the amount of the demand. [*Ford v. Hamilton Invs., Inc.* (6<sup>th</sup> Cir. 1994) 29 F.3d 255, 260—award; *Pershing, LLC v. Kiebach* (5<sup>th</sup> Cir. 2016) 819 F.3d 179, 182-183 – demand]
- **Attorney fees:** Attorney fees will be counted toward the amount-in-controversy only if they are recoverable by contract or statute. [*Webb v. FINRA* (7<sup>th</sup> Cir. 2018) 889 F.3d 853; *Fritsch v. Swift Transp. Co. of Arizona, LLC* (9<sup>th</sup> Cir. 2018) 899 F.3d 785--same]

## **Removal Jurisdiction**

### **DIVERSITY REMOVAL:**

#### **Realignment of parties**

Remand will be denied if, after a proper realignment of the parties to their true interests, diversity jurisdiction exists. [*City of Vestavia Hills v. Gen. Fid. Ins. Co.* (11th Cir. 2012) 676 F.3d 1310, 1314; *Scotts Co. LLC v. Seeds, Inc.* (9th Cir. 2012) 688 F.3d 1154, 1157-1158—in considering realignment, court considers primary matter in dispute; see also *Moss v. Princip*, 913 F.3d 508, 514–515 (5th Cir. 2018) (partnership dismissed as dispensable party); compare *Valencia v. Allstate Texas Lloyd’s* (5th Cir. 2020) 976 F.3d 593--party not named as defendant, even if defendant misnamed—cannot remove action].

#### **Fraudulent Joinder**

Fraudulent joinder requires more than grounds sufficient for a Rule 12(b)(6) dismissal – rather, it requires that there be no possibility of recovery with “extraordinarily strong” evidence there is no basis for a claim against the designated defendant. [*Grancare, LLC v. Thrower by and through Mills* (9th Cir. 2018) 889 F.3d 543—nursing facility administrator could be personally liable and hence was not a sham defendant; *Murphy v. Aurora Loan Services, LLC* (8th Cir. 2012) 699 F.3d 1027--fraudulent joinder upheld when negligent misrepresentation claim against law firm barred by established immunity from suit state law protection; see also *Couzens v. Donahue* (8th Cir. 2017) 854 F.3d 508--defendant not properly sued in individual capacity; *Alviar v. Lillard* (5th Cir. 2017) 854 F.3d 286 --no evidence of required willful intent for agent’s individual liability for tortious interference; *Casias v. Wal-Mart Stores, Inc.* (6th Cir. 2012) 695 F.3d 428, 433—joinder of nondiverse corporate manager a sham party in wrongful termination suit because he did not actively participate in termination decision]

#### **Bar on Removal by Served Local Defendants**

Even if diversity complete (i.e., an out-of-state plaintiff), if one of the properly joined and served defendants is local (citizen of forum state sued by an out-of-state plaintiff), removal is statutorily barred (28 U.S.C. § 1441(b)(2)).

- **Compare—“Snap” removal:** However, if the local defendant voluntarily appears and removes before formal service (so-called “snap removal”), or if the out-of-state defendant(s) are the only one yet served, removal is proper under the literal reading of section 1441(b)(2). [*Texas Brine Co. v. American Arbitration Ass’n, Inc.* (5th Cir. 2020) 955 F.3d 482—unserved local defendant can remove action if complete diversity exists; *Encompass Ins. Co. v. Stone Mansion Restaurant* (3d Cir. 2018) 902 F.3d 147—same; *Gibbons v. Bristol-Myers Squibb Co.* (2d Cir. 2019) 919 F.3d 699—same; contra *Gentile v. Biogen Idec, Inc.* (D. Mass. 2013) 934 F.Supp.2d 313, 317-318—(collecting cases reasoning that intention of local defendant



prohibition defied by allowing snap removal); *Kern v. KRSO* (N.D. Ill. 2020) 2020 U.S. Dist. LEXIS 122804--same]

- **Local Defendant Bar is Not Jurisdictional:** If a plaintiff desires to obtain a remand an action on the ground of the local defendant bar, the plaintiff must make the motion within thirty days of removal or remand is waived. [*Holbein v. TAW Enterprises, Inc.* (8<sup>th</sup> Cir. 2020) 983 F.3d 1049--local defendant bar is not jurisdictional]

### **Bar on Removal by Third Party Defendants**

Third party defendants cannot remove the action to federal court even if subjected to a federal claim by the original defendant. [*Home Depot U.S.A., Inc. v. Jackson* (2019) 139 S.Ct. 1743, 1749--no removal in CAFA case by non-original defendant; *Bowling v. U.S. Bank Nat'l Ass'n* (11<sup>th</sup> Cir. 2020) 963 F.3d 1030--same if third party attempts to remove under 28 U.S.C. 1441(c)]

### **Amount in Controversy on Removal**

- **Legal Certainty Test:** If the amount in controversy does not, to a legal certainty, exceed \$75,000 in an action filed originally in federal court, an action predicated on diversity jurisdiction must be dismissed even if the parties would prefer it be in federal court. [*Mensah v. Owners Ins. Co.* (8<sup>th</sup> Cir. 2020) 951 F.3d 941—requested uninsured motorist amount \$61,718.67; cf *Turtine v. Peterson* (8<sup>th</sup> Cir. 2020) 959 F.3d 873—plausible defamation claims concern more than \$75,000]
- **Alleging Amount in Controversy on Removal**

Defendant removing on diversity grounds need allege only short and plain statement of plausible satisfaction of amount in controversy requirement. [*Dart Cherokee Basin Operating Co., LLC v. Owens* (2014) 134 S.Ct. 1788; *Academy of Country Music v. Continental Casualty* (9<sup>th</sup> Cir. 2021) 991 F.3d 1059--defendant does not need to “prove” amount in controversy in notice of removal and sua sponte remand thereon improper; see also *Carrozza v. CVS Pharmacy, Inc.* (1<sup>st</sup> Cir. March 31, 2021) 2021 U.S. App. LEXIS 9410--removal can be based on plaintiff's settlement \$650,000 pre-filing settlement demand even if defendant offered only \$5,000]

### **FEDERAL QUESTION REMOVAL:**

#### **No Removal Simply Due to Parallel Action**

- The mere fact that there are parallel actions pending (one in state and the other in federal court) does not authorize removal of the state action that includes only state law claims, even if the claims in the two suits are transactionally related. [*Energy Mgt. Services, LLC v. City of Alexandria* (5<sup>th</sup> Cir. 2014) 739 F.3d 255; see also *American Airlines, Inc. v. Sabre, Inc.* (5<sup>th</sup> Cir. 2012) 694 F.3d 539, 543; *Dalton v. JJSC Properties, LLC* (8<sup>th</sup> Cir. 2020) 967 F.3d 909--if plaintiff lacks standing to sue, court must remand action to federal court even if claim arises under federal law; see also *Industria Lechera de Puerto Rico,*

*Inc. v. Beiro* (1<sup>st</sup> Cir. 2021) 989 F.3d 116--violating a prior federal consent decree is not a basis for removing state law claim]

### **Removal Based on Well Pledged Complaint**

Removal on federal question allowed if well pleaded complaint contains federal claim for relief as evidenced by incorporation of EEOC charge under Title VII attached to state court complaint. [*Davoodi v. Austin Independent School Dist.* (5<sup>th</sup> Cir. 2014) 755 F.3d 307]

- By comparison, if the state court complaint is uncertain and does not clearly refer to a federal claim for relief removal cannot take place until and if the claims are clarified by amendment or otherwise more certainly as arising under federal law. [*Quinn v. Guerrero* (5<sup>th</sup> Cir. 2017) 863 F.3d 353, 359--ambiguous references to excessive force and U.S. Constitution do not convert state law assault and battery claims into ones removable to federal court; *Industria Lechera De Puerto Rico v Beiro* (1<sup>st</sup> Cir. 2021) 989 F.3d 116—no removal of claim on basis it violated prior federal consent decree]
- Removal on the basis of the *Grable* decision and a substantial federal question is not authorized as to a complaint setting forth state law claims attacking a lender's foreclosure and to quiet title even though based on a federal statute (12 U.S.C. § 1701j-3—regulating due on sale clauses but not providing a federal cause of action). [*Estate of Cornell v. Bayview Loan Servicing, LLC* (6<sup>th</sup> Cir. 2018) 908 F.3d 1008; see also *Miller v. Bruenger* (6<sup>th</sup> Cir. 2020) 949 F.3d 986--dispute over benefits under life insurance policy issued to federal worker and governed by Federal Employees' Group Life Insurance Act does not raise substantial federal question]
- Merely because allegedly defective product regulated by FDA does not mean action arises under federal law. [*Burrell v. Bayer Corp.* (4<sup>th</sup> Cir. 2019) 918 F.3d 372—no federal question jurisdiction exists over removal of unlawful detainer action simply because of a possible defense under federal tenant protection laws; *Intellisoft, Ltd. v. Acer American Corp.* (Fed. Cir. 2020) 955 F.3d 927—state claim for trade secret infringement defendant incorporated into patent application does not arise under federal law; but see *Wulschleger v. Royal Canin U.S.A., Inc.* (8<sup>th</sup> Cir. 2020) 953 F.3d 519—removal jurisdiction proper of state law unfair practices claim based on buying D's products based on deception that FDA approved products]
- A regulatory taking claim based on alleged violations of state law does not arise under federal law or otherwise provide for a removable substantial federal question, even if the state statute was written to comply with federal laws (e.g. laws regulating outdoor advertising). [*Lamar Co. v. Mississippi Transp. Com'n* (5<sup>th</sup> Cir. 2020) 976 F.3d 524]
- Action does not involve “substantial federal question” and allow removal simply because independent state law claims involve federal issues. [*City of Oakland v. BP PLC* (9<sup>th</sup> Cir. 2020) 960 F.3d 570--state nuisance claim arising out of climate change liability not removable—and amending post-removal to add federal common law claim does not cure removal defect; *Cty. of San Mateo v. Chevron Corp.* (9<sup>th</sup> Cir. 2020) 960 F.3d 586—same; *Bd. of Cty. Comm'rs v. Suncor Energy (U.S.A.) Inc.* (10<sup>th</sup> Cir. 2020) 965 F.3d 792—same; and see *City of New York v. Chevron Corp.* (2d Cir. April 1, 2021) F.3d --issues different if original jurisdiction and raising issues of federal common law for global warming damage claims]

## **No Complete Preemption**

- Without a federal cause of action which in effect replaces a state law claim (e.g. LMRA, ERISA), there is an exceptionally strong presumption against complete preemption and removal under the artful pleading doctrine. [*Johnson v. MFS Petroleum Co.* (8<sup>th</sup> Cir. 2012) 701 F.3d 243, 249—no complete preemption under Petroleum Marketing Practices Act in class action by gas consumers for misrepresentation of grade of gasoline; *Sheehan v. Broadband Access Services, Inc.* (D. R.I. 2012) 889 F.Supp. 2d 284—no complete preemption of claims of violation of state drug testing laws under Federal Omnibus Transportation Employee Testing Act]

- **Labor Law Preemption**

- Claims for money had and received, unjust enrichment and conversion brought by union employee essentially were ones for unpaid wages, hinging on an interpretation of the CBA. Thus, removal authorized. [*Cavallaro v. UMass Mem'l Healthcare, Inc.* (1st Cir. 2012) 678 F.3d 1, 5]
- On the other hand, if a workplace safety claim depends on an independent and non-negotiable state right, it is not completely preempted. This may be true even if CBA also speaks to safety standards, so long as the claim does not rely on a construction of the CBA for recovery. [*McKnight v. Dresser, Inc.* (5th Cir. 2012) 676 F.3d 426, 434; see also *Markham v. Wertin* (8<sup>th</sup> Cir. 2017) 861 F.3d 748—no preemption of state discrimination claims since resolved without reference to CBA; *Dent v. NFL* (9<sup>th</sup> Cir. 2018) 902 F.3d 1109]

- **ERISA Preemption**

- No complete preemption if party would lack standing under ERISA or would not otherwise have a colorable claim to benefits contemplated by the statute. [*McCulloch v. Orthopaedic* (2<sup>nd</sup> Cir. 2017) 857 F.3d 141—no removal under ERISA over promissory estoppel claim by out-of-state provider who lacked standing under ERISA; *Hansen v. Group Health Cooperative* (9<sup>th</sup> Cir. 2018) 902 F.3d 1051—no ERISA preemption if claim based on duty independently granted under state law]
- A written agreement promising early pension plan eligibility was not a separate and independent promise from the plan itself. The agreement made clear that benefits arose from and were governed by the plan. Because the plan allowed for modification of benefits at any time, no cause of action arose from pension freeze. [*Arditi v. Lighthouse Intern.* (2nd Cir. 2012) 676 F.3d 294, 300]
- Where severance benefit rights arose under an employment agreement referencing an ERISA plan solely to assign value to benefits, was independent of

ERISA plan for preemption purposes. [*Dakota, Minnesota & Eastern R.R. Corp. v. Schieffer* (8<sup>th</sup> Cir. 2013) 711 F.3d 878, 882; *see also Gardner v. Heartland Industrial Partners, LP* (6<sup>th</sup> Cir. 2013) 715 F.3d 609, 614—tortious interference with pension plan contract claim did not require interpretation of ERISA plan terms]

### **Federal Officer Removal**

- Actions can be removed under the federal officer removal statute (28 U.S.C. § 1442).
  - *Removal Upheld: St. Charles Surg. Hosp., LLC v. La. Health Serv. & Indem. Co.* (5<sup>th</sup> Cir. 2021) 990 F.3d 447--removal allowed if private company administering FHBA-governed health insurance plan since OPM exercised strong level of control; *Williams v. Lockheed Martin Corp.* (5<sup>th</sup> Cir. 2021) 990 F.3d 852--federal officer removal upheld upon exposure while working for company acting under federal officer; *Agyin v. Razmzan* (2d Cir. 2021) 986 F.3d 168—removal of medical malpractice allowed as physician acting for health center receiving federal funds and deemed employee of Public Health Service; *Stirling v. Minasian* (9<sup>th</sup> Cir. 2020) 955 F.3d 795--since defendant serving both state and federal government, “acting under” requirement satisfied; *K&D LLC v. Trump Old Post Office LLC* (D.C. Cir. 2020) 951 F.3d 503—federal officer removal upheld since defendant raised colorable federal defense of lawful performance of presidential duties; *Latiolais v. Huntington Ingalls, Inc.* (5<sup>th</sup> Cir. 2020) 951 F.3d 286—exposure to asbestos while Navy’s ship being repaired at shipyard under federal contract authorized removal; *Baker v. Atlantic Richfield Co.* (7<sup>th</sup> Cir. 2020) 962 F.3d 937--company complying with governmental World War II requirements acting under federal officer and removal allowed.
  - *Removal Unauthorized: Riggs v. Airbus Helicopters, Inc.* (9<sup>th</sup> Cir. 2019) 939 F.3d 981—no federal officer removal simply because helicopter manufacturer inspected aircraft under FAA regulations but not acting under or assisting federal officers; *Mays v. City of Flint* (6<sup>th</sup> Cir. 2017) 871 F.3d 437--rejecting federal officer removal when state officials not acting under supervision of federal agency; *see also BP P.L.C. v. Mayor and City Council of Baltimore, cert granted No. 19-1189*—can appellate court review remand issues other than under federal officer removal statute.
  - *No Removal if State Court Without Jurisdiction:* While Congress has abrogated the so-called “derivative jurisdiction” requirement under the general removal statute (28 U.S.C. § 1441(f)), it has not done so if removal is sought under the federal officer removal provision. [*Ricci v. Salzman* (7<sup>th</sup> Cir. 2020) 976 F.3d 768--if state court lacked jurisdiction, no derivative jurisdiction rule can be raised to dismiss removed federal action; *but see Reynolds v. Behrman Capital IV, L.P.* (11<sup>th</sup> Cir. 2021) 988 F.3d 1314—absence of personal jurisdiction in state court does not bar removal]

### **CAFA AND MASS ACTIONS REMOVAL:**

- Federal jurisdiction *cannot* be exercised in “mass actions” removed from state court where all claims arise from a single event or occurrence in the state where the action was filed and that resulted in injuries in that state or contiguous states. [28 U.S.C. § 1332(d)(11)(B)(ii); *Nevada v. Bank of Am. Corp.* (9<sup>th</sup> Cir. 2012) 672 F.3d 661, 668—action did not result from a single occurrence where

complaint alleged widespread fraud involving thousands of borrower interactions]

- CAFA removal in a not-yet-certified class action is not defeated by plaintiff’s counsel’s stipulation that the amount in controversy does not exceed \$5 million, if absent the stipulation, defendant establishes the amount is in excess of the jurisdictional minimum for CAFA removal. *Standard Fire Insurance Co. v. Knowles* (2013) 133 S.Ct. 1345, 1348; *see also Faltermeier v. FCA US LLC* (8<sup>th</sup> Cir. 2018) 899 F.3d 617--plaintiff stipulation to limit recoverable attorney’s fees does not defeat CAFA removal; *see also Singh v. American Honda Finance Corp.*, (9<sup>th</sup> Cir. 2019) 925 F.3d 1053--CAFA abstention doctrine did not require remand since post-removal plaintiff added federal question claim]
- *Parens patriae* suit brought by State on behalf of its citizens is not a “class action” within the meaning of CAFA. [*Purdue Pharma L.P. v. Kentucky* (2<sup>nd</sup> Cir. 2013) 704 F.3d 208, 217; *Erie Ins. Exchange v. Erie Indem. Co.* (3<sup>rd</sup> Cir. 2013) 722 F.3d 154, 158-159—same as to state-authorized right of members of unincorporated association to bring suit on its behalf; *see also Nessel v. Amerigas Partners, L.P.* (6<sup>th</sup> Cir. 2020) 954 F.3d 831--state AG’s “class action” under state consumer protection statute not removable under CAFA since it lacks attributes of Rule 23 class action; *Canela v. Costco Wholesale Corp.* (9<sup>th</sup> Cir. 2020) 971 F.3d 845—PAGA case not “class action” allowing removal under CAFA]
- If an otherwise nonremovable action (e.g. CAFA case with mandatory abstention) is amended post-removal, that amendment cures any jurisdictional defect and establishes federal subject-matter jurisdiction. [*Singh v. American Honda Finance Corp.* (9<sup>th</sup> Cir. 2019) 925 F.3d 1053]
- The amount in controversy on removal of an action under CAFA must be shown by a preponderance of the evidence. [*Dart Cherokee Basin Operating Co., LLC v. Owens* (2014) 134 S.Ct. 1788—notice of removal need include only plausible allegation of CAFA amount in controversy and defendant can later provide evidence to meet preponderance burden; *Dudley v. Eli Lilly & Co.* (11<sup>th</sup> Cir. 2014) 778 F.3d 909--CAFA amount not satisfied because defendant failed to identify specific number of class members who did not receive promised compensation; *Judon v. Travelers Property Casualty Co. of America* (3<sup>rd</sup> Cir. 2014) 773 F.3d 495--conjecture as to CAFA amount in controversy insufficient; *Salter v. Quality Carriers, Inc.* (9<sup>th</sup> Cir. 2020) 974 F.3d 959—facial attack on CAFA amount in controversy requires only sufficient allegation of jurisdiction; *Harris v. KM Industrial, Inc.* (9<sup>th</sup> Cir. 2020) 980 F.3d 694--if factual attack, defendant must show CAFA amount in controversy satisfied by preponderance of evidence]
- “Any defendant” language in CAFA does not allow a third party defendant to remove to federal court. [*U.S.A., Inc. v. Jackson* (2019) 139 S.Ct. 1743; *In re Mortgage Electronic Registration Systems, Inc.* (6<sup>th</sup> Cir. 2012) 680 F.3d 849, 854; *Westwood Apex v. Contreras* (9<sup>th</sup> Cir. 2011) 644 F.3d 799, 806—same]

- Pleading minimal diversity for a CAFA removal can be made on information and belief. [*Ehrman v. Cox Communications, Inc.* (9<sup>th</sup> Cir. 2019) 932 F.3d 1223]
- Thirty day deadline to make motion to remand for non-jurisdictional defects does not apply to motion based on CAFA’s “local controversy” exception. [*Graphic Communications Local 1B Health & Welfare Fund “A” v. CVS Caremark Corp.* (8<sup>th</sup> Cir. 2011) 636 F.3d 971, 975]

## **REMOVAL PROCEDURE:**

### **Time to Remove**

- An in-court, off-the-record oral statement is not an “other paper” triggering the time to remove. [*Mackinnon v. IMVU, Inc.* (N.D. Cal. 2012) 2012 WL 95379; compare *Romulus v. CVS Pharmacy, Inc.* (1<sup>st</sup> Cir. 2014) 770 F.3d 67, 74—removal based on information in plaintiff’s email; *Morgan v. Huntington Ingalls* (5<sup>th</sup> Cir. 2018) 879 F.3d 602—“other paper” rule runs from receipt of removal disclosing deposition transcript, not upon testimony; *Hoffman v. Saul Holdings* 10<sup>th</sup> Cir. 1999) 194 F.3d 1072--contra]
- Time to remove is not triggered by service on statutory agent, but rather when defendant actually receives copy of complaint. [*Elliott v. America States* (4<sup>th</sup> Cir. 2018) 883 F.3d 384; *Anderson v. State Farm Mut. Auto Ins. Co.* (9<sup>th</sup> Cir. 2019) 917 F.3d 1126--same]
- Time to remove action does not begin until defendant has “solid and unambiguous” information that case is removable (e.g. calculating amount in controversy based on class size from defendant’s records). [*Harris v. Bankers Life & Cas. Co.* (9<sup>th</sup> Cir. 2005) 425 F.3d 689—no duty to investigate and removal timely upon receipt of paper from plaintiff first allowing ascertainment of removal; *Graiser v. Visionworks* (6<sup>th</sup> Cir. 2016) 819 F.3d 277, 283--CAFA removal time not triggered until defendant receives sufficient information from plaintiff; see also *Intellisoft, Ltd. v. Acer American Corp.* (Fed. Cir. 2020) 955 F.3d 927—time to remove claim based on proposed amendment adding federal claim not triggered until amendment granted and pleading operative]
- If defendant is not properly served under state law, then the time to remove does not commence and later removal not untimely. [*Shakouri v. Davis* (5<sup>th</sup> Cir. 2019) 923 F.3d 407]
- The 30-day removal deadline in a CAFA case is not triggered simply because the data as to the requisite \$5 million amount in controversy is contained in defendant’s own files. [*Kuxhausen v. BMW Fin’l Services NA LLC* (9<sup>th</sup> Cir. 2013) 707 F.3d 1136, 1139; see also *Walker v. Trailer Transit, Inc.* (7<sup>th</sup> Cir. 2013) 727 F.3d 19, 824-826]
- Outside one-year limit for removal of diversity case does not apply if plaintiff in bad faith dismissed nondiverse defendant without settlement two days after deadline. [*Hoyt v. Lane Constr. Corp.* (5<sup>th</sup> Cir. 2019) 927 F.3d 287]

### **Unanimity Requirement**

- Generally, all served defendants must unanimously agree to the notice of removal, although such joinder can be evidenced within a timely filed motion to dismiss filed in

federal court by a co-defendant. [*Christiansen v. West Branch Community School Dist.* (8<sup>th</sup> Cir. 2012) 674 F.3d 927]

- If a served co-defendant has signed a valid forum selection clause that prohibits removal (e.g. by agreeing to a mandatory clause placing exclusively selecting state court only), then it cannot consent to removal as would be required. [*Autoridad de Energia v. Vitol, S.A.* (1<sup>st</sup> Cir. 2017) 859 F.3d 140]

### **No Sua Sponte Remand for Procedural Defects**

- If the defect on removal is procedural and not one of jurisdiction, the court may not sua sponte remand. [*Coronoa-Contreras v. Gruel* (9<sup>th</sup> Cir. 2017) 857 F.3d 1025; *City of Albuquerque v. Soto Enterp.* (10<sup>th</sup> Cir. 2017) 864 F.3d 1089; note however that courts may nevertheless issue an order to show cause re the propriety of removal]

### **Waiver of Right to Remove**

- *Waiver of Removal By Contract:* A defendant waives the right to remove by clearly and unequivocally waiving the right to a federal forum. [*Grand View v. Helix Electric*, 847 F.3d 255 (5<sup>th</sup> Cir. 2017)—forum selection clause consenting to “sole and exclusive jurisdiction of the courts of Harris County, Texas” waives right of removal; *Medtronic Sofamor Danek, Inc. v. Gannon* (8<sup>th</sup> Cir. 2019) 913 F.3d 704—defendant waived right to remove by entering into related agreement stating claims “arising out of or related to this Agreement must be litigated in Minnesota state court”; *Bartels v. Saber Healthcare Group, LLC* (4<sup>th</sup> Cir. 2018) 880 F.3d 668—limiting forum to state county where there is no federal court bars removal; *City of Albany v. CH2M Hill, Inc.* (9<sup>th</sup> Cir. 2019) 924 F.3d 1306—same; *Autoridad de Energia v. Vitol, S.A.* (1<sup>st</sup> Cir. 2017) 859 F.3d 140—removal waived if co-defendant’s forum selection clause vests exclusive jurisdiction in “courts of Commonwealth of Puerto Rico”; *City of Albuquerque v. Soto Enterp.* (10<sup>th</sup> Cir. 2017) 864 F.3d 1089—filing motion to dismiss on the merits in state court waives removal; *Kenny v. Wal-Mart Stores, Inc.* (9<sup>th</sup> Cir. 2018) 881 F.3d 786--no waiver by seeking dismissal of state court complaint that does not yet disclose right to remove; *see generally Stone Surgical, LLC v. Stryker Corp.* (6<sup>th</sup> Cir. 2017) 858 F.3d 383]
- *Waiver by Failure to Move to Remand on Non-Jurisdictional Defect Within 30 Days:* [*Holbein v. TAW Enterprises, Inc.* (8<sup>th</sup> Cir. 2020) 983 F.3d 1049—a plaintiff waives right to remand on a non-jurisdictional defect if the motion is not made within 30 days of removal, e.g. local defendant bar remand; *ShIPLEY v. Helping Hands Therapy* (11<sup>th</sup> Cir. 2021) F.3d --raising non-jurisdictional defect in reply brief filed more than 30 days after removal untimely; *Hinkley v. Envoy Air, Inc.* (5<sup>th</sup> Cir. 2020) 968 F.3d 544—removal to wrong district is procedural defect and waived if no timely remand motion; *but see Kamm v. ITEX* (9<sup>th</sup> Cir. 2009) 568 F.3d 752—motion to remand based on forum selection clause not a “defect” under statute so 30-day time limit for motion does not apply]

### **Effect of Removal on State Court Jurisdiction**

Upon removal, the state court loses all jurisdiction over the case and its subsequent proceedings and judgment are not simply erroneous but absolutely void (and cannot later be corrected by a nunc pro tunc order). [*Roman Catholic Archdiocese v. Feliciano* (2020) 140 S.Ct. 696]

### **Time to Move to Remand**

Plainly, a motion to remand for lack of subject matter jurisdiction can be made at any time; in contrast, a motion to remand for procedural errors must be made within 30 days of removal. [See *Hinkley v. Envoy Air, Inc.* (5<sup>th</sup> Cir. 2020) 983 F.3d 544--removal to incorrect federal district is a procedural error, not a jurisdictional one; *Holbein v. TAW Enterprises, Inc.* (8<sup>th</sup> Cir. 2020) 983 F.3d 1049—remand based on local defendant bar must be made within 30 days of removal]

### **Appealability of Remand Decision**

If the court remands the action for lack of subject matter jurisdiction, the ruling remanding the action to state court is not appealable (28 U.S.C. § 1447(d)); however, if the removal was pursuant to 28 U.S.C. § 1442 (civil rights removal) or § 1443 (federal officer removal) an appeal may go forward and appellate review may also include review of all grounds (even those ordinarily not appealable) given for remanding the action to state court. [*BP P.L.C v. Mayor and City Council of Baltimore*, (May 17, 2021) S.Ct. (“After all, the statute allows courts of appeals to examine the whole of a district court’s ‘order,’ not just some of its parts or pieces.”)]

## **Supplemental Jurisdiction**

### **Supplemental Jurisdiction—Same Transaction or Occurrence Requirement**

- Courts have supplemental jurisdiction over transactionally related claims including claims raised in third party complaints. [*GN Netcom, Inc. v. Plantronics, Inc.* (3d Cir. 2019) 930 F.3d 76--federal question jurisdiction existed over plaintiff’s federal antitrust claims and supplemental jurisdiction was proper over the related state law tortious interference claim; *Weaver v. Metropolitan Life Ins. Co.* (5<sup>th</sup> Cir. 2019) 939 F.3d 618--supplemental jurisdiction exists over claims between non-diverse co-defendants joined on a Rule 22 interpleader claim; see also *D’Onofrio v. Vacations Publ’ns, Inc.* (5<sup>th</sup> Cir. 2018) 88 F.3d 197; *Watson v. Cartee* (6<sup>th</sup> Cir. 2016) 817 F.3d 299, 303]
- If, on the other hand, the claims do not arise out of the same transaction or occurrence, the assertion of supplemental jurisdiction is improper. [*Prolite Bldg. Supply LLC v. MW Mfrs., Inc.* (7<sup>th</sup> Cir. 2018) 891 F.3d 756—warranty and service contract claims for defective windows not supplemental since did not have common nucleus of operative fact; *S J Associated Pathologists, P.L.L.C. v. Cigna Healthcare of Texas, Inc.* (5<sup>th</sup> Cir.



2020) 964 F.3d 369—federal securities claim unrelated to separate state law contract claim and must be remanded (or dismissed)]

### **Retention or Dismissal of Supplemental Claims or Parties**

- Federal courts typically will decline continuing jurisdiction over supplemental state law claims once the federal claims are dismissed or resolved. [*Robinson v. Town of Marshfield* (1<sup>st</sup> Cir. 2020) 950 F.3d 21--when federal claims dismissed abuse of discretion to retain state claims unless doing so would serve interests of fairness, judicial economy, convenience and comity; *King v. City of Crestwood* (8<sup>th</sup> Cir. 2018) 899 F.3d 643—same; *Sexual Minorities Uganda v. Lively* (1<sup>st</sup> Cir. 2018) 899 F.3d 24--broad discretion to dismiss; also *Nuevos Destinos, LLC v. Peck* (8<sup>th</sup> Cir. June 9, 2021) 2021 U.S. App. LEXIS 17156—once federal question and supplemental claims dismissed, amending to add diversity ground rejected]
- **Factors:** Factors that lean in favor of continuing to exercise supplemental jurisdiction are whether:
  - trial is imminent and the court has expended time and resources on the matter;
  - the statute of limitations has run on the state law claims;
  - subsequent filing in state court will result in a substantial duplication of effort and waste of judicial resources; orwhen it is absolutely clear how the state law claims can be decided. [*Catzin v. Thank You & Good Luck Corp.* (2d Cir. 2018) 899 F.3d 77--abuse of discretion to dismiss remaining supplemental claims sua sponte, without notice and days before trial; see also *Integranet Physician Resource, Inc. v. Texas Independent Providers, L.L.C.* (5<sup>th</sup> Cir. 2019) 945 F.3d 232--abuse of discretion to retain supplemental claims since discretion is not a “blank check”; *Lambert v. Fiorentini* (1<sup>st</sup> Cir. 2020) 949 F.3d 22--can be abuse of discretion to retain jurisdiction if state law claim presents substantial question of state law better addressed by state courts; *Lavite v. Dunstan* (7<sup>th</sup> Cir. 2019) 932 F.3d 1020--rule to decline jurisdiction after dismissal of federal claim “is not rigid, but this practice is common and usually sensible if all claims within the court’s original jurisdiction have been resolved before trial”]

Courts often will simultaneously rule on related state law claims if the court’s reasoning in dismissing the federal claims applies equally to the state law claims; while declining supplemental jurisdiction if there is no analogue for the state claims and the reasoning in ruling on the federal claims does not bear on the remaining claims. [*Robinson v. Town of Marshfield* (1<sup>st</sup> Cir. 2020) 950 F.3d 21]

### **Loss of Supplemental Jurisdiction**

- If the anchor federal question claim is dismissed for lack of subject matter jurisdiction, supplemental jurisdiction may not be exercised over a related state law claim as such jurisdiction is lost. [*Cohen v. Postal Holdings, LLC* (2d Cir. 2017) 873 F.3d 394; *Arena v. Graybar Electric Co.* (5<sup>th</sup> Cir. 2012) 669 F.3d 214, 222]

- Similarly, if the Court finds that there is no *personal* jurisdiction over the anchor federal question claim, then there can be no supplemental jurisdiction at all over included state law claims – even if they are transactionally related. [*NexLearn v. Allen Interactions, Inc.*, (Fed. Cir. 2017) 859 F.3d 1371, 1381]
- If the action has been dismissed without the court expressly retaining jurisdiction to enforce a settlement, there is no supplemental or ancillary jurisdiction to decide the now-state law claim for breach of the settlement agreement. [See *National City golf Finance v. Scott* (5<sup>th</sup> Cir. 2018) 899 F.3d 412]

#### **Tolling Statute Upon Dismissal of Supplemental Claims**

- After dismissal of federal claims, the statute of limitations is tolled for 30 days pending the refiling of the claims in state court. [*Artis v. Dist. of Columbia* (2018) 138 S.Ct. 594]



Electronic Case Filing  
Administrative Policies and Procedures Manual

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March 31, 2021

**Electronic Case Filing  
Administrative Policies and Procedures  
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**Southern District of California**  
**Electronic Case Filing**  
**Administrative Policies and Procedures**

**Section 1: The Electronic Filing System**

a. **Authorization for Electronic Filing**

Pursuant to General Order No. 550, beginning on November 1, 2006, the U.S. District Court for the Southern District of California will require attorneys and others who have obtained permission of the court in civil and criminal cases to file documents with the court electronically, over the Internet, through its Case Management/Electronic Case Filing (CM/ECF) system. The court expects all attorneys practicing in this District to participate in electronic filing to the extent practicable.

Electronic transmission of a document to the CM/ECF system, together with the transmission of a Notice of Electronic Filing from the court, constitutes filing of the document for purposes of Rule 5(d) of the Federal Rules of Civil Procedure and Rule 49(d) of the Federal Rules of Criminal Procedure, and constitutes entry of the document on the docket kept by the Clerk of Court under Rules 58 and 79 of the Federal Rules of Civil Procedure. The following court policies govern electronic filing in this district unless, due to extraordinary circumstances, in a particular case, a judicial officer determines that these policies should be modified in the interest of justice.

b. **Scope of Electronic 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 these rules or in exceptional circumstances preventing a registered user from filing electronically, all petitions, motions, memoranda of law, or other pleadings and documents required 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.

Case initiating documents in civil cases, including but not limited to the civil Complaint and Notice of Removal, must be filed electronically. All sealed case initiating documents in civil cases must be filed in paper format. All case initiating documents in criminal cases, including the criminal Complaint, Information, Indictment and Superseding Information or Indictment, must be filed in paper format at the Clerk's Office. All subsequent documents must be filed by registered users electronically except as provided in these rules or as ordered by the court.

c. **The Official Record and Maintenance of Original Paper Documents**

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 will 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.

If an original pleading has some intrinsic value, the filing party must retain the original paper document for a period of five years from the date the document is signed, or for one year after the expiration of all time periods for appeal, whichever period is greater, and must provide the original paper document to the court upon request.

d. **Definitions**

**CASE MANAGEMENT/ELECTRONIC CASE FILING SYSTEM**, referred to in these procedures as the system or CM/ECF, means the Internet-based system for filing documents and maintaining court case files in the United States District Court for the Southern District of California.

**DOCUMENT** means pleadings, motions, exhibits, declarations, affidavits, memoranda, papers, orders, notices, and any other filing by or with the court.

**ELECTRONIC FILING** means uploading a document directly from the registered user's computer in "Portable Document Format" (.pdf), using the CM/ECF system to file that document in the court's case file. Individual .pdf documents must not exceed thirty-five (35) megabytes (MB) in size. Pacific Time applies to all filings. Sending a document or pleading to the court via e-mail other than as described below does not constitute "electronic filing."

**NOTICE OF ELECTRONIC FILING**, referred to in these procedures as NEF, is a notice automatically generated by the CM/ECF system at the time a document is filed with the court. The notice sets forth the time of filing, the name of the attorney and/or party filing the document, the type of document, the text of the docket entry, the name of the party and/or attorney receiving the notice, and an electronic link (hyperlink) to the filed document which allows recipients to retrieve the document automatically.

**.pdf** refers to Portable Document Format, a proprietary file format developed by Adobe Systems, Inc. A document file created with a word processor, or a paper document which has been scanned, must be converted to Portable Document Format to be electronically filed with the court. Converted files contain the extension ".pdf". Documents which exist only in paper form may be scanned into .pdf for electronic filing. The Court recommends scanner settings at 400 pixels per inch (ppi). Electronic documents must be converted to .pdf directly from a word processing program (e.g., Microsoft Word® or Corel WordPerfect®).

**REGISTERED USER** is an individual who has been issued a login and password by the court to electronically file documents.

**PACER** (Public Access to Court Electronic Records) is an automated system that allows a subscriber to view, print and download court case file information over the Internet for a fee.



e. **System Availability**

The CM/ECF system is designed to provide service 24 hours a day. The parties, however, are encouraged to file documents in advance of filing deadlines and during normal business hours. The Clerk's Office has established a Help Desk (866-233-7983) to respond to questions regarding CM/ECF and the registration process. The Help Desk will be staffed business days from 8:30 a.m. to 4:30 p.m. Information can also be obtained on the court web site at [www.casd.uscourts.gov](http://www.casd.uscourts.gov).

f. **Registration and Attorney Responsibilities**

Registration in the CM/ECF system for the purpose of electronic service of pleadings and other papers is mandatory for attorneys.

All attorneys in good standing must register for access to the CM/ECF system. To submit an electronic application for admission/registration, an attorney must have an individual upgraded PACER account. For additional information on how to register for an individual PACER account, please visit <https://www.casd.uscourts.gov/cmecf/nextgen.aspx>. Once an individual PACER account has been obtained, visit [www.pacer.gov](http://www.pacer.gov) and select Manage My Account > Maintenance > Attorney Admissions / E-File Registration. Any questions may be emailed to the CASD CM/ECF helpdesk at [ecfhelp@casd.uscourts.gov](mailto:ecfhelp@casd.uscourts.gov).

Registration constitutes consent to electronic service of documents by e-mail, as provided by the Federal Rules of Civil, Criminal and Appellate Procedure. An attorney may register up to two (2) additional e-mail addresses.

An attorney whose e-mail address, mailing address, telephone or fax number has changed must update the information through the PACER website and file a timely notification of the changes. Attorneys employed by federal, state, and local government agencies are responsible for updating their attorney information upon their appointment and separation from their respective agency.

Electronic filing through CM/ECF is required for all attorneys beginning November 1, 2006, except as otherwise provided herein.

A filing party must maintain an electronic mailbox of sufficient capacity, with the appropriate e-mail permissions, to receive electronic notice of case-related transmissions.

If an attorney fails to file electronically and does so without leave of court, he or she must also file a "Notice of Non-Compliance with Mandatory Electronic Filing" setting forth the reason(s) for filing in non-electronic form.

After leave to appear pro hac vice has been granted, attorneys will have five (5) days to register for electronic filing.

An attorney may apply to the court for permission to file documents in paper form. Effective November 1, 2006, attorneys must show good cause to file and serve using non-electronic filing. Permission for non-electronic filing may be withdrawn at any time by the court and the attorney may be required to file documents using the CM/ECF system.

g. **Logins and Passwords**

Documents filed under an attorney's login and password will constitute that attorney's signature for purposes of the Local Rules and Federal Rules of Civil and Criminal Procedure, including Rule 11 of the Federal Rules of Civil Procedure. The attorney is responsible for all documents filed with his or her password.

If a registered user believes the security of an existing password has been compromised, the user must immediately change the password through PACER.

h. **Privacy**

Unless otherwise ordered by the court, parties must refrain from including, or must partially redact where inclusion is necessary, the following personal data identifiers from all pleadings and documents filed with the court, including exhibits thereto:

1. Social Security numbers. If an individual's Social Security number must be included in a pleading, only the last four digits of that number should be used.

2. Names of Minor Children. If the involvement of a minor child must be mentioned, only the initials of that child should be used.
3. Dates of Birth. If an individual's date of birth must be included in a pleading, only the year should be used.
4. Financial Account Numbers. If the financial account numbers are relevant, only the last four digits of these numbers should be used.
5. In criminal cases, the home address of any individual ( e.g., victims).

The responsibility for redacting personal identifiers rests solely with the parties. The Clerk's Office will not review each document for compliance with this rule. A party filing a redacted document must retain the complete unredacted document for the duration of the case, including any period of appeal, unless instructed by the Court to file the complete unredacted document under seal.

Pursuant to General Order 514-E, Social Security cases will be excluded from electronic public access except for access by judiciary employees, the United States Attorney or its representatives and the litigants in those cases.

Without a court order, the court will not provide public electronic access to the following documents:

- a. Sealed documents ( e.g., motions for downward departure for substantial assistance, plea agreements indicating cooperation).
- b. Unexecuted warrants of any kind and associated petitions for warrants (e.g., arrest warrants, search warrants).
- c. Pretrial bail reports and bond supporting documents.
- d. Pre-Sentence reports and the statement of reasons related to the judgment of conviction.
- e. Juvenile records.

- f. Magistrate information sheets and financial affidavits filed in seeking representation pursuant to the Criminal Justice Act.
- g. Pleadings and reports related to the competency or mental health of a defendant.
- h. Civil settlement documents that contain information in section one above. It shall be the attorney's obligation to obtain an order sealing such documents.
- i. Ex parte requests for authorization of investigative, expert or other services pursuant to the Criminal Justice Act.
- j. Documents in criminal cases containing identifying information about jurors or potential jurors.
- k. Any other documents the court concludes is good cause to exclude from electronic access.

i. **Technical Specifications**

Current technical specifications for CM/ECF can be found at the court's official web site, [www.casd.uscourts.gov](http://www.casd.uscourts.gov). Specifications may change periodically. Registered users may refer to the web site for the most current requirements.

## Section 2: Electronic Filing and Service of Documents

### a. Filing

Electronically filed documents must meet the requirements of Fed. R. Civ. P. 10 (Form of Pleadings), and Local Civil Rule 5.1, as if they had been submitted on paper. Documents filed electronically are also subject to any page limitations set forth by Court order or by Local Civil Rule 7.1, Local Civil Rule 8.2, and Local Criminal Rule 47.1.

Unless otherwise expressly provided in these rules or in exceptional circumstances preventing a registered user from filing electronically, all applications, motions, memoranda of law, or other pleadings and documents required 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 authorized by the court, E-mailing a document to the Clerk's Office or to the assigned judge does not constitute "filing" of the document.

The court may, upon the motion of a party or upon its own motion, strike any inappropriately filed document.

### b. Pro Se Litigants

Unless otherwise authorized by the court, all documents submitted for filing to the Clerk's Office by parties appearing without an attorney must be in legible, paper form. The Clerk's Office will scan and electronically file the document.

A pro se party seeking leave to electronically file documents must file a motion and demonstrate the means to do so properly by stating their equipment and software capabilities in addition to agreeing to follow all rules and policies in the CM/ECF Administrative Policies and Procedures Manual. If granted leave to electronically file, the pro se party must register as a user with the Clerk's Office and as a subscriber to PACER within five (5) days.

A pro se party must seek leave to electronically file documents in each case filed. If an attorney enters an appearance on behalf of a pro se party, the attorney

must advise the Clerk's Office to terminate the login and password for the pro se party.

c. **Case Initiating Documents**

Case initiating documents in civil cases, including but not limited to the civil Complaint and Notice of Removal, must be filed electronically. All sealed case initiating documents in civil cases must be filed in paper format. All case initiating documents in criminal cases, including but not limited to the criminal Complaint, Information, and Superseding Information, must be filed in paper format at the Clerk's Office. Indictments and all sealed case initiating documents in criminal cases must be filed in paper format.

d. **Service**

1. **Summons**

The Clerk's Office will issue each summons, and the service of a summons must be effected pursuant to Rule 4 of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

After a summons has been served, or a waiver of service via summons has been received, the serving registered user must promptly scan the return of service or waiver and electronically file it. Non-registered filers may file the return of service or waiver with the Clerk's Office.

2. **Service of Documents**

Whenever a document is electronically filed in accordance with these procedures, the CM/ECF system will generate a "Notice of Electronic Filing" (NEF) to the filing party, the assigned judge and any registered user in the case. The NEF will constitute service of the document for purposes of the Federal Rules of Civil, Criminal and Appellate Procedure. Registration as a CM/ECF user constitutes consent to electronic service through the court's transmission facilities.

Each registered user of the CM/ECF system is responsible for assuring that the user's e-mail account is monitored regularly, and that e-mail notices are opened in a timely manner.

A certificate of service is not required when a party electronically files a document in the court's electronic filing system. If a certificate of service is required, the certificate must state the manner in which service or notice was accomplished on each party. If the certificate of service is signed by someone other than a registered user, the filing party must scan and electronically file the original signed document as set forth in Section 2.f.2 below.

Any document that is not filed electronically through the court's electronic filing system must be served as a paper copy, pursuant to the Federal Rules of Civil, Criminal and Appellate Procedure.

A party who is not a registered participant of CM/ECF is entitled to service of a paper copy of any electronically filed document. The filing party must serve the non-registered party with the document according to the Federal Rules of Civil, Criminal and Appellate Procedure.

A non-registered filing party who files document(s) with the Clerk's Office for scanning and entry to CM/ECF must serve paper copies on all non-registered parties to the case. There will be some delay in the scanning, electronic filing and subsequent electronic noticing to registered users. If time is an issue, non-registered filers must provide a paper copy of the document(s) to all parties.

e. **Courtesy Copies for Judicial Officers**

Unless otherwise ordered by the court, parties must deliver to the Clerk's Office or mail directly to the judge's chambers, within 24 hours after filing, any criminal or civil case filing which exceeds 20 pages in length including attachments and exhibits. In addition, where a party makes multiple filings in a case on the same day, and those filings cumulatively exceed 20 pages, a courtesy copy must be provided to the assigned judicial officer. If the nature of the filing is such that the need for a judge's immediate attention is anticipated or desired, a courtesy copy must be delivered on the same day as the filing. A copy of the Notice of Electronic

Filing must precede the first page of the courtesy copy. Courtesy copies are to be addressed to the attention of the assigned judicial officer.

f. **Signatures**

1. **Registered Users**

The registered user log-in and password required to submit documents to the CM/ECF system will serve as that registered user's signature for purposes of Rule 11 of the Federal Rules of Civil Procedure and for all other purposes under the Federal Rules of Civil, Criminal and Appellate Procedure and the Local Rules of this court. The name of the CM/ECF registered user under whose log-in and password the document is submitted must be preceded by a "s/" and typed in the space where the signature would otherwise appear. The correct format for an attorney signature is as follows:

s/Adam Attorney \_\_\_\_\_  
Attorney for (Plaintiff/Defendant)  
E-mail: adam\_attorney@lawfirm.com

2. **Non-Registered Signatories**

If the original document requires the signature of a non-registered signatory, the filing party must scan and electronically file the original document. The electronically filed document maintained on the court's servers will constitute the official version of that record. The filing party must retain the original document for a period of five years from the date the document is signed, or for one year after the expiration of all time periods for appeal, whichever period is greater, and must provide the original paper document to the Court upon request.

3. **Criminal Defendants**

A document required to be filed electronically which contains the signature of a defendant in a criminal case must be electronically filed as a scanned document in .pdf. The filing party is required to verify the legibility



of the scanned document before electronically filing it with the court. The filing party must retain the original paper document for a period of five years from the date the document is signed, or for one year after the expiration of all time periods for appeal, whichever period is greater, and must provide the original paper document to the Court upon request.

#### **4. Stipulations and Other Documents Requiring Multiple Signatures**

All stipulations must be filed as joint motions. The filer of a joint motion need not obtain a hearing date prior to filing the joint motion. At the time a joint motion is filed, the filer must e-mail a proposed order to the e-mail address of the assigned judicial officer pursuant to the procedures set forth in section 2.h below.

The filer of any joint motion or other document requiring more than one signature must certify that the content of the document is acceptable to all persons required to sign the document by obtaining either physical signatures or authorization for the electronic signatures of all parties on the document. Physical, facsimile or electronic signatures are permitted. The filer must electronically file the document indicating the signatories as "s/Jane Doe," "s/John Smith," etc., for each electronic signature.

Except as otherwise ordered, parties will have one business day to file an Objection to Electronic Filing if they object to contents of the joint motion or document that contains their signature. The assigned judicial officer will prepare an order, or enter a text order on the docket, following the filing of a joint motion.

#### **g. Motions, Applications, or Other Requests for Ruling by the Court**

1. Pursuant to Local Civil Rule 7.1.b and Local Civil Rule 7.1.e, all hearing dates for any motion, application, or other requests for ruling by the Court must be obtained from the law clerk of the judge to whom the case is assigned before any motion, application, or other requests for ruling by the Court are filed electronically.
2. Any supporting memorandum of points and authorities, declarations, and exhibits associated with motions, applications, or other requests for

ruling by the Court, must be filed as attachments to the motion in the CM/ECF system.

3. Civil and criminal motions, and responses thereto, must be filed according to the deadlines set forth in Local Civil Rule 7.1 and Local Criminal Rule 47.1.
4. A party wishing to file a motion or response on shortened time must file a motion for an order shortening time as required by the Local Rules. Counsel must e-mail a proposed order to the assigned judicial officer at the address indicated in section 2.h below.
5. The Court may, upon its own motion, strike any inappropriately filed document.

#### **h. Proposed Orders and Orders**

Registered users SHOULD NOT FILE OR SUBMIT proposed orders within the electronic filing system. At the time of filing any joint motion, motion for continuance or extension of time, motion for an order shortening time, or similar non-dispositive procedural motion, the filer must also e-mail a separate proposed order to the assigned judicial officer at the e-mail address provided below, with a copy of the e-mail and proposed order also being sent to opposing counsel.

The proposed order must be in editable word processing format (i.e. Microsoft Word), and not in .pdf format. The proposed order should not contain the name and law firm information of the filing party, and should not contain the word “proposed” in the caption.

The e-mail subject line should include the case number, followed by a short description of the attachment (i.e., 10cv1234 - Order Granting Motion for Continuance). **These e-mail addresses are not to be utilized to communicate with the Court unless otherwise permitted or when communications are solicited by the Court.** Opposing counsel will have one business day to e-mail chambers any objections to the proposed order.

### U.S. District Judges

efile_sabraw@casd.uscourts.gov	efile_miller@casd.uscourts.gov
efile_hayes@casd.uscourts.gov	efile_whelan@casd.uscourts.gov
efile_sammartino@casd.uscourts.gov	efile_lorenz@casd.uscourts.gov
efile_bencivengo@casd.uscourts.gov	efile_burns@casd.uscourts.gov
efile_curiel@casd.uscourts.gov	efile_houston@casd.uscourts.gov
efile_bashant@casd.uscourts.gov	efile_benitez@casd.uscourts.gov
efile_robinson@casd.uscourts.gov	efile_anello@casd.uscourts.gov
efile_huff@casd.uscourts.gov	efile_battaglia@casd.uscourts.gov
efile_moskowitz@casd.uscourts.gov	

### U.S. Magistrate Judges

efile_gallo@casd.uscourts.gov	efile_montenegro@casd.uscourts.gov
efile_major@casd.uscourts.gov	efile_lopez@casd.uscourts.gov
efile_skomal@casd.uscourts.gov	efile_berg@casd.uscourts.gov
efile_dembin@casd.uscourts.gov	efile_goddard@casd.uscourts.gov
efile_crawford@casd.uscourts.gov	efile_butcher@casd.uscourts.gov
efile_burkhardt@casd.uscourts.gov	efile_brooks@casd.uscourts.gov
efile_schopler@casd.uscourts.gov	efile_stormes@casd.uscourts.gov

#### i. **Ex Parte Documents**

Ordinary Ex Parte motions, for which notice is to be provided to all parties, should be filed electronically. Ex Parte documents for which no notice is to be provided to opposing parties should be filed in paper format under seal. Ex Parte documents filed in the system will be served on all parties.

#### j. **Sealed and Juvenile Documents**

All sealed documents in criminal cases and cases involving juveniles must be filed and served in paper format. Sealed documents in civil cases are to be filed electronically in CM/ECF and served in paper format.

Any document submitted for filing under seal in civil cases must be accompanied by a motion authorizing such filing. In civil cases the motion to seal will be filed as a public document using the appropriate CM/ECF event located under the “Sealed Documents” category. The proposed document to be filed under seal must be lodged electronically using the “Sealed Lodged Proposed Document” event located under the “Sealed Documents” category.

If the motion to seal is granted, the judge will issue an order authorizing the electronic filing by the Clerk’s Office of the lodged proposed document under seal. If the motion to seal is denied, the document will remain lodged under seal without further consideration absent contrary direction from the Court.

Electronic filing is not permitted in sealed cases. Documents intended for filing in sealed cases must be submitted in paper format. Ex Parte documents for which no notice is to be provided to opposing parties should be filed in paper format under seal.

1. Procedures for E-filing Sealed Documents in Civil Cases

- a. To e-file any sealed document in a civil case, including motions, responses, replies, declarations, etc., a filer must first e-file a motion to seal using the “Motion to File Document(s) Under Seal” event located in the civil events menu under “Sealed Documents.” The motion will be a public entry on the docket and the document will be available to the public. All parties in the case will receive notice of the electronic filing. The proposed sealed documents should not be attached to this public filing.
- b. After filing the Motion to File Document(s) Under Seal, the filer shall immediately submit the proposed sealed documents in CM/ECF using the “Sealed Lodged Proposed Document” event located under the “Sealed Documents” category. The proposed document must include the notation “UNDER SEAL” in the caption. The proposed sealed documents will be unavailable for viewing by any attorney or member of the public. However, the docket text associated with the entry will be available for viewing by attorneys and the public. The docket entry will not contain

specific information identifying the nature of the proposed sealed document. All parties in the case will receive notice of the electronic filing, however, the document itself will be unavailable. Counsel must serve copies on opposing counsel in a conventional manner.

- c. Counsel must e-mail a separate proposed order in word processing format to the assigned judicial officer at the e-mail address provided above in Section 2.h. If the order is also to be filed under seal, it must so state.
- d. If counsel believes the motion for leave to file documents under seal itself should be filed under seal, counsel shall follow the same process to obtain leave to file that motion under seal.

k. **Exhibits**

Exhibits must be submitted electronically in CM/ECF as attachments. If the entire exhibit exceeds thirty-five (35) megabytes, it must be submitted in multiple segments, not to exceed thirty-five (35) megabytes each.

Pursuant to Local Civil Rule 5.1.e, except where compliance is impracticable, exhibits must be paged in consecutive numerical order. 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.

The filing party is required to verify the legibility of the scanned exhibits prior to electronically filing them with the court. Parties should scan documents in black and white, unless color is a critical feature of the information.

Original exhibits must be retained by the submitting party for the duration of the case, including any period of appeal.

A party may seek leave of the court to allow the non-electronic filing of exhibits when they are not convertible to electronic form (e.g. videotapes, maps, etc.). If leave is granted, the filing party must prepare a cover page in pleading format to be submitted with the exhibits. The cover page must contain a table of contents indicating the page number of each of the succeeding exhibits. The

caption will state what document, if any, the exhibits are supporting. The actual exhibits must be tabbed and bound if appropriate.

Evidentiary and trial exhibits must be submitted directly to the appropriate courtroom deputy clerk and will not be filed with the court.

l. **Hyperlinks**

In order to preserve the integrity of the court record, attorneys wishing to insert hyperlinks in court filings should continue to use the traditional citation method for the cited authority, in addition to the hyperlink. The Judiciary's policy on hyperlinks is that a hyperlink contained in a filing is no more than a convenient mechanism for accessing material cited in the document. A hyperlink reference is extraneous to any filed document and is not part of the court's record.

m. **Technical Failures**

A registered user whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.

n. **Correcting Filing or Docket Errors**

1. Once a document is submitted and becomes part of the case docket, corrections to the docket may be made only by the Clerk's Office. The CM/ECF system will not permit the filing party to make changes to the document or docket entry once the transaction has been accepted.
2. The filing party should not attempt to re-file an incorrectly filed document.
3. The filing party must contact the Clerk's Office CM/ECF Help Desk as soon as an error has been discovered and provide the case number and document number. If appropriate, the Clerk's Office will make a docket entry indicating the document was filed in error. The filing party will be advised if the document needs to be re-filed.
4. If the Clerk's Office discovers filing or docketing errors, the filer will be advised of what further action, if any, is required to address the error.

However, if the error is minor, the Clerk's Office may correct the error, with or without notifying the parties.

5. In the event it appears a document has been filed in the wrong case, the Clerk's Office will docket an entry indicating this possible error and notify the filing party. If it is confirmed as an error, the party will be directed to re-file the document in the correct case. The Clerk's Office will not delete any documents filed by a party unless ordered by the court.

o. **Transcripts**

The Judicial Conference has adopted a policy regarding electronic access to court transcripts. The following procedures apply as to transcripts:

Transcripts filed by contract court reporters or official transcribers will be submitted to the Clerk's Office in .pdf through e-mail to a designated e-mail address. The e-mail address for contract court reporters and official transcribers is [ecftranscripts@casd.uscourts.gov](mailto:ecftranscripts@casd.uscourts.gov).

Transcripts will be electronically filed and available for viewing at the Clerk's Office public terminal, but may NOT be copied or reproduced by the Clerk's Office for a period of 90 days. Registered users who have purchased the transcript during the 90 day period will be provided remote electronic access to the transcript in CM/ECF. The court reporter or official transcriber will notify the Clerk's Office when a registered user in a case has purchased the transcript so that access to the transcript can be given to the purchaser through the court's CM/ECF system.

Within 7 calendar days of the filing of the official transcript in CM/ECF, each party wishing to redact a transcript must electronically file a "Notice of Intent to Request Redaction." If no such notice is filed within the allotted time, the court will assume redaction of personal data identifiers from the transcript is not necessary. If redaction is requested, within 21 calendar days from the e-filing of the transcript with the Clerk, or longer by order of the Court, the parties must submit to the court reporter or official transcriber a redaction request statement indicating by page and line where personal identifiers appear in the transcript and how they are to be redacted. The responsibility for redacting personal identifiers rests solely with counsel and the parties. Personal identifiers are Social Security numbers, financial

account numbers, names of minor children, dates of birth, and in criminal cases, home addresses.

p. **Exceptions to Electronic Filing**

The following documents must be submitted in paper form:

1. Sealed Documents in Criminal Cases and Cases Involving Juveniles
2. Sealed Civil Complaint and Sealed Notice of Removal
3. Indictment
4. Financial Affidavit in Support of Request for Appointment of Counsel
5. Bond Documents
6. Writs Issued
7. Reports of Medical or Mental Evaluations of Criminal Case Defendants
8. Letter to Sentencing Judge Recommending Downward Departure Under USSG § 5K1.1
9. Stipulation of Fact and Joint Motion for Release of Material Witnesses (in Alien Smuggling Cases)
10. Grand Jury Matters, including:
  - a. Grand Jury Returns
  - b. Voting Slips
  - c. Grand Jury Transcripts
11. Consent/Declination Form (Pursuant to General Order No. 707)
12. Consent of a Civil Action to a Magistrate Judge (Pursuant to Civil Local Rule 73.1.b)
12. Civil Miscellaneous Cases Filed by Unregistered Attorneys
13. Any other document or filing that the court orders not to be electronically filed, imaged or maintained in the CM/ECF system.



# **GENERAL FILING PROCEDURES**



**U. S. District Court**

**Southern District of California**

**John Morrill**

**Clerk of Court**

The Clerk's Office for the United States District Court for the Southern District of California is pleased to provide our customers with this General Filing Procedures Manual. We will continue to update the manual as rules change. We hope you will find it a valuable tool.

For those of you who are new to federal court, this manual is an effort to provide the public and attorneys with an informational package to assist in dealings with the court. We hope the following pages answer any questions you may have concerning such areas as preparation of documents, filing procedures, and the addresses of all departments of the court. We believe this manual, when used in conjunction with the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Local Rules for the Southern District of California and the Electronic Case Filing Administrative Policies and Procedures Manual, will not only be beneficial to those of you who may be familiar with the court, but also the paralegals, secretaries, and pro se litigants who have had little or no contact with the federal court system.

**This manual is intended only as a general guide. It does not take the place of the Federal Rules of Civil, Criminal or Appellate Procedure, the Local Rules, the Electronic Case Filing Administrative Policies and Procedures Manual, or individual chambers rules. It does not relieve litigants of the responsibility of complying with the court's Local Rules or Federal Rules of Procedures, or any other obligation imposed by the law.**

We will do everything possible to ensure prompt efficient service. We are here to answer any questions that you may have. Please feel free to contact us for assistance.

Sincerely,  
John Morrill  
Clerk of Court

## GENERAL INFORMATION ABOUT THE COURT

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### HOURS

The Clerk's Office is open to the public Monday through Friday from 8:30 a.m. until 4:30 p.m. Files can be reviewed from 8:30 a.m. until 4:30 p.m.

### LOCATION

Clerk of Court United States District Court Southern District of California 333 West Broadway, Suite 420 San Diego, CA 92101 (619) 557-5600	Clerk of Court United States District Court Southern District of California 2003 W. Adams Avenue, Suite 220 El Centro, CA 92243 (760) 339-4242
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### JURISDICTION

The Southern District of California is comprised of San Diego and Imperial Counties.

### LEGAL HOLIDAYS

- New Year's Day – January 1
- Martin Luther King, Jr. Day – third Monday in January
- Presidents' Day – third Monday in February
- Memorial Day – last Monday in May
- Independence Day – July 4
- Labor Day – first Monday in September
- Columbus Day – second Monday in October
- Veterans' Day – November 11
- Thanksgiving Day – fourth Thursday in November
- Christmas Day – December 25
- Any other day declared a holiday by federal statute, executive order, or by the Chief District Judge

Holidays that fall on Saturday will be observed the preceding Friday. Holidays that fall on Sunday will be observed the following Monday.

**JUDGES**

The mailing address for district and magistrate judges in San Diego is:

For judges located in the Edward J. Schwartz U.S. Courthouse

United States District Court  
Attention: (judge or magistrate judge name)  
221 West Broadway, (Suite number)  
San Diego, CA 92101

For judges located in the James M. Carter and Judith N. Keep U.S. Courthouse

United States District Court  
Attention: (judge or magistrate judge name)  
333 West Broadway, (Suite number)  
San Diego, CA 92101

The mailing address for Magistrate Judge Peter C. Lewis in El Centro is:

United States District Court  
Southern District of California at El Centro  
2003 W. Adams Ave, Suite 220  
El Centro, CA 92243

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. Except as authorized by the judge, attorneys must not send copies to the judge of letters sent to others (Civil Local Rule 83.9).

The mailing address for the Clerk’s Office is:

Clerk of the Court United States District Court Southern District of California 333 West Broadway, Suite 420 San Diego, CA 92101 (619) 557-5600	Clerk of Court United States District Court Southern District of California 2003 W. Adams Avenue, Suite 220 El Centro, CA 92243 760-339-4243
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## DISTRICT JUDGES IN ORDER OF SENIORITY

### Active Judges

<p>Chambers of: Chief Judge Dana M. Sabraw [DMS] Suite 1310 - Courtroom 13A (13th Floor - Carter/Keep Courthouse) (619) 557-6262 efile_sabraw@casd.uscourts.gov</p>	<p>Chambers of: Judge Gonzalo P. Curiel [GPC] Suite 2190 - Courtroom 2D (2nd Floor - Schwartz) (619) 557-7667 efile_curiel@casd.uscourts.gov</p>
<p>Chambers of: Judge William Q. Hayes [WQH] Suite 1480 - Courtroom 14B (14th Floor - Carter/Keep Courthouse) (619) 557-6420 efile_hayes@casd.uscourts.gov</p>	<p>Chambers of: Judge Cynthia Bashant [BAS] Suite 4145 - Courtroom 4B (4th Floor - Schwartz) (619) 321-0256 efile_bashant@casd.uscourts.gov</p>
<p>Chambers of: Judge Janis L. Sammartino [JLS] Suite 4145 - Courtroom 4A (4<sup>th</sup> Floor - Schwartz) (619) 557-5542 efile_sammartino@casd.uscourts.gov</p>	<p>Chambers of: Judge Todd W. Robinson [TWR] Suite 3130 - Courtroom 3A (3rd Floor - Schwartz) (619) 321-0975 efile_robinson@casd.uscourts.gov</p>
<p>Chambers of: Judge Cathy Ann Bencivengo [CAB] Suite 1510 - Courtroom 15A (15th Floor - Carter/Keep Courthouse) (619) 557-7688 efile_bencivengo@casd.uscourts.gov</p>	

\* E-mail addresses are to be used solely for submitting proposed orders to the court, or when communications are solicited by the court.

**SENIOR JUDGES**  
**Official Initials in Brackets**

<p>Chambers of: Judge Marilyn L. Huff [H] Suite 1210 - Courtroom 12A (12th Floor - Carter/Keep Courthouse) (619) 557-6016 efile_huff@casd.uscourts.gov</p>	<p>Chambers of: Judge Larry Alan Burns [LAB] Suite 1410 - Courtroom 14A (14th Floor - Carter/Keep Courthouse) (619) 557-5874 efile_burns@casd.uscourts.gov</p>
<p>Chambers of: Judge Barry Ted Moskowitz [BTM] Suite 5160 - Courtroom 15B (15th Floor - Carter/Keep Courthouse) (619) 557-5583 efile_moskowitz@casd.uscourts.gov</p>	<p>Chambers of: Judge John A. Houston [JAH] Suite 1380 - Courtroom 13B (13th Floor - Carter/Keep Courthouse) (619) 557-5716 efile_houston@casd.uscourts.gov</p>
<p>Chambers of: Judge Jeffrey T. Miller [JM] Suite 5190 - Courtroom 5D (5th floor - Schwartz) (619) 557-6627 efile_miller@casd.uscourts.gov</p>	<p>Chambers of: Judge Roger T. Benitez [BEN] Suite 5135 - Courtroom 5A (5th Floor - Schwartz) (619) 446-3589 efile_benitez@casd.uscourts.gov</p>
<p>Chambers of: Judge Thomas J. Whelan [W] Suite 3155 - Courtroom 3C (3rd floor- Schwartz) (619) 557-6625 efile_whelan@casd.uscourts.gov</p>	<p>Chambers of: Judge Michael M. Anello [MMA] Suite 3130 - Courtroom 3A (3rd Floor - Schwartz) (619) 557-5960 efile_anello@casd.uscourts.gov</p>
<p>Chambers of: Judge M. James Lorenz [L] Suite 3145 - Courtroom 5B (5th floor - Schwartz) (619) 557-7669 efile_lorenz@casd.uscourts.gov</p>	<p>Chambers of: Judge Anthony J. Battaglia [AJB] Suite 3142 - Courtroom 3B (3rd Floor - Schwartz) (619) 557-3446 efile_battaglia@casd.uscourts.gov</p>

\* E-mail addresses are to be used solely for submitting proposed orders to the court, or when communications are solicited by the court.

**MAGISTRATE JUDGES IN ORDER OF SENIORITY**  
**Official Initials in Brackets**  
**(Refer to the Court Calendars for Courtroom Locations)**

<p>Chambers of:  Presiding Magistrate Judge William V. Gallo [WVG]  Suite 2125 - 2nd Floor (Schwartz)  (619) 557-6384  efile_gallo@casd.uscourts.gov</p>	<p>Chambers of:  Magistrate Judge  Ruth Bermudez Montenegro [RBM]  El Centro Courthouse, Suite 220  (760) 339-4250  efile_montenegro@casd.uscourts.gov</p>
<p>Chambers of:  Magistrate Judge Barbara L. Major [BLM]  Suite 1110 - 11th Floor (Carter/Keep Courthouse)  (619) 557-7372  efile_major@casd.uscourts.gov</p>	<p>Chambers of:  Magistrate Judge Linda Lopez [LL]  Suite 2140 - 2nd Floor (Schwartz)  (619) 557-5585  efile_lopez@casd.uscourts.gov</p>
<p>Chambers of:  Magistrate Judge Bernard G. Skomal [BGS]  Suite 1280 - 12th Floor (Carter/Keep Courthouse)  (619) 557-2993  efile_skomal@casd.uscourts.gov</p>	<p>Chambers of:  Magistrate Judge Michael S. Berg [MSB]  Suite 2160 - 2nd Floor (Schwartz)  (619) 321-0247  efile_berg@casd.uscourts.gov</p>
<p>Chambers of:  Magistrate Judge Mitchell D. Dembin [MDD]  Suite 1180 - 11th Floor (Carter/Keep Courthouse)  (619) 446-3972  efile_dembin@casd.uscourts.gov</p>	<p>Chambers of:  Magistrate Judge Allison H. Goddard [AHG]  Suite 3142 - Courtroom 3B (3rd Floor-Schwartz)  (619) 557-6162  efile_goddard@casd.uscourts.gov</p>
<p>Chambers of:  Magistrate Judge Karen S. Crawford [KSC]  Suite 1010 - 10th Floor (Carter/Keep Courthouse)  (619) 446-3964  efile_crawford@casd.uscourts.gov</p>	<p>Chambers of:  Magistrate Judge Daniel E. Butcher [DEB]  Suite 3142 - Courtroom 3A (3rd Floor-Schwartz)  (619) 446-3704  efile_butcher@casd.uscourts.gov</p>
<p>Chambers of:  Magistrate Judge Jill L. Burkhardt [JLB]  Suite 5140 - 5th Floor (Schwartz)  (619) 557-6624  efile_burkhardt@casd.uscourts.gov</p>	<p>Chambers of:  Magistrate Judge Ruben B. Brooks [RBB]  Suite 5195 - 5th (Schwartz)  (619) 557-3404  efile_brooks@casd.uscourts.gov</p>
<p>Chambers of:  Magistrate Judge Andrew G. Schopler [AGS]  Suite 5160 - 5th Floor (Schwartz)  (619) 557-6480  efile_schopler@casd.uscourts.gov</p>	<p>Chambers of:  Magistrate Judge Nita L. Stormes [NLS]  Suite 5195 - 5th Floor (Schwartz)  (619) 557-5391  efile_stormes@casd.uscourts.gov</p>

\* E-mail addresses are to be used solely for submitting proposed orders to the court, or when communications are solicited by the court.

**RELATED COURT UNITS AND AGENCIES**

<p>U. S. Bankruptcy Court          Jacob Weinberger U. S. Courthouse          325 West F. Street          San Diego, CA 92101-6991          (619) 557-5620</p>	<p>U. S. Probation Office          101 W. Broadway, Suite 700          San Diego, CA 92101          (619) 557-5510</p> <p>El Centro Office          2003 W. Adams Avenue, Suite 110          El Centro, CA 92243          (760) 352-2138</p>
<p>U. S. Attorney's Office          880 Front Street, Room 6293          San Diego, CA 92101-8893          (619) 557-5610</p>	<p>U. S. Marshals Service          333 West Broadway          San Diego, CA 92101          (619) 557-6620</p>
<p>San Diego Federal Defenders, Inc.          NBC Building, 225 Broadway, Suite 900          San Diego, CA 92101-5008          (619) 234-8467</p> <p>El Centro Federal Defenders, Inc.          1122 State Street. Suite E          El Centro, CA 92243          (760) 335-3510</p>	<p>U. S. Pretrial Services          333 W. Broadway, Suite 600          San Diego, CA 92101          (619) 557-7538</p> <p>El Centro Office          2003 Adams Avenue, Suite 130          El Centro, CA 92243          (760) 339-4225</p>

<p><b>COURT REPORTER/RECORDER COORDINATOR</b>          Noemy Martinez          (619) 557-7310</p>
<p><b>MANAGER OF INTERPRETER SERVICES</b>          Gloria Mayne          (619)-557-5205</p>
<p><b>CIRCUIT LIBRARY</b>          Valerie Railey          (619)-557-5066</p>



## ATTORNEY INFORMATION

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### **ATTORNEY ADMISSION TO PRACTICE (CivLR 83.3)**

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. Applicants must request to be admitted through the electronic Attorney Admission System via the PACER website at [www.pacer.gov](http://www.pacer.gov). For additional attorney admissions information, please visit

<https://www.casd.uscourts.gov/attorney/attorney-admission.aspx>.

### **CERTIFICATE OF GOOD STANDING**

Attorneys should submit written requests for a Certificate of Good Standing to the Clerk's Office along with a \$20 check made payable to the U. S. District Court. A self-addressed stamped envelope should also be included.

### **CHANGE OF ADDRESS/FAX NUMBER/E-MAIL ADDRESS (CivLR 83.3) (Electronic Case Filing Administrative Policies and Procedures Section 1, f)**

When a law firm changes its address or e-mail or an attorney changes firm, address, fax, or e-mail address, the Clerk's Office must be notified of the change so the records remain accurate. Attorneys are responsible for updating their address information via PACER at [www.pacer.gov](http://www.pacer.gov) > Manage My Account > Maintenance > Update Address Information. Additionally, the attorney must file a timely notification of the changes.

A form for the notification may be found at the court's website

<http://www.casd.uscourts.gov> under Attorney Assistance - Attorney Admission.

Failure to officially notify the Clerk's Office will result in untimely or incomplete service of orders.

### **CJA APPOINTMENT OF COUNSEL**

The CJA Panel consists of attorneys who are eligible and willing to be appointed to provide representation under the Criminal Justice Act. Admission requirements are

specified in General Order 405A. Applications for panel members are accepted yearly between June and November. The Clerk's Office will post a notice when applications are being accepted. Applications can be retrieved on line at <http://www.casd.uscourts.gov> and outside the cashier window of the Clerk's Office lobby. Completed applications must be returned to the cashier window of the Clerk's Office by the specified filing deadline. Applications that are not timely received will not be considered for the panel. The list of panel participants is revised each year in November by a committee of judges.

Information regarding qualifications, procedures, billing information, juror information, and current panel members is available on the court's Attorney Assistance tab, <http://www.casd.uscourts.gov>.

**E-MAIL ADDRESSES FOR PROPOSED ORDERS** - (Electronic Case Filing Administrative Policies and Procedures Section 2, h)

Registered users SHOULD NOT FILE OR SUBMIT proposed orders within the electronic filing system. At the time of filing a motion the filer must also e-mail a separate proposed order to the assigned judicial officer, with a copy of the e-mail and proposed order also being sent to opposing counsel. E-mail addresses for the judges can be found in:

- The Electronic Case Filing Administrative Policies and Procedures Section 2, h,
- In Civil Events and Criminal Events under the link [Email Addresses for Proposed Orders](#),
- On the court's web site, [www.casd.uscourts.gov](http://www.casd.uscourts.gov) under the Court Info tab, and
- In this document.

The proposed order must be in editable word processing format, not in .pdf format. The proposed order should not contain the name and law firm information of the filing party, and should not contain the word "proposed" in the caption.

**PRO HAC VICE** (CivLR 83.3(c) (4))

An attorney not eligible for admission under CivLR 83.3(c), but a member in good standing of any U. S. court bar, or the highest court of any state or territory, may

register with the court to participate in a case. There is a one-time pro hac vice fee for eligibility for admission; however an attorney is required to file for admission in each case. An attorney appearing pro hac vice cannot reside in California, be regularly employed in California, or be regularly engaged in professional or other activities in California. Local Counsel must be designated.

To submit an electronic application for admission, an attorney must have an individual upgraded PACER account. For additional information on how to register for an individual PACER account, please visit

<https://www.casd.uscourts.gov/cmecf/nextgen.aspx>. Once an individual PACER account has been obtained, visit [www.pacer.gov](http://www.pacer.gov) and select Manage My Account > Maintenance > Attorney Admissions / E-File Registration > Pro Hac Vice.

## **U. S. GOVERNMENT ATTORNEY**

U. S. Attorneys not eligible for admission under CivLR 83.3(c), but a member in good standing of any U. S. Court bar, or the highest court of any state or territory, may register with the court to participate in a case. The U. S. Attorney must utilize the admission card on the court's web site and will not be required to pay an admission fee.

To request admission as a government attorney, the attorney must have an individual upgraded PACER account. For additional information on how to register for an individual PACER account, please visit

<https://www.casd.uscourts.gov/cmecf/nextgen.aspx>. Once an individual PACER account has been obtained, visit [www.pacer.gov](http://www.pacer.gov) and select Manage My Account > Maintenance > Attorney Admissions / E-File Registration > Federal Attorney.

### **CHANGE OF ADDRESS BY PRO SE LITIGANT (CivLR 83.11(b))**

A party proceeding pro se (i.e., without an attorney) must advise the court and opposing parties if his or her address changes. If a pro se plaintiff fails to notify the court that they have a new address, the court may dismiss the action without prejudice for failure to prosecute. In order to accurately maintain address records in the Clerk's Office, it is preferred that pro se litigants use their full name on the first pleading filed and on all subsequent pleadings.

### **DROP BOX - AFTER OFFICE FILINGS**

An after-hours drop box is located on the 4<sup>th</sup> floor of the Federal Building at 333 West Broadway, outside Room 420. The drop box is available from 4:30 p.m. to 6:00 p.m., Monday through Friday, except federal holidays. Documents dropped will receive a file stamp for the day the document was dropped in the after-hours drop box. All dropped documents must be in a sealed envelope, with a self-addressed stamped envelope if conformed copies are requested. If documents are required to be filed electronically, a Notice of Non-Compliance will be issued.

### **FEES OF THE U. S. DISTRICT COURT**

Please visit the court's website at <https://www.casd.uscourts.gov> to view the current fee schedule.

### **FILE NUMBERS**

All cases have distinctive numbers in the following format:

- The first number is either a 3 for San Diego or a 2 for El Centro.
- The next two numbers indicate the year the case was filed.
- The two letters indicate the case type (cv - civil, cr - criminal, mj - magistrate, mc - miscellaneous, po - petty offense.)
- The next 5 numbers are the case number.

- Civil and criminal case numbers also indicate the judge assignment with the judge's initial(s). The judge's initials are listed on pages 6 – 8 in this document.
  - The first letters are the presiding judge, and in civil cases the last three letters indicate the magistrate judge.
  - Magistrate and Petty Offense cases will have only a magistrate judge assignment.
  - Miscellaneous case numbers do not indicate a judge assignment.

## **FINANCIAL INFORMATION**

Financial information for the court is available on the court's website at <https://www.casd.uscourts.gov>. For further information please contact the Financial Department at 619-557-6482.

## **FILES AND RECORDS**

Cases are available for viewing in the Clerk's Office on the computers in the lobby. The official court record is the electronic record in CM/ECF. Docket sheets and party indexes are also available on the Internet via the Public Access to Court Electronic Records (PACER) System, at <http://pacer.casd.uscourts.gov>. For information concerning PACER access and registration for PACER contact the Pacer Service Center in San Antonio, Texas at 1-800-676-6856 or <http://pacer.psc.uscourts.gov>.

With Electronic Case Filing (CM/ECF), many entries on the official court record have never been filed in paper in the Clerk's Office. Copies prepared by the Clerk's Office are \$.50 per page. Customers can print their own copies of documents at a public computer terminal for \$.10 per page.

Certain closed cases have been transferred to the National Archives and Records Administration (NARA) in Perris, CA. To receive information about closed cases, call the Clerk's Office File Review (619) 557-7362.

## **JUDGE ASSIGNMENT**

The Clerk's office has no discretion in the assignment of cases (CivLR 40.1(a)). Judges are assigned by random draw.

## **LOCAL RULES (LR)**

The Local Rules of Practice 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 cited as A.1-E.1; and HC.1, HC.2, et seq. Rules covering Patent proceedings may be cited as Patent L.R.\_\_\_\_.

Local Rules can be obtained on-line, free of charge, at <http://www.casd.uscourts.gov> using the Rules tab. Copies of the Local Rules are available in the Clerk's Office lobby, cashier window, for \$3.00. Local Rules can also be obtained by mailing \$3.00 to Clerk's Office, U. S. District Court, Southern District of CA, at 333 West Broadway Suite 420, San Diego, CA 92101-8900 with a 9.5' x 12' self-addressed envelope with \$2.00 postage.

## **REQUEST FOR REPRODUCTION OF DOCUMENTS**

Documents may be printed from our public terminals in the lobby for \$.10 per page. The fee for Clerk's Office staff making copies is \$.50 per page. You will be asked to complete a Request for Copies form which calls for case number, case title, document file date, and docket number. You can use PACER or the public terminals to determine this information. The form must be completed in its entirety in order to process the request.

**SEALED DOCUMENTS** (CivLR 79.2, Patent Rule 2.2, Electronic Case Filing Administrative Policies and Procedures Section 2.j)

A document may not be filed under seal unless authorized by an order. If the order is also to be filed under seal, it must so state. All criminal sealed cases, juvenile cases, and criminal sealed documents must be filed in paper format pursuant to (CivLR 79.2 and Local Patent Rule 2.2). Sealed documents in civil cases should be filed electronically. Please refer to the procedures for electronically filing sealed documents in civil cases located on our CM/ECF website, [www.casd.uscourts.gov/cmecf](http://www.casd.uscourts.gov/cmecf).

## **TRANSCRIPTS, TAPES AND CDS**

Orders for transcripts should be directed to the court reporter/recorder present at the proceedings. To determine which court reporter/recorder was present, review the minute entry on the docket, or contact the judge's courtroom deputy. Orders for transcripts produced by electronic sound recording in a magistrate judge's courtroom should be directed to the judge's courtroom deputy or the Court Reporter Coordinator at (619) 557-7310. The case name, case number, judge or magistrate judge and date of hearing will be required to process the request. The fee for a transcript is based on the per page rate. Refer to the current version of General Order 70 for detailed information regarding fees. General Orders are accessed on-line, free of charge at [www.casd.uscourts.gov](http://www.casd.uscourts.gov) by clicking on the Rules tab .

Tapes and CDs of electronically recorded proceedings may be obtained by contacting the individual court reporter for the district court judge. For magistrate judge requests, contact the assigned judge's courtroom deputy. The case name, case number, district judge or magistrate judge and date of hearing will be required to process the request. The fee for a copy of an audio tape or CD can be found on the court's fee schedule. Please visit the court's website at <https://www.casd.uscourts.gov> to view the current fee schedule.

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## CM/ECF AND PACER INFORMATION

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### **ELECTRONIC CASE FILING ADMINISTRATIVE POLICIES AND PROCEDURES**

Pursuant to General Order 550, beginning on November 1, 2006, the U. S. District Court for the Southern District of California requires attorneys to file documents with the court electronically through its Case Management/Electronic Case Filing (CM/ECF) system. The Court expects all attorneys practicing in this District to participate in electronic filing to the extent practicable. All criminal sealed cases, juvenile cases, and criminal sealed documents must be filed in paper format pursuant to (CivLR 79.2 and Local Patent Rule 2.2). Sealed documents in civil cases should be filed electronically. Copies of the Electronic Case Filing Administrative Policies and Procedures may be downloaded from the court's CM/ECF web site <http://www.casd.uscourts.gov/cmecf>.

### **INTERNET PUBLIC ACCESS TO COURT ELECTRONIC RECORDS (PACER)**

Docket sheets and party indexes are available on the Internet via the Public Access to Court Electronic Records (PACER) System, at <http://pacer.casd.uscourts.gov>. For information concerning PACER access and registration for PACER contact the Pacer Service Center in San Antonio, Texas at 1-800-676-6856 or <http://pacer.psc.uscourts.gov>.

### **NOTICE OF ELECTRONIC FILING**

A notice is automatically generated each time a document is filed with the court. The Notice of Electronic Filing (NEF) is sent to the filing party, the judge(s) in the case, and any registered user in the case. The NEF will constitute service of the document for purposes of the Federal Rules of Civil, Criminal and Appellate Procedure.

### **SEARCHING FOR CASES WHEN THE CASE NUMBER IS UNKNOWN**

PACER can be searched to identify the case number for a given plaintiff or defendant in **Query** by searching for the Last Name or Business Name. Criminal cases filed on or



after July 1991 and civil cases filed in or after May 1989 are available via PACER on the Internet.

Complete indexes of all participants in federal cases from 1962 to 1995 are available in microfiche in the Clerk's Office Lobby. The Public Terminals in the Clerk's Office and the microfiche are available to the public Monday through Friday from 8:30 a.m. to 4:30 p.m. (excluding federal holidays). The Clerk's Office can perform party name searches at a charge of \$31 per name.

## **SYSTEM AVAILABILITY**

CM/ECF is available for service 24 hours a day. Parties are encouraged to file documents in advance of filing deadlines and during normal business hours. The Help Desk will respond to questions regarding CM/ECF at 866-233-7983, between the hours of 8:30 a.m. to 4:30 p.m. or by e-mailing questions to [ecfhelp@casd.uscourts.gov](mailto:ecfhelp@casd.uscourts.gov). The Clerk's Office help desk number for non-CM/ECF questions remains 619-557-5600.

## **TRAINING FOR CM/ECF**

The Clerk's Office offers training for attorneys and support staff each month. Training is in a classroom in the Clerk's Office with hands on practice using the CM/ECF system. To register for CM/ECF training access the information on our external site <https://www.casd.uscourts.gov/CMECF/SitePages/Training.aspx>.

The Clerk's Office also offers several Electronic Learning Modules on their website in the CM/ECF Training tab. Additionally, on the court's website, [www.casd.uscourts.gov](http://www.casd.uscourts.gov) under the Policies and Procedures tab there are Attorney Checklists, Manuals for Electronic Case filing and demonstration videos.

The General Information tab provides information regarding the hardware and software required, a video "The Attorney's Perspective", and a list of Frequently Asked Questions for attorneys.

### **CERTIFICATE OF SERVICE (CivLR 5.2)**

A certificate of service is not required when a party electronically files a document in the court's electronic filing system. If a certificate of service is required, the certificate must state the manner in which service or notice was accomplished on each party. CM/ECF will allow you to determine which participants in a case will receive e-mail notices and which will require manual noticing. Access this information by clicking on Utilities/Mailings/Mailing Info for a Case, and enter the case number.

### **FORMAT OF COMPLAINT, REMOVAL AND SUBSEQUENT PLEADINGS**

- Case initiating documents in civil cases must be filed electronically, with payment for the filing fee incorporated in the event utilizing Pay.gov.
- The name of the filing attorney, or pro se litigant, bar number, address, phone number and e-mail address must be listed in the upper left corner of the document, beginning on line 1 (CivLR5.1(j)(1)). (See sample in Appendix 1.)
- Attorneys appearing pro hac vice and attorneys employed or retained 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 (Reference General Order 632 dated 11/27/2013).
- Printed text, produced on a word processor or other computer, may be no smaller than fourteen (14) point standard font (e.g. Times New Roman).
- The title of the court is to begin at or below line eight (8) of the first page (CivLR 5.1(j) (2)).
- Below and to the left of the court title, the name of the title of the action is to be inserted (CivLR 5.1(j) (3)). Please note that "et al." is not acceptable in the case caption of the complaint or petition for removal. Name of the first plaintiff et al. verses name of the first defendant et al. is acceptable for subsequent pleadings (FRCvP 10(a)).
- The nature of the document is to appear below the case number to the right of the case caption (CivLR 5.1(j) (3)) on subsequent pleadings.
- A Civil Cover Sheet, Form JS44 must accompany every complaint filed (CivLR 3.1).

- Complaints which are larger than 20 pages must have a courtesy copy delivered to the Clerk's Office or mailed directly to the judge's chambers. (Electronic Case Filing Administrative Filing and Procedures 2 e.)

## **FORMAT FOR FILINGS**

Pursuant to the Electronic Case Filing Administrative Policies and Procedures all cases are assigned to the Electronic Filing System and all petitions, motions, memoranda of law or other pleadings and documents required to be filed with the court must be electronically filed. Documents must be saved from either Word or WordPerfect to an Adobe "Portable Document Format" (.pdf) document, or scanned using settings at 400 pixels per inch (ppi). Each attachment must not exceed thirty-five megabytes (35 MB) in size. Pleadings filed in paper will be given a "Notice of Non Compliance."

**Paper Size:** All pleadings, either converted to .pdf or filed in paper must be on letter size paper (8 ½" X 11").

**Form:** All pleadings, either converted to .pdf and filed electronically or filed in paper must be double spaced on one side of line numbered paper (CivLR 5.1(a)).

**Case Numbering:** The typed case number must appear on the lower right corner of each page, below line 28, excluding the title page of each document, although not required on the complaint, petition or other document which opens the case. (CivLR 5.1(b)).

**Pre-punching:** All documents submitted in paper for filing or lodging must be pre-punched with two holes (approximately ¼" in diameter), centered 2 ¾" apart, ½" to 5/8" from the top of the document (CivLR 5.1(d)).

**Captions:** Pursuant to CivLR 5.1(m), double captions are required for cross and counter complaints, third party complaints, and their responses.

**Copies required:** Documents filed in paper format should follow the table below for the number of copies required. Counsel must provide a courtesy copy to chambers within 24 hours after filing, of any electronically filed document which exceeds 20

pages in length, including attachments and exhibits. (Electronic Case Filing Administrative Filing and Procedures 2 e)

Case Type	Pleading Type	Local Rule	Copies Required
cv	General Pleadings	CivLR 5.1(i)(1)	Original + 1
cv	Substitutions of Attorney	CivLR 5.1(i)(5)	Original + 2
cv	Consolidated Matter Pleadings *	CivLR 5.1(i)(3)	Original + 1
cv	Three judge case	CivLR 5.1(i)(2)	Original + 3
cv	Motions to Proceed in Forma Pauperis	CivLR 5.1(i)(1)	Original + 1
cv	Prisoner Habeas Petitions	HC.3(2e)	Original + 3
cr	Non-Sentencing Pleadings	CrimLR 4.1(b)(1)	Original + 2
cr	Sentencing Pleadings		Original + 3
cr	28:2255 Motions to Vacate Sentence	CrimLR 47.1(b)(1)	Original + 2

\* **Consolidated Cases:** In consolidated matters, the document must be filed in the low-numbered case (lead Case). The case number of each consolidated case shall appear on each pleading following the lead case number (CivLR 5.1(i)(3)).

**Filing Fees:** The filing fees for cases will be paid as part of the electronic filing process. The filing fee will be paid with a credit card using Pay.gov. Please see the “How to File a Civil Case” user’s manual or on-line demonstration on the court’s web site under the Policies and Procedures tab. Pro se litigants may pay filing fees at the Clerk’s Office Cashier Window.

## SUMMONS

The Clerk's Office will issue a summons, if appropriate, as soon as the case has been opened in CM/ECF and a case number and judge assignment have been made. The summons will be sent electronically, via U.S. Mail, or in person to the filer of the complaint, pursuant to Local Rules.

## SIGNATURE BLOCK

Each attorney or pro se litigant must sign the last page of the pleading. For electronically filed documents the name of the CM/ECF registered attorney under whose log-in and password the document is submitted must be preceded by an "s/" and typed in the space where the signature would otherwise appear (Electronic Case Filing Administrative Policies and Procedures 2 f.) Names must be typed below signatures on documents (CivLR 5.1 j 5).

Respectfully submitted,  
WINSON AND LOSOM

By: s/Iman Attorney  
IMAN ATTORNEY

Attorney for (Plaintiff name)  
E-mail: [imanatty@email.com](mailto:imanatty@email.com)

## STYLE OF MOTIONS AND SENTENCING DOCUMENTS

- CivLR 7.1(f) (1) requires that all written motions be noticed and accompanied by a separate "Memorandum of Points and Authorities in Support of the Motion." Filers may combine the notice of motion with the motion itself.
- The noticed hearing date and time is to appear on page one (1) of each motion, along with the case number, the name of the judicial officer, and the courtroom number on supporting documents, opposition, and reply. It is to appear below the nature of the document to the right of the case caption (CivLR 5.1(j) (4)). See sample in Appendix 2.

- Sentencing documents must reference the sentence date on page one (1) of each document below the nature of the document to the right of the case caption (CrimLR 32.1(a) (11)).
- Proposed orders SHOULD NOT BE FILED OR SUBMITTED electronically. They should be e-mailed to the assigned judicial officer at the e-mail address provided. E-mail addresses for the judges can be found on the court's web site, [www.casd.uscourts.gov](http://www.casd.uscourts.gov) under the Court Info tab, in the Electronic Case Filing Policies and Procedures, and in this document.

## **ATTACHMENTS**

- Points and authorities, declarations and exhibits must be filed as attachments to the motion in the CM/ECF system. (Electronic Case Filing Administrative Filing and Procedures 2 g.2)
- Each attachment must be less than thirty-five (35) megabytes in size. (Electronic Case Filing Administrative Filing and Procedures 2 k)

## **EXHIBITS (CivLR 5.1(e)) (Electronic Case Filing Administrative Filing and Procedures 2 k)**

- Except where compliance is impracticable, exhibits are to be paged in consecutive numerical order, and each page is to show the exhibit number either immediately above or below the page number.
- Each document containing exhibits must have a cover page to the exhibits and a table of contents indicating the page number of each succeeding exhibit.
- Unless the physical nature of the exhibit renders it impracticable, exhibits are to be attached to the documents to which they belong and are to be readable without detaching the exhibit from the accompanying document.

## **JOINT MOTIONS AND STIPULATIONS (Electronic Case Filing Administrative Filing and Procedures 2 f.4)**

- All stipulations must be filed as joint motions. The filer of a joint motion need not obtain a hearing date prior to filing the joint motion. The filer must e-mail the proposed order to the assigned judicial officer.

## **ELECTRONIC CASE FILING ERRORS**

The Clerk's Office will inspect electronic and paper filed documents for discrepancies which are then brought to the attention of the judge. The assigned judge in the case may then direct the clerk to correct any discrepancy or reject the deficient pleading. The filer will be advised of what further action, if any, is required to address the error. (Electronic Case Filing Administrative Filing and Procedures 2 n)

## FILING REQUIREMENTS IN SPECIFIC CIVIL MATTERS

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### COMPLAINT AGAINST A PRIVATE PERSON OR CORPORATION: FRCvP 4

**Complaint:** Complaints must be electronically filed by CM/ECF registered attorneys. An original and one copy for the Court is required if the complaint is filed in paper by pro se parties. Complaints which are larger than 20 pages must have a courtesy copy delivered to the Clerk's Office or mailed directly to the judge's chambers. (Electronic Case Filing Administrative Filing and Procedures 2 e)

**Civil Cover Sheet:** A Civil Cover Sheet Form JS44 must accompany all complaints (CivLR 3.1). These forms may be found on the court's web site, <http://www.casd.uscourts.gov> under Attorney Assistance.

**Waiver of Service:** Waiver of Service may be used in lieu of issuing summons in order to save service costs (FRCvP 4(d)). Two official forms have been devised to implement the procedure for waiver of service. These forms can be found on the court's web site.

**Summons:** Preparation of the summons will be accomplished by the Clerk's Office upon receipt of the filing of the case. The summons will be electronically sent to the filing party. The electronic summons can be duplicated for service upon each defendant. The original is returned to the clerk and filed as a Summons Returned Executed or Summons Returned Unexecuted. In situations which require the U. S. Marshal to perform service, it is the plaintiff's responsibility to provide the Marshal with service instructions, defendant address, and capacity in which service is to be made (official or individual) (CivLR 4.1(c)).

**Service on Foreign Countries:** When service is to be effected outside a judicial district of the United States, the methods of service appropriate under an applicable treaty or international agreement shall be employed, if available (FRCvP 4(f)). Counsel shall investigate methods of service.

**Filing Fee:** The filing fee will be paid electronically as part of the case opening procedure with Pay.gov, or a motion to proceed in forma pauperis should be filed



(forms available on the court's website). Please visit the court's website at <https://www.casd.uscourts.gov> to view the current fee schedule. Attorneys who are United States Attorneys will have their fees waived as part of the electronic filing.

### **SUITS INVOLVING THE U.S.A AS A DEFENDANT: FRCvP 4(i)**

**Complaint:** Complaints must be electronically filed by CM/ECF registered attorneys. An original and one copy for the Court is required if the complaint is filed in paper by pro se parties. Complaints which are larger than 20 pages must have a courtesy copy delivered to the Clerk's Office or mailed directly to the judge's chambers. (Electronic Case Filing Administrative Filing and Procedures 2 e)

**Civil Cover Sheet:** A Civil Cover Sheet Form JS44 must accompany all complaints (CivLR 3.1). These forms may be found on the court's web site, <http://www.casd.uscourts.gov> under Attorney Assistance.

**Summons:** Preparation of the summons will be accomplished by the Clerk's Office upon receipt of the filing of the case. The summons will be electronically sent to the filing party. The electronic summons can be duplicated for service upon each defendant. The original is returned to the clerk and filed as a Summons Returned Executed or Summons Returned Unexecuted. In situations which require the U. S. Marshal to perform service, it is the plaintiff's responsibility to provide the Marshal with service instructions, defendant address, and capacity in which service is to be made (official or individual) (CivLR 4.1(c)).

**Filing Fee:** The filing fee will be paid electronically as part of the case opening procedure with Pay.gov, or a motion to proceed in forma pauperis should be filed (forms available on the court's website, see above). Please visit the court's website at <https://www.casd.uscourts.gov> to view the current fee schedule.

**Service:** Serving the United States and its Agencies, Corporations, Officers or Employees must include service upon:

- **(1) The U. S. Attorney for the district where the action is brought.** (A copy of the complaint and summons.)

- **(2) U. S. Attorney General.** (A copy of the complaint and summons served by registered mail.)
- **(3) Agency named as defendant.** (A copy of the complaint and summons served by registered mail.)

## **REMOVAL OF A CASE FROM STATE COURT: 28: USC § 1446**

**Notice of Removal:** Notices of Removal must be electronically filed by CM/ECF registered attorneys. An original and one copy for the Court is required if the complaint is filed in paper by pro se parties. Pursuant to 28 USC § 1446, a notice of removal will be filed together with a copy of all process, pleadings, and orders served upon defendant(s) in the action as attachments to the main document. Complaints which are larger than 20 pages must have a courtesy copy delivered to the Clerk's Office or mailed directly to the judge's chambers. (Electronic Case Filing Administrative Filing and Procedures 2 e)

**Civil Cover Sheet:** A Civil Cover Sheet Form JS44 must accompany all complaints (CivLR 3.1). These forms may be found on the court's web site, <http://www.casd.uscourts.gov> under Attorney Assistance.

**Summons:** Service of process may be completed or a new process may be issued in the district court after the filing of the notice of removal, if defendant(s) have yet to be served (28 USC 1448). Preparation of the summons will be accomplished by the Clerk's Office upon request of the plaintiff. The summons will be electronically sent to the filing party. The electronic summons can be duplicated for service upon each defendant. The original is returned to the clerk and filed as a Summons Returned Executed or Summons Returned Unexecuted.

**Notice of Filing:** Not required, although it will be accepted if electronically filed.

**Filing Fee:** The filing fee will be paid electronically as part of the case opening procedure with Pay.gov, or a motion to proceed in forma pauperis should be filed (forms available on the court's website). Please visit the court's website at <https://www.casd.uscourts.gov> to view the current fee schedule. Attorneys with the

United States Attorney's Office will have their fees waived as part of the electronic filing.

## **ASSET SEIZURES**

**Complaint:** Complaints must be electronically filed by CM/ECF registered attorneys. An original and one copy for the Court is required if the complaint is filed in paper by pro se parties. Complaints which are larger than 20 pages must have a courtesy copy delivered to the Clerk's Office or mailed directly to the judge's chambers. (Electronic Case Filing Administrative Filing and Procedures 2 e)

**Civil Cover Sheet:** A Civil Cover Sheet Form JS44 must accompany all complaints (CivLR 3.1). These forms may be found on the court's web site, <http://www.casd.uscourts.gov> under Attorney Assistance.

**Summons:** Preparation of the summons, if appropriate, will be accomplished by the Clerk's Office upon receipt of the filing of the case. The summons will be electronically sent to the filing party. The electronic summons can be duplicated for service upon each defendant. The original is returned to the clerk and filed as a Summons Returned Executed or Summons Returned Unexecuted. In situations which require the U. S. Marshal to perform service, it is the plaintiff's responsibility to provide the Marshal with service instructions, defendant address, and capacity in which service is to be made (official or individual) (CivLR 4.1(c)).

**Filing Fee:** The filing fee will be paid electronically as part of the case opening procedure with Pay.gov, or a motion to proceed in forma pauperis should be filed (forms available on the court's website). Please visit the court's website at <https://www.casd.uscourts.gov> to view the current fee schedule. Attorneys with the United States Attorney's Office will have their fees waived as part of the electronic filing.

**Application to Substitute Custodian and Application for Arrest:** A Motion for order to substitute custodian shall be electronically filed. The order will appoint a custodian to

detain and keep the defendant property. A Motion for order authorizing issuance of a warrant for the defendant shall also be electronically filed.

**Order for Substitute Custodian and Warrant Authorization:** A proposed order designating a keeper of the property and allowing issuance of the warrant shall be e-mailed to the appropriate judge for signature.

**Warrant of Arrest:** A warrant of arrest for each item to be seized shall be delivered to the clerk's office for signature and distribution.

**Seizure by U. S. Marshal:** An original of the U. S. Marshal Form 285 is required for service.

Contact the U. S. Marshal's Office for any additional fees in connection with a seizure.

## **COMPLAINT FOR WARRANT FOR ARREST IN ACTION IN REM OF A MARINE VESSEL:**

### **FRCvP Rules of Civil Procedure & Rules of Evidence**

**Complaint:** Complaints must be electronically filed by CM/ECF registered attorneys. An original and one copy for the court is required if the complaint is filed in paper by pro se parties. Complaints which are larger than 20 pages must have a courtesy copy delivered to the Clerk's Office or mailed directly to the judge's chambers. (Electronic Case Filing Administrative Filing and Procedures 2 e)

**Civil Cover Sheet:** A Civil Cover Sheet Form JS44 must accompany all complaints (CivLR 3.1). These forms may be found on the court's web site, <http://www.casd.uscourts.gov> under Attorney Assistance.

**Summons:** Preparation of the summons, if appropriate, will be accomplished by the Clerk's Office upon receipt of the filing of the case. The summons will be electronically sent to the filing party. The electronic summons can be duplicated for service upon each defendant. The original is returned to the clerk and filed as a Summons Returned Executed or Summons Returned Unexecuted. In situations which require the U. S. Marshal to perform service, it is the plaintiff's responsibility to provide the Marshal with service instructions, defendant address, and capacity in which service is to be made (official or individual) (CivLR 4.1(c)).

**Filing Fee:** The filing fee will be paid electronically as part of the case opening procedure with Pay.gov, or a motion to proceed in forma pauperis should be filed (forms available on the court's website). Please visit the court's website at <https://www.casd.uscourts.gov> to view the current fee schedule. Attorneys with the United States Attorney's Office will have their fees waived as part of the electronic filing.

**Application to Substitute Custodian and Application for Arrest:** A Motion for order to Substitute Custodian shall be electronically filed appointing a custodian to detain and keep the defendant property. A Motion for order authorizing issuance of a warrant for the defendant shall also be electronically filed.

**Order for Substitute Custodian and Warrant Authorization:** An order designating a keeper of the property and allowing issuance of the warrant shall be e-mailed to the appropriate judge for signature.

**Warrant of Arrest:** A warrant of arrest for each item to be seized shall be delivered to the clerk's office for signature and distribution.

**Bond:** A bond may be ordered by the court for the release of property in custody. (FRCP; Supplemental Rule E(5)(a)).

**Seizure by U. S. Marshal:** An original of the U. S. Marshal Form 285 is required for each service.

Contact the U. S. Marshal's Office for any additional fees in connection with a seizure.

## **INMATE FILINGS**

**Habeas Corpus:** Litigants proceeding with or without an attorney who wish to file a habeas corpus petition challenging their conviction or sentence may receive a copy of this court's habeas manual, which is entitled: PRO SE HABEAS CORPUS HANDBOOK: A Manual For State Prisoners Filing a Federal Habeas Corpus Petition Attacking a State Conviction or Sentence Pursuant to 28: U.S.C. § 2254 or §2241. The manual is available

in the Clerk's Office, California prison law libraries, and on-line at <http://www.casd.uscourts.gov>.

**Prisoner Civil Rights:** (link to GO 653)

**Complaint:** 42USC § 1983 (Civil Rights), 28 USC § 2254 (State Habeas Corpus), and 28 USC § 2255 (Federal Habeas Corpus) forms may be obtained from the Clerk's Office, at the court's web site (see above), or from the prison law library.

**Filing Fee:** Prisoners who desire to proceed in forma pauperis must submit a prison trust account statement for the six (6) month period immediately preceding the filing of the action (28 USC § 1915(a) (2)). This statement can be obtained from the prison trust accounting office. Motions to proceed in forma pauperis can be obtained from the prison library, from the court's web site, or from the Clerk's Office when requested in writing at 333 West Broadway, Suite 420, San Diego, CA 92101-8900.

Filing Fee for civil rights cases is \$402.00. Filing fee for Habeas Corpus cases is \$5.00. There is no filing fee for 28 USC § 2255 motions.

### **REGISTRATION OF JUDGMENT FROM ANOTHER DISTRICT (incoming): 28 USC § 1963**

A judgment in an action for recovery of money or property entered in another federal court may be registered by filing a certified copy of the judgment in this district. The registration of the judgment will be filed electronically as a Miscellaneous Case with the certified AO form 451, and a certified copy of the judgment.

**Filing Fee:** The filing fee be paid electronically as part of the case opening procedure with Pay.gov, or a motion to proceed in forma pauperis should be filed (forms available on the court's website). Please visit the court's website at <https://www.casd.uscourts.gov> to view the current fee schedule.

### **APPEALS: FEDERAL RULES OF APPELLATE PROCEDURE**

**Notice of Appeal:** The original appeal is filed electronically with the district court.

**Filing Fee:** The filing fee will be paid electronically as part of the case opening procedure with Pay.gov, or a motion to proceed In Forma Pauperis (IFP) on appeal.

Please visit the court's website at <https://www.casd.uscourts.gov> to view the current fee schedule. If IFP status was previously granted in the case being appealed, a new motion for IFP is not required. Transcript Designation forms can be obtained from the clerk. Designations of record should be directed to the appeals court.

## **CENTRAL VIOLATIONS BUREAU (CVB)**

The Central Violations Bureau is responsible for processing Federal Citations. Federal citations (tickets) are issued on federal property such as: Camp Pendleton, MCRD, and national parks. The citation you received must say “United States District Court Violation Notice” across the top, to be a federal citation. For other citations, contact the San Diego County Clerk’s Office at 858-565-1006.

The CVB is located in San Antonio, Texas, and their hours of operation are 8:00 a.m. to 6:00 p.m. CST. Their telephone is 1-800-827-2982, or e-mail at [www.cvb.uscourts.gov](http://www.cvb.uscourts.gov) for general information about your ticket and online payments.

Update?



## FILING REQUIREMENTS IN SUBSEQUENT MATTERS

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### **AMENDED COMPLAINT: FRCvP 15**

**Complaint:** Amended complaints are filed electronically.

**Summons:** Preparation of the summons will be accomplished by the Clerk's Office upon receipt of the electronic filing of the amended complaint as to newly added defendants only. The summons will be electronically sent to the filing party. The electronic summons can be duplicated for service upon each defendant. The original is returned to the clerk and filed as a Summons Returned Executed or Summons Returned Unexecuted. In situations which require the U. S. Marshal to perform service, it is the plaintiff's responsibility to provide the Marshal with service instructions, defendant address, and capacity in which service is to be made (official or individual) (CivLR 4.1(c)).

If no additional defendants are added, the existing defendants must be served a copy of the amended complaint, either electronically via CM/ECF or by conventional means.

**Filing Fee:** None

### **DEFAULT JUDGMENT: FRCP 55**

The procedure for filing a default judgment is to first file a request for clerk's entry of default, together with an affidavit regarding service of process, if not already on file (FRCP 55(a)). If the defendant has been properly served and no responsive pleading has been filed, a clerk's entry of default may be entered. Upon filing of a clerk's entry of default, a motion for default judgment may be filed electronically and a proposed judgment e-mailed to the judge (FRCP 55(b) (2)). The clerk is authorized to issue default judgments for a sum certain if the defendant has been defaulted for failure to appear (FRCP 55(b) (1)).

## **DEPOSITION: FRCP 45**

**Subpoena:** Attorneys may issue and sign a subpoena on behalf of a court in which the attorney is authorized to practice or a court in which the deposition or production is compelled by the subpoena (FRCP 45(a)(3)).

**Witness Fees:** Contact the U, S. Marshal for current rates.

**Filing Fee:** None

## **MOTION ARGUMENT: CivLR 7.1**

A party can submit a motion for decision based solely on the pleadings and without oral argument upon approval of the court. The statement “Oral Argument Not Required” is to be placed below the nature of the document, or the noticed hearing date if applicable. Opposing parties can indicate a willingness to waive oral argument by similarly including the same statement. If either party indicates such willingness, the adverse party must promptly call the law clerk of the assigned judge and indicate whether or not there is concurrence (CivLR 7.1(d) (2) (a)-(c)). The court can also determine that no oral argument will be heard, at its own discretion.

## **MOTION FOR SANCTIONS: FRCvP 11**

FRCvP 11 requires sanction motions be separate from other motions/requests. They must clearly describe the conduct that violates FRCvP 11(b).

## FILING REQUIREMENTS FOR POST JUDGMENT INSTRUMENTS

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**CERTIFICATION OF JUDGMENT FOR REGISTRATION IN ANOTHER DISTRICT** (outgoing):  
28 USC § 1963

**AO Form 451:** There is no fee for the preparation of AO Form 451 which will accompany the certified copy of the judgment from our court to be registered in another district.

**Copy Fee:** Fee of \$.50 per page for the reproduction of the judgment is required if the copy work is performed by court personnel.

**Certification Fee:** Fee of \$11.00 each for the certification of the judgment, and the AO form 451 made payable to the clerk.

**RELEASE OF VESSEL:** 28 USC § 2464

A seized vessel can be released only with a signed order from the court or by stipulation of the parties. If a party wishes to have a bond returned at the time of vessel release, a separate motion and order are needed.

**WRIT OF EXECUTION: FRCP 69**

**Writ:** Original and 4 copies.

**Affidavit:** Original and 2 copies.

**Marshal's Form:** Service is governed by FRCP 4 and 69. If the U.S. Marshal effects service, the Form 285 must accompany the Writ of Execution. If service is effectuated by the sheriff pursuant to state law, the sheriff's procedures should be followed.

**Filing Fee:** None

**Note:** The writ can only be issued a minimum of 10 days after entry of judgment unless otherwise ordered by the court. If a notice of appeal has been filed and a supersedeas bond posted, the writ may not be issued.

Appendix 1, Style of Complaint (PDF Document)

1 **APPENDIX 1 – STYLE OF COMPLAINT**  
2 Iman Attorney, CA Bar No. 99999  
3 Winsom and Losom  
4 222 Anystreet  
5 San Diego, CA 92101  
6 Telephone: (123)555-7890  
7 Email: [imanattv@email.com](mailto:imanattv@email.com)  
8 Attorney for Plaintiff

9 **UNITED STATES DISTRICT COURT**  
10 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

11  
12 JOHN DOE, ) Case No.: *(Leave blank on complaint)*  
13 Plaintiff, ) COMPLAINT, JURY DEMAND  
14 vs. )  
15 ROE CORPORATION, )  
16 Defendant )

17  
18 Plaintiff John Doe alleges and states as follows: Roe Corporation received  
19 an unjust benefit.

20 Dated: January 31, 2013 LAW OFFICE OF WINSOM AND LOSOM

21  
22 By: S/ Iman Attorney  
23 IMAN ATTORNEY

24 Attorney for Plaintiff  
25 Email: [imanattv@email.com](mailto:imanattv@email.com)  
26  
27  
28

Appendix 2: Style of Motion (PDF Document)

1 Iman Attorney, CA Bar No. 99999  
Winsom and Losom  
2 222 Anystreet  
San Diego, CA 92101  
3 Telephone: (123)555-7890  
Email: [imanattv@email.com](mailto:imanattv@email.com)  
4 Attorney for Plaintiff

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6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10  
11

11 JOHN DOE,	} CASE NO.: 3:11-CV-9999 H (JMA)	
12 Plaintiff,		} MOTION TO DISMISS CASE
13 vs.		} DATE: March 31, 2013
14 ROE CORPORATION,		} TIME: 11:30 a. m.
15 Defendant		} COURTROOM D
16	} Honorable Judge Marilyn L. Huff	

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Defendant Roe Corporation move the Court for an order dismissing the above captioned action.

Dated: January 31, 2013      LAW OFFICE OF WINSOM AND LOSOM

By: S/ Iman Attorney  
IMAN ATTORNEY  
Attorney for Plaintiff  
Email: [imanattv@email.com](mailto:imanattv@email.com)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
OFFICE OF THE CLERK OF COURT

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**Categories of Miscellaneous Cases**

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Miscellaneous numbers are assigned to a variety of matters filed with the court which are not properly considered civil or criminal cases. These matters, however, may be directly or indirectly related to civil or criminal cases pending within the district or another district. In general, miscellaneous actions are used for administrative matters that require resolution through the judicial system.

In general, a miscellaneous number is assigned to ancillary and supplementary proceedings not defined as civil actions. With certain exceptions permitted by the Court's Local Rules of Practice, the clerk's office will not assign a civil case number to a proceeding that is not contested before a judge.

Administrative Deposition Subpoena
Application to Perpetuate Testimony
Appointment of Special U.S. Attorney
Designation and Assignment of Judge for Service in Another District
Foreign Subpoenas
Grand Jury Matters
Internal Revenue Service Third Party Record Keeper Actions
Letters Rogatory or Letters of Request from Other Districts
Order to Show Cause - Attorneys Suspended or Disbarred
Papers by Trustees
Pen Registers
Power of Attorney
Proceedings Against Sureties
Receiverships
Registration of Judgment from Another District
Registration of Petitions to Perpetuate Testimony
Video Interceptions
Warrant for Arrest of Juror
Wire Interceptions



Office of the Clerk of Court: John Morrill, Clerk of Court

**INTRODUCTION TO FEDERAL COURT**

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1

**TOP TEN THINGS LAWYERS SHOULD KNOW**

- ✘ 10. The Clerk's Office is located on the 4<sup>th</sup> floor of the Carter-Keep U.S. Courthouse, 333 West Broadway, San Diego, California 92101. Clerks are available to assist you with filing questions and research. Main telephone line: 619-557-5600.
- ✘ Schwartz Courthouse - 20 chambers and 16 courtrooms
- ✘ Carter-Keep Courthouse - 12 chambers and 6 courtrooms (2 new courtrooms under construction)

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2

**TOP TEN THINGS LAWYERS SHOULD KNOW**

- ✘ 9. Our website is [casd.uscourts.gov](http://casd.uscourts.gov)
  - + News, Notices & Events
  - + General Orders & Chief Judge Orders
  - + Attorney Admissions
  - + CM/ECF
  - + Local Rules
  - + Judge Pages with Chambers Rules & Contact Info.
  - + Court Calendars
  - + Forms
  - + Fee Schedule
  - + Contact Information and Court Locations

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3



**TOP TEN THINGS LAWYERS SHOULD KNOW**

- ✘ 8. You must be admitted to practice in the Southern District before filing documents or making an appearance. The Clerk's Office will process your attorney admission packet online. The \$206 fee can also be paid online.

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4

**TOP TEN THINGS LAWYERS SHOULD KNOW**

- ✘ 7. After you are admitted to practice in the Southern District, you should immediately register for CM/ECF, our electronic case filing system. There is no fee to register and our attorney admissions clerk will help you with registration. This also adds you to our email announcements, so register soon.

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**TOP TEN THINGS LAWYERS SHOULD KNOW**

- ✘ 6. Electronic filing is mandatory in the Southern District for attorneys. It is available 24/7. We provide training for lawyers and support staff.

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6

**TOP TEN THINGS LAWYERS SHOULD KNOW**

- ✘ 5. The CM/ECF Policies & Procedures Manual will answer many of your questions about electronic filing. It is available on our website.
  - + If you need help filing a document, call our CM/ECF Help Line: 866-233-7983.

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7

**CM/ECF ADMINISTRATIVE POLICIES AND PROCEDURES**

- ✘ Documents must be filed electronically
  - + Some Exceptions: Criminal Sealed Documents; Documents Filed in the Courtroom (see exceptions to electronically filed documents).
- ✘ Service of documents
- ✘ Courtesy copies for Judicial Officers
- ✘ Signatures
- ✘ Proposed orders
- ✘ Sealed documents
- ✘ QC Mailer / Discrepancy Orders




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**TOP TEN THINGS LAWYERS SHOULD KNOW**

- ✘ 4. Our courtrooms have the latest evidence presentation technology. The Clerk's Office can help familiarize you with using the system prior to your scheduled hearing. Contact the Courtroom Deputy for assistance before the hearing.

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9

**TOP TEN THINGS LAWYERS SHOULD KNOW**

- ✘ 3. The Clerk’s Office is the custodian of public monies. A court order is required to deposit and disburse funds. Our Financial Department can assist with sample orders.
- ✘ We collect:
  - + Registry Funds (Civil and Criminal)
  - + Filing Fees
  - + Fines and Restitution

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10

**TOP TEN THINGS LAWYERS SHOULD KNOW**

- ✘ 2. To order a transcript, contact the Court Reporter/Court Recorder directly. The Court Reporter’s name is included on the docket. For hearings held before a Magistrate Judge, contact the Courtroom Deputy. You can find contact information on the Judge’s page on the website.

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11

**TOP TEN THINGS LAWYERS SHOULD KNOW**

- ✘ 1. *We strive to be a user-friendly Clerk’s Office*
  - + *Helpful links*
    - ✘ Website: [www.casd.uscourts.gov](http://www.casd.uscourts.gov)
    - ✘ CM/ECF Information: <https://www.casd.uscourts.gov/cmecf.aspx>
    - ✘ General Filing Procedures: <https://www.casd.uscourts.gov/attorney/filing-procedures.aspx>
    - ✘ PACER: <https://pacer.uscourts.gov/>

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**OTHER SERVICES PROVIDED BY  
THE CLERK'S OFFICE**

- ✦ Jury Management / Jury Summons
- ✦ Interpreting services
- ✦ Statistical Reporting to the Administrative Office U.S. Courts
- ✦ Bill of Costs
- ✦ Administrative Support
  - + (Budget, I.T., Space, HR)



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# Comparing Federal & State Courts

*The U.S. Constitution is the supreme law of the land in the United States. It creates a federal system of government in which power is shared between the federal government and the state governments. Due to federalism, both the federal government and each of the state governments have their own court systems. Discover the differences in structure, judicial selection, and cases heard in both systems.*

## Court Structure

The Federal Court System	The State Court System
<p>Article III of the Constitution invests the judicial power of the United States in the federal court system. Article III, Section 1 specifically creates the U.S. Supreme Court and gives Congress the authority to create the lower federal courts.</p>	<p>The Constitution and laws of each state establish the state courts. A court of last resort, often known as a Supreme Court, is usually the highest court. Some states also have an intermediate Court of Appeals. Below these appeals courts are the state trial courts. Some are referred to as Circuit or District Courts.</p>
<p>Congress has used this power to establish the 13 U.S. Courts of Appeals, the 94 U.S. District Courts, the U.S. Court of Claims, and the U.S. Court of International Trade. U.S. Bankruptcy Courts handle bankruptcy cases. Magistrate Judges handle some District Court matters.</p>	<p>States also usually have courts that handle specific legal matters, e.g , probate court (wills and estates); juvenile court; family court; etc.</p>
<p>Parties dissatisfied with a decision of a U.S. District Court, the U.S. Court of Claims, and/or the U.S. Court of International Trade may appeal to a U.S. Court of Appeals.</p>	<p>Parties dissatisfied with the decision of the trial court may take their case to the intermediate Court of Appeals.</p>
<p>A party may ask the U.S. Supreme Court to review a decision of the U.S. Court of Appeals, but the Supreme Court usually is under no obligation to do so. The U.S. Supreme Court is the final arbiter of federal constitutional questions.</p>	<p>Parties have the option to ask the highest state court to hear the case.</p>

	Only certain cases are eligible for review by the U.S. Supreme Court.
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## Selection of Judges

The Federal Court System	The State Court System
<p>The Constitution states that federal judges are to be nominated by the President and confirmed by the Senate.</p> <p>They hold office during good behavior, typically, for life. Through Congressional impeachment proceedings, federal judges may be removed from office for misbehavior.</p>	<p>State court judges are selected in a variety of ways, including</p> <ul style="list-style-type: none"> <li>• election,</li> <li>• appointment for a given number of years,</li> <li>• appointment for life, and</li> <li>• combinations of these methods, e.g., appointment followed by election.</li> </ul>

## Types of Cases Heard

The Federal Court System	The State Court System
<ul style="list-style-type: none"> <li>• Cases that deal with the constitutionality of a law;</li> <li>• Cases involving the laws and treaties of the U.S.;</li> <li>• Cases involving ambassadors and public ministers;</li> <li>• Disputes between two or more states;</li> <li>• Admiralty law;</li> <li>• Bankruptcy; and</li> <li>• Habeas corpus issues.</li> </ul>	<ul style="list-style-type: none"> <li>• Most criminal cases, probate (involving wills and estates)</li> <li>• Most contract cases, tort cases (personal injuries), family law (marriages, divorces, adoptions), etc.</li> </ul> <p>State courts are the final arbiters of state laws and constitutions. Their interpretation of federal law or the U.S. Constitution may be appealed to the U.S. Supreme Court. The Supreme Court may choose to hear or not to hear such cases.</p>

**HONORABLE ANTHONY J. BATTAGLIA**  
**U.S. DISTRICT JUDGE**  
**CIVIL CASE PROCEDURES**

June 4, 2021

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**Please Note:** The Court provides this information for general guidance to counsel. However, the Court may vary these procedures as appropriate in any case.

**I. Communications With Chambers**

- A. Letters or emails.** Letters or emails to chambers are prohibited unless specifically requested by the Court. If letters or emails are requested, copies of the same must be simultaneously delivered to all counsel. Copies of correspondence between counsel may *not* be sent to the Court unless specifically requested by the Court.
- B. Faxes.** Faxes to chambers are prohibited unless specifically requested by the Court. If faxes are requested, copies of the document(s) must be simultaneously delivered to all counsel.
- C. Telephone Calls.** *Telephone calls to chambers are permitted only for matters such as scheduling and calendaring. Procedural questions should be directed to the Clerk's Office after first consulting the Local Rules and CM/ECF Policies and Procedural Manual.* Court personnel are prohibited from giving legal advice or discussing the merits of a case. When calling chambers, be prepared to identify your case as odd or even based on the last digit of the case number so your call can be directed to the appropriate law clerk. Only counsel with knowledge of the case may contact chambers. Chambers staff may be reached at 619-557-3446.
- D. Document submissions.** Please refer to the Local Rules for a complete list of deadlines and compliance requirements. The Electronic Case Filing Administrative Policies & Procedures Manual can be found on the Court's website. Parties must provide the Court with a courtesy copy of any document exceeding twenty (20) pages in length, including exhibits and other attachments. Courtesy copies

must be brought to the Clerk's Office to be placed in Judge Battaglia's box. Failure to submit courtesy copies may result in a continuance of the hearing.

## II. Noticed Motions

- A. **Hearing Dates.** Counsel must obtain all hearing dates from the appropriate law clerk before filing any motion. Motion papers **MUST** be filed and served *the same day* of obtaining a motion hearing date from chambers. A briefing schedule will be issued once a motion has been filed. ***Objections relating to the motion should be set forth in the parties opposition or reply. No separate statement of objections will be allowed.*** The parties must obtain leave of Court by filing an *ex parte* request before filing any sur-replies.
- B. **Oral argument.** Although the Court often decides motions based on the papers submitted by the parties, it is the Court's policy to schedule oral argument for dispositive motions or when all counsel request oral argument. If oral argument is not necessary, the Court will electronically inform the parties via CM/ECF, or the law clerk assigned to the case will contact the parties. The Court tries to inform the parties whether oral argument will be required at least a week before the scheduled hearing date.

The Court views argument as an opportunity to have counsel answer questions on the facts and law that remain despite the briefing. Typically, the hearing will begin with the Court expressing its tentative ruling or areas where questions remain. Counsel need not prepare for, or expect to, restate the arguments from the briefs or elaborate on the facts in general. Lengthy presentations are discouraged, and supplemental authority must be submitted 7 days in advance of the hearing, with notice to all other counsel or unrepresented parties.

For lawyers with less than 5 years admission to the bar, the Court will hold argument on civil motions where: (1) the motion will be argued by attorneys with less than 5 years of admission to the bar for at least



two opposing sides; or (2) where the motion will be argued by an attorney with less than 5 years of admission to the bar on one side and the opposing attorney, notwithstanding their time admitted to the bar, also requests oral argument. Counsel must meet and confer on this issue and advise the Court of their request for oral argument no less than 7 days before the hearing by written pleading.

- C. Continuances.** Parties requesting a continuance of any conference, scheduled motion, hearing date, deadline, briefing schedule, or any other procedural change, must meet and confer prior to contacting the Court. If the parties reach an agreement, they must e-file a joint motion with a detailed declaration explaining the reasons for the requested continuance or extension of time. The parties must also e-mail a proposed order in Word format to [efile\\_battaglia@casd.uscourts.gov](mailto:efile_battaglia@casd.uscourts.gov). The proposed order must set forth the current date scheduled and the new date proposed. Please refer to the Case Filing Administrative Policies and Procedures Manual located on the Court's website with regard to CM/ECF filings. If the parties are unable to reach an agreement, the requesting party must file an *ex parte* motion satisfying the applicable legal standard, with a particular focus on the diligence of the party seeking delay and any prejudice that may result therefrom. In addition, the *ex parte* motion must state: (1) the original date; (2) the number of previous continuances and requests that have been made; (3) whether previous requests were granted or denied; and (4) opposing counsel's position with regard to their opposition.
- D. Proposed Orders.** Proposed orders must be submitted simultaneously with the filing of all joint motions or *ex parte* motions. The proposed order should be emailed to [efile\\_battaglia@casd.uscourts.gov](mailto:efile_battaglia@casd.uscourts.gov) in Word. Counsel are not required to submit proposed orders on motions requiring legal analysis, i.e., motions for summary judgment, 12(b) motions, etc.
- E. Sur-Replies.** Sur-replies must *not* be filed unless leave of Court has been granted.

**HONORABLE GONZALO P. CUIEL  
UNITED STATES DISTRICT JUDGE  
CIVIL PRETRIAL & TRIAL PROCEDURES**

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**Criminal matters contact:**

**Courtroom Deputy Kimmi Ridgeway: (619) 557-5539**

**Civil matters contact:**

**Judge Curiel's Law Clerks in chambers: (619) 557-7667**

**Transcript requests contact:**

**Court Reporter: Chari Bowery (858)-822-8828**

**Location: Schwartz Courthouse - Courtroom 2D**

These rules will help civil litigants appearing before Judge Curiel. Unless otherwise ordered by the Court, counsel and pro se litigants are expected to follow the Federal Rules of Civil Procedure, the Local Rules for the Southern District of California, the Electronic Case Filing Administrative Policies and Procedures Manual, and any other applicable rules. The Local Rules and the Electronic Case Filing Administrative Policies and Procedures Manual are available on the Court's website: <http://www.casd.uscourts.gov>.

**COMMUNICATION WITH CHAMBERS**

Telephone calls to chambers are permitted only for scheduling or calendaring motion hearings or as otherwise authorized by the Court. Court personnel are prohibited from interpreting orders, discussing the merits of a case, or giving legal advice, including advice on procedural matters. Letters, faxes, and emails are prohibited unless otherwise authorized by the Court.

**DISCOVERY**

Counsel shall contact the magistrate judge's chambers directly for all matters pertaining to discovery. Any objection to a discovery ruling of the magistrate judge must be filed as a motion pursuant to Civil Local Rule 7.1.

### **PROPOSED ORDERS**

Proposed orders shall be submitted in Word or WordPerfect format simultaneously with all motions, except motions that are fully noticed and set for hearing at least 28 days beyond the date of filing. In accordance with Section 2(h) of the Electronic Case Filing Administrative Policies and Procedures Manual, proposed orders shall not contain the name and law firm information of the filing party and shall not contain the word “proposed” in the caption. Counsel shall email proposed orders to opposing counsel and to the following address: efile\_curiel@casd.uscourts.gov, and include the docket number and case name in the subject line of the email.

### **JOINT MOTIONS/STIPULATIONS**

Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, all stipulations must be filed as joint motions. Joint motions must be signed by the Court to have legal effect.

### **EX PARTE MOTIONS**

The Court may rule upon *ex parte* motions without requiring a response from the opposing party. If a party intends to oppose the *ex parte* motion, the party must immediately file a notice stating that the party intends to oppose the *ex parte* motion and providing the date upon which the opposition will be filed.

### **PRETRIAL MOTION PRACTICE**

#### **HEARING DATES**

Motion hearing dates are set on **Fridays at 1:30 p.m.**

Pursuant to Civil Local Rule 7.1(b), all dates for motion hearings must be obtained by calling the law clerk before filing any motion. Motion papers **MUST** be filed and served *the same day* of obtaining a motion hearing date from chambers. A briefing schedule will be issued once a motion has been filed. The parties must obtain leave of Court by filing an *ex parte* request before filing any sur-replies.

The Court strongly encourages litigants to be mindful of opportunities for young lawyers to conduct hearings before the Court, particularly for motions where

the young lawyer drafted or contributed significantly to the underlying motion or response. Frequently, the Court will issue a written order and vacate the hearing unless oral argument appears to be necessary. If a written request for oral argument is made in the moving, opposition or reply briefs stating that an attorney with less than five years of experience after becoming a member of the California bar will argue the oral argument, then such a representation will weigh in favor of holding a hearing.

### **FAILURE TO OPPOSE**

An opposing party's failure to file an opposition to any motion may be construed as consent to the granting of the motion pursuant to Civil Local Rule 7.1(f)(3)(c).

### **MOTIONS FOR SUMMARY JUDGMENT**

All motions for summary judgment shall be accompanied by a separate statement setting forth **plainly and concisely** all material facts that the moving party contends are undisputed. Each of the material fact shall be followed by a reference to the supporting evidence. The parties should avoid using the separate statements as a means of presenting or repeating legal arguments that are or should be made in the memorandum of points and authorities in support of the motion for summary judgment. Separate statements are merely used as an aid to assist the Court in pinpointing the material facts and not to assert additional arguments. The failure to comply with this requirement of a separate statement may in the court's discretion constitute a sufficient ground for denying the motion.

Any opposition to a summary judgment motion shall include a response to the separate statement that responds to each of the material facts contended by the moving party to be undisputed, indicating if the opposing party agrees or disagrees that those facts are undisputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. The statement shall also set forth **plainly and concisely** any other material facts the opposing party contends are disputed. The parties should avoid using the separate statements as a means of presenting or repeating legal arguments that are or should be made in the memorandum of points and authorities in opposition to the motion for summary judgment. Failure to comply with this requirement of a separate

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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY UCS  
DEPUTY

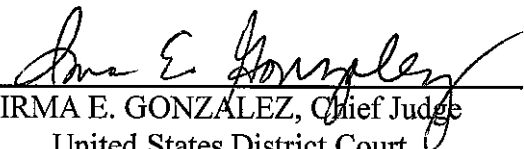
**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

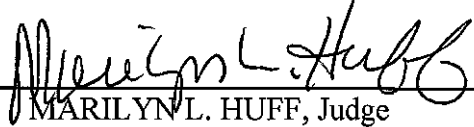
In the matter of )  
ADOPTING PRO BONO PLAN )  
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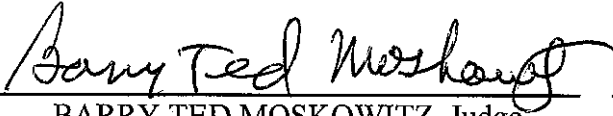
GENERAL ORDER NO. 5916


The Court hereby adopts the attached Plan for the Representation of *Pro se* Litigants in Civil Cases.


Dated: 8/3/11


  
IRMA E. GONZALEZ, Chief Judge  
United States District Court

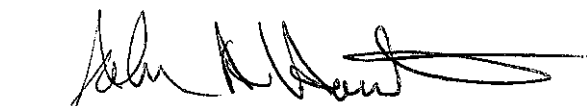
  
MARILYN L. HUFF, Judge  
United States District Court

  
BARRY TED MOSKOWITZ, Judge  
United States District Court

  
LARRY A. BURNS, Judge  
United States District Court

  
DANA M. SABRAW, Judge  
United States District Court

  
WILLIAM Q. HAYES, Judge  
United States District Court



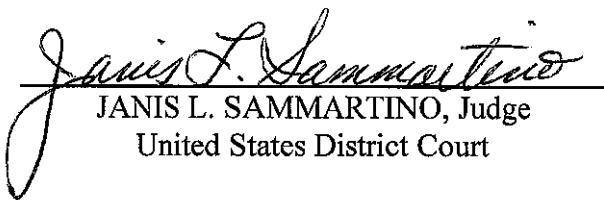
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JOHN A. HOUSTON, Judge  
United States District Court



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ROGER T. BENITEZ, Judge  
United States District Court



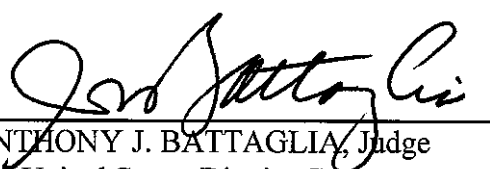
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JANIS L. SAMMARTINO, Judge  
United States District Court



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MICHAEL M. ANELLO, Judge  
United States District Court



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ANTHONY J. BATTAGLIA, Judge  
United States District Court

**Plan of the United States District Court  
for the Southern District of California  
for the Representation of *Pro se* Litigants in  
Civil Cases**

Selection of Attorneys to serve on Pro Bono Panel

The U.S. District Court for the Southern District of California will receive applications from law firms and attorneys willing to serve on a pro bono panel to provide representation to indigent civil plaintiffs. The Federal Bar Association - San Diego ("FBA-SD") and the Court will review the applications and compile a list of law firms and attorneys to participate on the pro bono panel. The factors to be considered in determining whether to include a law firm or attorney on the pro bono panel include the following:

1. for a law firm, the number of attorneys who are admitted to the bar of this Court and willing to serve as pro bono counsel;
2. for attorneys, the length time he or she has been a member of the bar of this Court;
3. the law firm or attorney's litigation and trial experience (civil or criminal);
4. the availability of personnel within a law firm or attorney's office, to consult and advise in languages other than English.

Once a law firm or attorney has been selected to serve on the pro bono panel, they will remain on the panel for a period of at least two years. The Court will solicit applications for new law firms and attorneys to serve on the panel on a rolling, as-needed basis. Any law firm or attorney who is placed on the pro bono panel should be willing to accept appointment, unless there exists a conflict, or unless the law firm or attorney has previously been appointed within the last two years.

Selection of cases appropriate for appointment of counsel

The assigned judge in a civil case filed by an indigent *pro se* litigant will determine whether such case is appropriate for the appointment of pro bono counsel, upon consideration of the following:

1. the inability of the *pro se* party to retain counsel by other means,
2. the potential merit of the claims as set forth in the pleadings,
3. the nature and complexity of the action, both factually and legally, including the need for factual investigation and evidentiary presentation at motions or trial,
4. whether the *pro se* party has another case pending before this Court and, if so, whether counsel has been appointed in such case;
5. the degree to which the ends of justice will be served by appointment of counsel, including the extent to which the Court may benefit from the appointment; and
6. any other factors deemed appropriate.

In addition, unless the Court determines based upon the above factors that counsel is not necessary, the Court may appoint counsel for purposes of trial as a matter of course in each prisoner civil rights case where summary judgment has been denied.

Nothing herein prevents the assigned judge from appointing counsel if it is apparent from the pleadings or other materials before the Court that the *pro se* civil plaintiff has mental or other disabilities substantially interfering with his or her ability to present the factual and legal claims and making an appropriate application for appointment of counsel.

Method of selection of counsel from the Pro Bono Panel

The Court will maintain a random-ordered list of law firms and attorneys who have been selected for the pro bono panel. When a judge determines appointment of pro bono counsel would be appropriate in a particular case, the judge's staff will prepare an historical memorandum, summarizing the procedural and factual history of the case as well as the nature of the legal claims asserted. The judge will forward this historical memorandum to the Court's pro bono administrator, who will transmit such memorandum along with a "Notice of Selection for Pro Bono Representation" to the next listed law firm or attorney on the random-ordered list.

Investigation of claim and acceptance of case

Within three weeks after receipt of the Notice, the selected Panel law firm or attorney will conduct a conflict check as well as an initial review and investigation of the civil plaintiff's claims. Thereafter, the panel law firm or attorney must return to the pro bono coordinator the "Pro Bono Panel Response Form," indicating (a) appointment is accepted, (b) appointment cannot be accepted due to a conflict, or (c) appointment cannot be accepted for another reason (such reason to be specified in the Response Form). Absent a conflict or the presence of exceptional circumstances, panel law firms and attorney are expected to accept appointment.

If the law firm or attorney cannot accept the appointment, the pro bono administrator will select the next listed law firm or attorney on the random-ordered list, and repeat the Notice process. Once a Panel law firm or attorney has accepted the appointment, the Court will notify the pro se litigant and enter an order of appointment.

Reimbursement of expenses

Local Civil Rule 83.8 (a)(2) provides that pro bono counsel may be reimbursed for their necessarily incurred out-of-pocket expenses. A sample form to claim such expenses can be found on the Court's website.

*The provisions of this Plan are to be broadly interpreted in the interests of justice. Nothing herein is intended to limit (a) the ability of the Court to make alternative provisions for the appointment of counsel, (b) the ability of pro se litigants to represent themselves, or (c) the ability of counsel to request to be relieved if circumstances so require.*





**\*\*NOTICE\*\***

**COURT SEEKS APPLICATIONS FOR  
PRO BONO PANEL**

**From:** Chief Judge Dana M. Sabraw  
**Date:** May 17, 2021

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In August 2011, the U.S. District Court for the Southern District of California adopted a Plan for the Representation of *Pro Se* Litigants in Civil Cases pursuant to General Order 596. In partnership with the San Diego Chapter of the Federal Bar Association, the Court and representatives from the local bar formed a panel of law firms and attorneys qualified and willing to accept *pro bono* appointment in cases which the Court has determined appropriate for such representation.

**Pursuant to the Pro Bono Plan as adopted by General Order 596, the Court is once again soliciting applications for new law firms and attorneys to serve on the Panel. Law firms and attorneys currently serving on the Panel will remain on the Panel and need not reapply.**

Appointments of counsel from this Panel are made pursuant to 42 U.S.C. § 2000e et seq. and 28 U.S.C. § 1915(e)(1), and not pursuant to the Criminal Justice Act. Counsel from the Pro Bono Panel have and will be called upon to represent indigent plaintiffs asserting civil rights claims in the Southern District, most of whom are prisoners. Appointments may be made at the early stages of litigation, but are typically deferred until after summary judgment has been denied and a trial is anticipated.

Necessary out-of-pocket expenses incurred by Pro Bono Panel appointees will be reimbursed, upon properly supported request, out of the Court's Pro Bono Fund as provided in S.D. Cal. CivLR 83.8(a)(2). In addition, prevailing civil rights plaintiffs may seek an award of attorneys' fees under federal law.

The procedures for selection of law firms and attorneys to serve on the Panel, as well as applications to become a member of the Panel, can be found on the Court's website at <https://www.casd.uscourts.gov/attorney/pro-bono-panel.aspx>.

Questions should be directed to Pro Bono Administrator Karen Beretsky at (619) 557-5693 or [ProBonoAdministrator@casd.uscourts.gov](mailto:ProBonoAdministrator@casd.uscourts.gov).

## Pro Bono Panel Frequently Asked Questions

### 1. What expenses are reimbursable?

Pursuant to Civil Local Rule 83.8(a)(2) and the Pro Bono Plan, pro bono counsel may seek reimbursement for “out-of-pocket expenses, necessarily incurred by court-appointed attorneys representing indigents pro bono in civil cases not covered by the Criminal Justice Act....”

- a. What expenses can be reimbursed?
  - i. Any costs set forth in Civ. L.R. 54.1(b) as items taxable as costs at the end of the case are appropriate if they are “necessarily incurred.” These include such items as transcripts, deposition costs, witness fees, and copies (please see the Rule for detailed explanations).
  - ii. Expert witness fees are excluded from the “costs” permitted under Civ. L.R. 54.1(b). However, upon an appropriately supported application submitted to the trial judge, the Court may authorize the payment of expert witness fees as a “necessarily incurred” expense.
- b. Can expenses be paid prior to the end of the case?
  - i. As a matter of course, pro bono counsel will be reimbursed for necessarily incurred expenses at the end of the case. Upon an appropriately supported application submitted to the trial judge, however, the Court may authorize the interim payment of expenses.
  - ii. In the event the represented party recovers costs, any out-of-pocket expenses paid out of the Pro Bono Fund must be redeposited into the fund.
- c. Attorney’s and expert fees may also be awarded to a “prevailing part” “as part of the costs” pursuant to 42 U.S.C. § 1988(b) and (c). However, in civil actions brought by prisoners, 42 U.S.C. § 1997e(d) limits attorney’s fees awards otherwise authorized by 42 U.S.C. § 1988.

### 2. Can I associate co-counsel?

If an appointed pro bono attorney wishes to associate counsel to assist in the matter, that associated attorney should also be a member of the panel.

### 3. What types of cases are referred under the Court’s Pro Bono Plan?

The Court may refer any type civil case to pro bono counsel. As a matter of course, the majority of cases are civil rights actions filed by state prisoners under 42 U.S.C. § 1983 alleging constitutional violations in the conditions of their confinement.

### 4. At what stage of the proceedings are cases referred to pro bono counsel?

The Court may refer a case at any stage of the proceedings. However, most cases are post-summary judgment and ready for trial.

### 5. How flexible is the Court with regard to previously-set deadlines?

Although it is within the discretion of the individual trial judge, the Court appreciates the commitment of pro bono counsel and where possible will seek to accommodate counsel’s

schedules even as to previously-set deadlines.

6. *How long does the appointment last?*

It is possible the Court could refer a matter for a particular and isolated proceeding, such as pretrial motions or settlement. Otherwise, the appointment is made through the conclusion of matters before this Court.

7. *How often will an attorney or firm be appointed to a new pro bono matter*

The Pro Bono Plan provides that a law firm or attorney will not be appointed to a new matter if they have previously been appointed within the last two years.

8. *What if a Panel attorney or firm cannot accept a case?*

The Pro Bono Plan provides that once a law firm or attorney becomes a member of the panel, the firm or attorney is expected to accept appointment, absent a conflict of interest or the presence of exceptional circumstances. Because the Court has limited resources, it must be able to rely upon the attorneys and law firms who join the Panel to honor their commitment. Nonetheless, nothing in the Plan provides for the imposition of sanctions against a Panel member who must decline an appointment.



\*Denotes required information.

### **Attorney Information**

**Firstname:**

Firstname

**Middle Initial:**

Middle Initial

**Lastname:**

Lastname

**Phone:**

Phone

**E-mail:**

Email

**Street Address:**

full address

**City:**

City

**State:**

State

**ZipCode:**

ZipCode

## Education and Bar Information

Law School:

JD Year Awarded:

Admitted to CA Bar:

Admitted to CASD :

## Experience and Other Information

*\*Note: Your answer on each question below should not be more than 750 characters.*

List other federal district and appellate courts to which you are admitted (and dates of admission)

Please describe the nature of your present practice

Please describe your civil or criminal litigation and trial experience. To the extent applicable, include number of jury and bench trials (in federal and state court)

Experience litigating civil rights cases is not necessary to participate on the pro bono panel. However, if you have experience with these types of cases, please describe that experience

Are you fluent in any language other than English? If so, please list



FBA, San Diego Chapter Jun 3 2 min read

## Southern District Seeks Applications for Pro Bono Panel

In August 2011, the U.S. District Court for the Southern District of California adopted a Plan for the Representation of Pro Se Litigants in Civil Cases pursuant to General Order 596. In partnership with the San Diego Chapter of the Federal Bar Association, the Court and representatives from the local bar formed a panel of law firms and attorneys qualified and willing to accept pro bono appointment in cases which the Court has determined appropriate for such representation.

Pursuant to the Pro Bono Plan as adopted by General Order 596, the Court is once again soliciting applications for new law firms and attorneys to serve on the Panel. Law firms and attorneys currently serving on the Panel will remain on the Panel and need not reapply.

Appointments of counsel from this Panel are made pursuant to 42 U.S.C. § 2000e et seq. and 28 U.S.C. § 1915(e)(1), and not pursuant to the Criminal Justice Act. Counsel from the Pro Bono Panel have and will be called upon to represent indigent plaintiffs asserting civil rights claims in the Southern District, most of whom are prisoners. Appointments may be made at the early stages of litigation, but are typically deferred until after summary judgment has been denied and a trial is anticipated.

Necessary out-of-pocket expenses incurred by Pro Bono Panel appointees will be reimbursed, upon properly supported request, out of the Court's Pro Bono Fund as provided in S.D. Cal. CivLR 83.8(a)(2). In addition, prevailing civil rights plaintiffs may seek an award of attorneys' fees under federal law.

The procedures for selection of law firms and attorneys to serve on the Panel, as well as applications to become a member of the Panel, can be found on the Court's website at <https://www.casd.uscourts.gov/attorney/pro-bono-panel.aspx>.

Questions should be directed to Pro Bono Administrator Karen Beretsky at (619) 557-5693 or [ProBonoAdministrator@casd.uscourts.gov](mailto:ProBonoAdministrator@casd.uscourts.gov).

# Tips and Strategies to Improve Your Depositions

A few ways to help sharpen your skills and become better advocates for your clients.

By Kimberly L. Beck

Share:



Every attorney has a deposition style all their own. However, even the best deposition takers can improve. This article sets forth tips and strategies for improving deposition preparation and deposition taking skills.

## Tips to Prepare for a Deposition

- **Research the law and keep the theory of the case in mind.** In order to take effective depositions, attorneys need to know what questions to ask, and to do that, they need to know the law. Although it seems obvious, many attorneys do not research the law before starting discovery. Yet, the law, and particularly the nuances in the law, may guide the entire litigation. David M. Malone & Peter T. Hoffman, *The Effective Deposition, Techniques and Strategies that Work* §5.3 (2nd ed. 1996).

Once the litigation team knows the law, the team can construct a theory of the case, and work to obtain evidence (like deposition testimony) to support the theory. The case theory serves as the backbone for each deposition outline. The theory must remain flexible, ready to evolve as facts are discovered, and accordingly, the attorney taking the deposition must remain flexible with questioning. Malone, *et al. supra* at § 5.5.

- **Learn which objections are acceptable.** Which objections are permitted? It depends. Different jurisdictions have different rules regarding objections. All jurisdictions will permit objections based on privilege, as well as the “common sense” objections, like those involving harassment of the witness. Paul Bergman & Albert J. Moore, *Nolo's Deposition Handbook*, 130 (6th ed. 2014).

The questioning attorney may also raise an objection to opposing counsel's behavior including the use of excessive objections, or objections raised for the purpose of coaching the witness. *See e.g. Security Nat'l Bank of Sioux City v. Abbot Labs.*, 299 F.R.D. 595, 604 (N.D. Iowa 2014) (chastising an attorney for excessive interruptions and coaching the witness with his objections). The questioner is also permitted to raise an objection if the witness's “answer” to a question is non-responsive. Bergman, *et al. supra* at 269.

Otherwise, the list of proper deposition objections is probably in the rules of procedure for the jurisdiction where the case is pending. For example, the appropriate objections for lay witnesses in federal cases are described in Fed. R. Civ. P. 32. Rule 32(d)(3) provides that any objection to the “competence, relevance, or materiality of the testimony” is NOT waived regardless of whether it is raised at a deposition. On the other hand, if the objection relates to a deficiency “that might have been corrected at the time” of the deposition, it is waived if not raised. Accordingly, an attorney would waive objections based on the officer's qualifications, another attorney's behavior at the deposition, and to the form of the question if not made during the deposition. All other objections are preserved. As a practical matter, then, the only objections one should expect to hear during the deposition relate to privilege or form.

- **Be organized.** Consider the sequence of your questions and make sure you are fully prepared. Organization ensures you cover the topics you intend to and also helps to make sure the record is clear for later use in preparing for trial or for motions practice. A thorough and detailed outline will help ensure nothing is forgotten. As depositions move forward, most attorneys end up going “off script” a bit from their outlines and just follow the conversation where it leads. When that happens, a thoroughly prepared outline allows the lawyer to go back over the list of questions or topics to make sure everything has been covered.

## Strategies for Successfully Taking a Deposition

- Do not blindly agree to the “usual stipulations.” You *do* know what the usual stipulations are, don’t you? That is okay. No one else does either.

In many areas of the country, there are no usual stipulations. In other areas, it may be customary to enter into the “usual stipulations,” but “[t]here is no judicial definition defining what this phrase means and very few decisions explaining” the meaning. Kathy Behler, *Best Advocacy Fix: Depositions and Stipulations*, *The Legal Advocate*, (Nov. 4, 2013). Further, there is not always a consensus among practitioners. See *Molfese v. Fairfax*, 2006 WL 908161, No. 3:05-cv-317 (D. Connecticut April 4, 2016) (deciding whether the “usual stipulations” means in part to that the parties waive the right to review and sign the deposition transcript); *Marshall v. Planz*, 145 F. Supp. 2d 1258 (M.D. Ala. 2001) (holding that, in this case, the “usual stipulations” do not reserve objections regarding privilege, despite arguments to the contrary).

Accordingly, an attorney asked to agree to the “usual stipulations” should either decline to do so, or clarify on the record what is meant by that term. Several recommended responses to “do you just want to agree to the usual stipulations?” are set forth below:

- “No, I don’t do that.”
- “That’s fine; we just need to put them on the record.” Then, just start the deposition by stating “we have agreed to the usual stipulations. By that, we mean that all objections are reserved, except those as to form and privilege.”
- “No, let’s just do the deposition per the Rules.”
- Regardless of whether the deposition takes place in an area of the country where parties customarily enter into the “usual stipulations” or that is just a meaningless phrase in the jurisdiction at issue, do not agree blindly. Consider whether each deposition is one where detailed objections might be needed.
- **Follow up.** Effective lawyers explore the details and nuances of the witness’ testimony. In the discovery deposition, what you don’t know can later hurt you. To avoid being hit at trial with something you neglected to cover at a deposition, you have to be ready to adapt. By the same token, failing to follow-up may result in missing vital testimony that could significantly help your case. While a good outline is critical, it is not a Shakespearean script. You need to ad lib your way through the details. Attorneys often come to depositions perfectly prepared, but stick so close to their outline that they fail to dive into the details of the answer and just move on to the next question they planned to ask. The best lawyering is often done in those unexpected moments. Listen to the answer and consider whether there are details behind it that may possibly have an impact on the case. If so, explore those details.
- **Win and walk away.** Once the questioner “wins” on a particular point, it can be tempting to let the other side know. Resist the temptation. There will be plenty of time to let the plaintiffs know they “lost” on a specific issue at the deposition in a motion for summary judgment. At the deposition, simply take the “win” and move on to the next point. At trial, it is almost always best to quit while you are ahead. Given how few cases go to trial, this may also be true in some depositions. If you like the record you have created and you have met your goals, do not be afraid to end the deposition rather than continuing at the risk of giving the witness a chance to undo the things you achieved up to that point.

Everyone has to find their own deposition style, but regardless of how experienced an attorney is, the style should evolve and improve. All attorneys can continue to hone their skills. Hopefully, some of the tips described here will help lawyers sharpen their skills and become better advocates for their clients.



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**FINDING A FEDERAL MENTOR IN SIX SIMPLE STEPS**

Mentoring improves career outcomes and satisfaction for virtually everyone, including attorneys. The following six steps explain how to connect with a mentor of one's own.

\*61 “There are very few people in the world whom you can't learn some-J.L. thing from, but even rarer are those souls who can reveal whole worlds to you if you observe them carefully.” Sonia Sotomayor, *My Beloved World*<sup>1</sup>

Professionals in the private sector have long recognized the benefits of networking, which is “widely regarded as essential to positive career outcomes.”<sup>2</sup> The fact that an estimated one- to two-thirds of all jobs are unadvertised, filled by candidates who come to an employer's attention through word-of-mouth referrals from a trusted source, often an insider,<sup>3</sup> makes networking even more essential for job seekers.<sup>4</sup> Additionally, networking is a time-honored way to find mentors, who in turn can extend a network even further.<sup>5</sup>

Mentoring improves career outcomes and satisfaction for virtually everyone, including attorneys.<sup>6</sup> The ability to observe and speak with experienced attorneys, including mentors, influences career and skill development, especially in regard to interpersonal and judgment skills.<sup>7</sup> Protégé attorneys can also get an insider's view on how to succeed, learning about marketing skills and an office's unofficial practices and policies. Having a relationship with a seasoned employee can give protégés access to new and varied work experience and high-ranking individuals within the firm.<sup>8</sup> This “relationship capital” offers valuable opportunities mediated through personal connections.<sup>9</sup>

In addition to helping advance their protégés' career development, mentors “socialize” new attorneys into the principles of professionalism unique to the law and serve as role models.<sup>10</sup> The importance of mentors as role models cannot be overstated. As Justice Sotomayor has observed, “[a] role model in the flesh provides more than an inspiration; his or her existence is confirmation of possibilities one may have every reason to doubt, saying, ‘Yes, someone like me can do this.’”<sup>11</sup> Perhaps not surprisingly, formal mentoring programs effectively help underrepresented groups gain traction in the legal profession.<sup>12</sup>

Studies of networking and mentoring come largely from the ‘private sector, and in law, usually reflect the experiences of associates in large firms. A law student or new graduate interested in a federal career might reasonably wonder: Do these principles hold up in public interest or government, service?

Absolutely.<sup>13</sup> Networking in federal service is essential, and mentors can provide critical support in a federal job search.<sup>14</sup> Here's why.

Lawyers who work for the federal government are in a special category: exempt from civil service hiring rules, they can be hired, fired, and transferred less formally, as in the private sector.<sup>15</sup> Available evidence suggests there is a robust, invisible federal job market for lawyers in government and public service. Richard Hermann observes that “[m]ost federal jobs that never see the

light of publication are attorney positions.”<sup>16</sup> Insiders may know about an agency's needs well before positions are posted.<sup>17</sup> Networking and mentoring can help a candidate perform the due diligence needed to identify and pursue opportunities.<sup>18</sup> lawyers are hired not by a monolithic Fed, but by specific agencies, offices, and departments with distinct missions and needs. As a professor of administrative law has observed, “[a]n aspiring federal lawyer will have to mount a multipart campaign to find the specific agency that needs his talents and then has to use all available networks to get into the agency manager's field of awareness.”<sup>19</sup>

Contacts and mentors familiar with the hiring office can help a candidate understand those needs and advise the candidate on preparing an application tailored to meet them. Best of all, insiders vouch for people they know and trust, which helps an applicant stand out in the flood of job applications currently inundating federal offices.<sup>20</sup> Relationships and trust matter as much in federal service as elsewhere.

When should you start networking and looking for a mentor? \*62 As in the proverb about planting trees, the best time is 20 years ago; the second best time is now. Networking and mentoring are tools for the long game. In his book *Overshooting*, Malcolm Gladwell posits that achieving mastery in any given field requires about 10,000 hours (about 10 years) of deliberate practice.<sup>21</sup> It may not take that long to find your first federal job, but it may take several years of building skills and contacts<sup>22</sup> before you get your break. While some federal offices hire new graduates, usually through honors programs, many prefer to hire lawyers with a few years of experience.<sup>23</sup> So don't be discouraged--it may help to view your first federal job as a step toward achieving mastery in a field you are passionate about.

So let's assume you're a student or recent law school graduate who hasn't spent the last 10 years building the skills and contacts you need to find the federal opportunity you've been dreaming about. Are you going to give up? Heck no. You're going to read on. Where do you start?

### **Step One: Discover Your Passion for Public Service**

A fulfilling federal legal career demands a “passion for public service, and especially federal government service.”<sup>24</sup> (If you keep score with money, you've already figured out that there's more to be made in the private sector.<sup>25</sup>) Networking and mentoring both depend on personal relationships, which in turn depend on trust, authenticity, and shared values.<sup>26</sup> If you see public service as a fallback to pay the bills until you get a “real” job, believe me, it'll be obvious to everyone you meet. Your genuine enthusiasm and willingness to commit; will be equally apparent.

To fully benefit from networking and mentoring with people interested in public service, you need to share their passion. The key is to find an agency or field that aligns with your interests and values--and the first step is self-knowledge.<sup>27</sup>

There are several ways to crystallize your interests and values into a plan for finding public service work. For example, the website [Idealist.org](http://Idealist.org) offers abundant information and guidance on developing career self-awareness and beginning a public interest job search. Another tool, developed by New York University's Wagner Graduate School of Public Service, describes five “lenses” that help public-sector job seekers identify what it is about public service that attracts them: an issue or value they care about, a role they want to play, a population they want to serve, a system in which they want to work, or an organization they want to join.<sup>28</sup> These “lenses” can help you focus on which type of federal legal work generally suits you, and help you see whether a particular job posting aligns with your interests and values. You can also reflect on what you did before law school, and what you do with your free time. One lawyer chose to pursue a career in food and drug regulatory law because it complemented her interest in food and cooking.<sup>29</sup>

While law school courses can point you in the direction of your passion, they may be less important than you think. A recent law school graduate obtained an entry-level federal position doing immigration litigation despite never having taken an immigration course or clinic. She observed, “[m]y past work in human rights and criminal prosecution had a direct link to the kinds of issues arising in immigration law. So while I lacked classes, I was able to have a narrative that linked my experience with my interests.”<sup>30</sup> When you understand your passion, that narrative will fall into place.

Next, seek places in federal service where people are doing the kind of work you want to be doing. Richard Hermann's *Landing a Federal Legal Job*<sup>31</sup> provides an overview of career possibilities in all three branches of government. Websites such as Making-the-difference.org and Bestplacetowork.org also offer suggestions for how to explore federal job opportunities. Students and new grads often find their way into entry-level federal legal positions through internships, fellowships, and agency honors programs. At least 19 agencies currently have honors programs.<sup>32</sup> The federal Office of Personnel Management website describes its attempts to streamline the hiring of students and recent graduates.<sup>33</sup> Federal job postings themselves may be found on USAJOBS.gov, and a mix of federal, state, and local opportunities may appear on PSJD.org, the National Association for Law Placement's (NALP) website for public interest postings. It seems likely that agencies will use social media to reach out to entry-level candidates as well.<sup>34</sup> Your school's career services office may have access to the widely recommended *University of Arizona Government Honors and Internship Handbook* which collects application information and deadlines for summer and entry-level positions.<sup>35</sup>

While you should be reasonably focused about the kind of work you want to do, try to remain open minded about how and where to do it. Bear in mind that many federal legal positions may not involve litigation but rather regulation, advising, or policymaking; avoid setting rigid limits on the entities to which you apply. The recent graduate I mentioned earlier wanted to work for a particular agency that was not hiring at the time--a common problem in this age of tight federal budgets. Her mentors at that agency--people she met during a student internship--encouraged her to apply to a different office that did related work, where she ultimately found a position.<sup>36</sup>

Because of the premium federal employers place on federal experience, a position in one agency or office "puts you in a strong position to move laterally" within your workplace and to other federal jobs as well.<sup>37</sup> Also consider location: federal law offices are concentrated first in Washington, D.C., second in the 10 Federal Regional Centers, and third in other major U.S. cities,<sup>38</sup> so being able to relocate may make it easier to find the work you'd like to do.

Above all, trust your instincts and pay attention when you hear about a job that sounds right for you. Justice Sotomayor recalls that one of her Yale classmates was "aghast" when she interviewed for a low-paying entry-level position with the Manhattan District Attorney's Office--yet in the end, she trusted her instincts,<sup>39</sup> and all things considered, it appears to have turned out very well.

In summary: be focused about why you want to go into public service and what you want to do, and create a compelling narrative that \*63 connects the two. But when it comes to how, where, and for whom you work, be prepared to cast a wider net. And when it comes to finding contacts in your chosen field, it's time to cast the widest net of all.

## Step Two: Find People Who Share It

Richard Hermann recommends that federal job applicants be both reactive, in the sense of keeping an eye out for postings, but also proactive, meaning "taking affirmative steps to alert a prospective federal employer to your credentials, even without benefit of a vacancy announcement"<sup>40</sup> --for example, by networking.

Your network consists of everyone you already know. Seriously, everyone. Your classmates from even' school, training course, or continuing legal education (CLE) seminar you've ever attended.<sup>41</sup> All your former teachers. Everyone you've ever worked for or with. The people you volunteer with. Neighbors. Family. Your kids' friends' parents. Your accountant, hairstylist, mechanic, babysitter, barista.<sup>42</sup> When it comes to networking, no one is invisible; it is precisely the people in the "third ring" of your network (friends of friends of friends) that have information that could lead to your next job.<sup>43</sup> "Breaking into the hidden market isn't about old-school networks or special favors .... The most important and effective aspects of networking are about finding things out, filling gaps, making connections."<sup>44</sup>

So whether or not you realize it, you probably know someone (or know someone who knows someone who knows someone) who is, or has been, in federal service. Remember, a given field will likely have a presence in government service (federal, state and local), academia, nonprofits, and private practice; indeed, any person's career path may travel through all of these different sectors. Networking does not mean cold-calling someone in a federal agency. It means calling a professor you know, or going

to lunch with a former employer, or having coffee with a classmate who had an internship, or emailing someone recommended by your school's career services office, or reaching out to someone you're connected to on LinkedIn--any of whom might be able to connect you with someone who can tell you more about the agency.

The best way to network is to “hang out” with the people who are already doing the work you want to do.<sup>45</sup> If you're a student, you have a substantial advantage, because federal internships provide not only the opportunity not only to learn and build skills, but, also to meet and spend time with people who share your passion.<sup>46</sup> A recent graduate has observed, “interning in a federal agency provides the upper hand because you can then use your contacts to vouch for you when seeking full-time work.”<sup>47</sup> Your law school often can connect you with alumni in public service-- as in the discussions and panels sponsored for NYU Law students through the Guarini Government Summer Series in Washington, D.C.

If you're a new graduate and don't have the benefit of an internship, you'll have to get more creative. One great way to find people who share your passion is by joining organizations where they are likely to volunteer. Juanita Hernandez of the Securities and Exchange Commission Office of the General Counsel has been involved for years with the American Bar Association, Federal Bar Association, and the Hispanic National Bar Association. Says Hernandez, “For a young lawyer, bar associations provide professional networking, potential mentors, pro bono experience, and substantive seminars. They also give you an opportunity to develop and showcase your organizational and leadership skills to other leaders in your profession and the community.”<sup>48</sup> Bar association sections or committees in federal subject matter, or in administrative and regulatory law, may be a helpful place to network.<sup>49</sup> Naturally the FBA is widely recognized as a great place to meet federal practitioners of all kinds, and the FBA's Young Lawyers' Division events--such as the Thurgood Marshall moot court competition in April and the summer reception for federal interns in Washington, D.C.--provide great opportunities for students to connect with federal practitioners.<sup>50</sup>

Attending related conferences, trade shows, and CLE seminars offer another way to find people who share your passion. The Next Generation of Government Training Summit is aimed at federal employees representing Generations X and Y.<sup>51</sup> Industry, civic, and trade associations may also be great places to find nonlawyers who share your interests and values.<sup>52</sup> Conferences not only furnish a golden opportunity to approach presenters on breaks, but also surround you with other people interested in the topic, many of whom may be actual (or aspiring) government lawyers.

Yet another way is to read and write--which, more than ever, have become opportunities for genuine dialogue. Reading books, articles, and blogs keeps you up to date on your passion and gives you a reason to reach out to authors with appreciative questions and comments (and perhaps invitations to meet for coffee). Writing increases your visibility, improves your communication skills, demonstrates your commitment to the field, and gives you an opportunity to interview and seek feedback from people who know your topic.

A subtext to all of these suggestions is that you will need to invest your own time and money in building your network. Have a budget for organization dues, continuing education, and treating your contacts to lunch and coffee; take a professional-quality digital photograph of yourself for social networking sites; and if there's any money left over, buy thank you notes made out of actual paper made from trees.<sup>53</sup> I understand that for students and new lawyers, the thought of finding additional time or money to network may seem daunting, but you will find investing in these small professional touches will make a lasting good impression.

In summary: share your passion with those you already know, and look for opportunities to meet those who share it. You are hoping to meet people who share your passion long before they can help you. Expect it to take time, and cultivate patience.

### Step Three: Meet Them

Networking is about giving, not getting.<sup>54</sup> Law students and recent graduates at the start of their career may reasonably wonder what they have to offer more senior lawyers. Obviously it's great if you can share useful information or business contacts, but the answer is even simpler: “even if you give nothing but your attention, your presence, and your warmth, that is a lot, and people appreciate it and remember it.”<sup>55</sup> Another gift you can give is authentic, deeply felt gratitude--for their expertise, time, wisdom, suggestions, and willingness to help.<sup>56</sup> Introverts take note: informal, face-to-face, one-on-one networking appears

to be at least as effective as working the room at a crowded event, so feel free to meet your contacts in a setting where you're comfortable.<sup>57</sup>

While networking is essential to finding a job, it is not the same as interviewing. Please repeat after me: Networking is *not* job interviewing. You should never ask for a job in an informational interview.<sup>58</sup> Speaking of which, you may want to think twice about asking for an “informational interview.” To me an informational interview sounds tedious and raises suspicions that someone might put me on the spot \*64 and ask me for a job. But meeting up for coffee or lunch or a few minutes' chat about, what I do for a living? Now you're talking.<sup>59</sup>

While you should never use a networking meeting to ask for a job interview, once you're already in a job interview, it's fine to go ahead and ask the kind of questions you'd ask in a networking meeting. The recent graduate I mentioned recalls once asking an interviewer for tips on interesting cases to observe in court later in the day, which not only affirmed her enthusiasm for the work, but conveyed a “sense of proactivity and good time management skills.”<sup>60</sup>

When you schedule informal meetings, try to meet people at times when you're likely to be at your best, and consider rescheduling (with appropriate notice) if you're stressed or distracted.<sup>61</sup> Before a meeting, do your homework--search your new contact's website, do a Google news search, and learn what you can to avoid asking questions that can be answered by “that's on the website.” If they've written an article, read it. If they've written a book, at least know the subject. If you happen to be meeting someone involved in newsworthy federal litigation, consider checking out recent, electronic court filings available on PACER (the account is free, and downloads are 10 cents a page). You're not stalking; you're preparing to ask informed questions, to respond intelligently if you're asked for your thoughts, and to feel calm and relaxed enough to really listen to what your contact will be sharing with you.

Networking meetings should be short--20 to 30 minutes is plenty of time--and focused. Your task is to listen and convey your passion for the field. Your objectives are to gather new information, add contacts to your network, and if you're lucky, gain what executive search consultant Marcia Ballinger calls an ““evangelist””: someone willing to connect you with others right away.<sup>62</sup>

While it's essential to be proactive in meeting people, it's equally important to be prepared for unexpected meetings. Justice Sotomayor describes meeting her First “true mentor,” Yale General Counsel Jose Cabranes, by chance. A friend of Sotomayor's visited Yale to interview Cabranes for his undergraduate research and stayed with Sotomayor. She was invited to lunch with Cabranes, and a great mentoring relationship was born.<sup>63</sup>

In summary: First do your homework, then look for opportunities to have short, focused conversations where you can share your passion for public service. Listen to your contacts, learn from them, and let them connect you with others.

#### **Step Four: Stay in Touch with Them**

“[D]on't be shy about making a teacher of any willing party who knows what he or she is doing.” --Sonia Sotomayor<sup>64</sup>

Follow up--that is, follow up *by you*--transforms contacts into mentors. You may notice one of your contacts shares your passion for public service and some of your key values. Maybe you're connected through an Inn of Court, an employer, a formal school or bar association mentoring program, or an online mentor matching program such as GovLoop.com.<sup>65</sup> Or maybe you just met at a CLE or a garden show or a softball game. However it happens, look for ““chemistry,” the secret ingredient that “actually makes a mentoring relationship work.”<sup>66</sup>

Mentoring is rewarding--done right, it benefits the mentor as well by providing a meaningful relationship with someone with similar interests.<sup>67</sup> One lawyer has observed, “[h]ad I known the rewards of mentoring, I wouldn't have been so hesitant to seek out mentors as a young attorney.”<sup>68</sup> If you do not connect with a mentor through a formal program, don't despair; research suggests that mentoring relationships initiated informally are just, as effective, if not more effective, than formal ones.<sup>69</sup>

If you can connect with a judge through an internship or clerkship, you should. A great deal has been written on the mentoring relationships between judges and their law clerks.<sup>70</sup> Judges make legendary mentors: they know a lot of people, they've seen a lot of lawyering (good and bad), they had careers before the bench, and most of all, they value on mentoring young lawyers.<sup>71</sup> Yet always remember that mentors may be found not only on the summit of the profession, but also on the slopes and foothills. Junior people, just a few years ahead of you, may have great perspective and guidance to offer.<sup>72</sup> So when you find someone you like, junior or senior, make the first move.<sup>73</sup> You don't have to ask "will you be my mentor," but you do need to seek out opportunities to watch them work, and, with their leave, ask questions:

- Would you send me a copy of your next [article, complaint, brief]?
- Would you mind if I observed your next [deposition, trial, oral argument, settlement conference]?
- Is there something coming up [in court, at the legislature] that I should watch?
- Are there resources I should buy or read?
- Are there organizations I should join?
- I'm writing a paper. Where would you recommend I submit it for publication?
- Is there anyone else I should talk to?<sup>74</sup>

By the way, it's expected that you'll have multiple mentors over your career--different ones at different times.<sup>75</sup> Studies recognize four basic functions of mentoring: career mentoring, psychosocial mentoring, role-modeling, and professionalism mentoring.<sup>76</sup> Career mentoring, usually found within an organization, focuses on career advancement, including better work assignments, performance coaching, exposure to contacts, protection, and sponsorship.<sup>77</sup> In their first years of practice, students and new graduates may benefit most from career mentoring that focuses on learning, skill building, and exploration.<sup>78</sup> But as you meet people inside or outside your organization who are good role models and coaches, and who can offer guidance on the expectations of the profession, you should not hesitate to learn from them. A "constellation of developmental relationships" yields greater benefits for both you and your mentors over time.<sup>79</sup>

A mentoring relationship provides an opportunity to show your work and ask for feedback. U.S. Magistrate Judge Jeanne Graham's first mentor was her law school trial skills coach, who introduced her to her second, U.S. Magistrate Judge Jan Symchych.<sup>80</sup> "My mentors were dynamite professors and practitioners," Judge Graham observes, and "I did my very best--working hard and volunteering to do whatever they needed." Such opportunities to demonstrate your skills and seek feedback are essential. "In the end, it doesn't matter if you have a great mentor if you don't give them the tools to say wonderful things about you later."<sup>81</sup>

A mentoring relationship provides an opportunity to let someone you trust get to know you as a person. General Mills executive Kimberly Nelson recently shared a mentor's advice that she should get to know the company leadership personally because

“they're not going to hand the keys to the kingdom over to a stranger.”<sup>82</sup> The same holds true in any relationship: to be trusted, you must be known. So \*65 when you've found someone you trust, it's okay to talk (respectfully and professionally of course) about what happens in your lives outside of the office. To truly benefit from mentoring, you need to give them the tools to say wonderful things about you--both based on your work and on who you are as a person.

Most of all, you need to stay in touch. Whether you have one mentor or many, whenever someone takes the time to mentor you, it is essential to communicate not only your questions but your gratitude. Take their advice, or explain why you don't. Buy them lunch. Thank them in writing (that's what those paper notes are for). Keep your mentors posted whenever you reach out to their contacts, publish an article, or Find a new position.<sup>83</sup> A recent grad observes she has stayed in touch with mentors from law school and from her internships as she moves into entry-level federal service.<sup>84</sup> Maintaining these relationships makes it more likely you'll be thought of for positions that go unannounced,<sup>85</sup> and when the time comes, that you'll be able to seek your mentors' detailed advice on how to navigate the application process.<sup>86</sup>

In summary: When you feel “chemistry” with someone who shares your passion for public service, invest time in getting to know them, and letting them get to know you. Learn from them, look for opportunities to do your very best work for them, and ask for feedback.

### **Step Five: Build (and Demonstrate) Your Skills.**

If you're in law school, you have access to internships that will offer a pathway into federal service. If you figure it out for the first time after graduation, not to worry. As you build your network, you can look for opportunities to build your skills.

Which skills? The recent graduate I mentioned observes that interns and entry-level hires must be good writers who can research legal issues quickly and cost effectively and should be “outgoing, extremely organized, and disciplined.”<sup>87</sup> A recent study of student interns in judicial and other government and public interest placements confirmed that certain work habits are especially needed: attention to detail, efficient and high-quality research, initiative, and confidence.<sup>88</sup> Federal judges in particular have identified “intellectual excellence, superior work habits, and an exceptional ability to get along with others” as helpful for law clerks.<sup>89</sup> Not surprisingly, judges in a study indicated that the most important factor in hiring clerks was law school performance (for law students) or prior work experience (for graduates). The next most important factor? Personality.<sup>90</sup>

You may notice a theme here. General skills that are expected of new attorneys--clear writing, quick and cost-effective research, solid organization and work habits, confidence, attention to detail--can be developed in many, contexts, improved by feedback from mentors, and communicated through networks to federal lawyers looking for a few good attorneys. If you want to identify more specific skills needed in your field, ask your contacts and your mentor. And once you know, look for opportunities to demonstrate them to your mentor by working hard and volunteering to do whatever is needed--working on a case, volunteering on a committee, helping write an article or speech, planning an event.

But remember that legal skills alone aren't the end of the story: employers also look for personality and fit. So a major skill to cultivate is the ability to work well with others and to quickly fit in and come up to speed in a workplace. By introducing you to other people and giving you the opportunity to learn from them, networking and mentoring build your people skills as well.

In summary: Focus on improving your research and communication skills, and ask your contacts and mentors what other skills are needed in your field. Your mentors can identify which skills are in demand, give you opportunities to practice them, and help you develop “an “exceptional ability to get along with others.”

### **Step Six: Give Back**

Sooner than you're ready, you'll be asked to be a mentor. Someone newer than you will ask you to share your time and insight. Do it.<sup>91</sup> The newbie could use your help; you will learn from their questions; and in no time at all, your protégées will be out practicing and connecting you to people they know.

## In Conclusion

Once believed to be in decline in the legal profession,<sup>92</sup> mentoring is making a comeback, with law schools, bar associations, and public service organizations all providing more opportunities for students and new lawyers to meet mentors. Social media make it easier than ever to make and maintain connections. Public interest law in general, and federal service in particular, are now understood as distinct career paths requiring specialized techniques and support, and so law school career services offices are better placed to connect students and new graduates with mentors and opportunities. And an unprecedented amount of information on internships, job postings, and federal public service work is freely available online, making it easier than ever to do the homework necessary to understand and apply for a federal law job.

Finding a federal legal job can be a long and challenging process. The well-established benefits of networking and mentoring can help you leverage your time and talent, wherever you are in the search.

## Footnotes

- <sup>a1</sup> Karin Ciano, *the Federal Slio-pa(tm)*, handles civil rights and employment discrimination cases in federal court, and has a lively freelance research and writing practice helping other attorneys navigate federal issues in litigation. A former federal career clerk and longtime legal writing professor, Ciano is the Twin Cities director of Custom Counsel LLC, a network of freelance attorneys, and saves on the board of the Minnesota Chapter of the FBA. She is solely responsible for the views and opinions expressed in this article, and can be reached at [federalsherpa@gmail.com](mailto:federalsherpa@gmail.com). The author wishes to thank Paige Stradley and Mary Meredith, both recent law school graduates, for their outstanding reseaihv and assistance with this article and also wishes to thank all who offered suggestions or agreed to be interviewed or quoted, including Hon. Jeanne J. Graham, Kimbetiy Nelson, and a recent law school graduate. The author also wishes special thanks to her federal mentors, including Hon. James M. Rosenbaum (Ret.), Hon. Ann D. Montgomery, Hon. Arthur J. Boylan, and especially her first federal mentor, her dad.
- <sup>1</sup> Soma Sotomayor, *MY BELOVED WORLD* (Knopf 2013) at 176.
- <sup>2</sup> Cindy A. Schipaiii et al., *Pathways For Women To Obtain Positions Of Organizational Leadership: The Significance Of Mentoring and Networking*, 16 *DUKE J. GENDER, L. & POL'Y* 89, 95 (2009).
- <sup>3</sup> Marcia Ballinger et al., *THE 20-M:NUTE NETWORKING MEETING: HOW LITTLE MEETINGS CAN LEAD TO YOUR NEXT BIG JOB* (KeyStone Search 2012) at 19; John Lees, *Crack the Hidden Job Market*, *HARVARD BUSINESS REVIEW BLOG NETWORK*, available at [blogs.hbr.org/cs/2011/08/crack\\_the\\_hidden\\_job\\_market.html](https://blogs.hbr.org/cs/2011/08/crack_the_hidden_job_market.html) (“one-third of jobs are filled through word-of-mouth connections”); Nick Corcodilos, *Ask The Headhunter: The Four Best (Not Easiest!) Ways to Land a Job*, [www.pbs.org/newshour/businessdesk/2013/04/ask-the-headhunter-the-four-be.html](http://www.pbs.org/newshour/businessdesk/2013/04/ask-the-headhunter-the-four-be.html).
- <sup>4</sup> Shawn M. Beern, *Newbie Bines*, *GPSOLO MAGAZINE*, January/February 2013 at 58.
- <sup>5</sup> Kay Kavanagh et al., *EXCELLENCE IN THE WORKPLACE: LEGAL AND LIFE SKILLS* (Thomson West 2007) at 41, 43.
- <sup>6</sup> Schipani, *supra* at 4; Julie A. Oseid, *WHEN BIG BROTHER IS WATCHING (OUT FOR) YOU: MENTORING LAWYERS, CHOOSING A MENTOR, AND SHARING TEN VIRTUES FROM MY MENTOR*, 59 *S. C. L. Rev.* 394, 406 (2007-2008).
- <sup>7</sup> Neil Hamilton et al., *Fostering Professionalism Through Mentoring*, 57 *J. LEGAL EDUC.* 102, 112 (2007).
- <sup>8</sup> Oseid, *supra* at 406.
- <sup>9</sup> Kay, *Principals in Practice*, 31 *LAW & POLICY* 69, 70 (2009) (surveying new and experienced attorneys in Canadian system, which requires a period of apprenticeship).
- <sup>10</sup> Hamilton, *supra* at 108-109.



- 11 Sotomayor, *supra* at 178.
- 12 Deborah L. Rhode, *From Platitudes to Priorities: Diversity and Gender Equity in Law Firms*, 24 *Geo. J. LEGAL ETHICS* 1041, 1071 (2011); JUANITA C. HERNANDEZ, CONTRIBUTING AUTHOR, DEAR SISTERS, DEAR DAUGHTERS: STRATEGIES FOR SUCCESS FROM MULTICULTURAL WOMEN ATTORNEYS (American Bar Association 2009) at 67.
- 13 JAMES T. O'REILLY, CAREERS IN ADMINISTRATIVE LAW AND REGULATORY PRACTICE (American Bar Association 2010) at 51 (“Should I network? Absolutely.”).
- 14 E-mail interview with recent graduate attorney in federal service, April 11, 2013, on file with the author (“Recent Grad Interview”).
- 15 RICHARD L. HERMANN, LANDING A FEDERAL LEGAL JOB: FINDING SUCCESS IN THE U.S. GOVERNMENT JOB MARKET (American Bar Association 2011) at 10, 18, 143.
- 16 Hermann, *supra* at 146, 323.
- 17 Hermann, *supra* at 323; O'Reilly, *supra* at 16.
- 18 Hermann, *supra* at 328.
- 19 O'Reilly, *supra* at 17.
- 20 Hermann, *supra* at 233; Recent Grad Interview, *supra*.
- 21 MALCOLM GLADWELL, OUTLIERS 39-40 (Little, Brown & Co. 2008).
- 22 Courtney Rubin, “How to Make a Career in Public Service,” U.S. NEWS & WORLD REPORT, (Oct. 28, 2010) [www.mnews.com/arti-cles/2010/10/28/how-to-make-a-career-in-public-service](http://www.mnews.com/arti-cles/2010/10/28/how-to-make-a-career-in-public-service). For excellent 10-year career timetables for new lawyers, please see Kavanagh and Nailon, *supra* at 330-332, and Douglas E. Motzenbecker, “Rainmaking,” in THE YOUNG LITIGATOR: TIPS ON RAINMAKING, WRITING AND TRIAL PRACTICE (American Bar Association 2011) at 20-24.
- 23 Hermann, *supra*.
- 24 Recent Grad Interview, *supra*.
- 25 Hermann, *supra* at 39 (“Lawyers are indoctrinated from day one in law school with the peculiar notions that (1) you only have status and even value if you go to work for a large law firm and (2) your overall worth is demarcated by the size of your paycheck. Those are difficult notions to set aside given the barrage of such information assaulting you from all sides during law school and beyond.”)
- 26 Schipani, *supra*; see also Veronica Ashenhurst, *Mentoring the Lawyer, Past & Present: Some Reflections*, 42 OTTAWA L. REV. 125, 130 (2010-2012).
- 27 Cathy Wasserman, “Self and Career Assessment: The Foundation of a Successful Job Search and Career,” found in Chapter 3 of MEG BUSSE, STEVEN JOINER, THE IDEALIST GUIDE TO NONPROFIT CAREERS FOR FIRST-TIME JOB SEEKERS (Hundreds of Heads 2010) at 36, available for download at [www.idealists.org/info/JCareers/Guides/FirstTime](http://www.idealists.org/info/JCareers/Guides/FirstTime); see also Karol Taylor and Janet Ruck, *The Importance of Career Planning in the Federal Job Search: A Practice Application. Digest*, American Counseling Association Professional Counseling Digest (2010). A 30 minute, \$4.95 self-assessment test may be found online at [www.self-directed-search.com](http://www.self-directed-search.com).
- 28 Busse et al., *supra*; The fifth lens, target population, appears at [www.idealists.org/info/Careers/SelfKnowledge/Lenses](http://www.idealists.org/info/Careers/SelfKnowledge/Lenses).
- 29 Miriam J. Guggenheim, “Becoming a Lawyer with a Work-Life Balance: From Part-Time to Partner,” collected in O'Reilly, *supra* at 65.
- 30 Recent Grad Interview, *supra*.

- 31 Hermann, *supra*.
- 32 Hermann, *supra* at 151-52.
- 33 U.S. OFFICE OF PERSONNEL MANAGEMENT, *Hiring Authorities: Students and Recent Graduates*, [www.opm.gov/policy-data-oversight/hiring-authorities/students-recent-graduates](http://www.opm.gov/policy-data-oversight/hiring-authorities/students-recent-graduates).
- 34 Rubin, *supra*; see also Katherine Calogero, *Become a Fan of Government Procurement on Facebook: How the Federal Government's Acquisition Workforce can use Social Networking Websites to Recruit New Employees*, 40 Pub. Cont. L. J. 808, 828 (2011)
- 35 NALP and PSJD, *The Federal Legal Employment Opportunities Guide 2012-2013* at 12 (available at [www.psjd.org](http://www.psjd.org)); see also O'Reilly, *supra* at 57.
- 36 Recent Grad Interview, *supra*.
- 37 Hermann, *supra* at 25.
- 38 Hermann, *supra* at 54.
- 39 Sotomayor, *supra* at 194.
- 40 Hermann, *supra* at 147.
- 41 Douglas E. Motzenbecker, *Rainmaking*, THE YOUNG LITIGATOR: TIPS ON RAINMAKING, WRITING AND TRIAL PRACTICE (American Bar Association 2011) at 20-21.
- 42 Busse, *supra* at 56.
- 43 Ballinger, *supra*, at 25, 54-55.
- 44 Lees, *supra*.
- 45 Corcodilos, *supra*.
- 46 Glen McMurry et al., "What's Next? The Transition from Law School to Solo or Firm Practice," 59 FEDERAL LAWYER 18, 18 (May 2012).
- 47 Recent Grad Interview, *supra* Information on the Guarini Summer Series can be found at <http://blogs.law.nyu.edu/lifeatnyulaw/nyulaw-students-m-d-c-the-guarini-governent-summer-series/> (posted July 1, 2013)
- 48 Rhode, *supra* at 1070; Hernandez, *supra* at 68.
- 49 O'Reilly, *supra* at 51; Motzenbecker, *supra* at 22.
- 50 McMurry, *supra* at 18.
- 51 Information available at [www.nextgen.com](http://www.nextgen.com).
- 52 Amy Messigan et al., "Young Lawyer's Perspective on Rairunaking: A Timeline for Success," in THE YOUNG LITIGATOR (American Bar Association 2011) at 20.
- 53 Busse, *supra* at 69.
- 54 Michael Ellsberg, *The Power of Eye Contact* (HarperCollins 2010) at 118.
- 55 Ellsberg, *id.*; see also Nick Corcodilos, *The Right Way to Get Coached*, [www.asktheheadhunter.com/hagetcoached.htm](http://www.asktheheadhunter.com/hagetcoached.htm).
- 56 Ballinger, *supra* at 114.

- 57 Hamilton *supra* at 120-121.
- 58 Busse, *supra* at 58, 68.
- 59 I appear to be in the distinct minority as “informational interview” is widely and effectively used in career-services-speak. See Busse and Joiner, *supra* at 66. It's fine to think of your get togethers as informational interviews, but it's much more fun to grab coffee and chat. Just saying.
- 60 Recent Grad Interview.
- 61 Randall Ryder. “Don't Suck at Networking Lunches,” LAWYERIST (posted April 16, 2013).
- 62 Ballinger, *supra* at 52.
- 63 Sotomayor, *supra* at 176.
- 64 Sotomayor, *supra* at 72.
- 65 Terrence O'Donnell, *Federal Court Practitioners Seme as Mentors to Newly Admitted Attorneys: The Supreme Court of Ohio's Lawyer to Lawyer Mentoring Program*, 57 FED. LAWYEH 28, 29 (August 2010) (describing Ohio's formal bar mentoring program). For more information on the GovLoop Mentors Program, see [www.govloop.com/page/govloop-mentors-program](http://www.govloop.com/page/govloop-mentors-program).
- 66 Steven Keeva, “Good Act to Follow,” 81 A.B.A. JOURNAL 74, 77 (March 1995).
- 67 Oseid, *supra* at 399.
- 68 Binns, *supra*.
- 69 Hamilton, *supra*, at 119-21.
- 70 See, e.g., Todd C. Peppers et al., *Inside Judicial Chambers: Hoiv Federal District Court Judges Select and Use Their Law Clerks*, 71 ALB. L. REV. 623, 623 (2008).; Keeva, *supra* at 76.
- 71 Peppers, *supra* at 637.
- 72 Oseid, *supra* at 407.
- 73 Oseid, *supra*, at 407.
- 74 Amy Messigan et al., “A Mentoring Checklist To Help Make the Mentoring Relationship More Productive,” in THE YOUNG LITIGATOR (American Bar Association 2011) at 52-58 (example checklist of questions to ask a mentor, tailored for a law firm setting).
- 75 Erin Bums, “Navigating the Mentor-Mentee Relationship,” STUDENT LAWYER (February 2013).
- 76 Hamilton, *supra* at 107-119.
- 77 Hamilton, *supra* at 107.
- 78 Kay, *supra* at 77 (2009).
- 79 Schipani, *supra* at 5; Oseid, *supra* at 407.
- 80 Email interview with the Hon. Jeanne J. Graham, U.S. magistrate judge, April 2, 2013, on file with the author.
- 81 *Id.*
- 82 Remarks at the Access to Leadership Conference, April 25, 2013, confirmed by email with Kimberly Nelson dated May 2, 2013, on file with the author.

- 83 Nick Corcodilos, *The Right Way to Get Coached*, *supra*.
- 84 Recent Grad Interview, *supra*.
- 85 Beem, *supra* at 58.
- 86 Recent Grad Interview, *supra*.
- 87 Recent Grad Interview, *supra*.
- 88 Carolyn Young et al., *What Students Don't Know Will Hurt Them: A Frank View From the Field on How to Better Prepare our Clinic and Externship Students*, 14 CLIN. L. REV. 105, 118 (2007-2008) (surveying skills reported to be most lacking in student interns).
- 89 Lauric A. Lewis, *Clerkship-Ready: First-Year Law Faculty Are Uniquely Poised to Mentor Stellar Students for Elbow Employment with Judges*, 12 APP. L. J. 1, 6 (2012).
- 90 Peppers, *supra* at 633-34 (2008).
- 91 Kavanagh, *supra* at 353.
- 92 Louise A. LaMothe, *Where Have All the Mentors Gone?* 19 LITIGATION 1, 5 (Winter 1993).

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## **Important Resources for Southern District of California Criminal Practitioners**

1. **Criminal Chambers Rules for each Judge** which outline filing deadlines, trial procedures, sentencing rules, and more

- [District Court Rules](#)
- [Magistrate Court Rules](#)

2. **Southern District of California Local Rules**

### *Criminal Rule 16.1.a Meet and Confer Requirement*

Not later than fourteen calendar days after the arraignment on an Indictment or Information, the attorney for the defendant(s) and the attorney for the government must confer and attempt to agree on a timetable and procedures for the pretrial disclosure of materials set forth in Federal Rule of Criminal Procedure 16.

Generally, this conference should be in person; however, in early disposition (fast track) cases or when it is impractical to meet in person, the conference may be conducted via telephone or email. During the conference, or as soon as practicable thereafter considering the size and complexity of the case, the parties should consider ways in which to ensure the elimination of unjustifiable expense and delay and the expeditious government production of electronically stored information (“ESI”) and other voluminous discovery. If discovery includes ESI, the parties must discuss the appropriate form and format of the production of materials containing ESI. To the extent practicable, this material should be produced in a searchable and reasonably usable format.

Not later than seven calendar days prior to the first motion hearing, the parties must inform the Court in writing of the agreed upon timetable for the production of discovery, including the Alien Registration File, body-port-or remote cam video, car/vehicle inspection, DEA drug reports, cell phone extraction data, and/or ESI where applicable, and any areas of disagreement.

3. **Federal Rules of Evidence**

4. **Federal Rules of Criminal Procedure**

The Due Process Protections Act amendment to Rule 5 (effective Dec. 2020) has not yet been published. New Rule 5(f) provides:

(f) REMINDER OF PROSECUTORIAL OBLIGATION.

(1) IN GENERAL. In all criminal proceedings, on the first scheduled court date when both prosecutor and defense counsel are present, the judge shall issue an oral and written order to prosecution and defense counsel that confirms the disclosure obligation of the prosecutor under *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny, and the possibly consequences of violating such order under applicable law.

(2) FORMATION OF ORDER. Each judicial council in which a district court is located shall promulgate a model order for the purpose of paragraph (1) that the court may use as it determines is appropriate.

5. Southern District of California-specific forms

- [Bond Forms](#)
- [Waiver of Prelim Hearing Form](#)
- [Stipulated Continuance of Prelim Hearing Form](#)
- [Rule 11 Waiver Form](#)

6. [Electronic Case Filing Administrative Policies and Procedures Manual for the U.S. District Court for the Southern District of California](#)

**Stipulations and Other Documents Requiring Multiple Signatures.** The filer of any joint motion or other document requiring more than one signature must certify that the content of the document is acceptable to all persons required to sign the document by obtaining either physical signatures or authorization for the electronic signatures of all parties on the document. Physical, facsimile or electronic signatures are permitted. The filer must electronically file the document indicating the signatories as "s/Jane Doe," "s/John Smith," etc., for each electronic signature.

*See also* [CM/ECF Information for Electronic Filing of New Civil Cases](#).