

1 Marty Harper (#003416)  
 mharper@polsinelli.com  
 2 Kelly J. Flood (#019772)  
 kflood@polsinelli.com  
 3 Andrew S. Jacob (#22516)  
 ajacob@polsinelli.com  
 Katherine V. Brown (#26546)  
 4 kvbrown@polsinelli.com  
**POLSINELLI SHUGHART, P.C.**  
 5 One E. Washington Street, Suite 1200  
 Phoenix, AZ 85004  
 6 Phone: (602) 650-2000  
 Fax: (602) 264-7033  
 7 *Attorneys for Plaintiffs*

8 **IN THE UNITED STATES DISTRICT COURT**  
 9 **FOR THE DISTRICT OF ARIZONA**

10 Don ADDINGTON; *et al.*,  
 11 *Plaintiffs,*

12 vs.

13 US AIRLINE PILOTS ASS'N,  
 14 *Defendant.*

Case No. 2:08-CV-01633

**PLAINTIFFS' SUPPLEMENTAL BRIEFING ON  
 THE ISSUE OF STRICT COMPLIANCE WITH  
 LOCAL RULES**

15 Plaintiffs Don ADDINGTON; *et al.*, file this *Supplemental Briefing On The*  
 16 *Issue Of Strict Compliance With Local Rules.*

17  
 18 In contrast to interpretation and application of the Federal Rules of Civil  
 19 Procedure, “[d]istrict courts have broad discretion in interpreting and applying  
 20 their local rules.” *Simmons v. Navajo County, Ariz.*, 609 F.3d 1011, 1017 (9th  
 21 Cir. 2010). Hence, the Ninth Circuit explains, “[b]ecause general orders and  
 22 local rules not only implement due process and other statutory rights but also  
 23 promote efficiency, we permit the district court broad discretion in determining  
 24 their requirements.” *Guam Sasaki Corp. v. Diana's Inc.*, 881 F.2d 713, 715 (9th  
 25 Cir. 1989). Consequently, the Second Circuit explains, the district court has  
 26 “discretion to determine when fairness demands that departure from the Local  
 27 Rules be excused.” *Somlyo v. J. Lu-Rob Enters., Inc.*, 932 F.2d 1043, 1046 (2d  
 28 Cir.1991). The district court has discretion to allow a procedure that is not

1 permitted by the literal language of a local rule if the procedure is “consistent  
2 with the **principal policy underlying**” the local rule. *Delange v. Dutra Const.*  
3 *Co., Inc.*, 183 F.3d 916, 919 n.2 (9th Cir. 1999) (emphasis added) (finding  
4 discretion to consider a brief opposing summary judgment that was not filed  
5 with a separate, concise statement of facts required by the local rule because  
6 the brief itself was sufficiently short and clear to enable the district court to  
7 decide the motion efficiently).

8 The local rule at issue here provides that a party may file a motion to  
9 transfer a case “whenever two or more cases are pending before different  
10 Judges.” LR Civ. 42.1(a). The motion here was filed on July 27, 2010, and the  
11 *Addington* case closed on August 13, 2010, more than two weeks later. The  
12 question then is whether the Court can transfer a case pending before another  
13 Judge based on a case that was open when the motion was filed but closed  
14 before the motion was fully briefed.

15 The Court can make such a transfer because the **principal policy**  
16 **underlying** LR Civ 42.1 “is to promote judicial efficiency and to avoid the  
17 necessity of a new judge learning a complex factual scenario from the  
18 beginning.” *Parra v. Bashas’ Inc.*, 2009 WL 1024615, \*5 (D. Ariz. 2009). That  
19 policy addresses the Court’s familiarity with the subject matter, not the status  
20 of the earlier case at the time of the transfer. A transfer based on a case that  
21 was recently pending, all else equal, is surely consistent with that purpose.

22 The Court surely has discretion to construe LR Civ 42.1(a) as requiring  
23 only that the earlier case not be closed when the transfer motion is filed. This is  
24 because its discretion in construction and application of local rules is limited  
25 only where “noncompliance with local rules . . . prejudices the losing party.”  
26 *Gerritsen v. Consulado General de Mexico*, 989 F.2d 340, 342 n.1 (9th Cir.  
27 1993); see also *United States v. Hernandez*, 251 F.3d 1247, 1251 (9th Cir.  
28 2001) (same). Hence, explaining that “[o]nly in rare cases will we question the

1 exercise of discretion in connection with the application of the local rules,” the  
2 Ninth Circuit held that a district court had discretion to allow a party to file a  
3 reply in support of a summary judgment motion outside the time limit allowed  
4 by a local rule. *Qualls By and Through Qualls v. Blue Cross of California, Inc.*,  
5 22 F.3d 839, 842 (9th Cir. 1994).

6 It is axiomatic that application of LR Civ 42.1(a) does not result in  
7 prejudice to any party. If the Court is familiar with issues based on an earlier  
8 case, that familiarity does not prejudice a party as soon as the earlier case is  
9 closed. Hence, if LR Civ 42.1(a) allows a transfer when an earlier case is  
10 pending, it should allow a transfer if the same case were recently pending—the  
11 situation here.

12 Finally, the Court rightly rejected USAPA’s accusations that the Court is  
13 biased. Such accusations are unfounded and irrelevant to whether LRCiv  
14 42.1(a) permits a transfer shortly after the earlier case is closed. Because such  
15 accusations would not preclude a LRCiv 42.1(a) transfer if *Addington* were still  
16 open, they should not preclude a transfer merely because *Addington* closed  
17 shortly after the transfer motion was filed.

18 Dated this 12th day of October, 2010.

19 **POLSINELLI SHUGHART, PC**

20 By /s/ Andrew S. Jacob  
21 Marty Harper  
22 Kelly J. Flood  
23 Andrew S. Jacob  
24 Katherine V. Brown  
25 One E. Washington Street, Suite 1200  
26 Phoenix, AZ 85012  
27 *Attorneys for Plaintiffs*

28 **CERTIFICATE OF SERVICE**

I hereby certify that on this 12th day of October 2010, I  
electronically transmitted the foregoing document to the U.S. District  
Court Clerk’s Office by using the ECF System for filing and transmittal.

By /s/ Andrew S. Jacob