

RULE 305 (Fed. R. Civ. P. 73)

PROCEDURES FOR THE DISPOSITION OF CIVIL ACTIONS ON CONSENT OF THE PARTIES

(a) Notice of Option. The Clerk shall notify the parties in all civil actions that they may consent to have a Magistrate Judge conduct any and all proceedings in the action and order the entry of a final judgment. Such notice shall be handed or transmitted by the Clerk to the plaintiff at the time the action is filed, and to the removing defendant at the time of removal, and the plaintiff or defendant shall transmit the notice to all other parties as an attachment to copies of the complaint and summons, or the removal documents, when served. See also 28 U.S.C. § 636(c). The Court may, at appropriate times, inform the parties of the options available under section 636(c). All such communication shall comply with the requirement of section 636(c)(2). As further explained in Appendix A to these Rules, for cases that are directly assigned to the Magistrate Judge, failure to timely submit a Declination of Consent Form shall constitute knowing and voluntary consent to proceed before the assigned Magistrate Judge for all purposes. For all other cases, the parties may consent to the jurisdiction of the Magistrate Judge by returning an executed Consent to Assignment.

(b) Reference to Magistrate Judge. After all necessary consents have been obtained, the Clerk shall transmit the file in the action to the assigned Judge, for review, approval by the Judge and Magistrate Judge, and referral. Notwithstanding the consent of all parties, the Judge or Magistrate Judge may reject the referral. Once an action has been referred to a Magistrate Judge, that Magistrate Judge shall have authority to conduct all proceedings referred to the Magistrate Judge, including, if appropriate, authority to enter a final judgment in the action. See Fed. R. Civ. P. 73(a).

(c) Appeal to the Court of Appeals. Upon the entry of final judgment in any action disposed of by a Magistrate Judge on consent of the parties under the authority of 28 U.S.C. § 636(c) and these Rules, an aggrieved party may appeal directly to the United States Court of Appeals for the Ninth Circuit in the same manner as governs appeals from any other final judgment of the Court. See Fed. R. Civ. P. 73(c).

APPENDIX A

AUTOMATED CASE ASSIGNMENT PLAN

(a) **Purpose.** This Assignment Plan is adopted to set forth a method whereby actions are assigned in this District, in accordance with the provisions of 28 U.S.C. § 137. Civil and criminal actions shall be assigned at random by means of an Automated Case Assignment System. All proceedings hereunder shall be under the supervision of the Clerk.

(b) **Assignment of Civil Actions.** Upon the filing of the initial complaint or other document first filed in a civil action, the Clerk shall assign a case number which shall be consecutive and prefixed by a the number "1:" denoting Fresno or "2:" denoting Sacramento, a filing year (the last two digits of the year in which the action is filed), followed by a "-cv-" and the next available case number available. Example: 1:05-cv-00205.

(c) **Assignment of Criminal Actions.** Upon the filing of the indictment, information, or other first document in a criminal action, the Clerk shall mark as provided in (b) except that "-cr-" will be used instead of "-cv-."

(d) **Assignment of Miscellaneous Actions.** Upon the filing of the first document in any action other than a civil action or a criminal action, the Clerk shall mark it as provided in (b)(1) and (2), except that "mc" will be used instead of "cv."

(e) **Assignment Procedure.** The Clerk shall assign actions to a Judge sitting in Sacramento or Fresno, where the action is filed, in the following manner:

(1) There shall be a separate category for each of the following types of actions:

A. District Wide Civil:

1. All DJ Civ (463 Immigration)

BA. Fresno Civil:

1. Frs DJ Civ (Civil)
2. Frs DJ Civ (Death Penalty)
3. Frs DJ Civ (Prisoner Civil Rights)
4. Frs DJ Civ (Prisoner Habeas Corpus)
- 5. Frs DJ Civ (Bankruptcy)**
- 65.** Frs MJ Civ (Civil)
- 76.** Frs MJ Civ (Prisoner Civil Rights)
- 87.** Frs MJ Civ (Prisoner Habeas Corpus)
- 98.** Frs MJ Civ (Social Security)
- 109.** Frs MJ FP (In Forma Pauperis)

110.Frs MJ MC (Miscellaneous)

CB. Fresno Criminal:

1. Frs DJ Cr (01 Defendant)
2. Frs DJ Cr (02-04 Defendants)
3. Frs DJ Cr (05-07 Defendants)
4. Frs DJ Cr (8+ Defendants)
5. Frs DJ Mc (Pre-Indictment Criminal)
6. Frs MJ (Mag Case/Petty Offense)
7. Frs MJ Cr (Misdemeanor)
8. Frs MJ SW (Search Warrant)

DC. Sacramento Civil:

1. Sac All St (Settlement Conf)
2. Sac DJ (Emergency / TRO)
3. Sac DJ Civ (Bankruptcy)
4. Sac .DJ Civ (Civil Rights)
5. Sac DJ Civ (Contract)
6. Sac DJ Civ (Death Penalty)
7. Sac DJ Civ (Federal Tax Suits)
8. Sac DJ Civ (Forfeiture/Penalty)
9. Sac DJ Civ (Labor)
10. Sac DJ Civ (Other Statutes)
11. Sac DJ Civ (Personal Injury)
12. Sac DJ Civ (Personal Property)
13. Sac DJ Civ (Prisoner Petitions)
14. Sac DJ Civ (Pro Se)
15. Sac DJ Civ (Property Rights)
16. Sac DJ Civ (Real Property)
17. Sac DJ Civ (Social Security)
18. Sac DJ Civ (Unassigned President)
19. Sac DJ Mc (Miscellaneous)
20. Sac MJ Civ (Civil)
21. Sac MJ Civ (Death Penalty)
22. Sac MJ Civ (Prisoner Civil Rights)
23. Sac MJ Civ (Prisoner Habeas Corpus)
24. Sac MJ Civ (Pro Se)
25. Sac MJ Civ (Social Security)
26. Sac MJ Mc (Miscellaneous)
27. Sac MJ St (Settlement Conference)

ED. Sacramento Criminal:

1. Sac DJ Cr (01-05 Defendants)
2. Sac DJ Cr (06-10 Defendants)
3. Sac DJ Cr (11+ Defendants)
4. Sac DJ Cr (Appeals from MJ)

5. Sac DJ SW (Wire Tap)
6. Sac MJ (Mag Case/Petty Offense)
7. Sac MJ Cr (Misdemeanor)
8. Sac MJ SW (Search Warrant)

FE. Bakersfield Criminal:

1. Bak MJ (Mag Case/Petty Offense)
2. Bak MJ Cr (Misdemeanor)

GF. Redding Criminal:

1. Red MJ (Mag Case/Petty Offense)
2. Red MJ Cr (Misdemeanor)
3. Red MJ SW (Search Warrant)

HG. Yosemite Criminal:

1. Yos MJ (Mag Case/Petty Offense)
2. Yos MJ Cr (Misdemeanor)

(2) Each category or "deck" shall contain a number of "cards" signifying the name of each active Judge. The number of cards for each Judge shall be equal, except as may from time to time be determined by the Court.

(3) The "deck of cards" shall be automatically shuffled by the computer at the time the categories are filled and each time an assignment is made, so that the sequence of the Judge's names shall be random and secret.

(4) When the initial document is presented for filing and has been marked pursuant to (b), (c), or (d), the Clerk shall draw a Judge from the applicable category in the Automated Case Assignment System on the computer.

(5) Thereafter the Clerk shall proceed by assigning the initials of the assigned Judge and Magistrate Judge, immediately after the case number placed on the document pursuant to (b), (c), and (d). All subsequent papers filed in the action shall bear the designation "1:" or "2:" followed by the year, case type "-cv-," "-cr-," or "-mc-" and the case number, followed by the initials of the assigned Judge or Judge and Magistrate Judge, e.g., **"1:05-cr-00200-ABC" or "2:05-cv-0700-ABC-DEF."**

(6) The assignment of each action shall be completed as each initial document is presented for filing and before the processing of the next action is begun.

(7) In emergency situations (in Sacramento) when counsel deems prompt action necessary and if the assigned Judge is absent or otherwise unable to hear the matter in time, the Clerk shall draw the name of another Judge in the manner hereinabove described from the category "Emergency Applications." The matter shall be returned to the calendar of the unavailable assigned Judge upon completion of the hearing on the emergency application unless the matter is transferred pursuant to these

Rules.

(f) Reassignments.

No action, once assigned, shall be reassigned to any other Judge except as hereinafter provided:

(1) Actions may be reassigned between Judges on order signed by the transferring and accepting Judges as approved by the Court.

(2) Actions may be assigned and reassigned by order of the Court to effectuate the related case rule. See L.R. 123.

(3) In the event the Judge to whom an action has been assigned files therein a statement of disqualification or is disqualified, the Court may make an order directing the Clerk to draw again for reassignment of the action to another Judge and to replace the name of the disqualified Judge in the Automated Case Assignment System.

(4) With the approval of the Court en banc, the Chief Judge may make such other assignments, reassignments or related orders as are conducive to the equitable division and just, efficient and economical determination of the business of the Court.

(5) At the time of each reassignment the Clerk shall make such appropriate adjustment in the Automated Case Assignment System as is necessary to balance the equal number of "cards" in each assignment category.

(g) Visiting Judges. Whenever a Judge has been assigned to serve as a visiting Judge in this Court, the Chief Judge shall, before the arrival of such Judge, make an order transferring to the visiting Judge from the other Judges those actions designated by them as available for transfer. Selection of actions for this purpose shall be made upon a basis equitable among all the Judges and after consultation with them.

(h) Review of Assignments. A Judge may request the Chief Judge to review an assignment or reassignment. If the Chief Judge requests such review, the Chief Judge shall designate another Judge to serve on the hearing of such request. A Judge affected by a ruling may have the ruling reviewed by the Court en banc.

(i) Assignment Reports.

(1) The Clerk shall maintain assignments in the Automated Case Assignment System which shall contain an account of all actions assigned to each of the Judges or to any visiting Judge and all reassignments among Judges.

(2) At the end of each month, the Clerk will prepare from the foregoing records for the Chief Judge (copy to each Judge) a report showing the number of actions assigned to and pending before each Judge and such other information as the Chief Judge may direct.

(j) Social Security Actions. Notwithstanding any other provision in Appendix A, Social Security individual benefits review actions brought in Sacramento under 42 U.S.C. §§ 405(g), 1383(c)(3), and/or 1395ff, shall be assigned as follows:

(1) When initially assigned, the action shall be randomly assigned to a Magistrate Judge only. The parties shall forthwith be informed of their right to consent to proceed before a Magistrate Judge pursuant to 28 U.S.C. § 636(c). Such notice shall be handed or transmitted by the Clerk to the plaintiff at the time the action is filed, and the plaintiff shall transmit the notice to all other parties as an attachment to copies of the complaint and summons, when served. The form entitled Consent to Assignment or Request for Reassignment shall be returned to the Clerk within ninety (90) days from the date the action was filed.

(2) If all executed Consent to Assignment or Request for Reassignment forms have not been returned within ninety (90) days, parties will be ordered to show cause why the forms have not been returned to the Clerk.

(3) If any party requests reassignment to a United States District Judge, the Clerk will randomly assign a District Judge to hear the action. In the absence of a future consent by all parties, the action shall be adjudicated pursuant to 28 U.S.C. § 636(b)(1)(A) and (b)(3); L.R. 302(c)(15).

(k) Prisoner Civil Rights and Habeas Corpus Actions. Notwithstanding any other provision in Appendix A, actions encompassed by L.R. 302(c)(17) (generally actions brought by a person in state custody for habeas corpus relief or whether in state or federal custody pursuant to 42 U.S.C. § 1981 et seq. or its federal *Bivens* equivalent) shall be assigned as follows:

(1) When initially assigned, the action shall be randomly assigned to a Magistrate Judge only. The parties shall be given notice of their right to proceed before a Magistrate Judge pursuant to 28 U.S.C. § 636(c). Such notice shall be transmitted by the Clerk to the plaintiff/petitioner as soon as practicable after the filing of the complaint. Respondents in habeas corpus actions shall be given notice at the time the petition is transmitted to the appropriate government attorney. Defendants in civil rights actions shall be given notice when an order to serve defendants is issued. Notice shall include a form entitled "Consent to Assignment or Request for Reassignment," and the form shall be returned no later than thirty (30) days after receipt of the consent notice referenced above. In cases involving repeat filers, the matter may be directly assigned to a district judge at the discretion of the chief district judge.

(2) If executed Consent to Assignment or Request for Reassignment forms have not been returned as required by (1) above, the parties may be ordered to show cause why the forms have not been returned to the Clerk.

(3) If any party requests reassignment to a United States District Judge, the Clerk shall randomly assign a District Judge as presiding judge. In the absence of a future consent by all parties, the action shall be adjudicated pursuant to 28 U.S.C. § 636(b)(1)(A) and (b)(3); L.R. 302(c)(17). Actions in which all parties have consented pursuant to 28 U.S.C. § 636(c) shall remain assigned to the Magistrate Judge only.

(l) Direct Assignments. Notwithstanding any other provision in Appendix A, in actions other than those encompassed by subsections (j) and (k), cases shall be assigned as follows:

(1) Criminal actions arising from a wiretap search warrant shall be directly assigned to the Judge who was assigned the wiretap search warrant.

(2) Civil forfeiture actions arising from a criminal action shall be directly assigned to the Judge who was assigned to the criminal action. If the civil forfeiture action is filed prior to the criminal action, the Judge initially assigned the civil forfeiture action shall be directly assigned to the criminal action.

(3) All civil actions initiated by non-prisoner plaintiffs from Butte, Lassen, Modoc, Plumas, Shasta, Siskiyou, Tehama, and Trinity counties shall be directly assigned to the Magistrate Judge sitting in Redding. When initially assigned, some may be assigned to the Magistrate Judge only, as provided in subsection (m). Except as provided in subsection (m), the direct assignment of these cases would be for those purposes anticipated by these Rules, including resolution of discovery disputes, conducting of settlement conferences, and holding jury trials with consent of the parties.

(4) All civil actions where defendants reside in Inyo and Kern counties shall be directly assigned to the Magistrate Judge sitting in Bakersfield. When initially assigned, some may be assigned to the Magistrate Judge only, as provided in subsection (m). Except as provided in subsection (m), the direct assignment of these cases would be for those purposes anticipated by these Rules, including resolution of discovery disputes, conducting of settlement conferences, and holding jury trials with consent of the parties.

(m) Direct Assignments to Magistrate Judges. Notwithstanding any other provision of Appendix A, (and excluding those cases encompassed by subsections (j) and (k) above, bankruptcy appeals, immigration habeas cases, or when a plaintiff is appearing pro se) when initially assigned, a percentage of civil cases as the Court from time-to-time determines by general order to be appropriate, shall be directly assigned to a Magistrate Judge only.

~~(1) The parties shall be given notice of their right to proceed before a Magistrate Judge pursuant to 28 U.S.C. 636(c). Such notice shall be transmitted by the Clerk to the plaintiff(s) as soon as practicable after the filing of the complaint, and the plaintiff shall transmit the notice to all other parties as an attachment to copies of the complaint and summons, when served. The form entitled Consent to Assignment or Request for Reassignment shall be returned to the Clerk within 90 days from the date the action was filed.~~

~~(2) If executed Consent to Assignment or Request for Reassignment forms have not been returned as required by (1) above, the parties may be ordered to show cause why the forms have not been returned to the Clerk.~~

(1) When a case is assigned initially only to a Magistrate Judge, the Clerk shall provide a Notice of Assignment to a Magistrate Judge (“Notice”) and a Declination of Consent Form (“Form”) to the initiating party. The initiating party must serve the Notice and Form on each newly served party or party added to the case (e.g., intervention) at the time of service of the summons and complaint or other initiating pleading (e.g., Notice of Removal). The Notice will advise each party that: (1) the case has been assigned to a Magistrate Judge for all purposes, including trial and entry of judgment; and (2) that any party may decline to consent to having the Magistrate Judge preside over the case by signing and returning the Form within thirty (30) calendar days for cases initiated in the Eastern District and fourteen (14) calendar days for cases removed or transferred to the Eastern District. The period to decline consent shall begin upon service of the Notice and Declination of Consent Form, either by issuance from the Clerk’s Office or when served with the form by the initiating party.

(2) Failure to timely submit a Declination of Consent Form shall constitute knowing and voluntary consent to proceed before the assigned Magistrate Judge for all purposes.

(3) If any party (i) any party timely submits a Declination of Consent Form, or (ii) if the party served with the Declination of Consent Form is appearing pro se, or (iii) if a temporary restraining order is filed prior to the period to file a Declination of Consent Form, requests reassignment to a United States District Judge, the Clerk shall randomly assign a District Judge as presiding judge with the Magistrate Judge continuing to be assigned to the case to for those purposes anticipated by these Rules, including adjudication pursuant to 28 U.S.C. §§636(b)(1)(A), 636(b)(1)(B), and 636(b)(3), and L.R. 302(c), as appropriate. Actions in which all parties have consented pursuant to 28 U.S.C. 636(c) shall remain assigned to the Magistrate Judge only.