

# **PROPOSED LOCAL RULES FOR 2024**

## **(to be effective January 1, 2025)**

### **Proposed changes:**

120(d)- Sessions of Court  
174- Appearance by Video or Telephone  
180(b)- Attorneys  
183(b)- Person Appearing in Pro Persona  
271- VDRP  
301- Trial By Consent  
Appendix A

### **Local Rule 120(d)(Sessions of Court- Intra-District)**

(d) Commencement of Actions. All civil and criminal actions and proceedings of every nature and kind cognizable in the United States District Court for the Eastern District of California arising in Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Stanislaus County (misdemeanor cases only), Tulare, and Tuolumne counties shall be commenced in the United States District Court sitting in Fresno, California, and in Bakersfield, California, Yosemite National Park, or other designated places within those counties as the Court shall designate when appropriate for Magistrate Judge criminal proceedings. All civil and criminal actions and proceedings of every nature and kind cognizable in the United States District Court for the Eastern District of California arising in Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Stanislaus (except misdemeanor cases), Sutter, Tehama, Trinity, Yolo, and Yuba counties shall be commenced in the United States District Court sitting Sacramento, California, and in Redding, California, or other designated places within those counties as the Court shall designate when appropriate for Magistrate Judge criminal proceedings.

#### **Comments:**

*This proposed rule is being offered to address concerns that defendants and witnesses in misdemeanor cases are required to travel farther to attend court proceedings.*

### **Local Rule 174 (Appearance By Video or Telephone- Civil Matters)**

**(a) Appearance By Video Conferencing.**

(1) Attorneys or pro se parties may request permission from the Court to appear by video conferencing for pre-trial proceedings in all civil matters in lieu of appearing in person.

(2) For settlement conferences and VDRP proceedings, the party representatives and insurance company representatives may also request permission to appear by video conferencing.

Any person appearing by video conferencing shall appear in appropriate attire as if present in court, shall have stable video conferencing, without background audio or visual interferences, and shall have an appropriate background for a Court appearance. Any Judge is free to impose additional requirements for video conferencing as that Judge sees fit.

**(b) Appearance By Telephone.** The attorneys and pro se parties without access to video teleconferencing may request permission to appear by telephone for the matters described in (a) in lieu of appearing in person.

## **Rule 180 (Attorneys)**

**(b) For Unauthorized Practice.** The Court may order any person who practices before it in violation of this Rule to pay an appropriate penalty. Payment of such sum shall be an additional condition of admission or reinstatement to the Bar of this Court or to practice in this Court.

## **Local Rule 183 (Person Appearing in Pro Persona)**

**(b) Address Changes.** A party appearing in propria persona shall keep the Court and opposing parties advised as to his or her current address. If mail directed to a plaintiff in propria persona by the Clerk is returned by the U.S. Postal Service, and if such plaintiff fails to notify the Court and opposing parties within thirty (30) days thereafter of a current address, the Court may dismiss the action without prejudice for failure to prosecute.

## **Local Rule 271 (VDRP)**

**(a) Purpose and Scope.**

**(1) Purpose.** Pursuant to 28 U.S.C. § 651 *et seq.*, this Rule governs the referral of certain actions to the Voluntary Dispute Resolution Program (“VDRP”) at the election of parties. The VDRP allows participants to use a wide variety of alternative dispute resolution (“ADR”) methods. Available methods include, but are not limited to, mediation, negotiation, early neutral evaluation, and settlement facilitation. The specific method used determined by the Neutral and the parties.

(2) **Scope.** This Rule applies to all civil actions except (i) prisoner petitions and actions, including habeas corpus petitions, (ii) actions in which one of the parties is appearing pro se, (iii) voting rights actions, (iv) social security actions, (v) deportation actions, (vi) Freedom of Information Act actions, and (vii) actions involving the constitutionality of federal, state or local statutes or ordinances.

(3) **Parties Retain the Option of Securing ADR Services Outside the Program Sponsored by the Court.** Nothing in this Rule precludes the parties from agreeing to use ADR services outside the VDRP.

**(b) Program Administration.**

**(1) ADR Judge.**

**(A) Appointment.** The Chief Judge shall appoint one or more Judges or Magistrate Judges to serve as the ADR Judge of this Court. When necessary or appropriate, the chief Judge shall appoint another Judge or Magistrate Judge to perform the duties of ADR Judge temporarily.

**(B) Duties.** The ADR Judge shall serve as the liaison between the Court and the VDRP staff, shall rule on all disputes resulting from a party's request to be excused from appearing at any VDRP proceeding, and shall hear and determine all complaints alleging violations of this Rule.

**(2) VDRP Administrator.** The VDRP Administrator shall be responsible for implementing, administering, overseeing, and evaluating the VDRP and procedures covered by this Rule, including recruiting, screening, and training Neutrals.

**(3) Rules and Materials Available.** The Clerk shall make pertinent rules and explanatory materials available to the parties.

**(4) Parties May Request Referral to the VDRP at Any Time.** Unless ordered by the Court at the inception of a case, any party may ask the assigned Judge or Magistrate Judge, at any stage in the proceedings, to refer the action, in whole or in part, to the VDRP. The Court may enter an order of reference only if all parties voluntarily agree to the proposed reference. For the purposes of this Rule, the phrase "all parties" means all parties to an action or, when appropriate, all parties to a discrete sub-part of an action such as a counterclaim or third-party action. The decision whether to enter an order of reference is within the Court's discretion and includes the considerations set forth in this rule.

**(c) Referral to the VDRP.**

**(1) Notice of Availability.** The Clerk shall provide a notice of the availability of the VDRP to all plaintiffs upon the filing of the complaint or to a party who removes a case upon a removal.

**(2) Consent of Parties Required.** Unless ordered by the Court at the inception of a case, actions may not be assigned to the VDRP over the objection of a party. The Court may assign discrete sub-parts of an action to the VDRP if all parties to the sub-part agree and any objecting party is not a party to the sub-part of the action to be assigned to the VDRP.

**(3) Request by the Parties.** Parties may request referral to the VDRP by filing a request reflecting the agreement of all affected parties. *See* L.R. 143; 271(i).

**(d) Duty to Consider VDRP.**

In every action to which this rule applies, the parties must confer about whether they are willing to participate in the VDRP. The parties' status report must include a statement indicating that each party has carefully considered whether the action might benefit from participation in VDRP.

**(e) Panels of Neutrals; Selection of Neutrals.**

**(1) Panels of Neutrals.** The VDRP Administrator shall maintain a panel of persons who are trained and otherwise qualified to serve as Neutrals for the VDRP.

**(2) Parties to Confer About Selection of Neutral.** If the parties agree to participate in VDRP, they may, within fourteen (14) days of referral or as otherwise ordered by the Court, propose a Neutral to conduct the VDRP session, including, upon authorization from the Court, a Neutral who is not on the VDRP Administrator's panel.

**(3) Assistance in Selecting Neutral.** If the parties are unable to agree upon a Neutral within fourteen (14) days of referral or as otherwise ordered by the Court, they shall inform the VDRP Administrator, who shall supply a list of three (3) potential Neutrals, from which list the parties shall agree upon one. The parties must, within fourteen (14) days of receiving the list from the VDRP Administrator, notify the VDRP Administrator, in writing, of their selection. If the parties are unable to agree upon a Neutral or fail to communicate their selection, the VDRP Administrator may designate a Neutral and shall so notify the parties. If a selected Neutral is unable or unwilling to serve, the VDRP Administrator shall select and notify another Neutral.

**(f) Disqualification of Neutrals.**

**(1) Applicable Standards.** No person may serve as a Neutral in a VDRP proceeding under this Rule in violation of:

(A) the standards set forth in 28 U.S.C. § 455;

(B) any applicable standard of professional responsibility or rule of professional conduct; or

(C) any additional standards adopted by the Court.

**(2) Mandatory Disqualification.** The parties may not waive a basis for disqualification that is described in 28 U.S.C. § 455(b). A Neutral who must recuse under § 455(b) shall promptly notify the parties and the VDRP Administrator in writing.

**(3) Disclosure and Waiver of Non-Mandatory Grounds for Disqualification.** If a prospective Neutral discovers a circumstance that may be covered by 28 U.S.C. § 455(a) but does not compel disqualification under the rules of professional conduct or under 28 U.S.C. § 455(b), the Neutral must promptly disclose that circumstance in writing to all counsel and the VDRP Administrator. A party may waive a basis for disqualification premised only on 28 U.S.C. § 455(a), in writing within fourteen (14) days of receiving notification of the circumstance.

**(g) Compensation of Neutrals.** Neutrals shall serve without compensation.

**(h) Immunity of Neutrals.** All persons serving as Neutrals under this Rule are deemed to be performing quasi-judicial functions and shall be immune to the extent provided by 28 U.S.C. § 655(c) and applicable authorities.

**(i) Stipulation and Order for VDRP Referral.**

**(1) File with Status Conference Report.** If all parties agree to use the VDRP, counsel must file with their Status Conference Reports, a request for VDRP Referral, including a proposed deadline for completion of the VDRP process and a description of any pretrial activity, e.g., specified discovery or motions, that will be completed before the VDRP session is held.

**(4) Assigned Judge's Authority.** The assigned Judge or Magistrate Judge maintains authority over a case that has been referred to the VDRP.

**(j) Communications by Neutral Before the VDRP Session.** After a Neutral has been appointed, the Neutral should communicate with the parties to determine the details of the VDRP session, including a time and place for the session, whether the session will be held in person or by remote videoconference, the mode of ADR to be used, a schedule for the exchange and contents of written VDRP statements, materials that will be provided to the Neutral, who will attend the session on behalf of each party, and any other matters necessary to conduct the VDRP session.

**(k) Written VDRP Statements.**

**(1) Service Deadline.** Unless otherwise directed by the Neutral, at least seven (7) days before the VDRP session, each party shall submit directly to the Neutral and serve on all other parties a written VDRP statement not to exceed ten (10) pages. Statements shall not be filed, and the assigned Judge or Magistrate Judge shall not have access to them.

**(2) The Content of the Statements.** Unless otherwise directed by the Neutral, each statement must:

- (A) give a brief statement of the facts;
- (B) identify the pertinent principles of law;
- (C) identify the significant legal and factual issues that are in dispute;
- (D) identify any legal or factual issues whose early resolution might reduce the scope of the dispute or contribute significantly to the productivity of settlement discussions;
- (E) identify by name and role with respect to the litigation and the parties of the person(s) in addition to counsel who will attend the session as representatives of the party filing the statement with decision-making authority; and
- (F) identify or attach particular document(s) or other physical evidence, if any, central to an understanding of the dispute and an appreciation of the merits of each party's case.

**(1) Attendance at the VDRP Session.**

**(1) Attendance.** All parties and their lead counsel, having authority to settle and to adjust pre-existing settlement authority, are required to attend the VDRP session unless excused under (1)(2). Insurer representatives also are required to attend, unless excused, if their agreement would be necessary to achieve a settlement.

**(A) Corporations and Other Non-Governmental Entities.** A corporation or other non-governmental entity satisfies this attendance requirement if represented by a person who has, to the greatest extent possible, authority to settle, and who is knowledgeable about the facts of the action and that party's position in the action.

**(B) Governmental Entities.** A governmental entity satisfies this attendance requirement if represented by a person who has, to the greatest extent possible, authority to settle, and who is knowledgeable about the facts of the action, the governmental entity's position in the action, and the procedures and policies under which the governmental entity can enter, finalize, and perform settlements.

**(2) Requests to be Relieved of Duty to Appear.**

A party may be excused from attending a VDRP session only after meeting and conferring with all other parties and making a request to the ADR Judge with a showing that attendance would impose a serious and unjustifiable hardship.

**(3) Participation by Video Conference When Appearance Is Excused.** Every person who is excused from attending a VDRP session in person must be available to participate by video conference, unless otherwise directed by the Neutral.

**(m) Confidentiality of VDRP Proceedings.**

**(1) Generally applicable Provision.** Except as otherwise required by law or as stipulated in writing by all parties and the Neutral, all communications made in connection with any VDRP proceeding under this Rule shall be privileged and confidential to the fullest extent provided by applicable law.

**(2) Limitations on Communication with Assigned Judge or Magistrate Judge.** No person may disclose to the assigned Judge or Magistrate Judge any communication made, position taken, or opinion formed by any party or Neutral in connection with any VDRP proceeding under this Rule except as

(A) stipulated in writing by all parties and the Neutral;

(B) provided in this Rule; or

(C) ordered by the court in connection with a proceeding to determine:

(i) whether the parties entered an enforceable settlement agreement at the end of the VDRP session, or

(ii) whether a person violated a legal norm, rule, court order, or ethical duty during or in connection with the VDRP session.

**(n) Neutral's VDRP Completion Report.**

No later than fourteen (14) days after the VDRP session has been concluded or as otherwise ordered by the Court, the Neutral shall submit to the parties and the VDRP Administrator the Neutral's VDRP Completion Report indicating only the date on which the parties completed the VDRP process.

**(o) Parties' Joint VDRP Completion Report.**

No later than fourteen (14) days after the VDRP session has been concluded or as otherwise ordered by the Court, the parties must jointly file the Parties' Joint VDRP Completion Report in which they report to the assigned Judge or Magistrate Judge whether the action or any issues therein were resolved in whole or in part and any additional relevant update concerning the status of the action.

**(p) Violations of This Rule**

**(1) Complaints Alleging Material Violations.** A complaint alleging that any person or party has materially violated this rule must be presented in writing

directly to the ADR Judge or a Judge who has been designated by the Chief Judge to hear the matter and to whom the underlying action is not assigned (the “designated Judge”). Copies of any such complaint must be sent to all counsel and the Neutral at the time they are presented. Any such complaint must be accompanied by a competent affidavit, must not be filed or lodged, and must not be presented to the Judge or Magistrate Judge to whom the underlying action is assigned for litigation.

**(2) Proceedings in Response to Complaint.** Upon receipt of a complaint of material violation of this Rule, the ADR Judge or designated Judge shall determine whether the matter warrants further proceedings. If further proceedings are warranted, the ADR Judge or designated Judge may issue an order to show cause why sanctions should not be imposed. Any such proceeding shall be conducted on the record, and, if appropriate, may be conducted under seal.

## Local Rule 301 (Trials by Consent)

Upon the consent of all parties, the Magistrate Judges are specially designated to conduct any and all proceedings in any civil action, including the conduct of jury or nonjury trials, and to order the entry of final judgments, in accordance with Fed. R. Civ. P. 73 and 28 U.S.C. § 636(a)(5) and (c). In such actions, L.R. 303 and 304 shall be inapplicable.

## Appendix A (Automated Case Assignment Plan)

**(b) 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.