

General Order 94-3

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

JAN 19 1994

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS**

DAVID J. MALAND, CLERK

BY  
DEPUTY



**ORDER ADOPTING AMENDED LOCAL RULES OF COURT  
FOR THE ASSIGNMENT OF DUTIES TO UNITED STATES MAGISTRATE JUDGES**

It is hereby ORDERED that the attached amendments to the *Local Rules of Court for the Assignment of Duties to United States Magistrate Judges* specified in Local Rule 15 are adopted for immediate implementation. The Clerk shall make copies of this document and its accompanying forms available in accordance with Local Rule 15.

Signed this 18<sup>th</sup> day of January, 1994.



**ROBERT M. PARKER**  
Chief Judge

**LOCAL RULES OF COURT  
FOR THE ASSIGNMENT OF DUTIES  
TO UNITED STATES MAGISTRATE JUDGES**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS**

## **RULE 1. AUTHORITY OF UNITED STATES MAGISTRATE JUDGES**

### **(A) Duties Under 28 U.S.C. Section 636(a).**

Each United States Magistrate Judge of this Court is authorized to perform the duties prescribed by 28 U.S.C. Section 636(a), and may -

- (1) Exercise all the powers and duties formerly conferred or imposed upon United States Commissioners by law and the Federal Rules of Criminal Procedure;
- (2) Administer oaths and affirmations, issue orders pursuant to 18 U.S.C. 3142 concerning release or detention of persons and take acknowledgements, affidavits, and depositions;
- (3) Conduct misdemeanor trials as authorized in 18 U.S.C. Section 3401.

### **(B) Disposition of Misdemeanor Cases - 18 U.S.C. Section 3401.**

A magistrate judge may -

- (1) Try persons accused of, and sentence persons convicted of, misdemeanors, petty offenses, or infractions committed within this district in accordance with 18 U.S.C. Section 3401;
- (2) Accept a plea of guilty or nolo contendere, if the defendant waives venue and trial in the district in which a proceeding is pending, in a Petty Offense case for which no sentence of imprisonment will be imposed. (See Rule 58(c) of the Federal Rules of Criminal Procedure.)
- (3) Direct the probation service of the Court to conduct a presentence investigation in any misdemeanor case. 18 U.S.C. Section 3401(c).
- (4) A full-time magistrate judge may conduct a jury trial in any misdemeanor case where the defendant waives trial before a district judge and consents to trial before the magistrate judge; and provided that the defendant is entitled to trial by jury under the Constitution and laws of the United States.

### **(C) Determination of Non-Dispositive Pretrial Matters - 28 U.S.C. Section 636(b)(1)(A).**

A magistrate judge may hear and determine any procedural or discovery motion or other pretrial matter, including a management conference,<sup>1</sup> in a civil or criminal case, other than the motions which are specified in subsection 1(D), *infra*, of these rules.

### **(D) Recommendations Regarding Case-Dispositive Motions - 28 U.S.C. Section 636(b)(1)(B).**

- (1) A magistrate judge may submit to a district judge of the court a report containing proposed findings of fact and recommendations for disposition by the district judge of the following pretrial motions in civil and criminal cases:

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<sup>1</sup> The Eastern District of Texas "Civil Justice Expense and Delay Reduction Plan".

- (a) Motions for injunctive relief, including temporary restraining orders and preliminary and permanent injunctions;
  - (b) Motions for judgment on the pleadings;
  - (c) Motions for summary judgment;
  - (d) Motions to dismiss or permit the maintenance of a class action;
  - (e) Motions to dismiss for failure to state a claim upon which relief may be granted;
  - (f) Motions to involuntarily dismiss an action;
  - (g) Motions for default judgments;
  - (h) Motions to dismiss or quash an indictment or information made by a defendant;
  - (i) Motions to suppress evidence in a criminal case; and
  - (j) Other similar motions.
- (2) A magistrate judge may determine any preliminary matters and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority conferred by this subsection.

**(E) Prisoner Cases Under 28 U.S.C. Sections 2254 and 2255.**

A full-time magistrate judge may perform any or all of the duties imposed upon a district judge by the rules governing proceedings in the United States District Courts under Section 2254 and Section 2255 of Title 28, United States Code. In so doing, a magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a district judge a report containing proposed findings of fact and recommendations for the disposition of the petition by the district judge. Any order disposing of the petition may only be made by a district judge unless the parties consent to disposition by a magistrate judge.

**(F) Prisoner Cases Under 42 U.S.C. Section 1983.**

A full-time magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a district judge a report containing proposed findings of fact and recommendations for the disposition of complaints filed by prisoners challenging the conditions of their confinement.

The parties may consent to trial by the magistrate judge pursuant to 28 U.S.C. Section 636(c).

**(G) Special Master References.**

A magistrate judge may be designated by a district judge to serve as a special master in appropriate civil cases in accordance with 28 U.S.C. Section 636(b)(2) and Rule 53 of the Federal Rules of Civil Procedure. Upon the consent of the parties, a magistrate judge may be designated by a district judge to serve as a special master in any civil case, notwithstanding the limitations of Rule 53(b) of the Federal Rules of Civil Procedure.

**(H) Review of Administrative Agency Proceedings.**

In a suit for judicial review of a final decision of an administrative agency, a magistrate judge may be designated by a district judge to review the record of administrative proceedings and submit to the district judge a report and recommendation concerning (a) any defects in the agency proceedings which constitute a violation of statute or regulation or a violation of due process, (b)

whether the matter should be remanded to the agency for additional factual determinations, and (c) whether the record contains substantial evidence in support of the agency decision. *See Mathews v. Weber*, 423 U.S. 261 (1975).

(I) **Conduct of Trials and Disposition of Civil Cases Upon Consent of the Parties - 28 U.S.C. Section 636(c).**

(1) **General Consent.**

Upon the consent of the parties, a full-time magistrate judge may conduct any or all proceedings in a jury or non-jury civil matter which is filed in this court, including the conducting of a trial, and may order the entry of a final judgment, in accordance with 28 U.S.C. Section 636(c). In the course of conducting such proceedings upon consent of the parties, a magistrate judge may hear and determine any and all pretrial and post-trial motions which are filed by the parties, including case-dispositive motions.

(2) **Limited Consent.**

Pursuant to 28 U.S.C. Section 636(c), if all parties consent, a district judge may not only refer the entire case but may also refer a dispositive motion or any other portion of the case to a magistrate judge for final determination.

(J) **Other Duties.**

A full-time magistrate judge is also authorized to -

- (1) Conduct pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings in civil and criminal cases;
- (2) Conduct arraignments in criminal cases assigned to a district judge and take not guilty pleas in such cases, a magistrate judge can conduct voir dire in a criminal case when assigned by a district judge and with consent of the parties;
- (3) Receive grand jury returns in accordance with Rule 6(f) of the Federal Rules of Criminal Procedure;
- (4) Accept waivers of indictment, pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure;
- (5) Accept petit jury verdicts in civil cases for a district judge;
- (6) Conduct necessary preliminary proceedings leading to the potential revocation of probation;
- (7) Modify, revoke, or terminate supervised release or probation of any person sentenced to a term of supervised release or probation by a magistrate judge.
- (8) Conduct evidentiary hearing, when designated by a district judge, to modify, revoke, or terminate supervised release and to submit proposed findings of fact and recommendations, including, in the case of revocation, a recommended sentence. (See 18 U.S.C. Section 3401). Recommendations are to be submitted in accordance with 28 U.S.C. 636(b)(1)(B), enabling the district judge to make a de novo review.

- (9) Issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings;
- (10) Order the exoneration or forfeiture of bonds;
- (11) Conduct proceedings for the collection of civil penalties of not more than \$200 assessed under the Federal Boat Safety Act of 1971, in accordance with 46 U.S.C. Section 1484(d);
- (12) Conduct examinations of judgment debtors in accordance with Rule 69 of the Federal Rules of Civil Procedure;
- (13) Conduct proceedings for initial commitment of narcotics addicts under Title III of the Narcotic Addict Rehabilitation Act;
- (14) Perform the functions specified in 18 U.S.C. Sections 4107, 4108 and 4109, regarding proceedings for verification of consent by offenders to transfer to or from the United States and the appointment of counsel therein;
- (15) Conduct extradition proceedings under 18 U.S.C. Section 3184;
- (16) Conduct proceedings pursuant to provisions of Section 7402(b) and 7604(a) of Title 26 U.S.C. to judicially enforce Internal Revenue Service summons;
- (17) Consider and rule upon applications for administrative inspection warrants and orders permitting entry upon a taxpayer's premises to effect levies in satisfaction of unpaid tax deficits;
- (18) Perform the duties required by the Plan<sup>2</sup> on "Discovery Hotline" calls.
- (19) Conduct "Alternative Dispute Resolution" proceedings when assigned by a district judge.
- (20) Review civil in rem forfeiture suits filed by the United States, and if conditions for an action in rem appear to exist, enter orders so stating and authorizing warrants of arrest in rem and other appropriate initial orders.
- (21) Perform any additional duty as is not inconsistent with the Constitution and laws of the United States.

A part-time magistrate judge may perform items (6) through (12).

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<sup>2</sup> The Eastern District of Texas "Civil Justice Expense and Delay Reduction Plan".

## **RULE 2. ASSIGNMENT OF MATTERS TO MAGISTRATE JUDGES**

### **(A) General.**

The method for assignment of duties to a magistrate judge and for the allocation of duties among the several magistrate judges of the court shall be made in accordance with orders of the court or by special designation of a district judge.

### **(B) Misdemeanor Cases.**

All misdemeanor cases shall be assigned, upon the filing of an information, complaint, or violation notice, or the return of an indictment, to a magistrate judge, who shall proceed in accordance with the provisions of 18 U.S.C. Section 3401, and Rule 58 of the Federal Rules of Criminal Procedure.

### **(C) Policy.**

Nothing in these rules shall preclude the court, or a district judge, from reserving any proceeding for conduct by a district judge, rather than a magistrate judge. The court, moreover, may by order modify the method of assigning proceedings to a magistrate judge as changing conditions may warrant.

### **RULE 3. PROCEDURES BEFORE THE MAGISTRATE JUDGE**

**(A) In General.**

In performing duties for the Court, a magistrate judge shall conform to all applicable provisions of federal statutes and rules, to the general procedural rules of this Court, and to the requirements specified in any order of reference from a district judge.

**(B) Special Provisions for the Disposition of Civil Cases by a Magistrate Judge on Consent of the Parties - 28 U.S.C. Section 633(c).**

**(1) Notice**

The clerk of court shall notify the parties in all civil cases that they may consent to have a magistrate judge conduct any or all proceedings in the case and order the entry of a final judgment. Such notice shall be handed or mailed to the plaintiff or his or her representative at the time an action is filed and to other parties as attachments to copies of the complaint and summons, when served. Additional notices may be furnished to the parties at later stages of the proceedings, and may be included with pretrial notices and instructions.

**(2) Execution of Consent.**

The clerk shall not accept a consent form unless it has been signed by all the parties in a case. The plaintiff shall be responsible for securing the execution of a consent form by the parties and for filing such form with the clerk of court.

**(3) Reference.**

After the consent form has been executed and filed, the clerk shall transmit it to the district judge to whom the case has been assigned for approval and referral of the case to a magistrate judge. Once the case has been assigned to a magistrate judge, he or she shall have the authority to conduct any and all proceedings to which the parties have consented and to direct the clerk of court to enter a final judgment in the same manner as if a district judge has presided.

#### **RULE 4. REVIEW AND APPEAL**

**(A) Motion for Reconsideration of Non-Dispositive Matters - 28 U.S.C. Section 636(b)(1)(A).**

Any party may file a motion for reconsideration by a district judge of a magistrate judge's order determining a motion or matter under Subsection 1(C) of these rules, *supra*, within 10 days after issuance of the magistrate judge's order, unless a different time is prescribed by the magistrate judge or a district judge. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, a motion for reconsideration, which shall specifically designate the order, or part thereof, for which reconsideration is requested, and the basis for any objection thereto. A district judge of the court shall consider the motion and shall set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law. The district judge may also reconsider *sua sponte* any matter determined by a magistrate judge under this rule.

**(B) Review of Case-Dispositive Motions and Prisoner Litigation -28 U.S.C. Section 636(b)(B).**

Any party may object to a magistrate judge's proposed findings, recommendations or report under Subsections 1(d), (e), and (f) of these rules, *supra*, within 10 days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections, which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. Any party may respond to another party's objections within 5 days after being served with a copy thereof. A district judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The district judge, however, need conduct a new hearing only in his discretion or where required by law, and may consider the record developed before the magistrate judge, making his own determination on the basis of that record. The district judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

**(C) Special Master Reports - 28 U.S.C. Section 636(b)(2).**

Any party may seek review of, or action on, a special master report filed by a magistrate judge in accordance with the provisions of Rule 53(3) of the Federal Rules of Civil Procedure.

**(D) Appeal from Judgments in Misdemeanor Cases - 18 U.S.C. Section 3402.**

A defendant may appeal a judgment of conviction by a magistrate judge in a misdemeanor case by filing a notice of appeal specifying the judgment from which the appeal is taken, with the clerk within 10 days after entry of the judgment, and must also serve a copy of the notice upon the United States attorney, personally or by mail, and provide a copy to the magistrate judge. The scope of appeal shall be the same as on an appeal from a judgment of the District Court to the Court of Appeals. (See Rule 58 of the Federal Rules of Criminal Procedure.)

(E) Appeal from Judgments in Civil Cases Disposed of on Consent of the Parties - 28 U.S.C. Section 636(c).

(1) Appeal to the Court of Appeals.

Upon the entry of judgment in any civil case disposed of by a magistrate judge on consent of the parties under authority of 28 U.S.C. Section 636(c) and Subsection 1(h) of these rules, *supra*, an aggrieved party shall appeal directly to the United States Court of Appeals for this circuit in the same manner as an appeal from any other judgment of this Court.

(2) Appeal to a District Judge.<sup>3</sup>

(a) Notice of Appeal.

In accordance with 28 U.S.C. Section 636(c)(4), the parties may consent to appeal any judgment in a civil case disposed of by a magistrate judge to a district judge of this Court, rather than directly to the Court of Appeals. In such case, the appeal shall be taken by filing a notice of appeal with the clerk of court within 30 days after entry of the magistrate judge's judgment, but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days of entry of the judgment. For good cause shown, the magistrate judge or a district judge may extend the time for filing the notice of appeal for an additional 20 days. Any request for such extension, however, must be made before the original time period for such appeal has expired. In the event a motion for a new trial under Rule 59, FRCP, is timely served, i.e. within 10 days after entry of the trial judgment, the time for appeal from the judgment of the magistrate judge shall be extended to 30 days from the date of the ruling on the motion for a new trial, unless a different period is provided by the Federal Rules of Civil or Appellate Procedure. A motion for new trial filed later than 10 days after entry of the final judgment is a Rule 60(b) motion and does not stop the time for a notice of appeal.

(b) Service of the Notice of Appeal.

The clerk of court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record for all parties other than the appellant, or if a party is not represented by counsel, to the party at his last known address. A certificate of service is not required with a notice of appeal.

(c) Record on Appeal.

The record on appeal to a district judge shall consist of the original papers and exhibits filed with the Court and the transcript of the proceedings before the magistrate judge, if any. Every effort shall be made by the parties, counsel, and the Court to minimize the production and costs of transcriptions of the record, and otherwise to render the appeal expeditious and inexpensive, as mandated by 28 U.S.C. Section 636(c)(4).

(d) Memoranda.

The appellant shall within 30 days of the filing of the notice of appeal file a typewritten

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<sup>3</sup>Ordinarily there will be no appeal of a civil case tried by a magistrate judge by consent of the parties to a district judge, as it is the policy of this Court to only assign consent cases to the magistrate judge where the parties have opted for appeal to the court of appeals.

memorandum with the clerk, together with two additional copies, stating the specific facts, points of law, and authorities on which the appeal is based. The appellant shall also file a copy of the memorandum on the appellee or appellees. The appellees shall file an answering memorandum within 30 days of the filing of the appellant's memorandum. The Court may extend these time limits upon a showing of good cause made by the party requesting the extension. Such good cause may include reasonable delay in the preparation of any necessary transcript. If an appellant fails to file his memorandum within the time provided by this rule, or any extension thereof, the Court may dismiss the appeal.

(e) Disposition of the Appeal by a District Judge.

The district judge shall consider the appeal on the record, in the same manner as if the case had been appealed from a judgment of the District Court to the Court of Appeals and may affirm, reverse, or modify the magistrate judge's judgment, or remand with instructions for further proceedings. The district judge shall accept the magistrate judge's findings of fact, unless they are clearly erroneous, and shall give due regard to the opportunity of the magistrate judge to assess the credibility of the witnesses.

(F) Appeals from other Orders of a Magistrate Judge.

Appeals from any other decisions and orders of a magistrate judge not provided for in this rule should be taken as provided by governing statute, rule, or decisional law.

**RULE 5. PRIORITIES IN PERFORMANCE OF MAGISTRATE JUDGE'S  
DUTIES AND IN ASSIGNMENT OF DUTIES TO MAGISTRATE JUDGES**

A magistrate judge shall give priority to the following types of matters above other matters pending on his or her docket:

- (1) Criminal matters of all types;
- (2) Motions for extraordinary relief under Rule 65, Federal Rules of Civil Procedure;
- (3) Prisoner petitions for relief from custody under 28 U.S.C. Sections 2254 and 2255;
- (4) Any matter pending in an action which has been set for trial and in which delay might result in postponement of trial, including, but not limited to, pretrial conferences and motions to maintain or dismiss class actions;
- (5) Matters pending in actions brought pursuant to Title VII Civil Rights Act of 1964;
- (6) Social Security Reviews;
- (7) Prisoner complaints challenging conditions of confinement under 42 U.S.C. Section 1983 and related statutes;
- (8) Any other matter designated as a priority matter by a district judge.

A magistrate judge shall endeavor to dispose of all priority matters pending before him or her which are ready for disposition before reaching non-priority matters.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS**

**NOTICE**

**CONSENT TO DISPOSITION OF A CIVIL CASE  
BY A UNITED STATES MAGISTRATE JUDGE**

In accordance with Title 28 U.S.C., Section 636(C), the parties may consent, by written request that "any or all proceedings in a jury or non-jury civil matter" may be conducted by a full-time magistrate judge. This civil jurisdiction includes entry of judgment at the conclusion of trial.

All full-time magistrate judges in the Eastern District of Texas have been specially designated to exercise jury or non-jury civil jurisdiction.

Appeal from judgment of the magistrate judge will be to the Fifth Circuit Court of Appeals...in the same manner as an appeal from any other judgment of a district court.

When plaintiff files a complaint, the clerk, as required by 28 U.S.C., Section 636(c)(2), shall provide this notice. Forms for consent are available from the clerk. Plaintiff shall complete the selected form at the time of filing or at any time within 10 days of such filing, and mail it directly to the clerk.

Consent of the parties is voluntary and the parties are free to withhold consent without adverse substantive consequences. Consent to magistrate judge jurisdiction shall be communicated directly to the Clerk of the United States District Court. The district judge, upon receipt by the clerk of the consent of the parties, may then refer the civil case to the appropriate full-time magistrate judge.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

\_\_\_\_\_ DIVISION

NOTICE OF RIGHT TO CONSENT TO DISPOSITION OF  
A CIVIL CASE BY A UNITED STATES MAGISTRATE

In accordance with the "Federal Magistrates Act of 1979" (Public Law 96-82, October 10, 1979, Section 636(c) of Title 28 U.S.C., the parties may consent, by written request that "any or all proceedings in a jury or non-jury civil matter" may be conducted by a "magistrate who serves as a full-time judicial officer." This civil jurisdiction includes entry of judgment at the conclusion of trial and "appeal directly to the appropriate United States Court of Appeals...in the same manner as an appeal from any other judgment of a district court."

All full-time magistrate judges have been specially designated to exercise jury or non-jury civil jurisdiction in the Eastern District of Texas. Appeal from judgment of the magistrate judge will be to the Fifth Circuit Court of Appeals.

When plaintiff files a complaint, the clerk, as required by 28 U.S.C., Section 636(c)(2), shall provide forms of consent (attached to this notice.) Plaintiff shall complete the selected form at the time of filing or at any time within 10 days of such filing, and mail it directly to the clerk. The clerk shall also staple copies of the consent to the summons which is served upon parties named as defendants. They shall complete the appropriate consent form within 20 days of receipt of service and also mail it

to the clerk.<sup>1</sup>

Consent of the parties is voluntary and shall be communicated directly to the Clerk of the United States District Court. The district judge, upon receipt by the clerk of the consent of the parties, shall then refer the civil case to the appropriate full-time magistrate judge.

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<sup>1</sup>At any time after proceedings are commenced, the parties may stipulate that a magistrate judge may conduct a civil bench or jury trial and submit such stipulation to the district judge handling the case. In his discretion, the judge may refer the matter to a magistrate pursuant to the stipulation. Before referring a case to a magistrate judge, the district judges of this district require that the parties consent to make their appeal, if any, directly to the Fifth Circuit Court of Appeals, rather than to the district judge.

