

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

JUL 3 1980

MURRAY L. HARRIS, CLERK
By

[Signature]

AMENDED ORDER FOR THE ADOPTION OF LOCAL RULES FOR
THE ASSIGNMENT OF DUTIES TO UNITED STATES MAGISTRATES

The District Judges of the Eastern District of Texas, having taken cognizance of the provisions found in 28 U.S.C. Section 636(b)(4), requiring the District Courts to adopt rules pursuant to which Magistrates shall perform their duties, and having further taken cognizance of the changes in law made by the Magistrates' Act of 1979, and having found that the assistance of the United States Magistrates is vital to the prompt and efficient administration of justice in this Court, heretofore adopted five Magistrate rules effective on March 31, 1977, thereafter amended by Order dated December 3, 1979.

IT IS HEREBY ORDERED that the Rules formerly adopted on the 31st day of March, 1977, as amended the 3rd day of December, 1979, are hereby RESCINDED and SUPERSEDED by the terms and provisions of the Local Rules for the Assignment of Duties to United States Magistrates adopted by the Court on July 3, 1980, attached hereto and made a part of this Order for all purposes.

IT IS FURTHER ORDERED that Rule 15 of the Local Court Rules shall remain in full force and effect.

IT IS FURTHER ORDERED that the Clerk of this Court publish the Local Rules for the Assignment of Duties to United States Magistrates, and make such publication available in the same manner as the Local Court Rules heretofore adopted and published by this Court.

SIGNED and ENTERED this 3rd day of July, 1980.

[Signature]
WILLIAM WAYNE JUSTICE
CHIEF JUDGE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

[Signature]
JOE J. FISHER
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF TEXAS

[Signature]
WILLIAM H. STEGLER
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF TEXAS

[Signature]
ROBERT H. PARKER
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF TEXAS

LOCAL RULES OF COURT
FOR THE ASSIGNMENT OF DUTIES
TO UNITED STATES MAGISTRATES

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

RULE 1. AUTHORITY OF UNITED STATES MAGISTRATES

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

Each United States Magistrate 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 conferred or imposed upon United States Commissioners by law and the Federal Rules of Criminal Procedure;
- (2) Administer oaths and affirmations, impose conditions of release under 18 U.S.C. Section 3146, and take acknowledgements, affidavits, and depositions; and
- (3) Conduct extradition proceedings, in accordance with 18 U.S.C. Section 3184.

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

A magistrate may -

- (1) Try persons accused of, and sentence persons convicted of, misdemeanors committed within this district in accordance with 18 U.S.C. Section 3401;
- (2) Direct the probation service of the Court to conduct a presentence investigation in any misdemeanor case.

A full-time magistrate may conduct a jury trial in any misdemeanor case where the defendant so requests and 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 may hear and determine any procedural or discovery

motion or other pretrial matter 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 may submit to a judge of the Court a report containing proposed findings of fact and recommendations for disposition by the judge of the following pretrial motions in civil and criminal cases:
 - (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 review of default judgments;
 - (h) Motions to dismiss or quash an indictment or information made by a defendant; and
 - (i) Motions to suppress evidence in a criminal case.

(2) A magistrate 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 may perform any or all of the duties imposed upon a 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 may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendations for the disposition of the petition by the judge. Any order disposing of the petition may only be made by a judge.

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

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

(G) Special Master References.

A magistrate may be designated by a 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 may be designated by a 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 may be designated by a 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.

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

Upon the consent of the parties, a full-time magistrate may conduct any or all proceedings in any civil case which is filed in this Court, including the conduct of a jury or nonjury 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 may hear and determine any and all pretrial and posttrial motions which are filed by the parties, including case-dispositive motions.

(J) Other Duties.

A full-time magistrate 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 not triable by the magistrate and take not guilty pleas in such cases;

- (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 in the absence of a judge;
- (6) Conduct necessary proceedings leading to the potential revocation of probation;
- (7) Issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad presequendum, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings;
- (8) Order the exoneration or forfeiture of bonds;
- (9) 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);
- (10) Conduct examinations of judgment debtors in accordance with Rule 69 of the Federal Rules of Civil Procedure;
- (11) Conduct proceedings for initial commitment of narcotics addicts under Title III of the Narcotic Addict Rehabilitation Act;
- (12) 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;

- (13) Conduct extradition proceedings under 18 U.S.C. Section 3184;
- (14) 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;
- (15) 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;
- (16) Perform any additional duty as is not inconsistent with the Constitution and laws of the United States.

A part-time magistrate may perform items (6),(7), (8), (9) and (10), above.

RULE 2. ASSIGNMENT OF MATTERS TO MAGISTRATES

(A) General.

The method for assignment of duties to a magistrate and for the allocation of duties among the several magistrates of the court shall be made in accordance with orders of the Court or by special designation of a 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, who shall proceed in accordance with the provisions of 18 U.S.C. Section 3401, and the Rules of Procedure for the Trial of Misdemeanors before United States Magistrates.

(C) General.

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

RULE 3. PROCEDURES BEFORE THE MAGISTRATE

(A) In General.

In performing duties for the Court, a magistrate 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 judge.

(B) Special Provisions for the Disposition of Civil Cases by a Magistrate 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 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 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. No consent form will be made available, nor will its contents be made known to any judge or magistrate, unless all parties have consented to the reference to a magistrate. No magistrate, judge, or other court official may attempt to persuade or induce any party to consent to the reference of any matter to a magistrate. This rule, however, shall not preclude a judge or magistrate from informing the parties that they may have the option of referring a case to a magistrate.

(3) Reference.

After the consent form has been executed and filed, the clerk shall transmit it to the judge to whom the case has been assigned for approval and referral of the case to a magistrate. Once the case has been assigned to a magistrate, the magistrate 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 judge has presided.

RULE 4. REVIEW AND APPEAL

(A) Appeal of Non-Dispositive Matters - 28 U.S.C. Section 636(b)(1)(A).

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

(B) Review of Case-Dispositive Motions and Prisoner Litigation - 28 U.S.C. Section 636(b)(1)(B).

Any party may object to a magistrate'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 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 10 days after being served with a copy thereof. A 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. The 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, making his own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate 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 in accordance with the provisions of Rule 53(e) 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 in a misdemeanor case by filing a notice of appeal with the district clerk within 10 days after entry of the judgment, and by serving a copy of the notice upon the United States attorney. The scope of appeal shall be the same as on an appeal from a judgment of the District Court to the Court of Appeals.

(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 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.*

(a) Notice of Appeal.

In accordance with 28 U.S.C. Section 633(c)(4), the parties may consent to appeal any judgment in a civil case disposed of by a magistrate to a 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'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 or a 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 is timely filed, the time for appeal from the judgment of the magistrate 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.

(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.

* Ordinarily there will be no appeal of a civil case tried by a magistrate by consent of the parties to the District Court, as it is the policy of this Court not to assign cases to the magistrate where the parties have opted for appeal to the District Court.

(c) Record on Appeal.

The record on appeal to a judge shall consist of the original papers and exhibits filed with the Court and the transcript of the proceedings before the magistrate, 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 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 Judge.

The 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's judgment, or remand with instructions for further proceedings. The judge shall accept the magistrate's findings of fact, unless they are

RULE 5. PRIORITIES IN PERFORMANCE OF MAGISTRATE'S
DUTIES AND IN ASSIGNMENT OF DUTIES TO MAGISTRATES

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

- (1) Criminal matters of all types;
- (2) Prisoner petitions for relief from custody under 28 U.S.C. Sections 2254 and 2255;
- (3) 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;
- (4) Matters pending in actions brought pursuant to Title VII Civil Rights Act of 1964;
- (5) Social Security Reviews;
- (6) Prisoner complaints challenging conditions of confinement under 42 U.S.C. Section 1983 and related statutes;
- (7) Any other matter designated as a priority matter by a district judge.

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

clearly erroneous, and shall give due regard to the opportunity of the magistrate to judge the credibility of the witnesses.

(F) Appeals from other Orders of a Magistrate.

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