

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

LOCAL MAGISTRATE JUDGE RULES

[EFFECTIVE *OCTOBER 1, 2002*]

WITH AMENDMENTS THROUGH *DECEMBER 1, 2010*

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SUMMARY OF DECEMBER 1, 2010, AMENDMENTS

Rule 3 – Paragraphs (6) and (7) amended by deleting the reference to “dispositive” or “non-dispositive” as potentially misleading as a matter covered by 28 U.S.C. § 636(b)(1)(A) may be dispositive and a matter covered by § 636(b)(1)(B) may be non-dispositive. No substantive change intended.

Rule 5 – Subdivision (a) is amended to make the procedure for review of non-dispositive motions dispositive motions uniform. Paragraph (a)(3) is former ¶ (a)(4) modified to make the procedure for obtaining a hearing on an objection to a non-dispositive matter the same as for motions made before the district judge.

Subdivision (c) is former ¶ (a)(3) relocated to make it applicable to objections and briefs in both dispositive and non-dispositive matters.

Rule 6 – Paragraph (a)(1) amended by deleting the word “non-dispositive” and (b) amended by deleting the word “dispositive.” See comment to proposed amendment to LMR 3.

Subparagraph (b)(3)[B] amended by substituting “serve” for “mail.” Where appropriate, the transmission may be electronically. In those cases where the final findings and recommendations are filed, service will occur as provided with any other document filed electronically.

Paragraph (c)(3) is amended to provide for 3 business days to account for the 2009 amendment to Fed. R. Civ. P 6 and Fed. R. Civ. P. 45 eliminating the exclusion of intervening holidays and weekends.

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Rule 1 Scope, Title and Effective Date

(a) **Title and Citation.** These are known as the Local Magistrate Judge Rules of the United States District Court for the District of Alaska, and may be cited as “D.Ak.LMR ____.”

(b) **Effective Date.** These rules become effective October 1, 2002.

(c) **Applicability.** These rules apply to all actions and proceedings commenced on or after the effective day and, except to the extent that the rights of a party may be prejudiced thereby, to all open actions and proceedings on the effective date.

(d) **Conflicts.** In the event of a conflict between these rules and the Federal Rules of Civil Procedure or the Federal Rules of Criminal Procedure, the Federal Rules of Civil Procedure or the Federal Rules of Criminal Procedure will prevail.

Rule 2 Authority of Magistrate Judges

A Magistrate Judge appointed by this court is, with respect to matters assigned, authorized to exercise all powers and perform all duties conferred expressly or by implication upon magistrate judges by, and in accordance with, procedures now or hereafter set provided in the United States Code, rules promulgated by the Supreme Court, and the rules of this Court.

Related Provisions:

28 U.S.C. § 636	Jurisdiction, powers, and temporary assignments
Fed. R. Civ. P. 72	Magistrate Judges; Pre-trial Orders
Fed. R. Civ. P. 73	Magistrate Judges; Trial by Consent and Appeal Option
D.Ak.LMR 3	Criminal Matters Routinely Assigned to Magistrate Judges
D.Ak.LMR 4	Civil Matters Routinely Assigned to Magistrate Judges
D.Ak. LMR 7	Trial by Consent

Rule 3 Criminal Matters Routinely Assigned to Magistrate Judges

(a) **In General.** Unless otherwise provided by order of a district judge, all criminal matters designated for hearing before magistrate judges by statute or the Federal Rules of Criminal Procedure will be assigned to magistrate judges, including but not limited to:

- (1) issuance of arrest warrants;
- (2) issuance of search warrants;
- (3) initial appearances;
- (4) preliminary examinations;
- (5) removal hearings;
- (6) Class B and Class C misdemeanor cases, and infractions in their entirety; and
- (7) Class A misdemeanor cases in their entirety upon consent of the defendant.

(b) **Other Matters.** Unless otherwise provided by order of a district judge, in addition to the matters provided in subsection (a), the following criminal matters will be assigned to magistrate judges:

- (1) extradition proceedings under 18 U.S.C. § 3184;
- (2) return of indictments;
- (3) warrants and summonses upon indictment or information;
- (4) arraignments;
- (5) waivers of indictment;
- (6) pretrial release and detention hearings;
- (7) pretrial motions within the scope of 28 U.S.C. § 636 (b)(1)(A), except motions related to scheduling the time and place of trials not otherwise assigned to a magistrate judge; and
- (8) pre-trial motions within the scope of 28 U.S.C. § 636 (b)(1)(B) for reports and recommendations.

Related Provisions:

18 U.S.C. § 19	Petty Offenses
18 U.S.C. §§ 3141–3156	Release and Detention Pending Judicial Proceedings
18 U.S.C. § 3184	Fugitives from foreign country to United States
18 U.S.C. §§ 3401, 3402	Trial by United States Magistrate Judges
28 U.S.C. § 636	Jurisdiction, powers, and temporary assignments
Fed. R. Crim. P. 4	Arrest Warrant or Summons Upon Complaint
Fed. R. Crim. P. 5	Initial Appearance Before the Magistrate Judge
Fed. R. Crim. P. 5.1	Preliminary Examination
Fed. R. Crim. P. 7	The Indictment and the Information
Fed. R. Crim. P. 10	Arraignment
Fed. R. Crim. P. 40	Commitment to Another District
Fed. R. Crim. P. 41	Search and Seizure
Fed. R. Crim. P. 46	Release From Custody
Fed. R. Crim. P. 58	Procedure for Misdemeanors and Other Petty Offenses
Fed. R. Crim. P. 59	Matters Before a Magistrate Judge
D.Ak.LMR 2	Authority of Magistrate Judges
D.Ak.LMR 6	Objections to Matters under 28 U.S.C. § 636(b)(1) in Criminal Matters

Rule 4 Civil Matters Routinely Assigned to Magistrate Judges

Unless otherwise provided by order of a district judge, the following civil matters will be assigned to magistrate judges for disposition or findings and recommendations as appropriate:

- (1) administrative inspection warrants;
- (2) Matters relating to nonpayment of seaman’s wages;
- (3) *Habeas Corpus* petitions initiated under 28 U.S.C. § 2254;
- (4) Motions Attacking Sentence under 28 U.S.C. § 2255;
- (5) preferred ship mortgage foreclosures;
- (6) matters relating to the arrest, seizure, or release of vessels and other property under the Supplemental Rules for Certain Admiralty and Maritime Claims; and
- (7) matters relating to the enforcement of administrative subpoenas.

Related Provisions:

26 U.S.C. § 7604	Enforcement of Summons
28 U.S.C. § 636	Jurisdiction, powers and temporary assignment
28 U.S.C. § 2254	State custody; remedies in Federal courts
28 U.S.C. § 2255	Federal custody; remedies on motion attacking sentence
Fed. R. Civ. P. 54	Judgments; Costs
Fed. R. Civ. P. 72	Magistrate Judges; Pre-trial Orders
Fed. R. Civ. P. 73	Magistrate Judges; Trial by Consent and Appeal Option
Admiralty Rule C	Actions in Rem; Special Proceedings
Admiralty Rule E	Actions in Rem and Quasi in Rem; General Provisions
D.Ak. LMR 2	Authority of Magistrate Judges

Rule 5 Review of Magistrate Judge Civil Pretrial Orders

(a) Nondispositive Matters under Rule 72(a), Federal Rules of Civil Procedure.

(1) Unless otherwise ordered by a district judge:

[A] not later than fourteen (14) days after service of the objection, the opposing party must serve and file an opposing brief; and

[B] Unless ordered by the district judge, no reply may be filed to the opposition.

(2) Unless leave of court is obtained, for good cause shown:

[A] objections are limited to those matters fairly presented to or raised before the magistrate judge; and

[B] new matters or issues may not be raised for the first time in an objection to the decision of a magistrate judge.

(3) Hearings on the objections are governed by D. Ak. LR 7.2.

(b) Dispositive Motions and Prisoner Petitions under Rule 72(b), Federal Rules of Civil Procedure.

(1) Unless otherwise ordered by the district judge, no briefs, other than the objection and reply provided in Rule 72(b), Federal Rules of Civil Procedure, will be permitted.

(2) The court may, on its own motion or the motion of any party, set the matter for a further evidentiary hearing either before the district court or it may remand the matter to the magistrate judge to take such further evidence as the district judge may deem necessary.

(3) A party requesting a further evidentiary hearing must serve and file a motion not later than seven (7) days after the transcript of the record is certified, which motion must:

[A] describe the nature of the evidence to be proffered and its relevance to the specific objections; and

[B] contain a statement of the reason the proffered evidence could not be presented to the magistrate judge.

(c) Form of Objections/Briefs. Preparation of the objection and briefs is governed by D. Ak. LR 10.1.

Related Provisions:

Fed .R. Civ. P. 72 Magistrate Judges; Pretrial Orders

D. Ak. LR 7.2 Hearings

D. Ak. LR 10.1 Form of Pleadings and Other Papers

Rule 6 Objections to Matters under 28 U.S.C. § 636(b)(1) in Criminal Cases

(a) Objections and Replies. Unless otherwise ordered:

(1) an objection to orders entered under 28 U.S.C. § 636(b)(1)(A) or initial findings and recommendations entered under 28 U.S.C. § 636(b)(1)(B) must be filed within the time specified in Federal Rule of Criminal Procedure 59;

(2) any reply to the objection must be filed within seven (7) days after any objection is filed; and

(3) no briefs, other than the objection and reply will be permitted.

(b) Initial Review by Magistrate Judge. Unless otherwise ordered, an objection to a matter referred under §636(b)(1)(B) will be routed to the magistrate judge who:

(1) will promptly examine the pleadings and documents related to the objection;

(2) may—

[A] conduct such further hearings as deemed necessary, and

[B] make additional, supplemental or substitute findings and recommendations; and

(3) will, when the action deemed appropriate has been taken—

[A] forward final findings and recommendations to the district judge, and

[B] serve a copy on the parties.

(c) **Review by District Judge.**

(1) Unless leave of court is obtained, for good cause shown:

[A] objections are limited to those matters fairly presented to or raised before the magistrate judge; and

[B] new matters or issues may not be raised for the first time in an objection to the decision or findings and recommendations of a magistrate judge.

(2) The court may, on its own motion or the motion of any party, set the matter for a further evidentiary hearing before the district judge or it may remand the matter to the magistrate judge to take such further evidence as the district judge may deem necessary.

(3) A party requesting a further evidentiary hearing must serve and file a motion not later than three business (3) days after the transcript of the record is certified, which motion must:

[A] describe the nature of the evidence to be proffered and its relevance to the specific objections; and

[B] contain a statement of the reason the proffered evidence could not be presented to the magistrate judge.

Related Provisions:

28 U.S.C. § 636

Jurisdiction, powers, and temporary assignment

Fed. R. Crim. P. 59

Matters Before a Magistrate Judge

D.Ak. LR 10.1

Form of Pleadings and Other Papers

D.Ak. LMR 3

Criminal Matters Routinely Assigned to Magistrate Judges

Rule 7 Trial by Consent

Upon the written consent of all parties to the matter as provided in Rule 73, Federal Rules of Civil Procedure, magistrate judges in this district are authorized to exercise the authority provided by 28 U.S.C. § 636(c).

Related Provisions:

28 U.S.C. § 636

Jurisdiction, powers and temporary assignments

Fed. R. Civ. P. 73

Magistrate Judges; Trial by Consent and Appeal Options

D.Ak. LMR 2

Authority of Magistrate Judges.