

**U.S. District Court Magistrate Rules
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Rule 1
General Powers and Duties

Each United States Magistrate appointed by this Court is authorized to exercise all the powers and duties conferred or imposed upon United States commissioners by law and the Federal Rules of Criminal Procedure, including but not limited to the following:

- (1) Accepting complaints, finding probable cause and issuing appropriate process;
- (2) Receiving grand jury returns and issuing the appropriate process for defendants named in those returns;
- (3) Issuing search warrants upon written affidavit and a determination that probable cause for issuance of the warrant exists. If circumstances render it reasonable to dispense with a written affidavit, then such issues may be upon sworn testimony, communicated by telephone or other appropriate means, and a determination that probable cause for issuance of the warrant exists;
- (4) Reviewing applications for and order the installation of a pen register, transponder or other surveillance device;
- (5) Conducting initial appearance proceedings for defendants for the purpose of informing them of their rights, admitting them to bail, imposing conditions of release and such other matters as may be appropriate;
- (6) Administering the Court's Criminal Justice Act Plan, maintaining a register of eligible attorneys, appointing attorneys for indigents and approving vouchers submitted under the Act in appropriate cases;
- (7) Conducting full preliminary examinations in criminal cases;
- (8) Conducting removal hearings and issuing warrants and orders of removal;
- (9) Imposing conditions of release as provided in 18 U.S.C. §§ 3146 and 3149;
- (10) Discharging indigent prisoners or persons imprisoned for debt under process issued by the Federal Courts (18 U.S.C. § 3569; 28 U.S.C. § 2007);
- (11) Issuing an attachment or order to enforce obedience to an Internal Revenue Service summons to produce records or give testimony. 26 U.S.C. § 7604(a) and (b);
- (12) Issuing administrative inspection warrants;
- (13) Instituting proceedings against persons violating certain civil rights statutes pursuant to 42 U.S.C. §§ 1987, 1989, 1990;
- (14) Settling or certifying the nonpayment of seamen's wages (46 U.S.C. §§ 603, 604);
- (15) Enforcing a judgment through proceedings supplementary to and in aid of a judgment and in proceedings on and in aid of execution.

Rule 2
Special Jurisdiction in Criminal Proceedings

Unless otherwise ordered by the Chief Judge, a United States Magistrate shall perform the following functions in criminal proceedings:

(1) Generally supervise the plan for prompt disposition of criminal cases pursuant to the Speedy Trial Act of 1974;

(2) Hear and decide government motions to dismiss an indictment or information, without prejudice to other proceedings, or any other motion or pretrial matter which is not specifically enumerated as an exception in 28 U.S.C. § 636 (b)(1)(A);

(3) Conduct pretrial conferences, omnibus hearings and related proceedings;

(4) Conduct post-indictment arraignments in criminal cases not triable by the magistrate and take not-guilty pleas in such cases;

(5) Hear motions and enter orders for examination to determine mental competency under 18 U.S.C. §§ 4241-4248;

(6) Accept waiver of indictments;

(7) Conduct extradition proceedings;

(8) Receive notice of the government's intention to destroy all but samples of controlled substance seizures, to enter appropriate orders and to hear and determine objections thereto;

(9) Rule upon motions to require defendants in criminal cases to participate in a line-up, furnish handwriting samples or furnish voice exemplars; and

(10) Conduct proceedings on petitions for revocation of probation up to final disposition.

Rule 3
Additional Duties of Magistrates

Each magistrate appointed by the Court is authorized to exercise all powers and perform all duties conferred upon magistrates by 29 U.S.C. § 636 as specifically designated in these local rules or in any written orders of a District Judge designating a magistrate to perform specific duties in a particular action or proceeding, including, but not limited to the following:

- (1) Exercise general supervision of civil and criminal calendars, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the judges;
- (2) Conduct voir dire and select petit juries for the Court by agreement of the parties;
- (3) Accept petit jury verdicts in civil cases in the absence or unavailability of the trial judge;
- (4) Issue subpoenas, writs of habeas corpus, testificandum, habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for Court proceedings;
- (5) Review applications for an order for the issuance of summons pursuant to 26 U.S.C. § 7402(a) and (b);
- (6) Order the exoneration or forfeiture of bonds;
- (7) Conduct proceedings for the collection of civil penalties of not more than two hundred dollars (\$200.00), including those assessed under the Federal Boat Safety Act of 1971, in accordance with 46 U.S.C. § 1484(d) and penalties under the Motor Boat Act of 1940 (46 U.S.C. §§526 - 526u inclusive);
- (8) Conduct proceedings for initial commitment of narcotics addicts under Title III of the Narcotic Addict Rehabilitation Act;
- (9) Perform the functions (specified in 18 U.S.C. §§ 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;
- (10) Conduct evidentiary hearings and prepare findings in employment discrimination cases as a master under Title VII of the Civil Rights Act of 1964 (as amended) when a judge has not scheduled the case for trial within one-hundred twenty (120) days after the issue has been joined;
- (11) Conduct hearings and resolve specific issues in patent, antitrust and other complex cases where there are a great many issues, claims, and documents; and also to do the same in multiple disaster and class action cases where there are numerous claimants and diverse claims;
- (12) Serve as Commissioner to determine compensation and assess damages in land condemnation cases under Rule 71(A) (h), Federal Rules of Civil Procedure.
- (13) Review applications for entry on premises to effect levy pursuant to 25 U.S.C. § 6331;
- (14) Enforce awards of foreign consuls in differences between captains and crews of vessels of the consul's nations (22 U.S.C. § 258[al]);

- (15) Supervise proceedings conducted pursuant to letters rogatory in accordance with 28 U.S.C. § 1782;
- (16) Rule upon objections to the taxing of costs;
- (17) Order the sealing and unsealing of documents filed with the Clerk of Court;
- (18) Administer oaths and affirmations and take acknowledgments, affidavits and depositions;
- (19) Preside at the ceremony of the final Naturalization hearing and the administration of the oath; and
- (20) Perform any additional duties not inconsistent with the Constitution and laws of the United States.

Rule 4
Dispositive Pretrial Motions and Other Matters

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

- (1) For injunctive relief, including temporary restraining orders, preliminary and permanent injunctions;
- (2) For judgment on the pleadings;
- (3) For summary judgment;
- (4) To dismiss or permit the maintenance of a class action;
- (5) To dismiss for failure to state a claim upon which relief may be granted;
- (6) To involuntarily dismiss an action;
- (7) For review of default judgments;
- (8) To dismiss or quash an indictment or information made by a defendant;
- (9) To suppress evidence in a criminal case;
- (10) To change venue or for the separate trial of defendants; and
- (11) For pretrial matters not excepted in 28 U.S.C. § 636 (b)(1)(A).

(B) A magistrate may determine any preliminary matters and conduct any necessary evidentiary hearings or other proceeding arising in the exercise of the authority conferred by this rule.

Rule 5
Determination of Non-dispositive Pretrial Matters

A magistrate may be designated by a District Judge to hear and determine procedural or discovery motions (or other pre-trial matters) pending before that judge in civil or criminal cases, other than those specifically enumerated as an exception in 28 U.S.C. § 636(b)(1)(A) including, but not limited to the following:

- (1) To conduct preliminary and final pretrial conferences;
- (2) To conduct status calls and settlement conferences;
- (3) To modify a pretrial order;
- (4) To supervise the civil calendar and hear and determine motions to postpone or expedite the trial of a case;
- (5) To dismiss a complaint with leave to amend;
- (6) To deny a motion to dismiss a complaint;
- (7) To issue orders regarding discovery motions;
- (8) To sever or to consolidate an action;
- (9) To set aside default judgments;
- (10) To add parties, to intervene, or to file third party complaints, and to order dismissal of a party from an action pursuant to stipulation;
- (11) To exceed time to plead or file amended pleadings;
- (12) Supervise preparation of class action lawsuits for pre-trial and trial;
- (13) To hear and decide motions relating to security for costs;
- (14) To hear motions for substitution of counsel for parties.

Rule 6
Hearings Before Magistrate

Except as otherwise provided by the local rules or any order of the Court, matters designated to be heard by a magistrate may be set for hearing on the assigned magistrate's calendar.

Rule 7
Disposition of Misdemeanor Cases

(A) A magistrate shall, in a misdemeanor case wherein the defendant elects to be tried or plead before a district judge, note that fact in the file and return the papers related to the case to the Clerk.

(B) A magistrate may, in a misdemeanor case, direct the Probation Office to conduct a presentence investigation of any person convicted and to render a report to the magistrate prior to the imposition of sentence.

(c) A magistrate shall, in a misdemeanor case, conduct a jury trial where the defendant so requests, consents to the magistrate's jurisdiction, and is entitled to trial by jury under the Constitution and laws of the United States.

Rule 8
Civil Trial Before Magistrates by Consent of Parties, 28 U.S.C. § 636(c)

(A) General Authority. Upon consent of the parties and upon the entry of an order of reference by a district judge, a United States Magistrate may conduct any or all proceedings in any civil case which is filed in this Court. This includes the conduct of a jury or nonjury trial. The magistrate may order the entry of final judgment in accordance with 28 U.S.C. § 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 post-trial motions which are filed by the parties, including case-dispositive motions.

(B) Notice to Parties. These rules shall constitute general notice to all parties in civil cases in this Court of the procedures governing references to magistrates for trial by consent of the parties. 28 U.S.C. § 636(c)(2).

(c) Execution of Consent. A case shall be considered by a district judge for reference to a magistrate only if a consent form, executed without limitation or qualification on behalf of every party, has been received by the Clerk. 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 a form with the Clerk. 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 the case is or might become eligible for reference to a magistrate.

(D) 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 so that he or she shall consider the case for reference to a magistrate. Once and if the case has been assigned to a magistrate, the magistrate shall have the authority to conduct any and all proceedings and to direct the Clerk to enter a final judgment in the same manner as if a judge had presided. An order of reference can be vacated by the Court for good cause shown or under extraordinary circumstances.

Rule 9
Review of Administrative Proceedings

The United States Magistrate shall in the following proceedings, review the administrative record and pleadings, conduct any pretrial proceedings that may be required, hear any oral arguments that may be necessary, and submit reports and recommendations for final disposition to the appropriate United States District Judge as authorized by 28 U.S.C. § 636 et seq. The proceedings so applying are:

(1) Decisions regarding the granting or denying of benefits to claimants under Social Security Act and related statutes including, but not limited to actions filed under 42 U.S.C. § 405(g);

(2) Administrative denials of licenses, applications for certification, or similar privileges;

(3) Adjudications by the Civil Service Commission of adverse employee action, retirement eligibility and other matters; and

(4) Proceedings to review agency action in accordance with 5 U.S.C. § 702;

(5) Actions to review an order of any branch or establishment of the military service denying or granting discharge of a petitioner from the military;

(6) Actions to review orders and actions of the Immigration and Naturalization Service including, but not limited to actions involving deportation orders and denial of petitions to adjust status;

(7) Actions filed by the United States or a carrier to review, implement or restrain orders of the Interstate Commerce Commission regarding freight overcharge including, but not limited to actions under 28 U.S.C. § 1336 and 49 U.S.C. § 304(g).

Rule 10
Special Master References

(A) A magistrate may be designated by a District Judge to serve as a special master in appropriate civil cases in accordance with 28 U.S.C. § 636(b)(2) and Rule 53 of the Federal Rules of Civil Procedure.

(B) Upon the consent of the parties, a magistrate may be designated by a District Judge to serve as a special master and try the issues in any civil case notwithstanding the limitations of Rule 53(b) of the Federal Rules of Civil Procedure. The entry of final judgment shall be made by the magistrate as the judgment of the District Court.

Rule 11
Prisoners' Petitions

The United States Magistrate shall perform the following functions and promptly submit his reports and recommendations to the District Judge to whom the matter has been assigned:

(1) Review of habeas corpus petitions filed by state prisoners under 28 U.S.C. § 2254. The magistrate may issue orders to show cause and other necessary orders or writs to obtain a complete record;

(2) Review of habeas corpus petitions filed by federal prisoners for the correction or reduction of sentences under 28 U.S.C. § 2255;

(3) Review of prisoner suits, taking of on-site depositions, gathering evidence, conducting pretrial conferences or serving as a mediator at the holding facility, in connection with civil rights suits filed by prisoners contesting conditions of confinement under 42 U.S.C. § 1983;

(4) Conducting periodic reviews of proceedings to insure compliance with previous orders of the Court regarding conditions of confinement;

(5) Review of prisoner correspondence; and

(6) Conducting evidentiary or other hearings in a prisoner case in which the petitioner seeks post-trial relief or challenges conditions of confinement.

Rule 12

Review and Appeal

(A) Appeal of Non-dispositive Matters — 28 U.S.C. § 636(b) (1)(A). Any party may appeal from a magistrate's order determining a motion or matter under Rule 5 of these rules within ten (10) days after issuance of the magistrate's order, unless a different time is prescribed by the magistrate or judge. The Notice of Appeal, filed with the Clerk, shall specifically designate the order or part thereof appealed from and the basis for any objection thereto. Briefing and hearing such appeals to be in accordance with the Civil and Criminal Rules thereon. On appeal, the judge to whom the matter has been assigned may accept, vacate, or modify in whole or in part the order of the magistrate. The judge may also reconsider any matter determined by a magistrate under this rule.

(B) Adoption of Recommendation as Court Order. A magistrate's recommendation served upon the parties and filed with the Clerk may be adopted as the order of the Court unless objections are filed with the Clerk within ten (10) days from service of the recommendation.

(c) Review of Case-dispositive Motions and Prisoner Litigation — 28 U.S.C. § 636(b)(1)(B). In proceedings in which the United States Magistrate is designated to submit proposed findings and recommendations to a judge of the District Court, a party seeking to object to the proposed findings and recommendations shall, within ten (10) days after the date of service of a copy of the recommendation, or such other time as may be ordered, file written objections with the Clerk. The objections shall specifically designate the findings or recommendations objected to, the basis for the objection, and the points and authorities in support. Responses to objections shall be filed within five (5) days after receipt of the objections or within such other time as may be ordered. No reply to the response will be received. The magistrate shall promptly examine the documents relating to said objections and conduct such further hearings as deemed necessary, make additional, supplemental or substitute proposed findings and conclusions, and foster modifications in the proposed judgment. If such changes are made, the magistrate shall serve them by mail upon all parties.

When the magistrate has taken the action deemed appropriate, he or she shall forward the entire file to the judge to whom the matter is assigned for final action and notify the parties accordingly. Upon receipt of the case file, the judge to whom the matter has been assigned may enter any order necessary to a prompt determination of the issue. Such judge may accept, reject or modify in whole or in part the findings or recommendations made by the magistrate.

(D) Special Master Reports — 28 U.S.C. § 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.

(E) Appeals from Other Orders of a Magistrate. Appeals from any other decisions and orders of a magistrate not provided for in these rules shall be taken as provided by governing statute, rule, or decisional law.

Rule 13
Recordings, Transcripts, Fees

(A) Recordings.

(1) All proceedings shall be recorded by electronic sound equipment. Any party, however, may request a court reporter or waive a verbatim record altogether.

(2) Any request for a court reporter must be so made as to enable to ruling thereon not less than twenty (20) days prior to the scheduled proceedings.

(3) A waiver of verbatim record may be entered into at any time. (Amended, eff. 7-29-85)

(B) Transcripts. Applications for transcripts or duplicate recording tapes of proceedings held before U.S. Magistrate shall be made as set forth in General Rule 25.1.

Appeals: Transcript, (if desired) shall be ordered as prescribed by Rule 10(b), Federal Rules of Appellate Procedure, except that, in the absence of a reporter, the transcript shall be ordered through the office of the Clerk. Within thirty days after a transcript has been ordered, the original shall be Filed with the Clerk. Upon the receipt of the transcript, the record on appeal shall be deemed complete for appeal purposes. If no transcript is ordered within ten days after the notice of appeal is filed, the record on appeal shall be deemed complete for appeal purposes. (Amended, eff. 7-29-85)

(c) Fees.

(1) Reproduction of tape recordings shall be sold at the rates established by the Judicial Conference of the United States.

(2) Duplicate recordings shall be provided without costs to defendants upon sufficient showing of inability to pay therefor and shall be provided without costs to counsel appointed pursuant to the provision of the Criminal Justice Act. Fees shall be required of counsel in all other cases.

(3) Fees for necessary transcription services shall be paid directly by the parties.

(4) An order for transcripts of proceedings shall provide for the prepayment of costs unless a defendant makes a sufficient affidavit that he or she is unable to pay or give security therefor. In such case, the expense shall be paid by the Director of the Administrative Office from available appropriated funds. Counsel for the government also may move that a copy of such transcript be made. An order may be entered granting such motion (in whole or part) on appropriate terms. However, the government need not prepay costs nor furnish security for such costs.

Rule 14
Part-time United States Magistrates

Assignments of matters to part-time magistrates shall be made in a manner consistent with the applicable conflict-of-interest rules of the Judicial Conference of the United States.