

# Practice Before United States Magistrate Judges

United States District Court for the Eastern District of Pennsylvania



## MAGISTRATE JUDGES

A United States magistrate judge is a judicial officer of the district court appointed by a majority vote of the active district judges in that district. The number of magistrate judge positions is determined by the Judicial Conference, based on recommendations of the respective district courts, the judicial councils of the circuits, and the Director of the Administrative Office. A full-time magistrate judge is appointed for a term of eight years; a part-time magistrate judge serves for a term of four years.

The office of United States magistrate judge was created by the Federal Magistrates Act of 1968. Its origins lie with the commissioner system, first established in 1793. Commissioners were previously used in federal courts to try petty offense cases committed on federal property, to issue search warrants and arrest warrants, to determine bail for federal defendants, and to conduct other initial proceedings in federal criminal cases.

The Federal Magistrates Act of 1968, as amended, was enacted by Congress to create a federal judicial officer who would:

- be a flexible resource for the district courts
- assume all the former duties of the commissioners
- conduct additional judicial proceedings to expedite the disposition of the civil and criminal cases of the United States district courts.

The authority of magistrate judges was expanded by statute in 1976 and 1979 to include a wide range of pretrial and trial duties. Reflecting the expanded role that magistrate judges play in the district courts, the title was changed from “magistrate” to “magistrate judge” in 1990.

The authority exercised by a magistrate judge is that of the Article III district court itself, delegated by the district judges under local court rule or order. Magistrate judges may be used by the district court to handle virtually any court matter or proceeding, with the exception of trying felony cases. *See* 28 U.S.C. § 636. Congress has encouraged district courts to innovate and expand the use of magistrate judges by providing that magistrate judges may be assigned any duty “not inconsistent with the Constitution and laws of the United States.” 28 U.S.C. § 636(b)(3).

An increasing number of courts are assigning a share of their civil cases directly to magistrate judges for all pretrial duties and, if the parties’ consent is obtained, for trial and disposition. Many courts are also referring proceedings under Federal Rule of Criminal Procedure 11 to accept guilty pleas in felony cases to magistrate judges.

JURISDICTION AND POWERS OF UNITED STATES MAGISTRATE JUDGES  
28 U.S.C. § 636

§ 636. Jurisdiction, powers, and temporary assignment

(a) Each United States magistrate judge serving under this chapter shall have within the district in which sessions are held by the court that appointed the magistrate judge, at other places where that court may function, and elsewhere as authorized by law--

- (1) all powers and duties conferred or imposed upon United States commissioners by law or by the Rules of Criminal Procedure for the United States District Courts;
- (2) the power to administer oaths and affirmations, issue orders pursuant to section 3142 of title 18 concerning release or detention of persons pending trial, and take acknowledgments, affidavits, and depositions;
- (3) the power to conduct trials under section 3401, title 18, United States Code, in conformity with and subject to the limitations of that section;
- (4) the power to enter a sentence for a petty offense; and
- (5) the power to enter a sentence for a class A misdemeanor in a case in which the parties have consented.

(b) (1) Notwithstanding any provision of law to the contrary--

(A) a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.

(B) a judge may also designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial [FN1] relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

© the magistrate judge shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.

Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court

shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

(2) A judge may designate a magistrate judge to serve as a special master pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure for the United States district courts. A judge may designate a magistrate judge to serve as a special master in any civil case, upon consent of the parties, without regard to the provisions of rule 53(b) of the Federal Rules of Civil Procedure for the United States district courts.

(3) A magistrate judge may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.

(4) Each district court shall establish rules pursuant to which the magistrate judges shall discharge their duties.

© Notwithstanding any provision of law to the contrary--

(1) Upon the consent of the parties, a full-time United States magistrate judge or a part-time United States magistrate judge who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves. Upon the consent of the parties, pursuant to their specific written request, any other part-time magistrate judge may exercise such jurisdiction, if such magistrate judge meets the bar membership requirements set forth in section 631(b)(1) and the chief judge of the district court certifies that a full-time magistrate judge is not reasonably available in accordance with guidelines established by the judicial council of the circuit. When there is more than one judge of a district court, designation under this paragraph shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge.

(2) If a magistrate judge is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of the availability of a magistrate judge to exercise such jurisdiction. The decision of the parties shall be communicated to the clerk of court. Thereafter, either the district court judge or the magistrate judge may again advise the parties of the availability of the magistrate judge, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. Rules of court for the reference of civil matters to magistrate judges shall include procedures to protect the voluntariness of the parties' consent.

(3) Upon entry of judgment in any case referred under paragraph (1) of this subsection, an aggrieved party may appeal directly to the appropriate United States court of appeals from the judgment of the magistrate judge in the same manner as an appeal from any other judgment of a district court. The consent of the parties allows a magistrate judge designated to exercise civil jurisdiction under paragraph (1) of this subsection to direct the entry of a judgment of the district court in accordance with the Federal Rules of Civil Procedure. Nothing in this paragraph shall be construed as a limitation of any party's right to seek review by the Supreme Court of the United States.

(4) The court may, for good cause shown on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate judge under this subsection.

(5) The magistrate judge shall, subject to guidelines of the Judicial Conference, determine whether the record taken pursuant to this section shall be taken by electronic sound recording, by a court reporter, or by other means.

(d) The practice and procedure for the trial of cases before officers serving under this chapter shall conform to rules promulgated by the Supreme Court pursuant to section 2072 of this title.

(e) Contempt authority.--

(1) In general.--A United States magistrate judge serving under this chapter shall have within the territorial jurisdiction prescribed by the appointment of such magistrate judge the power to exercise contempt authority as set forth in this subsection.

(2) Summary criminal contempt authority.--A magistrate judge shall have the power to punish summarily by fine or imprisonment, or both, such contempt of the authority of such magistrate judge constituting misbehavior of any person in the magistrate judge's presence so as to obstruct the administration of justice. The order of contempt shall be issued under the Federal Rules of Criminal Procedure.

(3) Additional criminal contempt authority in civil consent and misdemeanor cases.--In any case in which a United States magistrate judge presides with the consent of the parties under subsection © of this section, and in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, the magistrate judge shall have the power to punish, by fine or imprisonment, or both, criminal contempt constituting disobedience or resistance to the magistrate judge's lawful writ, process, order, rule, decree, or command. Disposition of such contempt shall be conducted upon notice and hearing under the Federal Rules of Criminal Procedure.

(4) Civil contempt authority in civil consent and misdemeanor cases.--In any case in which a United States magistrate judge presides with the consent of the parties under subsection © of this section, and in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, the magistrate judge may exercise the civil contempt authority of the district court. This paragraph shall not be construed to limit the authority of a magistrate judge to order sanctions under any other statute, the Federal Rules of Civil Procedure, or the

Federal Rules of Criminal Procedure.

(5) Criminal contempt penalties.--The sentence imposed by a magistrate judge for any criminal contempt provided for in paragraphs (2) and (3) shall not exceed the penalties for a Class C misdemeanor as set forth in sections 3581(b)(8) and 3571(b)(6) of title 18.

(6) Certification of other contempts to the district court.--Upon the commission of any such act--

(A) in any case in which a United States magistrate judge presides with the consent of the parties under subsection © of this section, or in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, that may, in the opinion of the magistrate judge, constitute a serious criminal contempt punishable by penalties exceeding those set forth in paragraph (5) of this subsection, or

(B) in any other case or proceeding under subsection (a) or (b) of this section, or any other statute, where--

(I) the act committed in the magistrate judge's presence may, in the opinion of the magistrate judge, constitute a serious criminal contempt punishable by penalties exceeding those set forth in paragraph (5) of this subsection,

(ii) the act that constitutes a criminal contempt occurs outside the presence of the magistrate judge, or

(iii) the act constitutes a civil contempt,

the magistrate judge shall forthwith certify the facts to a district judge and may serve or cause to be served, upon any person whose behavior is brought into question under this paragraph, an order requiring such person to appear before a district judge upon a day certain to show cause why that person should not be adjudged in contempt by reason of the facts so certified. The district judge shall thereupon hear the evidence as to the act or conduct complained of and, if it is such as to warrant punishment, punish such person in the same manner and to the same extent as for a contempt committed before a district judge.

(7) Appeals of magistrate judge contempt orders.--The appeal of an order of contempt under this subsection shall be made to the court of appeals in cases proceeding under subsection © of this section. The appeal of any other order of contempt issued under this section shall be made to the district court.

(f) In an emergency and upon the concurrence of the chief judges of the districts involved, a United States magistrate judge may be temporarily assigned to perform any of the duties specified in subsection (a), (b), or © of this section in a judicial district other than the judicial district for which he has been appointed. No magistrate judge shall perform any of such duties in a district to which he has been temporarily assigned until an order has been issued by the chief judge of such district specifying (1) the emergency by reason of which he has been transferred, (2) the duration of his assignment, and (3) the duties which he is authorized to perform. A magistrate judge so assigned shall not be entitled to additional compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of his duties in accordance with section 635.

(g) A United States magistrate judge may perform the verification function required by section 4107 of title 18, United States Code. A magistrate judge may be assigned by a judge of any United States district court to perform the verification required by section 4108 and the appointment of counsel authorized by section 4109 of title 18, United States Code, and may perform such functions beyond the territorial limits of the United States. A magistrate judge assigned such functions shall have no authority to perform any other function within the territory of a foreign country.

(h) A United States magistrate judge who has retired may, upon the consent of the chief judge of the district involved, be recalled to serve as a magistrate judge in any judicial district by the judicial council of the circuit within which such district is located. Upon recall, a magistrate judge may receive a salary for such service in accordance with regulations promulgated by the Judicial Conference, subject to the restrictions on the payment of an annuity set forth in section 377 of this title or in subchapter III of chapter 83, and chapter 84, of title 5 which are applicable to such magistrate judge. The requirements set forth in subsections (a), (b)(3), and (d) of section 631, and paragraph (1) of subsection (b) of such section to the extent such paragraph requires membership of the bar of the location in which an individual is to serve as a magistrate judge, shall not apply to the recall of a retired magistrate judge under this subsection or section 375 of this title. Any other requirement set forth in section 631(b) shall apply to the recall of a retired magistrate judge under this subsection or section 375 of this title unless such retired magistrate judge met such requirement upon appointment or reappointment as a magistrate judge under section 361.

FEDERAL RULES OF CIVIL PROCEDURES  
Magistrate Judges

Rule 72. Magistrate Judges; Pretrial Orders

(a) **Nondispositive Matters.** A magistrate judge to whom a pretrial matter not dispositive of a claim or defense of a party is referred to hear and determine shall promptly conduct such proceedings as are required and when appropriate enter into the record a written order setting forth the disposition of the matter. Within 10 days after being served with a copy of the magistrate judge's order, a party may serve and file objections to the order; a party may not thereafter assign as error a defect in the magistrate judge's order to which objection was not timely made. The district judge to whom the case is assigned shall consider such objections and shall modify or set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law.

(b) **Dispositive Motions and Prisoner Petitions.** A magistrate judge assigned without consent of the parties to hear a pretrial matter dispositive of a claim or defense of a party or a prisoner petition challenging the conditions of confinement shall promptly conduct such proceedings as are required. A record shall be made of all evidentiary proceedings before the magistrate judge, and a record may be made of such other proceedings as the magistrate judge deems necessary. The magistrate judge shall enter into the record a recommendation for disposition of the matter, including proposed findings of fact when appropriate. The clerk shall forthwith mail copies to all parties.

A party objecting to the recommended disposition of the matter shall promptly arrange for the transcription of the record, or portions of it as all parties may agree upon or the magistrate judge deems sufficient, unless the district judge otherwise directs. Within 10 days after being served with a copy of the recommended disposition, a party may serve and file specific, written objections to the proposed findings and recommendations. A party may respond to another party's objections within 10 days after being served with a copy thereof. The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

Rule 73. Magistrate Judges; Trial by Consent and Appeal Options

(a) **Powers; Procedure.** When specially designated to exercise such jurisdiction by local rule or order of the district court and when all parties consent thereto, a magistrate judge may exercise the authority provided by Title 28, U.S.C. § 636© and may conduct any or all proceedings, including a jury or nonjury trial, in a civil case. A record of the proceedings shall be made in accordance with

the requirements of Title 28, U.S.C. § 636(c)(5).

(b) Consent. When a magistrate judge has been designated to exercise civil trial jurisdiction, the clerk shall give written notice to the parties of their opportunity to consent to the exercise by a magistrate judge of civil jurisdiction over the case, as authorized by Title 28, U.S.C. § 636©. If, within the period specified by local rule, the parties agree to a magistrate judge's exercise of such authority, they shall execute and file a joint form of consent or separate forms of consent setting forth such election.

A district judge, magistrate judge, or other court official may again advise the parties of the availability of the magistrate judge, but, in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. A district judge or magistrate judge shall not be informed of a party's response to the clerk's notification, unless all parties have consented to the referral of the matter to a magistrate judge.

The district judge, for good cause shown on the judge's own initiative, or under extraordinary circumstances shown by a party, may vacate a reference of a civil matter to a magistrate judge under this subdivision.

© Appeal. In accordance with Title 28, U.S.C. § 636(c)(3), appeal from a judgment entered upon direction of a magistrate judge in proceedings under this rule will lie to the court of appeals as it would from a judgment of the district court.

[(d) Optional Appeal Route.] (Abrogated, April 11, 1997, eff. Dec. 1, 1997)

RULE OF CIVIL PROCEDURE OF UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA  
Magistrate Judges

**Rule 72.1 United States Magistrate Judges**

**I. Authority of United States Magistrates Judges in Civil Matters.**

**(a) Duties under 28 U.S.C. 636.**

Each United States magistrate judge of this district is authorized to exercise the powers and perform the duties prescribed by 28 U.S.C. 636(a).

**(b) Prisoner Cases under 28 U.S.C. 2254 and 2255.**

A magistrate judge may perform any or all of the duties imposed upon a judge by the rules governing proceedings in the United States District Courts under 28 U.S.C. 2254 and 2255, except signing CJA vouchers for compensation to be paid unless representation is furnished exclusively before a magistrate judge. 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 judge a report containing proposed findings of fact and recommendation for disposition of the petition by the judge. Any order disposing of the petition may be made only by a judge.

**© Prisoner Cases under 42 U.S.C. 1983.**

A magistrate judge 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 complaints filed by prisoners challenging the conditions of their confinement.

**(d) Special Master References.**

A magistrate judge may be designated by a judge to serve as a special master in appropriate civil cases in accordance with U.S.C. 636(b)(2) and Fed.R.Civ.P. 53. Upon the consent of the parties, a magistrate judge may be designated by a judge to serve as a special master in any civil case.

**(e) Other Duties.**

A magistrate judge is also authorized to (1) Exercise general supervision of civil calendars, conduct calendar and status calls and determine motions to expedite or postpone the trial of cases for the judges; (2) Conduct pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings in civil cases; (3) Conduct voir dire and select petit juries; (4) Accept petit jury verdicts in civil cases in the absence of a judge; (5) 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; (6) Order the exoneration or forfeiture of bonds; (7) 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. 4311(d) and

12309©; (8) Conduct examinations of judgment debtors in accordance with Fed.R.Civ.P. 69; (9) Conduct proceedings for initial commitment of narcotics addicts under Title III of the Narcotic Addict Rehabilitation Act, with the final determination and order of commitment to be made by the district judge assigned to the case; and (10) Perform any additional duty that is not inconsistent with the Constitution and laws of the United States.

## **II. Assignment of Matters to Magistrate Judges in Civil Matters.**

**(a) In General.** In accordance with procedures adopted by the Board of Judges, each district judge shall have an assigned magistrate judge. The assignment list shall be posted in the office of the Clerk. Matters shall be referred to magistrate judges at the direction of the district judge to whom the case is assigned.

## **III. Procedures before the Magistrate Judge in Civil Matters.**

**(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 judge.

### **(b) Special Provisions for the Disposition of Civil Cases by a Magistrate Judge on Consent of the Parties --28 U.S. C. 636©.**

**(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 the plaintiff's 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 plaintiff shall be responsible for securing the execution of consent forms by the parties and for filing such forms with the Clerk of Court. Unless otherwise ordered by the district judge to whom the case is assigned, consent forms may be filed at any time prior to trial. No consent form will be made available nor will its contents be made known to any judge or magistrate judge, unless all parties have consented to the reference to a magistrate judge.

**(3) Reference.** After consent forms have been executed and filed, the clerk shall transmit them to the judge to whom the case has been assigned for approval and possible referral of the case to a magistrate judge.

## **IV. Reconsideration and Appeal in Civil Matters.**

### **(a) Reconsideration of Non-Dispositive Matters - 28 U.S.C. 636(b)(1)(A).**

Any party may object to a magistrate judge's order determining a motion or matter under 28 U.S.C. 636(b)(1)(A), within ten (10) days after issuance of the magistrate judge's order, unless a different

time is prescribed by the magistrate judge or a judge. Such party shall file with the Clerk of Court, and serve on the magistrate judge and all parties, a written statement of objections which shall specifically designate the order, or part thereof, subject to the objections and the basis for such objection.

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

Any party may object to a magistrate judge's proposed findings, recommendations or report under 28 U.S.C. 636(b)(1)(B), and subsections 1© and (d) of this Rule within ten (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 ten (10) days after being served with a copy thereof.

© All issues and evidence shall be presented to the magistrate judges, and unless the interest of justice requires it, new issues and evidence shall not be raised after the filing of the Magistrate Judge's Report and Recommendation if they could have been presented to the magistrate judge.