

**EXISTING LOCAL RULES FOR PROCEEDINGS
BEFORE MAGISTRATE JUDGES AND
NOTES ON COMMITTEE RECOMMENDATIONS**

Rule 1. Jurisdiction--28 U.S.C. Section 636

Full-time magistrate judges shall have jurisdiction to discharge the duties set forth in 18 U.S.C. § 636.

COMMITTEE NOTE

The Committee concludes that no local rule is necessary to confer upon full-time Magistrate Judges the powers set forth in 28 U.S.C. § 636(a) and (b). With respect to 28 U.S.C. § 636(c), the Committee concludes that Local Magistrate Judge Rule 1 should be amended to incorporate expressly therein the special designation required by 28 U.S.C. § 636(c)(1), and should be retained and renumbered as Local Civil Rule 73.1(a). In order to avoid any negative implication that the powers listed in Local Civil Rule 73.1 are the only powers of Magistrate Judges, the Committee recommends that Local Civil Rule 73.1 contain an introductory phrase making clear that the powers listed therein are in addition to other powers of Magistrate Judges.

Rule 2. Jurisdiction--18 U.S.C. Section 3401

Full-time magistrate judges have jurisdiction to discharge the duties set forth in 18 U.S.C. § 3401. Unless there is a pending related indictment before a district judge, the clerk shall automatically refer misdemeanor cases initiated by information or indictment or transferred to the district under Rule 20 of the Federal Rules of Criminal Procedure to a magistrate judge for arraignment.

COMMITTEE NOTE

The Committee recommends that Local Magistrate Judge Rule 2 be retained and renumbered as Local Criminal Rule 58.1(a). As in the case of Local Magistrate Judge Rule 1, the Committee recommends that the first sentence of Local Magistrate Judge Rule 2 be amended to set forth expressly therein the special legislation required by 18 U.S.C. § 3401(a). As with recommended Local Civil Rule 73(a), in order to avoid any negative implication that the powers listed in Local Criminal Rule 58.1 are the only powers of Magistrate Judges, the Committee recommends that Local Criminal Rule 58.1 contain an introductory phrase making clear that the powers listed therein are in addition to other powers of Magistrate Judges.

Rule 3. Jurisdiction of Part-time Magistrate Judges

Part-time magistrate judges shall have jurisdiction to discharge duties set forth in 28 U.S.C. § 636(a).

COMMITTEE NOTE

The Committee recommends that Local Magistrate Judge Rule 3 be eliminated, on the ground that a local rule is not necessary to confer upon part-time Magistrate Judges the powers set forth in 28 U.S.C. § 636(a).

Rule 4. References Under 28 U.S.C. Sections 2254 and 2255

Matters arising under 28 U.S.C. §§ 2254 and 2255 or challenging the conditions of the confinement of prisoners may be referred to a magistrate judge by the judge to whom the case has been assigned. A magistrate judge may perform any or all of the duties imposed upon a judge by the rules governing such proceedings in the United States district courts. 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 recommendations for disposition of the matter by the Judge. Any order disposing of the petition may only be made by a judge.

COMMITTEE NOTE

Although the subject matters covered in this local rule are also dealt with in 28 U.S.C. § 636(b)(1)(B) and in Rule 8(b) of the Rules Governing Section 2254 Cases and Section 2255 Proceedings in the United States District Courts, the Committee recommends that the rule be retained as a ready reference to the powers of Magistrate Judges in proceedings under 28 U.S.C. §§ 2254 and 2255. The Committee further recommends that the rule be renumbered as Local Civil Rule 73.1(d).

Rule 5. Petition for Misdemeanor Trial

A petition by the government for trial of a misdemeanor before the district court pursuant to 18 U.S.C. § 3401(f) shall be filed prior to arraignment of the defendant.

COMMITTEE NOTE

The Committee concludes that this local rule serves a useful purpose, and recommends that it be retained and renumbered as the final sentence of recommended new Local Criminal Rule 58.1(a).

Rule 6. Issuance of Subpoenas

Magistrate judges may issue subpoenas, writs of *habeas corpus ad testificandum* or *ad prosequendum* or other orders necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings, either civil or criminal and may sign in forma pauperis orders.

COMMITTEE NOTE

The Committee recommends that Local Magistrate Judge Rule 6 be retained, on the ground that it is helpful to have a ready reference for the powers of the Magistrate Judges in this area. Because the rule relates to both civil and criminal cases, the Committee recommends that it be carried forward both as Local Civil Rule 73.1(c) and as Local Criminal Rule 58.1(c).

Rule 7. (Repealed) Notice of Determination and Objections Thereto

Rule 8. Consent Jurisdiction Procedure

(a) When a civil action is filed with the clerk, the clerk shall give the filing party notice of the magistrate judge's consent jurisdiction in a form approved by the court, with sufficient copies to be served with the complaint on adversary parties. A copy of such notice shall be attached to any third-party complaint served by a defendant.

COMMITTEE NOTE

The Committee concludes that Local Magistrate Judge Rule 8(a) serves the useful purpose of alerting parties to the consent jurisdiction of the Magistrate Judges, and recommends that it be retained and renumbered as Local Civil Rule 73.2(a).

(b) (Repealed)

(c) When a completed form has been filed, the clerk shall draw by lot the name of a magistrate judge, unless a magistrate judge has previously acted in the matter, and forward the consent form with the name of such magistrate judge for final approval to the judge to whom the case is assigned. When the judge has approved the transfer and returned the consent form to the clerk's office for filing, the clerk shall forward a copy of the consent form to the magistrate judge to whom the case is assigned. The clerk shall also indicate on the file the name of the magistrate judge to whom the case has been assigned.

COMMITTEE NOTE

The Committee recommends that Local Magistrate Judge Rule 8(c) be retained and renumbered as Local Civil Rule 73.2(b). The Committee further recommends changes to the text of the rule which are designed to clarify it and to bring it into conformity with current practice.

(d) The magistrate judge may hear and determine any and all pretrial and post-trial matters which are filed by the parties, including case-dispositive motions in a case which has been assigned upon consent of the parties.

COMMITTEE NOTE

The Committee recommends that Local Magistrate Judge Rule 8(d) be deleted, on the ground that it adds nothing to the provisions of 28 U.S.C. § 636(c).

(e) Appeals, if made to the district court from a magistrate judge's judgment, shall be heard by the judge to whom the case was originally assigned.

COMMITTEE NOTE

The Committee recommends that Local Magistrate Judge Rule 8(e) be deleted, because Section 207 of the Federal Courts Improvement Act of 1996 has amended 28 U.S.C. § 636(c) to eliminate the alternate method of appeal to the District Court.

Rule 9. Issuance of Warrants and Hearings

Pursuant to 18 U.S.C. § 3184 magistrate judges are empowered to issue warrants for the apprehension of persons and conduct hearings and consider the evidence in the extradition proceedings referred to therein.

COMMITTEE NOTE

The Committee recommends that Local Magistrate Judge Rule 9 be amended to clarify its language, and that the rule be renumbered as Local Criminal Rule 58.1(b).

Rule 10. Inspection Orders and Warrants

Magistrate judges are authorized to entertain *ex parte* applications by appropriate representatives of the United States government for the issuance of administrative inspection orders or warrants or orders authorizing the use of so-called “pen-register” devices by the Department of Justice.

COMMITTEE NOTE

The Committee recommends that the reference to orders authorizing the use of pen registers be deleted as unnecessary in light of 18 U.S.C. § 3127(2)(A). The Committee recommends that the portion of Local Magistrate Judge Rule 10 relating to administrative inspection orders and warrants be retained and renumbered as Local Civil Rule 73.1(b), on the ground that such a provision may be necessary to the execution of the statutory missions of some administrative agencies.

Rule 11. Petty Offenses-Collateral and Appearance

(a) A person who is charged with a petty offense as defined in 18 U.S.C. § 1(3), or with violating any regulation promulgated by any department or agency of the United States government, may, in lieu of appearance, post collateral in the amount indicated in schedules filed in the office of the clerk of this court, waive appearance before a United States magistrate judge and consent to forfeiture of collateral.

(b) For all other petty offenses the person charged must appear before a magistrate judge.

COMMITTEE NOTE

The Committee recommends that Local Magistrate Judge Rule 11 be retained and renumbered as Local Criminal Rule 58.2, except that the Committee recommends (1) that the reference to 18 U.S.C. § 1(3) be changed to 18 U.S.C. § 19, where the definition of “petty offense” now appears, and (2) that the reference to a schedule filed in the office of the Clerk of the Court be deleted, on the ground that such schedules are often not filed in the Clerk’s Office, and on the ground that as a practical matter the amount of the fine is set forth in the summons or other accusatory instrument.

Rule 12. Rotation of Assignments-Southern District Only (Superseded)

See provision of Southern District’s Civil Justice Expense and Delay Reduction Plan.

COMMITTEE NOTE

The Committee concluded that it is inappropriate for provisions relating to assignments of Magistrate Judges to appear in the local rules, as opposed to the Courts’ rules or guidelines for the division of business.

Rule 13. General Pretrial Supervision

Any case referred to a magistrate judge by a district judge for general pretrial supervision shall confer on the magistrate judge jurisdiction set forth in 28 U.S.C. § 636(b)(1)(A) unless specifically stated otherwise in the order of reference.

COMMITTEE NOTE

The Committee determined that it is unnecessary to have a local rule dealing with this subject, because the subject is already covered in the standard forms used for the assignment of Magistrate Judges in the Southern and Eastern Districts.

Rule 14. Appeals from Cases Heard on Consent (Southern District Version)

- (a) (Repealed) Appeal to the Court of Appeals
- (b) Appeal to a District Judge
- (1) Notice of Appeal

In accordance with 28 U.S.C. § 636(c)(4), the parties may consent to appeal any judgment in a civil case to be disposed of by a magistrate judge to the district judge to

whom the case was initially assigned, 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 the district court within thirty (30) days after entry of the magistrate judge's judgment. If the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within sixty (60) days of the judgment. A notice of cross appeal shall be filed within fourteen (14) days after the first timely notice of appeal was filed. For good cause shown, the magistrate judge or the judge may extend the time for filing the notice of appeal or cross appeal for an additional twenty (20) days. Any request for such extension, however, must be made before the original time period for such appeal has expired.

(2) Record on Appeal

The record on appeal shall comply with the provisions of Rules 10 and 11 of the Federal Rules of Appellate Procedure.

(3) Briefs

The appellant shall within twenty (20) days of the filing of the notice of appeal file a typewritten brief with the clerk of the district court together with two (2) additional copies, stating the specific facts, points of law and authorities on which the appeal is based. The appellee shall file an answering brief within fifteen (15) days of the filing of the appellant's brief. The appellant may serve and file a reply brief within seven (7) days after service of appellee's brief and at least three (3) days before any scheduled argument. 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 brief within the time provided by this rule, or any extension thereof, the court may dismiss the appeal.

(4) Oral Argument

After the appellee's brief has been filed, the chambers of the district judge will inform the parties of the time and place of any oral argument. By agreement of the parties and the judge, cases may be submitted for decision without oral argument.

(5) 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 of Appeals and in accordance with the provisions of 28 U.S.C. § 636(c)(4).

(6) Rehearing

A petition for rehearing must be filed within seven (7) days after judgment is entered on the appeal.

COMMITTEE NOTE

Local Magistrate Judge Rule 14 is unnecessary in light of the repeal of the District Court's appellate jurisdiction under 28 U.S.C. § 636(c)(4).

Rule 14. Appeals from Cases Heard on Consent (Eastern District version)

(a) General.

The practice on an appeal from a judgment in any civil case decided by a magistrate judge on consent of the parties pursuant to 28 U.S.C. § 636(c), as governed by Fed. R. Civ. P. 74-76, is supplemented by, the following rules of practice.

The appellant shall within twenty (20) days of the filing of the notice of appeal file a typewritten brief with the clerk of the district court together with two (2) additional copies, stating the specific facts, points of law and authorities on which the appeal is based. The appellee shall file an answering brief within fifteen (15) days of the filing of the appellant's brief. The appellant may serve and file a reply brief within seven (7) days

after service of appellee's brief and at least three (3) days before any scheduled argument. 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 brief within the time provided by this rule, or any extension thereof, the court may dismiss the appeal,

After the appellee's brief has been filed, the chambers of the district judge will inform the parties of the time and place of any oral argument. By agreement of the parties and the judge, cases may be submitted for decision without oral argument.

COMMITTEE NOTE

Local Magistrate Judge Rule 14 is unnecessary in light of the repeal of the District Court's appellate jurisdiction under 28 U.S.C. § 636(c)(4).

Rule 15. Entry of Mandatory Scheduling Orders (Eastern District only)

Magistrate judges are empowered to enter scheduling orders pursuant to Rule 16(b) of the Federal Rules of Civil Procedure.

COMMITTEE NOTE

The Committee concludes that this local rule is necessary in light of the requirement of Federal Rule of Civil Procedure 16(b) that the power of Magistrate Judges to issue scheduling orders be conferred by district court rule, and recommends that the rule be combined with the substance of Local Magistrate Judge Rule 15 (Southern District only) and renumbered as Local Civil Rule 16.2.

Rule 15. Entry of Mandatory Scheduling Orders (Southern District only)

Magistrate judges may make and modify for good cause shown, scheduling orders pursuant to Federal Rules of Civil Procedure 16(b) in any case referred to them by a judge.

COMMITTEE NOTE

The Committee concludes that this local rule is necessary in light of Federal Rule of Civil Procedure 16(b), and that it should be reworded for the sake of clarity and renumbered as Local Civil Rule 16.2.