



**LOCAL RULES OF COURT
FROM THE US DISTRICT COURT, FLORIDA, SOUTHERN DISTRICT
{[MAGISTRATE RULES]}**

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LOCAL RULES OF COURT | USFLSD

RULES: 1-4

TITLE: MAGISTRATE JUDGE RULES

DATE: December 1, 2020



MAGISTRATE RULE 1 | AUTHORITY OF UNITED STATES MAGISTRATE JUDGES

(a) Duties under 28 U.S.C. §636(a). Each United States Magistrate Judge of this Court is authorized to perform the duties prescribed by 28 U.S.C. §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. §3146, and take acknowledgments, affidavits, and depositions; and
- (3) Conduct extradition proceedings, in accordance with 18 U.S.C. §3184.

(b) Disposition of Misdemeanor Cases - 18 U.S.C. §3401; Federal Rule of Criminal Procedure 58. A Magistrate Judge may -

- (1) Arraign and try persons accused of, and sentence persons convicted of, misdemeanors committed within this District in accordance with 18 U.S.C. §3401 and Federal Rule of Criminal Procedure 58;
- (2) Direct the Probation Office of the Court to conduct a presentence investigation in any misdemeanor case; and
- (3) 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. §636(b) (1) (A). A Magistrate Judge 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. §636(b) (1) (B) .

- (1) A Magistrate Judge may submit to a District Judge of the Court a report containing proposed findings of fact and recommendations for disposition by the District 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 Judge 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. §§2254 and 2255. A Magistrate Judge may perform any or all of the duties imposed upon a District Judge by the rules governing proceedings in 28 U.S.C. §§2254 and 2255. 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 District Judge a report containing proposed findings of fact and recommendations for disposition of the petition by the District Judge. Any order disposing of the petition may only be made by a District Judge.

(f) 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 District Judge a report containing proposed findings of fact and recommendation for the disposition of petitions filed by prisoners challenging the conditions of their confinement.



(g) Special Master References. A Magistrate Judge 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 Federal Rules of Civil Procedure 53. Upon the consent of the parties, a Magistrate Judge may be designated by a District Judge to serve as a special master in any civil case, notwithstanding the limitations of Federal Rule of Civil Procedure 53(b).

(h) Conduct of Trials and Disposition of Civil Cases Upon Consent of the Parties—28 U.S.C. §636(c). Upon the consent of the parties, a full-time Magistrate Judge 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. §636(c). In the course of conducting such proceedings upon consent of the parties, a Magistrate Judge may hear and determine any and all pre-trial and post-trial motions which are filed by the parties, including case-dispositive motions.

(i) Other Duties. A Magistrate Judge is also authorized to -

- (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 District Judges;
- (2) Conduct pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings in civil and criminal cases;
- (3) Conduct arraignments in criminal cases not triable by the Magistrate Judge and take not guilty pleas in such cases;
- (4) Receive grand jury returns in accordance with Federal Rule of Criminal Procedure 6(f);
- (5) Accept waivers of indictment, pursuant to Federal Rule of Criminal Procedure 7(b);
- (6) Conduct voir dire and select petit juries for the Court;
- (7) Accept petit jury verdicts in civil cases in the absence of a District Judge;



- (8) Conduct necessary proceedings leading to the potential revocation of probation;
- (9) 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;
- (10) Order the exoneration or forfeiture of bonds;
- (11) 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. §1484(d);
- (12) Conduct examinations of judgment debtors in accordance with Federal Rule of Civil Procedure 69;
- (13) Conduct proceedings for initial commitment of narcotics addicts under Title III of the Narcotic Addict Rehabilitation Act;
- (14) 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;
- (15) Preside at naturalization hearings and ceremonies; and
- (16) Perform any additional duty as is not inconsistent with the Constitution and laws of the United States.

Effective December 1, 199. Amended effective April 15, 1998; April 15, 2007; April 15, 2010; December 1, 2015.



MAGISTRATE RULE 2 | ASSIGNMENT OF MATTERS TO MAGISTRATE JUDGES

All civil and criminal cases in this District shall be filed with the Clerk of the Court and assigned to a District Judge in accordance with Local Rules 1 through 7. Responsibility for the case remains with the District Judge throughout its duration, except that the District Judge may refer to a Magistrate Judge any matter within the scope of these Magistrate Judge Rules.

No specific order of reference shall be required except as otherwise provided in these Magistrate Judge Rules.

Nothing in these Magistrate Judge Rules shall preclude a District Judge from reserving any proceeding for conduct by a District Judge rather than a Magistrate Judge.

Effective December 1, 1994. Amended effective April 15, 2007.



MAGISTRATE RULE 3 | PROCEDURES BEFORE THE MAGISTRATE JUDGE

(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 District Judge.

(b) **Special Provisions for the Disposition of Civil Cases by a Magistrate Judge on Consent of the Parties - Title 28, United States Code, Section 636(c).**

(1) *Notice.* The Clerk of the Court shall notify the parties in all civil cases that they may consent to have the Magistrate Judge who is assigned to the case at the time of the consent conduct any or all proceedings in the case and order the entry of a final judgment. Such notices 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 of the Court 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 the Court, and serving the executed consent form on all parties. No consent form will be made available, nor will its contents be made known, to any District Judge or Magistrate Judge, unless all parties have consented to the reference to a Magistrate Judge. No Magistrate Judge, District Judge, or other Court official may attempt to persuade or induce any party to consent to the reference of any matter to a Magistrate Judge. This rule, however, shall not preclude a District Judge or Magistrate Judge from informing the parties that they may have the option of referring a case to a Magistrate Judge.

(3) *References.* After the consent form has been executed, filed and served, the Clerk of the Court shall transmit it to the District Judge to whom the case has



been assigned for consideration of approval and possible referral of the case to the Magistrate Judge assigned to the case, by specific order of reference. Once the case has been assigned to that Magistrate Judge, the Magistrate Judge shall have the authority to conduct any and all proceedings to which the parties have consented and to direct the Clerk of the Court to enter a final judgment in the same manner as if a District Judge had presided.

Effective December 1, 1994. Amended effective April 15, 2007; December 1, 2011; December 1, 2015; December 2, 2019.



MAGISTRATE RULE 4 | REVIEW AND APPEAL

(a) Appeal of Non-dispositive Matters-Government Appeal of Release Order.

(1) *Appeal of Non-dispositive Matters – 28 U.S.C. §636(b)(1)(A).* Any party may appeal from a Magistrate Judge's order determining a motion or matter under subsection 1(c) of these rules, *supra*, within fourteen (14) days after being served with the Magistrate Judge's order, unless a different time is prescribed by the Magistrate Judge or District Judge. Such party shall file with the Clerk of the Court, and serve on all parties, written objections which shall specifically set forth the order, or part thereof, appealed from; a concise statement of the alleged error in the Magistrate Judge's ruling; and statutory, rule, or case authority, in support of the moving party's position. Any party may respond to another party's objections within fourteen (14) days after being served with a copy thereof, or within such other time as may be allowed by the Magistrate Judge or District Judge. Absent prior permission from the Court, no party shall file any objections or responses to another party's objections exceeding twenty pages in length. The District Judge shall consider the appeal and shall set aside any portion of the Magistrate Judge's order found to be clearly erroneous or contrary to law. The District Judge may also reconsider *sua sponte* any matter determined by a Magistrate Judge under this rule.

(2) *Government Appeal of Release Order.* At the conclusion of a hearing pursuant to 18 U.S.C. §3142 in which a Magistrate Judge has entered an order granting pretrial release, the government may make an *ore tenus* motion that the Magistrate Judge exercise discretion to stay the release order for a reasonable time, to allow the government to pursue review or appeal of the release order, in accordance with 18 U.S.C. §3145.

If a stay is ordered pursuant to this rule, the Clerk of the Court is directed to obtain the tape recording or cassette immediately after the hearing and deliver the cassettes or tapes promptly to the appropriate court reporter so that an expedited transcript can be delivered to the District Judge within forty-eight (48)



hours of the hearing at which the release order is entered. The United States Attorney's Office is to pay the court reporter's charges.

(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 subsections 1(d), (e), and (f) of these rules, supra, within fourteen (14) days after being served with a copy thereof, or within such other time as may be allowed by the Magistrate Judge or District Judge. Such party shall file with the Clerk of the Court, and serve on all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made, the specific basis for such objections, and supporting legal authority. Any party may respond to another party's objections within fourteen (14) days after being served with a copy thereof, or within such other time as may be allowed by the Magistrate Judge or District Judge. Absent prior permission from the Court, no party shall file and serve any objections or responses to another party's objections exceeding twenty (20) pages in length. A District 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 Judge. The District 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 Judge, making his own determination on the basis of that record. The District Judge may also receive further evidence, recall witnesses, or recommit the matter to the Magistrate Judge with instructions.

(c) 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 Judge in accordance with the provisions of Federal Rules of Civil Procedure 53(e).

(d) Appeal From Judgments in Misdemeanor Cases - 18 U.S.C. §3402 [Deleted]. Replaced by Federal Rule of Criminal Procedure 58.



(e) Appeal From Judgments in Civil Cases Disposed of on Consent of the Parties – 28 U.S.C. §636(c).

(1) *Appeal to the Court of Appeals.* Upon the entry of judgment in any civil case disposed of by a Magistrate Judge on consent of the parties under authority of 28 U.S.C. §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 [Deleted].* See Pub.L. No. 104-317 §207, 110 Stat. 3847 (Oct. 19, 1996) (repealing 28 U.S.C. §636(c)(4) and (5).

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 1997; April 15, 1998; April 15, 1999; April 15, 2007; April 15, 2010; December 1, 2011; December 1, 2015; December 2, 2019; December 1, 2020.



APPENDIX



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