

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA

FILED

IN THE MATTER OF:)
)
GENERAL REFERENCE OF)
CERTAIN MATTERS TO)
UNITED STATES MAGISTRATES)

DEC 15 1983

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
JAMES E. VANDEGRIFT, CLERK

O R D E R

In accordance with the Rules Governing Jurisdiction and Authority of United States Magistrates promulgated by this court, it is hereby ORDERED that the following matters are referred to the full-time United States Magistrates without the necessity of a specific order of reference:

1. All those matters under the heading "Criminal Proceedings" enumerated in Rule 1(a)(1) of the Rules Governing Jurisdiction and Authority of the United States Magistrates.

2. All those matters enumerated in Rule 2(a)(1)(A) of the Rules Governing Jurisdiction and Authority of the United States Magistrates.

3. All those matters under the heading "Prisoner Petitions" enumerated in Rule 2(a)(4) of the Rules Governing Jurisdiction and Authority of the United States Magistrates.

This order replaces and supercedes that prior order of general reference dated January 31, 1977.

DONE this 15th day of December, 1983.

[Signature]
CHIEF JUDGE

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JUDGE

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JUDGE

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SENIOR JUDGE

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SENIOR JUDGE

RULES GOVERNING
JURISDICTION AND AUTHORITY OF
UNITED STATES MAGISTRATES
IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA

RULE 1

NON-DISPOSITIVE MATTERS [28 U.S.C. § 636(b)(1)(A)]

(a) Reference of Pretrial Matters. Any judge of this court may designate a magistrate of this court to hear and determine any pretrial matter pending before the court, except the following motions: to dismiss or quash an indictment or information made by the defendant; to suppress evidence in a criminal case; for injunctive relief; for judgment on the pleadings; for summary judgment; to dismiss or 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.

Pretrial matters which may be referred to a magistrate under this rule shall include but shall not be limited to:

(1) Criminal Proceedings

(A) General supervision of the criminal calendar, including calendar calls and motions to expedite or postpone the trial of cases.

(B) Hearing and deciding procedural and discovery motions.

(C) Hearing and deciding motions by the government to dismiss an indictment or information without prejudice to further proceedings and any other motion or pretrial matter which is not specifically enumerated as an exception in 28 U.S.C. § 636(b)(1)(A).

(D) Issuance of 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.

(E) Conduct of pretrial conferences, omnibus hearings, and related proceedings.

(F) Conduct of initial appearances, arraignments, acceptance of not guilty pleas, and the ordering of a presentence report on a defendant who signifies the desire to plead guilty.

(2) Civil Proceedings

(A) General supervision of the civil calendar, including the handling of calendar calls and motions to expedite or postpone the trial of cases.

(B) Hearing and determining pretrial procedural and discovery motions and other motions or pretrial matters which are not specifically enumerated as an exception in 28 U.S.C. §636(b)(1)(A).

(C) Issuance of 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.

(D) Issuance of scheduling orders as provided by Rule 16(b), Federal Rules of Civil Procedure.

(E) Conduct of preliminary and final pretrial conferences, status calls and settlement conferences, and the preparation of a pretrial order following the conclusion of the final pretrial conference.

(b) Order of Reference. Every reference of a matter to a magistrate under Rules 1 and 2 hereof shall be by order signed by a district judge or shall be pursuant to a general order of reference with regard to a particular class or category of matters or cases. The clerk shall serve notice of each reference made under this rule, other than by general order, upon all parties to the action.

(c) Finality. All decisions of the magistrate under this rule shall be final subject only to a right of review by the district judge to whom the pertinent case has been assigned.

(d) Procedure for Review. An aggrieved party may obtain review of the decision of the magistrate under this rule by filing with the court, within 10 days of the date such decision is entered, an appropriate motion to review which shall specify in detail the manner in which the magistrate is claimed to have erred. Any party to the action may respond to the motion to review within 7 days of the date it is filed. Such motions and responses thereto shall be served in accordance with the provisions of Rule 5 of the Federal Rules of Civil Procedure or Rule 49 of the Federal Rules of Criminal Procedure, as may be appropriate. For good cause shown, the magistrate or a district judge may expand such time period or, with actual notice to the parties, reduce such time period.

(e) Scope of Review. The judge to whom the pertinent case is assigned may vacate, amend, or remand to the magistrate with instructions, any decision of the magistrate where it is shown that said decision is clearly erroneous or contrary to law. Nothing herein shall be construed to in any way detract from the inherent power of a district judge sua sponte to vacate, amend or reconsider any decision of a magistrate in the interests of justice.

RULE 2

DISPOSITIVE MATTERS AND PRISONER CASES [28 U.S.C. § 636(b)(1)(B)]

(a) Reference of Dispositive Matters. Any judge of this court may designate a magistrate to review and consider, to conduct hearings, including evidentiary hearings, and to submit to the judge proposed findings of fact and recommendations for the disposition by the judge of any of the following matters:

(1) Criminal Proceedings

(A) Motions to dismiss or quash an indictment or information made by the defendant.

(B) Motions to suppress evidence.

(C) Applications to revoke probation (including the conduct of the "final" probation revocation hearing).

(2) Civil Proceedings

(A) Motions for injunctive relief (temporary restraining orders and preliminary injunctions).

(B) Motions to dismiss for failure to state a claim upon which relief may be granted.

(C) Motions to involuntarily dismiss an action (and the review of default judgments).

(D) Motions to dismiss or to permit the maintenance of a class action.

(E) Motions for judgment on the pleadings or for summary judgment.

(3) Judicial Review of Administrative Proceedings

(A) Decisions regarding benefits under the Social Security Act, the "Black Lung" benefits laws, and other similar statutes.

(B) The administrative award or denial of licenses or similar privileges.

(C) The decisions by the Civil Service Commission or other appropriate agency in federal employee matters.

(4) Prisoner Petitions

(A) Habeas corpus petitions filed by state prisoners under 28 U.S.C. § 2254 or by federal prisoners under 28 U.S.C. § 2241. In connection with the magistrate's handling thereof, the magistrate is expressly authorized to issue orders to show cause and other necessary orders or writs to obtain a complete record.

(B) Motions filed by federal prisoners for the correction or reduction of sentence under Rule 35 of the Federal Rules of Criminal Procedure or to vacate sentence under 28 U.S.C. § 2255.

(C) Original complaints by prisoners for the deprivation of constitutional rights. In connection with the magistrate's handling thereof, the magistrate is expressly authorized to take on-site depositions; gather evidence; conduct

pretrial conferences; serve as a mediator at the holding facility; and conduct periodic reviews to insure compliance with previous orders of the court regarding conditions of confinement.

(D) Prisoner correspondence.

(b) Order of Reference. References made under this rule shall be in accord with the procedure established in Rule 1(b) of these rules.

(c) Procedure on Reference. A magistrate to whom a reference is made pursuant to this rule shall have the authority to do all things necessary to fulfill his duties under such reference in the manner and to the same extent as if the matter were before a district judge. The magistrate shall, within a reasonable time after completing such proceedings as may be necessary to the reference, file with the clerk of the court his proposed findings of fact and recommended disposition of the matter together with a proposed order for the court.

The clerk shall serve a copy of the magistrate's proposed findings, recommendation and proposed order on all parties by mailing a copy to each party or his counsel at his address of record. The parties may file specific objections to the magistrate's report within 10 days after being served with a copy; said objections shall be in writing and shall be served on all other parties to the action in accord with Rule 5 of the Federal Rules of Civil Procedure or Rule 49 of the Federal Rules of Criminal Procedure, as may be appropriate. A party may respond to another party's objections within 10 days after being served with a copy thereof.

(d) Scope of Review. Final adjudication of matters referred under this rule shall rest with the judge assigned to hear the case. Such judge shall make a de novo determination on the basis of the record developed before the magistrate, or after additional evidence, of any portion of the magistrate's proposed findings of fact, recommended disposition or proposed order to which specific written objection has been made in accordance with this rule, and such judge is not bound to adopt the findings and conclusions of the magistrate. The judge may accept, modify or reject the magistrate's findings or recommended decision, receive further evidence or recommit the matter to the magistrate with instructions.

RULE 3

SPECIAL MASTER REFERENCES AND TRIALS BY CONSENT [28 U.S.C. § 636(b)(2)]

Any judge of this court may by special order of reference designate a magistrate to serve as a special master pursuant to the applicable provisions of law and the Federal Rules of Civil Procedure. Matters which may be referred to a magistrate under this rule shall include but shall not be limited to:

(a) Service as a special master in accordance with the provisions of Rule 53 of the Federal Rules of Civil Procedure, except that with the consent of the parties, the provisions of Rule 53(b) shall not apply.

(b) Conduct of evidentiary hearings and preparation of findings in employment discrimination cases as a master under Title VII of the Civil Rights Act of 1964, as amended, whenever a judge has not scheduled a case for trial within 120 days after issue has been joined. [42 U.S.C. § 2000e-5(f)]

(c) Conduct of hearings and resolution of specific issues in patent, antitrust and other complex cases where there are a great many issues, claims and documents, or in multiple disaster and class action cases where there are numerous claimants and diverse claims.

(d) Service as a commissioner to determine compensation and assess damages in land condemnation cases under Rule 71A(h) of the Federal Rules of Civil Procedure.

(e) Service as a master for the assessment of damages, such as in admiralty cases.

(f) Presiding over trials in civil cases by consent of the parties.

RULE 4

MISCELLANEOUS ADDITIONAL DUTIES [28 U.S.C. § 636(b)(3)]

Any judge of this court may assign to a magistrate such additional duties as are not inconsistent with the Constitution and laws of the United States. A formal order of reference shall not be necessary to implement an assignment of any of the duties hereafter enumerated. Such additional duties may include but shall not be limited to:

(a) Receipt of grand jury returns, in accordance with Rule 6(f) of the Federal Rules of Criminal Procedure.

(b) Exoneration or forfeiture of bonds.

(c) Service as a member of the district's Speedy Trial Act Planning Group, including service as the reporter. [18 U.S.C. § 3168]

(d) Review of petitions in civil commitment proceedings under Title III of the Narcotic Addict Rehabilitation Act.

(e) Disposition of civil violations under the Federal Boat Safety Act. [46 U.S.C. § 1484(d)]

(f) Conduct of voir dire and selection of juries in trials to be presided over by district judges.

(g) Acceptance of petit jury verdicts in civil cases.

(h) Supervision of proceedings on requests for letters rogatory in civil and criminal cases, provided that a special designation has been made by the district court as required under 28 U.S.C. § 1782(a).

(i) Examining judgment debtors. [Rule 69 of the Federal Rules of Civil Procedure]

(j) Review of default judgments and conduct of inquests on damages in cases involving default judgments.

(k) Coordination of the court's efforts in such fields as the promulgation of local rules and procedures and the administration of the forfeiture of collateral system.

RULE 5

COMMISSIONER TYPE DUTIES [28 U.S.C. § 636(a)]

Each United States magistrate serving in this court shall have within the territorial jurisdiction prescribed by his appointment all powers and duties conferred or imposed upon United States magistrates by law or by the Rules of Criminal Procedure for the United States District Courts. Such duties shall include but shall not be limited to:

(a) The trial and sentencing of defendants charged with "misdemeanors" (upon the consent of the defendant), and the power to invoke the federal probation laws. [18 U.S.C. § 3401]

(b) Accepting complaints, finding probable cause and issuing appropriate arrest warrants or summonses for the named defendants. [Rule 4 of the Federal Rules of Criminal Procedure]

(c) Issuance of search warrants upon a determination that probable cause for the warrants exists. [Rule 41 of the Federal Rules of Criminal Procedure]

(d) Conduct of initial appearance proceedings for defendants, informing them of their rights, admitting them to bail and imposing conditions of release. [Rule 5 of the Federal Rules of Criminal Procedure and 18 U.S.C. § 3146]

(e) Appointment of attorneys for indigent defendants, together with the administration of the court's Criminal Justice Act plan, the maintenance of a register of eligible attorneys and the approval of attorneys' expense vouchers in appropriate cases. [18 U.S.C. § 3006(A)]

(f) Conduct of full preliminary examinations. [Rule 5.1 of the Federal Rules of Criminal Procedure and 18 U.S.C. § 3060]

(g) Conduct of removal hearings for defendants charged in other districts and issuance of warrants of removal. [Rule 40 of the Federal Rules of Criminal Procedure]

(h) Administering oaths and taking bail, acknowledgements, affidavits and depositions. [28 U.S.C. § 636(a)(2)]

(i) Setting bail for material witnesses. [18 U.S.C. § 3149]

(j) Upon special designation by the district court, the conduct of extradition proceedings. [18 U.S.C. § 3184]

(k) Holding to security of the peace and for good behavior. [18 U.S.C. §3043]

(l) Discharge of indigent prisoners or persons imprisoned for debt under process of execution issued by a federal court. [18 U.S.C. § 3569 and 28 U.S.C. § 2007]

(m) Issuance of an attachment or order to enforce obedience to an Internal Revenue Service summons to produce records or give testimony. [26 U.S.C. § 7604(b)]

(n) Issuance of administrative inspection warrants.

(o) Instituting proceedings against persons violating certain civil rights statutes. [42 U.S.C. § 1987]

(p) Settling or certifying the nonpayment of seamen's wages. [46 U.S.C. § 603]

(q) Enforcing awards of foreign consuls in differences between captains and crews of vessels of the consul's nation. [22 U.S.C. § 258(a)]

(r) Issuance of writs authorizing levy, entry, search and seizure by the Internal Revenue Service requested pursuant to 26 U.S.C. § 6331 upon a determination of probable cause.

RULE 6

APPEALS FROM JUDGMENTS OF MAGISTRATES IN MISDEMEANOR CASES [18 U.S.C. § 3402]

In cases of conviction by a magistrate, an appeal of right shall lie from the judgment of the magistrate to a judge of this court. The following procedures shall apply to such appeals:

(a) An appeal shall be taken within 10 days after entry of judgment by filing a notice of appeal with the clerk of court and by serving a copy upon the United States Attorney. Upon receipt of the notice of appeal, the clerk shall assign the appeal to a judge and assign a case number if a number has not been previously assigned.

(b) A filing fee of \$5.00 shall be required to be paid at the time the notice of appeal is filed. If a defendant desires to proceed as an indigent, he must file a motion for leave to appeal in forma pauperis and a declaration of indigency with the notice of appeal.

(c) The defendant is not entitled to a trial de novo by the district judge. The scope of appeal shall be the same as on an appeal from a judgment of a district court to a court of appeals.

(d) Upon completion of the record (as defined in Rule 7(c), Rules of Procedure for the Trial of Misdemeanors before United States Magistrates), the clerk shall promptly forward the record, together with a certification as to its completeness, to the district judge. A copy of the record shall be furnished to the defendant only if requested and only after arrangements for payment have been made.

(e) The judge may affirm, reverse, or modify the magistrate's judgment, or he may remand with instructions for further proceedings. The judge shall accept the magistrate's findings of fact unless clearly erroneous, and he shall give due regard to the opportunity of the magistrate to evaluate the credibility of witnesses.