FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

JUN 17 1980

JOE R. ROMANE, Clerk
By _____ Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In Re: 1980 Amendments to Local Magistrates Rules ("MRs")	GENERAL ORDER

To implement the provisions of the Federal Magistrate Act of 1979, Public Law 96-82, the Court hereby amends the local Magistrates Rules ("MRs") of this Court as follows: (a) MR 1, 2, 3, 4, 5, 7 and 9 are amended; (b) MR 13 (now) is added; and (c) MR 6, 8, 10, 11 and 12 are unchanged.

The complete text of the local Magistrates Rules, as amended, is set forth below. These amendments are effective immediately upon the filing of this order.

UNITED STATES MAGISTRATES' RULES

MR 1

GENERAL POWERS AND DUTIES

Each United States Magistrate appointed by this court is authorized to perform the duties prescribed by 28 U.S.C. §636(a) and may:

(a) Try persons accused of misdemeanors, order a presentence investigation report on any such person who

is convicted or pleads guilty or nolo contendere, and sentence such persons, all in accordance with the provisions of 18 U.S.C. §3401 and applicable rules; provided, however, that where defendant is entitled to trial by jury and does not waive that right, the trial shall be conducted by a District Judge or by a full-time magistrate;

(b) Authorize the issuance of subpoenas, writs of habeas corpus ad testificandum or ad prosequendum, and issue or authorize issuance of any other orders or warrants necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings;

(c) Conduct extradition proceedings, in accordance with 18 U.S.C. §3184;

(d) Order examinations to determine mental competency under 18 U.S.C. §4244 and conduct all further proceedings thereunder in cases to be tried by the magistrate;

(e) Supervise proceedings conducted pursuant to letters rogatory, in accordance with 28 U.S.C. §1782, when designated to do so by a district judge;

(f) Accept waivers of indictment, pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure;

(g) Impose appropriate sanctions upon parties or counsel appearing before them in any matter referred to them or with regard to which they have independent jurisdiction;

(h) Rule upon applications to proceed in forma pauperis, pursuant to 28 U.S.C. §1915;

(i) Grant, upon an appropriate showing, warrants authorizing entry on premises by officers of the United States to conduct worksite inspections and investigations

in enforcement of the Occupational Safety and Health Act of 1970 (29 U.S.C. §§651 et seq);

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

(k) Exercise all powers and duties assigned to them from time to time by the district judges which are not inconsistent with the Constitution and laws of the United States.

MR 2

RULES OF PRACTICE AND PROCEDURE
IN MISDEMEANOR CASES

(a) The practice and procedure for the trial of misdemeanor cases before magistrates, and for the taking and hearing of appeals therefrom to the district court, shall conform to the provisions of 18 U.S.C. §§3401 and 3402, the "Rules of Procedure for the Trial of Misdemeanors before United States Magistrates," and of any other rules promulgated by the Supreme Court pursuant to 18 U.S.C. §3402.

(b) All informations, indictments, citations, or other instruments on file with the Clerk which charge only misdemeanors (including such cases transfered to this district under Rule 20 of the Federal Rules of Criminal Procedure) shall upon filing with the Clerk be assigned to a magistrate. If the defendant thereafter elects to be tried or plead before a district judge, the magistrate shall note that fact and return the papers related to the case to the Clerk.

(c) Payment of the sums fixed in this court's Petty Offense Bail Schedule may be accepted in lieu of appearance

and as authorizing termination of the proceedings. Where such proceedings involve a charge of moving traffic violations, the Clerk shall transmit a copy of the charge to the appropriate state's driver licensing authority, and identify it as a record of conviction.

MR 3

NON-DISPOSITIVE PRETRIAL MATTERS

(a) In accordance with 28 U.S.C. §636(b)(1)(A), the full-time magistrates in this district may, upon reference by a district judge, hear and determine any pretrial matter in a case pending before the district judge, other than those matters specified in Magistrates' Rule MR 4(a)(3), infra.

(b) Any party may appeal from a magistrate's determination made under this rule within ten days after issuance of the magistrate's order, unless a different time is prescribed by the magistrate or a district judge. Such party shall file with the Clerk of Court, and serve on all parties and the district judge and magistrate, a written notice of appeal which shall specifically designate the order or part thereof appealed from and the basis for objection thereto. The district judge shall consider the appeal and shall affirm the determination of the magistrate unless that determination is found to be clearly erroneous or contrary to law.

MR 4

DISPOSITIVE PRETRIAL AND OTHER MATTERS

(a) In accordance with 28 U.S.C. §636(b)(1)(B) and (C), the full-time magistrates in this district may, upon reference by a district judge, in a case pending before the

district judge, hear, conduct such evidentiary hearings as are deemed necessary or appropriate by the magistrate, and submit to the referring district judge proposed findings of fact and/or a report and recommendation for the disposition of:

(1) Applications for post-trial relief made by individuals convicted of criminal offenses;

(2) Prisoner petitions challenging conditions of confinement;

(3) Motions for injunctive relief (including temporary restraining orders and preliminary injunctions), for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by a defendant, to suppress evidence in a criminal case, to dismiss or permit the maintenance of a class action, to dismiss for failure to state a claim upon which relief may be granted, to involuntarily dismiss an action, and for review of default judgments;

(4) Petitions or applications for judicial review of administrative determinations;

(5) Hearings to determine mental competency pursuant to 18 U.S.C. §4244, in cases to be tried by a district judge.

(6) Petitions to enforce compliance with a summons issued by the Internal Revenue Service, pursuant to 26 U.S.C. §§7402(b) and 7604(a).

(b) In considering prisoner applications for post-trial relief under Paragraph (a)(1), the magistrates may perform all the duties imposed on a judge in the Rules governing §2254 and §2255 proceedings. In so doing, a magistrate may issue any preliminary orders, and conduct any necessary evidentiary hearing or other appropriate proceeding. Any

order disposing of the petition may only be made by a judge.

(c) Any party may object to the magistrate's proposed findings, recommendations or report issued under this rule within ten days after being served with a copy thereof. Such party shall file with the Clerk of Court, and serve on all parties and the district judge and magistrate, written objections which shall specifically identify the portions of the proceedings as the district judge may require. The district judge shall make a de novo determination of those portions to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The district judge, however, need not normally conduct a new hearing and may consider the record developed before the magistrate, 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 with instructions.

MR 5

SPECIAL MASTER REFERENCES

In accordance with 28 U.S.C. §636(b)(2), the full-time magistrates in this district, upon reference by a district judge, may, without additional compensation:

(a) Serve as special master pursuant to Rule 53 of the Federal Rules of Civil Procedure;

(b) Serve as special master to try the issues in employment discrimination cases under Title VII of the Civil Rights Act of 1964, as amended [42 U.S.C. §2000(e)(5)(F)(5)], without regard to the provisions of Rule 53(b),

whenever the district judge determines that the case could not be scheduled for trial within one hundred and twenty (120) days after issue is joined;

(c) Serve as special master to try the issues in any civil case upon consent of the parties, without regard to the provisions of Rule 53(b).

In any civil case in which a full-time magistrate serves as a special master, the entry of final judgment shall be made by or at the direction of a district judge.

MR 6

REFERENCES TO FULL-TIME MAGISTRATES

(a) References of matters provided for in Rules MR 3 through 5, supra, shall be made in such manner as the chief judge of the district shall from time to time determine.

(b) The Magistrate to whom any such matter is referred shall establish the procedure for determination of any and all motions, for holding pretrial conferences, and for trial, and shall make any further necessary orders consistent with the requirements of these local rules and the instructions of the district judge to whom the case is assigned.

MR 7

MOTION PRACTICE BEFORE MAGISTRATES

With respect to any motion to be heard before a magistrate, the parties shall comply in all respects with Rules CR 5, 6(d), and 7(b) and (c) of this court's local rules except for the following:

(a) All motions shall be noted for 9:00 a.m. on the Friday appointed for consideration of the motions.

(b) Motions will be ruled upon without oral argument unless the magistrate otherwise orders. The magistrate will consider a request for oral argument made by either party. A request for oral argument by the moving party shall be included in the motion. If the moving party fails to request oral argument, the opposing party may file and serve a written request therefor within seven calendar days from the date on which he was served with a copy of the motion.

(c) Where local rule CR 5(a) requires that papers "be delivered to the chambers of the court before whom the case is pending," such papers shall be delivered to the chambers of the magistrate.

MR 8

COMMITMENT UNDER TITLE III
NARCOTIC ADDICT REHABILITATION ACT

Every petition for commitment of a person as a narcotic addict under Title III of the Narcotic Addict Rehabilitation Act, 42 U.S.C. §§3411-3426, shall be referred by the Clerk to a full-time magistrate in this district, unless no such magistrate is readily available. The magistrate shall conduct all necessary proceedings, in connection with such petitions, shall record such proceedings and shall submit proposed findings of fact and a report and recommendation for the disposition thereof to a district judge. Any party may object to the proposed findings and report and recommendation as provided in local Magistrates' Rule MR 4(c).

OTHER DUTIES OF FULL-TIME MAGISTRATES

The full-time magistrates in this district shall also:

(a) Conduct pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings when requested by a district judge;

(b) Conduct arraignments in criminal cases not triable by the magistrate to the extent of taking a not-guilty plea, in accordance with a schedule set by the magistrates;

(c) Receive grand jury returns in accordance with Rule 6(f) of the Federal Rules of Criminal Procedure when requested by a district judge;

(d) Conduct voir dire examination and impanel petit juries when requested by a district judge;

(e) Accept petit jury verdicts in civil and criminal cases when requested by or on behalf of a district judge;

(f) Conduct all proceedings relating to charges of probation violation except final revocation hearings for defendants sentenced by district judges;

(g) Have authority to order the exoneration or forfeiture of bonds;

(h) Conduct proceedings for the collection of civil penalties of not more than $200.00 assessed under the Federal Boat Safety Act of 1971 as provided in 46 U.S.C. §1484(d);

(i) Conduct examinations of judgment debtors, in accordance with Rule 69 of the Federal Rules of Civil Procedure;

(j) Establish, and from time to time amend, a schedule of fixed sums (bail schedule) to be paid in lieu of appearance in cases involving petty offenses as defined in

18 U.S.C. §1(3), and designating for which such offenses court appearance shall be mandatory;

(k) Hear and determine applications by the United States to enter premises to effect a levy as provided in 26 U.S.C. §6331;

(l) Have authority to rule upon objections to the taxing of costs;

(m) Have authority to enter orders and otherwise act on behalf of this court with respect to petitions for enforcement of subpoenas issued pursuant to the Federal Energy Administration Act of 1974, 15 U.S.C. §761, et seq.;

(n) Have authority to order the sealing and unsealing of documents by the Clerk of the Court;

(o) Have authority to order the preparation by the court reporters of this court of such transcripts of proceedings in this court as the magistrate deems necessary to a determination of any matter to be considered by him; and

(p) 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 appoint counsel in such cases.

MR 10

ADMINISTRATION OF CRIMINAL JUSTICE ACT PLAN

The magistrates in this district, when and as requested, shall assist the district judges in the administration of the Criminal Justice Act Plan for the district. The magistrates shall have concurrent authority with the district judges to:

(a) Supervise the panel of attorneys;

(b) Determine the eligibility of a defendant to have counsel appointed;

(c) Appoint counsel;

(d) Examine and act upon vouchers submitted by appointed counsel.

MR 11

REVIEW OF CONDITIONS OF RELEASE

Applications for review of conditions of release in all criminal cases shall be heard by a magistrate unless otherwise directed by a district judge.

MR 12

REVIEW BY DISTRICT COURT

Rulings, orders, or other actions by a Magistrate in this District, review of which is not otherwise specifically provided for by law or these rules shall, nevertheless, be subject to review by the District Court as follows:

Any party may file and serve, not later than 10 days thereafter, an application for a review of the Magistrate's action by the District Judge having jurisdiction. Copies of such application shall be served promptly upon the other parties, the District Judge, and the Magistrate.

After conducting whatever further proceedings as he deems appropriate, the District Judge may adopt or reject, in whole or in part, the action taken by the Magistrate, or take such other action as he deems appropriate.

MR 13

CIVIL TRIALS BEFORE MAGISTRATES
BY CONSENT OF PARTIES, 28 U.S.C. §636(c)

(a) General Authority. Upon the consent of the parties, and upon the entry of an order of reference by a district

judge, a full-time magistrate 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 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 posttrial motions which are filed by the parties, including case-dispositive motions.

(b) Eligibility of a Case for Reference. Each District Judge shall designate specific cases as eligible for reference to a magistrate, if the parties consent, pursuant to 28 U.S.C. §636(c) and this rule. The number of cases so designated, and the general manner of selecting cases, shall be determined from time to time by the Chief Judge and the other district judges in this court. The Court will refer to the magistrates, pursuant to 28 U.S.C. §636(c), only cases which have been so designated and in which all parties have filed a timely written consent.

(c) 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). When a case is designated as eligible for reference to a magistrate, the Clerk shall so notify all parties in writing, and shall furnish a consent form to counsel for plaintiff.

(d) 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

within 30 days after the date the Clerk mailed notice to the parties. 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 of court. No consent will be made available, nor will its contents be made known to any judge or magistrate, unless all parties have consented to the reference to a magistrate. 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.

(e) 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 to consider the case for reference to a magistrate. The magistrate to whom a specific case is to be assigned shall be determined in accordance with directions from the Chief Judge. Once 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 of court to enter a final judgment in the same manner as if a judge had presided. An order of reference can be vacated upon a proper showing, pursuant to 28 U.S.C. §636(c)(6).

(f) Appeal.

1. Appeal to the Court of Appeals.

Upon entry of judgment at the direction of a

magistrate pursuant to this rule, any appeal shall be taken directly to the United States Court of Appeals for the Ninth Circuit, in the same manner as an appeal from any other judgment of this court, except as provided in MR 13(f)(2).

2. Appeal to a District Judge.

A. Notice of Appeal.

In accordance with 28 U.S.C. §636(c)(4), at the time of reference to a magistrate the parties may further consent to appeal any judgment in a civil case disposed of by a magistrate to a judge of this court, 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 court within 30 days after entry of the magistrate's judgment; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days of entry of the judgment. For good cause shown, the magistrate or a judge may extend the time for filing the notice of appeal for an additional 20 days. Any request for such extension, however, must be made before the original time period for such appeal has expired. In the event a motion for a new trial is timely filed, the time for appeal from the judgment of the magistrate shall be extended to 30 days from the date of the ruling on the motion for a new trial, unless a different period is provided by the Federal Rules of Civil or Appellate Procedure.

B. Service of the Notice of Appeal.

The clerk of court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel

of record for all parties other than the appellant, or if a party is not represented by counsel to the party at his last known address.

C. Record on Appeal.

The record on appeal to a judge shall consist of the original papers and exhibits filed with the court and the transcript of the proceedings before the magistrate, if any. Every effort shall be made by the parties, counsel, and the court to minimize the production and costs of transcriptions of the record, and otherwise to render the appeal expeditious and inexpensive, as mandated by 28 U.S.C. §636(c)(4).

D. Memoranda.

The appellant shall within 30 days of the filing of the notice of appeal file a typewritten memorandum with the clerk, together with two additional copies, stating the specific facts, points of law, and authorities on which the appeal is based. The appellant shall also file a copy of the memorandum on the appellee or appellees. The appellees shall file an answering memorandum within 30 days of the filing of the appellant's memorandum. 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 memorandum within the time provided by this rule, or any extension thereof, the court may dismiss the appeal.

E. 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 to the court of appeals and may affirm, reverse, or modify the magistrate's judgment, or remand with instructions for further proceedings. The judge shall accept the magistrate's findings of fact unless they are clearly erroneous, and shall give due regard to the opportunity of the magistrate to judge the credibility of the witnesses.

DATED this 15th day of July, 1980.

Walter T. McGovern
Chief United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge