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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) GENERAL ORDER
Magistrates Rules ("MRs"))
)

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

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

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

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

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

18 (e) Supervise proceedings conducted pursuant to
19 letters rogatory, in accordance with 28 U.S.C. §1792, when
20 designated to do so by a district judge;

21 (f) Accept waivers of indictment, pursuant to Rule
22 7(b) of the Federal Rules of Criminal Procedure;

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

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

29 (i) Grant, upon an appropriate showing, warrants
30 authorizing entry on premises by officers of the United
31 States to conduct worksite inspections and investigations
32

1 in enforcement of the Occupational Safety and Health Act of
2 1970 (29 U.S.C. §§651 et seq);

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

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

10 MR 2

11 RULES OF PRACTICE AND PROCEDURE
12 IN MISDEMEANOR CASES

13 (a) The practice and procedure for the trial of
14 misdemeanor cases before magistrates, and for the taking
15 and hearing of appeals therefrom to the district court,
16 shall conform to the provisions of 18 U.S.C. §§3401 and
17 3402, the "Rules of Procedure for the Trial of Misdemeanors
18 before United States Magistrates," and of any other rules
19 promulgated by the Supreme Court pursuant to 18 U.S.C.
20 §3402.

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

30 (c) Payment of the sums fixed in this court's Petty
31 Offense Bail Schedule may be accepted in lieu of appearance
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1 and as authorizing termination of the proceedings. Where
2 such proceedings involve a charge of moving traffic
3 violations, the Clerk shall transmit a copy of the charge
4 to the appropriate state's driver licensing authority, and
5 identify it as a record of conviction.

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7 MR 3

8 NON-DISPOSITIVE PRETRIAL MATTERS

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

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

27 MR 4

28 DISPOSITIVE PRETRIAL AND OTHER MATTERS

29 (a) In accordance with 28 U.S.C. §636(b)(1)(B) and (C),
30 the full-time magistrates in this district may, upon
31 reference by a district judge, in a case pending before the
32

GENERAL ORDER

Page -4-

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

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

8 (2) Prisoner petitions challenging conditions of
9 confinement;

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

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

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

23 (6) Petitions to enforce compliance with a summons
24 issued by the Internal Revenue Service, pursuant to 26 U.S.C.
25 §§7402(b) and 7604(a).

26 (b) In considering prisoner applications for post-trial
27 relief under Paragraph (a)(1), the magistrates may perform
28 all the duties imposed on a judge in the Rules governing
29 §2254 and §2255 proceedings. In so doing, a magistrate
30 may issue any preliminary orders, and conduct any necessary
31 evidentiary hearing or other appropriate proceeding. Any
32

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

3 (c) Any party may object to the magistrate's proposed
4 findings, recommendations or report issued under this rule
5 within ten days after being served with a copy thereof.
6 Such party shall file with the Clerk of Court, and serve
7 on all parties and the district judge and magistrate,
8 written objections which shall specifically identify the
9 portions of the proceedings as the district judge may
10 require. The district judge shall make a de novo
11 determination of those portions to which objection is made
12 and may accept, reject, or modify, in whole or in part,
13 the findings or recommendations made by the magistrate.
14 The district judge, however, need not normally conduct a
15 new hearing and may consider the record developed before
16 the magistrate, making his own determination on the basis
17 of that record. The district judge may also receive
18 further evidence, recall witnesses or recommit the matter
19 to the magistrate with instructions.

20
21 MR 5

22 SPECIAL MASTER REFERENCES

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

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

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

32 GENERAL ORDER
Page -6-

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

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

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

10
11 MR 6

12 REFERENCES TO FULL-TIME MAGISTRATES

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

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

23 MR 7

24 MOTION PRACTICE BEFORE MAGISTRATES

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

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

31
32 GENERAL ORDER

Page -7-

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

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

14
15 MR 8

16 COMMITMENT UNDER TITLE III
17 NARCOTIC ADDICT REHABILITATION ACT

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

30
31 GENERAL ORDER
32 Page -8-

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

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

3 (k) Hear and determine applications by the United
4 States to enter premises to effect a levy as provided in
5 26 U.S.C. §6331;

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

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

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

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

19 (p) Perform the functions specified in 18 U.S.C.
20 §4107, 4108 and 4109, regarding proceedings for verifica-
21 tion of consent by offenders to transfer to or from the
22 United States, and appoint counsel in such cases.

23
24 MR 10

25 ADMINISTRATION OF CRIMINAL JUSTICE ACT PLAN

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

31 (a) Supervise the panel of attorneys;

32 GENERAL ORDER
Page -10-

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

3 (c) Appoint counsel;

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

6
7 MR 11

8 REVIEW OF CONDITIONS OF RELEASE

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

12 MR 12

13 REVIEW BY DISTRICT COURT

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

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

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

27
28 MR 13

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

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

1 judge, a full-time magistrate may conduct any or all
2 proceedings in any civil case which is filed in this court,
3 including the conduct of a jury or nonjury trial, and may
4 order the entry of final judgment, in accordance with
5 28 U.S.C. §636(c). In the course of conducting such
6 proceedings upon consent of the parties, a magistrate
7 may hear and determine any and all pretrial and posttrial
8 motions which are filed by the parties, including case-
9 dispositive motions.

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

20 (c) Notice to Parties. These rules shall constitute
21 general notice to all parties in civil cases in this court
22 of the procedures governing references to magistrates for
23 trial by consent of the parties. 28 U.S.C. §636(c)(2).
24 When a case is designated as eligible for reference to a
25 magistrate, the Clerk shall so notify all parties in
26 writing, and shall furnish a consent form to counsel for
27 plaintiff.

28 (d) Execution of Consent. A case shall be considered
29 by a district judge for reference to a magistrate only if
30 a consent form, executed without limitation or qualification
31 on behalf of every party, has been received by the Clerk
32

1 within 30 days after the date the Clerk mailed notice
2 to the parties. The clerk shall not accept a consent form
3 unless it has been signed by all the parties in a case.
4 The plaintiff shall be responsible for securing the
5 execution of a consent form by the parties and for filing
6 such a form with the clerk of court. No consent will be
7 made available, nor will its contents be made known to
8 any judge or magistrate, unless all parties have consented
9 to the reference to a magistrate. No magistrate, judge,
10 or other court official may attempt to persuade or induce
11 any party to consent to the reference of any matter to a
12 magistrate. This rule, however, shall not preclude a
13 judge or magistrate from informing the parties that the
14 case is or might become eligible for reference to a
15 magistrate.
16

17 (e) Reference. After the consent form has been
18 executed and filed, the clerk shall transmit it to the
19 judge to whom the case has been assigned to consider the
20 case for reference to a magistrate. The magistrate to
21 whom a specific case is to be assigned shall be determined
22 in accordance with directions from the Chief Judge. Once
23 the case has been assigned to a magistrate, the magistrate
24 shall have the authority to conduct any and all proceedings
25 and to direct the clerk of court to enter a final judgment
26 in the same manner as if a judge had presided. An order
27 of reference can be vacated upon a proper showing, pursuant
28 to 28 U.S.C. §636(e)(6).

29 (f) Appeal.

30 1. Appeal to the Court of Appeals.

31 Upon entry of judgment at the direction of a

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

6 2. Appeal to a District Judge.

7 A. Notice of Appeal.

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

28 B. Service of the Notice of Appeal.

29 The clerk of court shall serve notice of the filing
30 of a notice of appeal by mailing a copy thereof to counsel
31

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

4 C. Record on Appeal.

5 The record on appeal to a judge shall consist of the
6 original papers and exhibits filed with the court and the
7 transcript of the proceedings before the magistrate, if
8 any. Every effort shall be made by the parties, counsel,
9 and the court to minimize the production and costs of
10 transcriptions of the record, and otherwise to render
11 the appeal expeditious and inexpensive, as mandated by
12 28 U.S.C. §636(c)(4).

13 D. Memoranda.

14 The appellant shall within 30 days of the filing of
15 the notice of appeal file a typewritten memorandum with
16 the clerk, together with two additional copies, stating
17 the specific facts, points of law, and authorities on
18 which the appeal is based. The appellant shall also file
19 a copy of the memorandum on the appellee or appellees.
20 The appellees shall file an answering memorandum within
21 30 days of the filing of the appellant's memorandum. The
22 court may extend these time limits upon a showing of
23 good cause made by the party requesting the extension.
24 Such good cause may include reasonable delay in the
25 preparation of any necessary transcript. If an appellant
26 fails to file his memorandum within the time provided by
27 this rule, or any extension thereof, the court may dismiss
28 the appeal.

29 E. Disposition of the Appeal by a Judge.

30 The judge shall consider the appeal on the record,
31 in the same manner as if the case had been appealed from
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1 a judgment of the district court to the court of appeals
2 and may affirm, reverse, or modify the magistrate's
3 judgment, or remand with instructions for further
4 proceedings. The judge shall accept the magistrate's
5 findings of fact unless they are clearly erroneous,
6 and shall give due regard to the opportunity of the
7 magistrate to judge the credibility of the witnesses.

8 DATED this 15th day of July, 1980.

9
10 Walter T. DeLoach
11 Chief United States District Judge

12
13 James H. Hutto Donald S. Branson
14 United States District Judge United States District Judge

15
16 John E. Thomas Wm. E. Miller
17 United States District Judge United States District Judge