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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

Administrative Order No. 2003-10

IN RE: ORDER AMENDING LOCAL RULE 72.1

Pursuant to the rule-making authority granted the court by 28 U.S.C. § 2071, and in conformity with and subject to the limitations of section 636, title 28, of the United States Code, Local Rule 72.1 is hereby deleted in its entirety, and substituted by the following:

UNITED STATES MAGISTRATE JUDGES

(a) Duties under 28 U.S.C. § 636(a). The United States Magistrate Judges for this district are authorized to perform and shall, without specific orders of reference, discharge all duties set out in 28 U.S.C. § 636(a) as follows:

(1) all powers and duties conferred or imposed upon United States commissioners by law or by the Rules of Criminal Procedure for the United States District Courts;

(2) the power to administer oaths and affirmations, issue orders pursuant to section 3142 of title 18 concerning release or detention of persons pending trial, and take acknowledgments, affidavits, and depositions;

(3) the power to conduct trials under section 3401, title 18 Untied States Code, in conformity with and subject to the limitations of that section;

(4) the power to enter a sentence for a petty offense; and

(5) the power to enter a sentence for a Class A misdemeanor in a case in which the parties have consented.

(b) Duties under 28 U.S.C. § 636(b). In addition to the powers and duties set forth in 28 U.S.C. § 636(a), the United States

Magistrate Judges for this district are hereby authorized, pursuant to 28 U.S.C.§ 636(b), to perform any and all additional duties, as may be assigned to them from time to time by any judge of this court, which are not inconsistent with the Constitution and laws of the United States.

The assignment of duties to the United States Magistrate Judges by the judges of this district may be made by standing order entered jointly by the district judges in this district or by any individual judge, in any case or cases assigned to him, through written order of reference or oral directive made or given with respect to such case or cases.

The duties authorized to be performed by the United States Magistrate Judges, when assigned to them pursuant to subsection (b) of this rule, shall include, but are not limited to:

(1) Issuance of search warrants upon a determination that probable cause exists, pursuant to Fed.R.Crim.P. 41, issuance of orders for a pen register, a trap and trace device, or other surveillance device pursuant to 18 U.S.C. §§ 3122 & 3123, issuance of administrative search warrants upon proper application meeting the requirements of applicable law, and acceptance of returns of search warrants.

(2) Processing of complaints and issuing appropriate summonses or arrest warrants for the named defendants. (Fed.R.Crim.P. 4.)

(3) Conducting initial appearance proceedings, bond and detention hearings, and issuing orders of release or detention for defendants. (Fed.R.Crim.P. 5 and 18 U.S.C. § 3146.)

(4) Appointment of counsel for qualified persons pursuant to this district's Criminal Justice Act Plan and approval of attorneys' compensation and expense vouchers. (18 U.S.C. Section 3006A; Fed.R.Crim.P. 44.)

(5) Conducting full preliminary hearings. (Fed.R.Crim.P. 5.1 and 18 U.S.C. § 3060.)

(6) Conducting removal hearings for defendants charged in other districts, including the issuance of warrants of removal. (Fed.R.Crim.P. 5.)

(7) Issuance of writs of habeas corpus ad testificandum and habeas corpus ad prosequendum. (28 U.S.C. § 2241(c)(5).)

(8) Release or detention of material witnesses and holding others to security of the peace and for good behavior. (18 U.S.C. § 3149 and 18 U.S.C. § 3043.)

(9) Issuance of warrants and conducting extradition proceedings pursuant to 18 U.S.C. § 3184.

(10) Conducting proceedings for the discharge of indigent prisoners or persons imprisoned for debt under process or execution issued by a federal court. (18 U.S.C. § 3569 and 28 U.S.C. § 2007).

(11) Issuance of an attachment or other orders to enforce obedience to an Internal Revenue Service summons to produce records or give testimony. (26 U.S.C. § 7604(a) and (b)).

(12) Conducting post-indictment arraignments, acceptance of not guilty pleas, acceptance of guilty pleas in petty offense cases, and, with the consent of the defendant, in Class A misdemeanor cases and in felony cases, and the ordering of a presentence investigation report concerning any defendant who signifies the desire to plead guilty. (Fed.R.Crim.P. 10, 11(a) and 32(i) and (j).)

(13) Accepting returns of indictments by the grand juries, issuance of process thereon, setting conditions for release on indictments and informations, and, on motion of the United States, ordering dismissal of an indictment or any separate count thereof. (Fed.R.Crim.P. 6(f) and 48(a).)

(14) Supervision and determination of all pretrial proceedings and motions made in criminal cases including, without

limitation, motions and orders made pursuant to Fed.R.Crim.P. 12, 12.2(c), 15, 16, 17, 17.1 and 28, 18 U.S.C. § 4244, orders determining excludable time under 18 U.S.C. § 3161, and orders dismissing a complaint without prejudice for failure to return a timely indictment under 18 U.S.C. § 3162; except that a magistrate judge shall not grant a motion to dismiss or quash an indictment or information made by the defendant, or a motion to suppress evidence, but may make proposed findings of facts and recommendations to the district judges concerning them.

(15) Conducting hearings and issuance of orders upon motions arising out of grand jury proceedings including orders entered pursuant to 18 U.S.C. § 6003, and orders involving enforcement or modification of subpoenas, directing or regulating lineups, photographs, handwriting exemplars, fingerprinting, palm printing, voice identification, medical examinations, and the taking of blood, urine, fingernail, hair and bodily secretion samples (with appropriate medical safeguards).

(16) Conducting preliminary and final hearings in all probation revocation proceedings, and the preparation of a report and recommendation to the district judge following an evidentiary hearing as to whether the petition should be granted or denied, and granting or denying the petition in misdemeanor cases in which the defendant has previously consented to the exercise of jurisdiction by a magistrate judge or in which the magistrate judge has jurisdiction. (Fed.R.Crim.P. 32.1 and 18 U.S.C. § 3653.)

(17) Supervision, hearing and determination of all pretrial proceedings and non-dispositive motions made in civil cases including, without limitation, rulings upon all procedural and discovery motions, and conducting Rule 16(b) pretrial conferences; except that a magistrate judge (absent a stipulation entered into by all affected parties) shall not appoint a receiver, issue an injunctive order pursuant to Fed.R.Civ.P. 65, enter an order dismissing or permitting maintenance of a class action pursuant to Fed.R.Civ.P. 23, enter any order

granting judgment on the pleadings or summary judgment in whole or in part pursuant to Fed.R.Civ.P. 12(c) or 56, enter an order of involuntary dismissal pursuant to Fed.R.Civ.P. 41(b) or (c), or enter any other final order or judgment that would be appealable if entered by a district judge of the court.

(18) Conducting hearings, preparing and submitting proposed findings of fact and recommendations for disposition in any motion excepted in subparagraph (b)(17) of this rule.

(19) Conducting all proceedings in civil suits, before or after judgment, incident to the issuance of writs of replevin, garnishment, attachment or execution pursuant to governing state or federal law, and the conduct of all proceedings and the entry of all necessary orders in aid of execution pursuant to Fed.R.Civ.P. 69.

(20) Conducting or presiding over the voir dire examination and empanelment of trial juries in civil and criminal cases and accepting jury verdicts in the absence of the presiding district judge with the consent of the parties.

(21) Processing and review of all suits instituted under any law of the United States providing for judicial review of final decisions of administrative officers or agencies on the basis of the record of administrative proceedings, and the preparation of a report and recommendation to the district judges concerning the disposition of the case.

(22) Serving as a master for the taking of testimony and evidence and the preparation of a report and recommendation for the assessment of damages in admiralty cases, non-jury proceedings under Fed.R.Civ.P. 55(b)(2), or in any other case in which a special reference is made pursuant to Fed.R.Civ.P. Rule 53.

(23) In admiralty cases, entering orders (i) appointing substitute custodians of vessels or property seized in rem; (ii) fixing the amount of security, pursuant to Rule E(5), Supplemental Rules for Certain Admiralty and Maritime Claims, which must be posted by the claimant of

a vessel or property seized in rem; (iii) in limitation of liability proceedings, for monition and restraining order including approval of the ad interim stipulation filed with the complaint, establishment of the means of notice to potential claimants and a deadline for the filing of claims; and (iv) to restrain further proceedings against the plaintiff in limitation except by means of the filing of a claim in the limitation proceeding.

(24) Appointing persons to serve process pursuant to Fed.R.Civ.P. 4(c), except that, as to in rem process, such appointments shall be made only when the Marshal has no deputy immediately available to execute the same and the individual appointed has been approved by the Marshal for such purpose.

(25) Processing and review of petitions in civil commitment proceedings under the Narcotic Addict Rehabilitation Act, and the preparation of a report and recommendation concerning the disposition of the petition.

(26) Conducting proceedings and imposition of civil fines and penalties under the Federal Boat Safety Act. (46 U.S.C. § 1484(d)).

(27) Conducting settlement conferences or other alternative dispute resolution proceedings pursuant to this district's ADR program, LR 16.1, and Fed.R.Civ.P. 16.

(28) Granting admission or enrollment of attorneys to practice before the court in this district pursuant to LR 83.1.

(29) Order competency examinations of defendants pursuant to 18 U.S.C. § 4244.

(c) Duties under 28 U.S.C. § 636(c) Civil Consent Jurisdiction. Pursuant to 28 U.S.C. § 636(c)(1), and subject to the provisions of this rule, the United States Magistrate Judges for the district are hereby specially designated and shall have jurisdiction to conduct any or all proceedings in any jury or nonjury civil matter and order the entry of judgment

in the case upon consent of the parties. The following procedures shall govern:

(1) Upon the filing of any civil case, the clerk shall deliver to the plaintiff(s) written notice of the right of the parties to consent to disposition of the case by a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c) and the provisions of this rule. The clerk shall also issue or supply at that time, for each defendant in the case, copies of such notice which shall be attached to the summons and thereafter served upon the defendant(s) in the manner provided by Fed.R.Civ.P. 4; provided, however, that a failure to serve a copy of such notice upon any defendant shall not affect the validity of the service of process or the jurisdiction of the court to proceed. If, after the initial filing of a civil case, new or additional parties enter or join in the action pursuant to the operation of any statute, rule or order of the court, the clerk shall immediately mail or otherwise deliver a copy of such notice to each such party.

(2) The written notice contemplated by subsection (c)(1) of this rule shall be in such form as the judges of the court from time to time direct. In addition, the clerk shall maintain on hand, in a form or forms to be approved by the judges of the court, written consent agreements for the use of the parties in communicating to the clerk their unanimous and voluntary consent, upon entry of an order of reference by the presiding district judge, to have all further proceedings in the case, including trial with or without a jury, and the entry of judgment, conducted by a United States Magistrate Judge.

(3) If the parties in any civil case unanimously consent to disposition of the case by a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c) and this rule, such consent must be communicated to the clerk on an appropriate form (provided by the clerk in accordance with subsection (c)(2) of this rule). The clerk shall not accept or file any consent except in the form and manner, and within the time, prescribed by this rule.

(4) In the event the parties file a unanimous consent pursuant to subsection (c)(3) of this rule, the clerk shall immediately notify the presiding district judge who will promptly (1) enter an order of reference to a United States Magistrate Judge, or (2) enter an order declining to do so; provided, however, the district judges of the court shall not decline to make an order or orders of reference for the purpose of limiting the types of cases to be tried by the United States Magistrate Judges pursuant to this rule. In making or in declining to make an order of reference the presiding district judge may consider, among other things, the current allocation of pending judicial business between the district judges of the court and the magistrate judges; the judicial economy, if any, to be gained by the reference as measured in part by the extent of prior judicial labor expended and familiarity accumulated in the case by the district judge or the magistrate judge, as the case might be; the extent to which the magistrate judge(s) may have time available to devote to the case giving due regard to the necessity of diligent performance of other judicial duties regularly assigned to the magistrate judges; and any other features peculiar to the individual case which suggest, in the interest of justice or judicial economy, that a reference should or should not be made.

(5) In any case in which an order of reference has been made, the presiding district judge may, for cause shown on his own motion, or under extraordinary circumstances shown by any party, vacate the order of reference and restore the case to the calendar of the presiding district judge.

(d) Misdemeanor Jurisdiction. Pursuant to 18 U.S.C. § 3401, the United States Magistrate Judges for this district, sitting with or without a jury, are specifically designated and shall have jurisdiction to try persons accused of, and sentence persons convicted of, petty offenses.

With consent of the parties, any of the United States Magistrate Judges for this district, sitting with or without a jury, shall have jurisdiction to try persons accused of, and sentence persons convicted of Class A misdemeanors committed

within the district whether originating under an applicable federal statute or regulation or a state statute or regulation made applicable by 18 U.S.C. § 13. Cases of Class A misdemeanors may, upon transfer into this district under Rule 20, Fed.R.Crim.P., be referred to a United States Magistrate Judge for this district for plea and sentence, upon defendant's consent.

In a petty offense case involving a juvenile, the United States Magistrate Judges for this district may exercise all powers granted to the district court under Chapter 403 of Title 18 of the United States Code. In cases of any misdemeanor, other than a petty offense involving a juvenile, in which consent to trial before a magistrate judge has been filed, a magistrate judge may exercise all powers granted to the district court under Chapter 403 of Title 18 of the United States Code.

In the trial of all cases pursuant to this subparagraph, Rule 58, Federal Rules of Criminal Procedure, governs practice and procedure.

(e) Duties under 28 U.S.C. § 636(e) Contempt Authority. Pursuant to 28 U.S.C. § 636(e), the United States Magistrate Judges for the district are hereby specially designated and shall have jurisdiction to conduct contempt proceedings and exercise the contempt authority as set forth in 28 U.S.C. § 636(e).

(f) Duties as to Pretrial Matters in Civil Cases. Pursuant to authority granted under subsection (b)(17) of this rule, the United States Magistrate Judges for this district shall, without specific order of reference, hear and determine all non-dispositive motions including, without limitation, all procedural and discovery motions and shall conduct Rule 16(b) conferences, setting all deadlines and trial date, in coordination with the presiding trial judge's staff in all cases unless the presiding trial judge by specific order directs otherwise. Except in those cases which are excluded by Local Rule 16.1(b), the United States Magistrate Judges for the district shall conduct settlement conferences pursuant to the authority granted in subsection (b)(27) of this rule only after parties have engaged in private mediation. The parties must present a certificate from a private mediator that at

least one mediation was held and the parties participated in good faith before the presiding trial judge will refer a case to the magistrate judge for a settlement conference.

(g) Appeals from or Objections to Magistrate Judges' Decisions.

(1) An appeal from an order of a magistrate judge determining a pretrial matter shall be filed with the clerk and served on opposing counsel within ten days after being served with a copy of the order. The presiding district judge may reconsider any order determining a pretrial matter where it has been shown that the magistrate judges' order is clearly erroneous or contrary to law.

(2) In any case in which the magistrate judge is not authorized to enter a determination pursuant to 28 U.S.C. § 636 or any standing or special order of the court entered thereunder, but is authorized or directed to submit proposed findings of facts and recommendations to the district judge to whom the case has been assigned, a copy of such proposed findings of facts and recommendations shall be furnished, upon filing, to the district judge and to all parties. Within ten (10) days after such service, any party may file and serve written objections thereto. The 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. The district judge may accept, reject, or modify in whole or in part, the findings and recommendation of the magistrate judge. The district judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

(3) Upon the entry of judgment in any civil case disposed of by a magistrate judge on consent of the parties under 28 U.S.C. § 636(c), an aggrieved party may appeal directly to the United States Court of Appeals for the Sixth Circuit in the same manner as an appeal from any other judgment of this court.

(4) The appeal of an order of contempt issued by a magistrate judge for this district shall be made to the United States Court of Appeals for the Sixth Circuit in cases

proceeding on consent of the parties under 28 U.S.C. § 636(c). The appeal of any other order of contempt issued by a magistrate judge for this district shall be made to the district court.

(h) **<u>No limitation.</u> Nothing in this rule shall be construed to limit or affect the right of any judge or judges of the court to assign judicial duties or responsibilities to a United States Magistrate Judge with or without the consent of the parties.**

The Clerk of Court shall cause notice of this amendment to be published for a period of thirty days, and thereafter furnish a copy of Amended Local Rule 72.1 to the Judicial Council of the Sixth Circuit.

DONE and ORDERED at Jackson, Tennessee, on this 1st day of April, 2003.

FOR THE COURT: James D. Todd

James D. Todd
Chief United States District Judge