
**LOCAL RULES OF COURT
FROM THE US DISTRICT COURT, FLORIDA, MIDDLE DISTRICT
[CHAPTER SIX]**

{AS OF: 12/1/2009}
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CHAPTER SIX | LOCAL RULES OF COURT | USFLMD

RULES: 6.01 through 6.05

TITLE: UNITED STATES MAGISTRATE JUDGES

Rule 6.01 | DUTIES OF UNITED STATES MAGISTRATE JUDGES

(a) In addition to the powers and duties set forth in 28 U.S.C. Section 636(a), the United States Magistrate Judges are hereby authorized, pursuant to 28 U.S.C. Section 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.

(b) The assignment of duties to United States Magistrate Judges by the judges of the Court may be made by standing order entered jointly by the resident judges in any Division of the Court; or by any individual judge, in any case or cases assigned to him, through written order or oral directive made or given with respect to such case or cases.

(c) The duties authorized to be performed by 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 Rule 41, Fed.R.Cr.P., and issuance of administrative search warrants upon proper application meeting the requirements of applicable law.

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

(3) Conduct of initial appearance proceedings for defendants, informing them of their rights, admitting them to bail and imposing conditions of release. (Rule 5, Fed.R.Cr.P. and 18 U.S.C. Section 3146)

(4) Appointment of counsel for indigent persons and administration of the Court's Criminal Justice Act Plan, including maintenance of a register of eligible attorneys and the approval of attorneys' compensation and expense vouchers. (18 U.S.C. Section 3006A; Rule 44, Fed.R.Cr.P.; and Rule 4.13(a) of these rules)

(5) Conduct of full preliminary examinations. (Rule 5.1, Fed.R.Cr.P. and 18 U.S.C. Section 3060)

(6) Conduct of removal hearings for defendants charged in other districts, including the issuance of warrants of removal. (Rule 40, Fed.R.Cr.P.)

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

(8) Setting of bail for material witnesses and holding others to security of the peace and for good behavior. (18 U.S.C. Section 3149 and 18 U.S.C. Section 3043)

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

(10) The discharge of indigent prisoners or persons imprisoned for debt under process or execution issued by a federal court. (18 U.S.C. Section 3569 and 28 U.S.C. Section 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. Section 7604(a) and (b))

(12) Conduct of post-indictment arraignments, acceptance of not guilty pleas, acceptance of guilty pleas in felony cases with the consent of the Defendant, and the ordering of a presentence investigation report concerning any defendant who signifies the desire to plead guilty. (Rules 10, 11(a) and 32(c), Fed.R.Cr.P.)

(13) Acceptance of the return of an indictment by the grand jury, issuance of process thereon and, on motion of the United States, ordering dismissal of an indictment or any separate count thereof. (Rules 6(f) and 48(a), Fed.R.Cr.P.)

(14) Supervision and determination of all pretrial proceedings and motions made in criminal cases through the Court's Omnibus Hearing procedure or otherwise including, without limitation, motions and orders made pursuant to Rules 12, 12.2(c), 15, 16, 17, 17.1 and 28, Fed.R.Cr.P., 18 U.S.C. Section 4244, orders determining excludable time under 18 U.S.C. Section 3161, and orders dismissing a complaint without prejudice for failure to return a timely indictment under 18 U.S.C. Section 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 recommendations to the Court concerning them.

(15) Conduct of hearings and issuance of orders upon motions arising out of grand jury proceedings including orders entered pursuant to 18 U.S.C. Section 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) Conduct of preliminary and final hearings in all probation revocation proceedings, and the preparation of a report and recommendation to the Court as to whether the petition should be granted or denied. (Rule 32.1, Fed.R.Cr.P. and 18 U.S.C. Section 3653.)

(17) Processing and review of habeas corpus petitions filed pursuant to 28 U.S.C. Section 2241, et seq., those filed by state prisoners pursuant to 28 U.S.C. Section 2254, or by federal prisoners pursuant to 28 U.S.C. Section 2255, and civil suits filed by state prisoners under 42 U.S.C. Section 1983, with authority to require responses, issue orders to show cause and such other orders as are necessary to develop a complete record, including the conduct of evidentiary hearings, and the preparation of a report and recommendation to the Court as to appropriate disposition of the petition or claim.

(18) Supervision and determination of all pretrial proceedings and motions made in civil cases including, without limitation, rulings upon all procedural and discovery motions, and conducting 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 Rule 65, Fed.R.Civ.P., enter an order dismissing or permitting maintenance of a class action pursuant to Rule 23, Fed.R.Civ.P., enter any order granting judgment on the pleadings or summary judgment in whole or in part pursuant to Rules 12(c) or 56, Fed.R.Civ.P., enter an order of involuntary dismissal pursuant to Rule 41(b) or (c), Fed.R.Civ.P., or enter any other final order or judgment that would be appealable if entered by a judge of the Court, but may make recommendations to the Court concerning them.

(19) Conduct of 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 Rule 69, Fed.R.Civ.P.

(20) Conduct or preside over the voir dire examination and empanelment of trial juries in civil and criminal cases.

(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 Court 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 Rule 55(b)(2), Fed.R.Civ.P., or in any other case in which a special reference is made pursuant to Rule 53, Fed.R.Civ.P.

(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 Rule 4(c), Fed.R.Civ.P., 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) Conduct of proceedings and imposition of civil fines and penalties under the Federal Boat Safety Act. (46 U.S.C. Section 1484(d)).

Rule 6.02 | REVIEW OF MAGISTRATE JUDGES' REPORTS AND RECOMMENDATIONS

(a) In any case in which the magistrate judge is not authorized to enter an operative order pursuant to Rule 6.01, 28 U.S.C. Section 636 or any standing or special order of the Court entered thereunder, but is authorized or directed to file a report or recommendation to the District Judge to whom the case has been assigned, a copy of such report and recommendation shall be furnished, upon filing, to the District Judge and to all parties. Within fourteen (14) days after such service, any party may file and serve written objections thereto; and any party desiring to oppose such objections shall have fourteen (14) days thereafter within which to file and serve a written response. The District Judge may accept, reject, or modify in whole or in part, the report and recommendation of the magistrate judge or may receive further evidence or recommit the matter to the magistrate judge with instructions.

Rule 6.03 | MISDEMEANOR AND PETTY OFFENSES

(a) Pursuant to 18 U.S.C. Section 3401, any full time United States Magistrate Judge of this District, sitting with or without a jury, shall have jurisdiction to try persons accused of, and sentence persons convicted of, petty offenses. With consent of the parties, any full time United States Magistrate Judge of this District, sitting with or without a jury, shall have jurisdiction to try persons accused of, and sentence persons convicted of a Class A misdemeanor 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. Section 13. Cases of misdemeanors may, upon transfer into this District under Rule 20, Fed.R.Cr.P., be referred to a full time United States Magistrate Judge of this District for plea and sentence, upon defendant's consent. In a petty offense case involving a juvenile, any full time United States Magistrate Judge of 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.

(b) Any person charged with a petty offense as defined in 18 U.S.C. Section 19 may, in lieu of appearance post collateral in the amount indicated for the offense, waive appearance before a magistrate judge, and consent to forfeiture of the collateral. The offenses for which collateral may be posted and forfeited in lieu of appearance by the person charged, together with the amounts of collateral to be posted, shall be specified in standing orders of the Court, in each Division of the Court, copies of which shall be maintained in the offices of the Clerk and the magistrate judges, respectively. For all petty offenses not specified in such standing orders, the person charged must appear before a magistrate judge; and further, nothing contained in this rule shall prohibit a law enforcement officer from arresting a person for the commission of any offense, including those for which collateral may be posted and forfeited, and requiring the person charged to appear before a magistrate judge or, upon arrest, taking him immediately before a magistrate judge.

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

Rule 6.04 | RESERVED

RESERVED

Rule 6.05 | TRIAL OF CIVIL CASES

(a) Pursuant to 28 U.S.C. Section 636(c)(1), and subject to the provisions of this rule, all full time United States Magistrate Judges in the District are hereby specially designated to conduct any or all proceedings in any jury or nonjury civil matter and order the entry of judgment in the case.

(b) 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. Section 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 Rule 4, Fed.R.Civ.P.; 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.

(c) The written notice contemplated by subsection (b) 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. One form of such consent agreements shall provide for appeal to the United States Court of Appeals (28 U.S.C. Section 636(c)(3)), and another shall provide for appeal to the presiding district judge (28 U.S.C. Section 636(c)(4)).

(d) 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. Section 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) 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.

(e) In the event the parties file a unanimous consent pursuant to subsection (d) 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 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 judge may consider, among other things, the current allocation of pending judicial business between the 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 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.

(f) In any case in which an order of reference has been made, the presiding 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 judge.

(g) In all cases in which an order of reference has been made on the basis of a consent agreement providing for appeal to the presiding judge of the District Court pursuant to 28 U.S.C. Section 636(c)(4), any such appeal shall be governed by the applicable Federal Rules of Appellate Procedure relating to appeals in civil cases from the District Court to the Court of Appeals, except that Rules 30, 31(b), and 32, Fed.R.App.P., shall not apply.

(h) 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 or magistrate judges pursuant to Rule 6.01, or any standing order entered under that rule, with or without the consent of the parties.

APPENDIX

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