

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

**FILED**

APR 27 1971

CLERK, U. S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

Deputy Clerk

RE:

DUTIES OF UNITED STATES  
MAGISTRATES.

GENERAL ORDER NO. 34

PART ONE

Except as specifically provided to the contrary herein, all United States Magistrates of this Court shall perform all of the duties prescribed and authorized by the statutes establishing the position, 28 U.S.C. § 631, et seq. Without limitation to the foregoing general grant and delegation of authority, the Magistrates of this District shall have the specific powers and duties enumerated hereinafter.

I. CIVIL CASES

A. When specifically designated and empowered by a Judge of this Court, the Magistrates may perform any of the following functions as standing master as provided in F.R. Civ.P. 53 in a given case:

1. Determining valuation in land condemnation cases, or serving as a commissioner in such cases.
2. Supervising discovery in complicated lengthy cases such as patent cases, antitrust cases, class actions, and

multiple disaster cases.

3. Hearing testimony and submitting a report and findings in non-jury cases involving matters of accounting or complex computation of damages.

B. On reference from a Judge in any given case, a Magistrate may hear argument and render a recommended decision on any and all contested discovery matters and discovery motions. Included are all motions relating to discovery under Civil Rules 26-37, such as objections to interrogatories, objections to requests for admissions, motions to compel answers to interrogatories or requests for admissions, motions concerning depositions, motions for discovery, inspection, or production of documents and other materials, and motions for physical examinations or for investigations. The parties shall have a right, after service on them of the Magistrate's report and recommended decision, to make objections to the referring Judge.

C. As authorized by a Judge of the Court, a Magistrate may:

1. Conduct pretrial conferences, including signature of pretrial orders and setting the case for trial.

2. Hear and decide motions relating to security for costs.

3. Hear and decide motions to extend time to plead, or to file amended pleadings.

4. Hear and decide motions for substitution of counsel for parties.

5. Hear and decide motions to add parties, to intervene or to file third party complaints.

6. Hear and decide motions to sever or to consolidate.

7. Hear and decide motions to set aside default judgments.

## II. CIVIL MATTERS INVOLVING REVIEW OF ADMINISTRATIVE RECORD

Any case involving review of an administrative record may be referred by the Judge to whom the case is assigned to a Magistrate as a master. The Magistrate shall review the matter, hear argument thereon, and submit a report and recommended decision to the Judge. The parties shall have a right, after service on them of the Magistrate's report and recommended decision, to make objections to the Judge.

Included, but not by way of limitation, in the cases covered by this section are:

A. Actions to review administrative determinations under the Social Security Act and related statutes;

B. Civil Service cases involving such matters as adverse actions, retirement questions, and reduction in force;

C. Actions to review the administrative award of licenses and similar privileges; and

D. Immigration matters involving denial of preference classification visas.

III. CRIMINAL CASES

A. In criminal cases a Magistrate may, on reference from a Judge, hear and determine the following types of motions:

1. Motions relating to depositions, discovery, and inspection.
2. Motions relating to subpoenas.
3. Motions for appointment of interpreters or expert witnesses, including approval of payment vouchers for them.
4. Motions for a bill of particulars.
5. Motions re availability of defendant for identification or handwriting exemplars.
6. Motions for return or release of exhibits or for forfeiture or destruction after trial of exhibits containing contraband.
7. Proceedings in connection with filing and spreading of mandates and remanding into custody of defendants previously on bond pending appeal.
8. Original fixing of bail and motions for increase or reduction of bail, provided that no Magistrate shall increase or reduce any bail previously fixed by order of a Judge of this Court, other than upon the grand jury return, and no Magistrate shall hear any motion for reduction of a defendant's bail during or following his trial in this Court.

B. A Magistrate may also conduct pretrial conferences,

omnibus hearings, and related proceedings when authorized by the Judge to whom the case was assigned.

C. No Magistrate shall authorize any grant of immunity or any wire tapping or electronic surveillance, or conduct any proceeding with respect to requiring grand jury witnesses to answer questions put to them.

D. A Magistrate shall hear and determine motions by the United States Attorney for dismissal of any indictment or information as to some or all of the defendant involved, if made prior to the assignment of the case to a Judge.

#### IV. MISCELLANEOUS DUTIES

When so ordered, the Magistrates shall also perform the following miscellaneous duties:

A. Administer the Court's Criminal Justice Act plan as may be provided therein, including supervising attorneys' lists, appointing attorneys, and examining and approving vouchers;

B. Conduct research for the Court in specific areas of the law or on individual projects;

C. Coordinate the Court's efforts in such fields as rules and procedures, facilities, and arrangements for post-conviction matters;

D. Issue bench warrants after the failure to appear of any defendant or witness, including the failure of a defendant to surrender following a stay of execution of sentence.

V. ADDITIONAL POWERS AND DUTIES OF THE MAGISTRATES

A. Functions Previously Performed by United States Commissioners

All Magistrates may and shall perform the following duties and functions heretofore performed by United States Commissioners:

1. Processing complaints and issuing appropriate summonses or arrest warrants [Rule 4];

2. Issuing search warrants [Rule 41];

3. Conducting initial appearance proceedings [Rule 5(a) and (b)];

- informing the defendant of the complaint against him and all of his rights;

- placing the defendant in custody, admitting him to bail, or imposing conditions or release under 18 U.S.C. § 3146; and

- appointing counsel [18 U.S.C. § 3006A];

4. Conducting preliminary examinations [Rule 5(c)]. Unless circumstances dictate otherwise, a part-time Magistrate shall, after compliance with F.R.Crim.P. Rule 5(b) set any required preliminary examination under Rule 5(c) before a full-time or part-time Magistrate located at the place where the case is to be tried;

5. Administering oaths and taking bail, acknowledgements, affidavits, and depositions [28 U.S.C. § 636(a) (2) (1968)];
6. Setting bail for material witnesses [18 U.S.C. § 3149];
7. Holding to security of the peace and for good behavior [Rule 54(b)(3); 18 U.S.C. § 3043];
8. Conducting removal hearings and recommending issuance of warrants of removal [Rule 40];
9. Conducting extradition proceedings, except contested proceedings which shall be heard and determined by a Judge [18 U.S.C. § 3184];
10. Discharging indigent prisoners or persons imprisoned for debt under process or execution issued by a federal court [18 U.S.C. § 3569; 28 U.S.C. § 2007];
11. Instituting proceedings against persons violating certain civil rights statutes [42 U.S.C. §§ 1987, 1989, 1990];
12. Issuing an attachment or order to enforce obedience to an internal revenue summons to produce books and give testimony [26 U.S.C. § 7604(b)];
13. Settling or certifying the nonpayment of a seaman's wage [46 U.S.C. §§ 603, 604]; and
14. Enforcing awards of foreign consuls in differences between captains and crews of vessels of the

consul's nation [22 U.S.C. § 258(a)].

B. Trial of Minor Offenses

All Magistrates shall have the power to try persons accused of minor offenses committed within this judicial district as defined and limited in 18 U.S.C. § 3401 and to sentence persons convicted thereof.

Among the categories of cases falling within the above grant of jurisdiction, but without limiting the said grant, are the following:

1. All "petty offense" cases committed on federal enclaves and heretofore triable by United States Commissioners [18 U.S.C. § 3401(a) (1964)];

2. Miscellaneous offenses under the Assimilated Crimes Act committed within any place under the exclusive or concurrent jurisdiction of the United States [18 U.S.C. §§ 7, 13]; and

3. Most other misdemeanors, wherever committed, including Migratory Bird Law cases; illegal entry cases; theft of United States property or interstate shipments under \$100.00 in value; some Food and Drug Act; certain fraud and forgery cases; certain liquor law violations; and cases involving general obstruction of the mail.

Any part-time Magistrate having no facilities for the trial of any case, may set the trial before any other full-time or part-time Magistrate having the necessary facilities.

VI. TIMING OF ASSUMPTION OF FUNCTIONS

The Court recognizes that the Magistrates will require a period of time following their induction to establish proper procedures and to acquaint themselves with their numerous duties and responsibilities. Therefore, the Court desires to make provision for the gradual enlargement of their duties and functions. Immediately, the Magistrates will commence performing the functions previously performed by United States Commissioners and the trial of minor offenses. As to other powers and functions herein given to them, the Chief Judge may regulate the timing for the assumption of such powers and functions.

PART TWO

I. POST-CONVICTION DUTY JUDGE

On May 1, 1971, and thereafter one of the Judges of the Court shall be designated as the Post-Conviction Duty Judge. The Judges will serve in this capacity in rotation as provided by order of the Chief Judge, rule of Court, order of Court, or resolution of the Judges. The term of such service shall be for four months.

II. HABEAS CORPUS

The full-time Magistrates shall conduct all proceedings in connection with habeas corpus petitions filed by present or former state or federal prisoners in pro per, except the signing of orders of adjudication in such matters. Included in the aforesaid grant of authority are the following:

A. Grant or denial of the right to file in forma pauperis, except in appeals to the Court of Appeals for the Ninth Circuit;

B. Preliminary screening and ordering of exhibits and responses;

C. Legal research;

D. Taking of evidence where appropriate as a standing master as authorized in F.R.Civ.P. 53;

E. Preparation and submission of a master's report,

which shall include proposed findings of fact, conclusions of law and judgment, to the Post-Conviction Duty Judge for decision.

III. MOTIONS PURSUANT TO 28 U.S.C. § 2255

A. Where a motion under § 2255 originates from a conviction and sentence by a Judge who is deceased, or a Senior Judge no longer accepting such motions, such motions shall be handled by the full-time Magistrates as above provided in habeas corpus cases. A master's report, which shall include proposed findings of fact, conclusions of law and judgment, shall be presented to the Post-Conviction Duty Judge for decision.

B. Where the motion originates from a conviction and sentence by an active Judge or a Senior Judge accepting such motions in his cases, the full-time Magistrates, when so ordered by the Judge involved, shall perform the same functions as above provided in habeas corpus cases, except that the master's report, proposed findings of fact, conclusions of law and judgment shall be presented for decision to the Judge involved rather than to the Post-Conviction Duty Judge.

IV. CIVIL RIGHTS COMPLAINTS FILED IN PRO PER BY INCARCERATED PLAINTIFFS

The full-time Magistrates and the Post-Conviction Duty Judge shall handle and perform all functions in connection with Civil Rights Act complaints filed in pro per by incarcerated

plaintiffs as above provided in habeas corpus cases. Any trial required shall be held by the Post-Conviction Duty Judge in whose term the complaint was filed.

V. MANDAMUS

Mandamus and other similar actions and other applications filed by federal or state prisoners in pro per shall be handled by the full-time Magistrates and the Post-Conviction Duty Judge as above provided in habeas corpus cases.

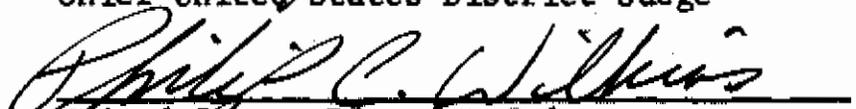
VI. SUCCESSIVE PETITIONS FOR POST-CONVICTION RELIEF

In dividing their work, the full-time Magistrates shall wherever possible arrange that all successive petitions for post-conviction relief filed by an individual be handled by the Magistrate who handled his initial petition.

VII. ASSIGNMENT OF CASES IN WHICH COUNSEL APPEAR OF RECORD

As distinguished from cases referred to in paragraphs IV and V hereof, all cases involving post-conviction relief in which counsel appear of record at the time the complaint or petition is filed shall be assigned in the same manner as any other civil case.

  
Chief United States District Judge

  
United States District Judge

  
United States District Judge

DATED: April 27, 1971.