

## **A Case for Consent**

Delay, congestion, uncertainty, and expense are terms often associated with any civil litigation. You inevitably will find that you and your client want your case to move faster and spend less money. In federal court, attorneys should be aware that the magistrate judge consent process is available to bring about the “just, speedy, and inexpensive determination” of their federal cases. Fed.R.Civ.P. 1. Should you consent to a magistrate judge? Absolutely. Here is why.

Magistrate judges have had a venerable role in the judiciary dating back to the beginning of this Country. The roots of the magistrate judge system began in the first Judiciary Act of 1789. Since that time, Congress has expanded and enhanced the position in the quest for judicial efficiency. The Federal Magistrate Act of 1968 established the Magistrate system “to reform the first echelon of the federal judiciary into an effective component of a modern system of justice.” By amendment in 1979, magistrate judges were authorized “to conduct any or all proceedings in a jury or non-jury civil matter and order the entry of judgment in the case” with the consent of the parties. 28 U.S.C. §636(c). The overall legislative purpose of giving civil consent jurisdiction to magistrate judges is to maximize access to the courts and ease court congestion through effective utilization of existing judicial resources.

Consent to magistrate judge jurisdiction provides numerous benefits to your client. Consent offers the prospect of an early, firm trial date. The right to a speedy trial in felony criminal matters requires district judges to give statutory priority to trying criminal cases. Magistrate judges do not conduct felony trials, and thus, can offer firm trial dates. Further, the assigned magistrate judge knows your case. When a civil action is filed, it is randomly assigned for all purposes to both a district judge and to a magistrate judge. In every civil case, the magistrate judge already handles non-dispositive motions and pre-trial procedures. Consent allows the magistrate judge also to decide dispositive motions and handle the pretrial conference and trial. Consent thus avoids the legal limbo parties face as district judges wade through volumes of cases, motions, and other case related filings. Moreover, if all the parties agree to consent, the magistrate judge will take over the entire case, up to and including trial and entry of judgment. The judgment may be appealed directly to the United States court of appeals like any other judgment.

Magistrate judges are well-qualified to try cases. The federal courts attract experienced, high-caliber attorneys, state court judges, and administrative law judges with diverse experience in civil and criminal litigation for magistrate judge positions. By statute, magistrate judges are screened through a selection process whereby lawyers and other residents of the judicial district comprise the merit selection. 28 U.S.C. §631(b)(5). The panel evaluates the applicants’ education, practice of law, knowledge of the court system, personal attributes and other criteria in making its recommendations. Political party affiliation plays no part in the merit selection process. The magistrate judge is then appointed by the life-tenured district judges. In the Fresno Division, the magistrate judges’ diverse experiences, from their legal practices and from their experience while presiding over civil matters including trials, make them well-qualified and knowledgeable judicial officers.

Without consent to a magistrate judge, your case comes before a district judge with a crushing caseload. The Fresno Division has one active Article III judge, Judge Lawrence J. O'Neill, and one senior Article III judge, Senior Judge Anthony W. Ishii. The Fresno Division has the same authorized number of active judges as it has had since 1979. Judge O'Neill and Judge Ishii carry twice the average weighted caseload of judges in the remaining 93 federal districts. While the weighted case load nationwide is 516 cases, Judge O'Neill and Judge Ishii shared the workload in 2011 for the 2,164 new civil cases and the 450 new criminal cases filed in the Fresno Division. Add the pending cases awaiting resolution, and the picture of two vastly busy judicial officers becomes crystal clear.

The U.S. Judicial Conference, the courts' policy-making arm, has recommended that Congress authorize six new judgeships for the district. So far, and for the foreseeable future, Congress has not acted upon the recommendation. Judge Ishii has taken Senior status, and any proposed candidate for his position is at the mercy of the political process and a reluctant-to-approve Congress. Political debate and budgetary constraints leave the Eastern District with little hope of new judgeships. Thus, all federal litigants will continue to vie for limited district judge time and attention.

If the parties decide to consent to the magistrate judge's jurisdiction, counsel simply signs and files a consent form. The form can be obtained from the Court's website: <http://www.caed.uscourts.gov/caednew/index.cfm/forms/civil/>. District judges actively encourage consent so that the parties may receive timely access to the courts.

In sum, litigants deserve justice delivered in a fair, prompt, and efficient manner. In the federal district court system, magistrate judges play a critical part in providing this justice to the parties. Consenting to magistrate judge jurisdiction in civil cases represents one of the best ways to secure "just, speedy, and inexpensive determination" for your client's case.

Magistrate Judge Barbara McAuliffe  
Magistrate Judge Gary Austin  
Magistrate Judge Jennifer Thurston  
Magistrate Judge Sheila Oberto  
Magistrate Judge Michael Seng  
Magistrate Judge Stanley Boone  
Magistrate Judge Sandra Snyder