

UNITED STATES CODE SERVICE  
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28 USCS § 636 (2004)

§ 636. Jurisdiction, powers, and temporary assignment

(a) Each United States magistrate [magistrate judge] serving under this chapter [28 USCS § 631 et seq.] shall have within the territorial jurisdiction prescribed by his appointment--

(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, United 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) (1) Notwithstanding any provision of law to the contrary--

(A) a judge may designate a magistrate [magistrate judge] to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's [magistrate judge's] order is clearly erroneous or contrary to law.

(B) a judge may also designate a magistrate [magistrate judge] to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

(C) the magistrate [magistrate judge] shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.

Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [magistrate judge]. The judge may also receive further evidence or recommit the matter to the magistrate [magistrate judge] with instructions.

(2) A judge may designate a magistrate [magistrate judge] to serve as a special master pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure for the United States district courts. A judge may designate a magistrate [magistrate judge] to serve as a special master in any civil case, upon consent of the parties, without regard to the provisions of *rule 53(b) of the Federal Rules of Civil Procedure* for the United States district courts.

(3) A magistrate [magistrate judge] may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.

(4) Each district court shall establish rules pursuant to which the magistrates [magistrate judge's] shall discharge their duties.

(c) Notwithstanding any provision of law to the contrary--

(1) Upon the consent of the parties, a full-time United States magistrate [magistrate judge] or a part-time United States magistrate [magistrate judge] who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves. Upon the consent of the parties, pursuant to their specific written request, any other part-time magistrate [magistrate judge] may exercise such jurisdiction, if such magistrate [magistrate judge] meets the bar membership requirements set forth in section 631(b)(1) [28 USCS § 631(b)(1)] and the chief judge of the district court certifies that a full-time magistrate [magistrate judge] is not reasonably available in accordance with guidelines established by the judicial council of the circuit. When there is more than one judge of a district court, designation under this paragraph shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge.

(2) If a magistrate [magistrate judge] is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of the availability of a magistrate [magistrate judge] to exercise such jurisdiction. The decision of the parties shall be communicated to the clerk of court. Thereafter, either the district court judge or the magistrate [magistrate judge] may again advise the parties of the availability of the magistrate [magistrate judge], but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. Rules of court for the reference of civil matters to magistrates [magistrate judges] shall include procedures to protect the voluntariness of the parties' consent.

(3) Upon entry of judgment in any case referred under paragraph (1) of this subsection, an aggrieved party may appeal directly to the appropriate United States court of appeals from the judgment of the magistrate [magistrate judge] in the same manner as an appeal from any other judgment of a district court. The consent of the parties allows a magistrate [magistrate judge] designated to exercise civil jurisdiction under paragraph (1) of this subsection to direct the entry of a judgment of the district court in accordance with the Federal Rules of Civil Procedure. Nothing in this paragraph shall be construed as a limitation of any party's right to seek review by the Supreme Court of the United States.

(4) The court may, for good cause shown on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate [magistrate judge] under this subsection.

(5) The magistrate [magistrate judge] shall, subject to guidelines of the Judicial Conference, determine whether the record taken pursuant to this section shall be taken by electronic sound recording, by a court reporter, or by other means.

(d) The practice and procedure for the trial of cases before officers serving under this chapter [28 USCS § § 631 et seq.] shall conform to rules promulgated by the Supreme Court pursuant to section 2072 of this title [28 USCS § 2072].

(e) Contempt authority.

(1) In general. United States magistrate judge serving under this chapter [28 USCS § § 631 et seq.] shall have within the territorial jurisdiction prescribed by the appointment of such magistrate judge the power to exercise contempt authority as set forth in this subsection.

(2) Summary criminal contempt authority. A magistrate judge shall have the power to punish summarily by fine or imprisonment, or both, such contempt of the authority of such magistrate judge constituting misbehavior of any person in the magistrate judge's presence so as to obstruct the administration of justice. The order of contempt shall be issued under the Federal Rules of Criminal Procedure.

(3) Additional criminal contempt authority in civil consent and misdemeanor cases. In any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, and in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, the magistrate judge shall have the power to punish, by fine or imprisonment, or both, criminal contempt constituting disobedience or resistance to the magistrate judge's lawful writ, process, order, rule, decree, or command. Disposition of such contempt shall be conducted upon notice and hearing under the Federal Rules of Criminal Procedure.

(4) Civil contempt authority in civil consent and misdemeanor cases. In any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, and in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, the magistrate judge may exercise the civil contempt authority of the district court. This paragraph shall not be construed to limit the authority of a magistrate judge to order sanctions under any other statute, the Federal Rules of Civil Procedure, or the Federal Rules of Criminal Procedure.

(5) Criminal contempt penalties. The sentence imposed by a magistrate judge for any criminal contempt provided for in paragraphs (2) and (3) shall not exceed the penalties for a Class C misdemeanor as set forth in sections 3581(b)(8) and 3571(b)(6) of title 18.

(6) Certification of other contempts to the district court. Upon the commission of any such act--

(A) in any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, or in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, that may, in the opinion of the magistrate judge, constitute a serious criminal contempt punishable by penalties exceeding those set forth in paragraph (5) of this subsection, or

(B) in any other case or proceeding under subsection (a) or (b) of this section, or any other statute, where--

(i) the act committed in the magistrate judge's presence may, in the opinion of the magistrate judge, constitute a serious criminal contempt punishable by penalties exceeding those set forth in paragraph (5) of this subsection,

(ii) the act that constitutes a criminal contempt occurs outside the presence of the magistrate judge, or

(iii) the act constitutes a civil contempt,

the magistrate judge shall forthwith certify the facts to a district judge and may serve or cause to be served, upon any person whose behavior is brought into question under this paragraph, an order requiring such person to appear before a district judge upon a day certain to show cause why that person should not be adjudged in contempt by reason of the facts so certified. The district judge shall thereupon hear the evidence as to the act or conduct complained of and, if it is such as to warrant punishment, punish such person in the same manner and to the same extent as for a contempt committed before a district judge.

(7) Appeals of magistrate judge contempt orders. The appeal of an order of contempt under this subsection shall be made to the court of appeals in cases proceeding under subsection (c) of this section. The appeal of any other order of contempt issued under this section shall be made to the district court.

(f) In an emergency and upon the concurrence of the chief judges of the districts involved, a United States magistrate [magistrate judge] may be temporarily assigned to perform any of the duties specified in subsection (a), (b), or (c) of this section in a judicial district other than the judicial district for which he has been appointed. No magistrate [magistrate judge] shall perform any of such duties in a district to which he has been temporarily assigned until an order has been issued by the chief judge of such district specifying (1) the emergency by reason of which he has been transferred, (2) the duration of his assignment, and (3) the duties which he is authorized to perform. A magistrate [magistrate judge] so assigned shall not be entitled to additional compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of his duties in accordance with section 635 [28 USCS § 635].

(g) A United States magistrate [magistrate judge] may perform the verification function required by section 4107 of title 18, United States Code. A magistrate [magistrate judge] may be assigned by a judge of any United States district court to perform the verification required by section 4108 and the appointment of counsel authorized by section 4109 of title 18, United States Code, and may perform such functions beyond the territorial limits of the United States. A magistrate [magistrate judge] assigned such functions shall have no authority to perform any other function within the territory of a foreign country.

(h) A United States magistrate [magistrate judge] who has retired may, upon the consent of the chief judge of the district involved, be recalled to serve as a magistrate [magistrate judge] in any judicial district by the judicial council of the circuit within which such district is located. Upon recall, a magistrate [magistrate judge] may receive a salary for such service in accordance with regulations promulgated by the Judicial Conference, subject to the restrictions on the payment of an annuity set forth in section 377 of this title [28 USCS § 377] or in subchapter III of chapter 83, and chapter 84, of title 5 [5 USCS § § 8331 et seq., 8401 et seq.] which are applicable to such magistrate [magistrate judge]. The requirements set forth in subsections (a), (b)(3), and (d) of section 631 [28 USCS § 631], and paragraph (1) of subsection (b) of such section to the extent such paragraph requires membership of the bar of the location in which an individual is to serve as a magistrate [magistrate judge], shall not apply to the recall of a retired magistrate [magistrate judge] under this subsection or section 375 of this title [28 USCS § 375]. Any other requirement set forth in section 631(b) [28 USCS § 631(b)] shall apply to the recall of a retired magistrate [magistrate judge] under this subsection or section 375 of this title [28 USCS § 375] unless such retired magistrate [magistrate judge] met such requirement upon appointment or reappointment as a magistrate under section 631 [28 USCS § 631].

#### **HISTORY:**

(June 25, 1948, ch 646, § 1, 62 Stat. 917; Oct. 17, 1968, P.L. 90-578, Title I, § 101, 82 Stat. 1112; March 1, 1972, P.L. 92-239, § § 1, 2, 86 Stat. 47; Oct. 21, 1976, P.L. 94-577, § 1, 90 Stat. 2729; Oct. 28, 1977, P.L. 95-144, § 2, 91 Stat. 1220; Oct. 10, 1979, P.L. 96-82, § 2, 93 Stat. 643; Oct. 12, 1984, P.L. 98-473, Title II, Ch I, § 208, 98 Stat. 1986; Nov. 8, 1984, P.L. 98-620, Title IV, Subtitle A, § 402(29)(B), 98 Stat. 3359; Nov. 14, 1986, P.L. 99-651, Title II, § 201(a)(2), 100 Stat. 3647; Nov. 15, 1988, P.L. 100-659, § 4(c), 102 Stat. 3918; Nov. 18, 1988, P.L. 100-690, Title VII,

Subtitle H, § 7322, 102 Stat. 4467; Nov. 19, 1988, P.L. 100-702, Title IV, § 404(b)(1), Title X, § 1014, 102 Stat. 4651, 4669 Dec. 1, 1990, P.L. 101-650, Title III, § 308(a), 104 Stat. 5112; Oct. 19, 1996, P.L. 104-317, Title II, § § 201, 202(b), 207, 110 Stat. 3848, 3849, 3850; Nov. 13, 2000, P.L. 106-518, § § 202, 203(b), 114 Stat. 2412, 2414.)  
(As amended Nov. 2, 2002, P.L. 107-273, Div B, Title III, § 3002(b), 116 Stat. 1805.)