

THE ROLE OF A UNITED STATES MAGISTRATE JUDGE IN THE ADMINISTRATION AND ADJUDICATION OF CIVIL CASES IN THE DISTRICT OF OREGON

During a recent gathering of the U.S. District Court's Ninth Circuit Lawyers Delegation, it became evident that some confusion still exists between the role of a magistrate judge as the *assigned judge*, the *dispositive authority* of a magistrate judge when all parties have filed written consents pursuant to Fed.R.Civ.P. 73(b), and the *normal appeal route* for appealing final orders and judgments entered by a magistrate judge in consent cases.

At the request of the delegation, I've been asked to write an article to help lawyers and their clients better understand:

- The unique and indispensable role played by Oregon's magistrate judges¹ in the assignment, management and trial of civil cases.**
- How magistrate judges in Oregon come to be the "assigned judge" in civil cases.**
- The scope of the magistrate judge's initial authority as the "assigned judge".**
- The jurisdictional authority provided by Fed.R.Civ.P. 73(a) which permits a magistrate judge to "conduct any or all proceedings, including a jury or non-jury trial" when parties have filed consents.**
- The "normal appeal route" for appealing final orders and judgments in consent cases.**
- The substantial monetary and time savings which accrue to litigants when they consent to a magistrate judge adjudicating their case.**

¹ Section 321 of the Judicial Improvements Act of 1990, P.L. 101-650, effective December 1, 1990, recognized the expanded nation-wide role of United States magistrates in the management and trial of civil cases. In order to encourage broader acceptance of the United States magistrates at the national level, Congress amended the Federal statutes to rename United States magistrates to magistrate judges. In the District of Oregon, however, United States magistrates have always been referred to as "judges" and are accepted by the lawyers and litigants alike as trial judges of this highest caliber.

RANDOM SELECTION OF THE "ASSIGNED JUDGE"

In the District of Oregon, the first event associated with the filing of a new civil action is the random selection of an *assigned judge*. Since 1984, resident district and magistrate judges in the Portland or Eugene divisions have been included in the pool of judicial officers available for random selection as the assigned judge.

SOLICITATION OF CONSENTS--Fed.R.Civ.P. 73

Once the assigned judge has been selected, the local rules require filing counsel to serve a copy of a "consent form" to each party served in the action. Via the consent form, each party is afforded an initial opportunity under Fed.R.Civ.P. 73(b) to consent to having a magistrate judge assume complete civil jurisdiction over the case.

In order to ensure the just, speedy and inexpensive determination of every action contemplated by Fed.R.Civ.P. 1, the Judicial Improvements Act of 1990 also modified Fed.R.Civ.P. 73(b) to permit assigned district and magistrate judges more opportunity throughout the course of litigation to encourage parties consent to a magistrate judge.

REASONS FOR ENCOURAGING CONSENTS TO MAGISTRATE JUDGES

Unlike many other district courts, consents in Oregon are encouraged for two distinctly different reasons:

- **Quality of the Magistrate Judges:** From the inception of the Federal magistrate system, Oregon has recruited state court judges and lawyers of the highest caliber. Because of their experience, Oregon magistrate judges are uniformly accepted by the practicing bar as "district judge equivalents". Oregon's selection of "trial judge quality" magistrate judges is unique in the Federal court system.
- **Statutory Priority Assigned to Criminal Cases:** Another more compelling reason for encouraging consents is the reality that pending criminal cases have relegated civil trials to "second position" in terms of the district judges' trial calendars. As a result of the ever increasing criminal caseload, Article III judges find themselves more frequently having to "double, triple or quadruple set" civil cases, while giving statutory priority to criminal cases on their trial calendars.

AUTHORITY OF THE MAGISTRATE JUDGE AS THE "ASSIGNED JUDGE"

If selected as the assigned judge in a particular case (regardless of whether consents have been filed or not), the magistrate judge will be responsible for all case management and scheduling activities and will hear and decide all non-dispositive pretrial and discovery matters and consider dispositive motions by findings and recommendation. (Fed.R.Civ.P. 72[b]).

AUTHORITY OF THE MAGISTRATE JUDGE IN "CONSENT CASES"

If consents are filed pursuant to Fed.R.Civ.P. 73(b), the magistrate judge will have the same jurisdictional authority as a United States district judge, including authority to:

- Schedule, hear and decide all dispositive and non-dispositive matters.
- Schedule, hear and decide all interlocutory matters.
- Conduct jury or non-jury trials.
- Enter final orders and judgment.
- Decide all post-trial motions.

"NORMAL APPEAL ROUTE" IN CONSENT CASES

28 U.S.C. § 636(c)(3) and Fed.R.Civ.P. 73(c) provide that the "normal appeal route" from any final order or judgment entered by a magistrate judge in "consent cases" lies directly to the United States Court of Appeals for the Ninth Circuit. This is exactly the same appeal route taken from a final order or judgment entered by a district judge.

Case law in this Circuit, and indeed throughout the Nation is clear on this point. . .if parties file a written consent to permit the magistrate judge to exercise full civil jurisdiction, then the magistrate judge can conduct any and all proceedings in that case. In turn, any subsequent appeal of a final order or judgment would lie directly to the United States Court of Appeals for the Ninth Circuit, rather than a *de novo* review by a district judge², with subsequent right of appeal to the circuit.

LIMITATIONS AND DELAYS ASSOCIATED WITH "NON-CONSENT CASES"

If consents are not filed in cases assigned to a magistrate judge, Fed.R.Civ.P. 72(b) prohibits the magistrate judge from finally deciding "dispositive matters and motions". By consenting to a magistrate judge, parties can avoid the delays and expense of the *de novo* review process, while preserving the right of appeal directly to the court of appeals.

Although not intended as a fiscal incentive to secure consents, the net effect of Fed.R.Civ.P. 72(b) is to cause all dispositive motions to first be considered by the magistrate judge, who in turn will issue a findings and recommendation to a district judge. Appeals or objections to the findings and recommendation must be filed within ten days and the entire matter will be referred to a district judge for *de novo* consideration. After decision by the district judge, the case will be returned to the assigned magistrate judge

² *Consents to permit appeals to a United States District Judge pursuant to 28 U.S.C. § 636(c)(4) [as an alternative to a direct appeal to the court of appeals pursuant to 28 U.S.C. § 636(c)(3)] are not accepted within the District of Oregon.*

for further processing until another dispositive matter is presented (at which time the cycle is repeated), or until the case is ready for trial. After discovery has been completed and the case is ready for trial, the magistrate judge in "non-consent" cases will transfer the case to a district judge for calendaring on that district judge's already over-crowded calendar, with the almost certain result of having the case "double, triple or quadruple set" for a trial date. Obviously, the additional proceedings required in "non-consent" cases delay the speedy disposition of the case. More importantly, they have the potential to increase the overall cost of litigation.

JUDICIAL COMPETENCE OF OREGON'S MAGISTRATE JUDGES

Referred to as "judges" by district judges and lawyers alike, Oregon's magistrate judges bring a wealth of litigation and trial court experience to the full range of civil cases including contract, real property, personal injury, diversity, admiralty and maritime claims, complex patent and trademark actions, anti-trust cases and labor disputes.

Given the press of criminal trial settings on district judges' calendars, magistrate judges provide an expeditious and cost effective alternative to awaiting a trial or final decision from an Article III district judge. From the lawyers' and litigants' standpoint, however, the question still remains--"will the quality of a magistrate judge's decision be of equal caliber to that of an Article III district judge?" Within the District of Oregon, the answer to that question is a resounding yes!

Acceptance of magistrate judges by lawyers and litigants alike is evidenced by the fact that during the 12 month period ending June 30, 1990, Oregon magistrate judges adjudicated 487 "consent cases" and scheduled and conducted numerous jury and non-jury trials in the full range of cases pending before the court.

CONCLUSION

It should be clear by now that within the District of Oregon, magistrate judges are integral and indispensable members of the judicial complement of this Court and, by virtue of their availability, may often times be in the best and most consistent position to assure litigants with a speedy, just, and inexpensive adjudication of each civil case, while still preserving the right of direct appeal to the court of appeals.

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