

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

Re: Reappointment of Magistrate Judge
Donald A. Scheer

Administrative Order

No. 09-AO- 036

ORDER OF REAPPOINTMENT

It appearing that the current term of United States Magistrate Judge Donald A. Scheer expires on February 28, 2010; and

It further appearing that Magistrate Judge Scheer has requested reappointment for another eight-year term beginning March 1, 2010 and continuing until February 28, 2018; and

It further appearing that a Magistrate Judge Merit Selection Panel appointed by this Court has recommended reappointment of Magistrate Judge Scheer (copy attached); and

It further appearing that the Judges of this Court at their regular meeting on October 5, 2009 approved the reappointment of Magistrate Judge Scheer, and have authorized the Chief Judge to enter this Order of Reappointment for the Court;

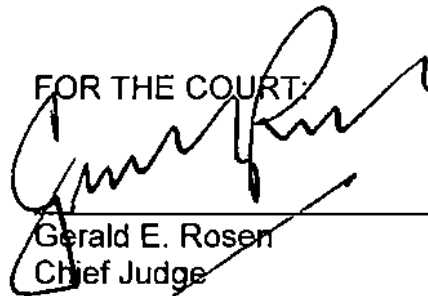
NOW, THEREFORE, IT IS ORDERED that United States Magistrate Judge Donald A. Scheer is hereby reappointed for a third term beginning March 1, 2010 and continuing until February 28, 2018.

FILED

'09 OCT -6 P1 51

U.S. DIST. COURT CLERK,
EAST DIST. MICH.
DETROIT-PSG

FOR THE COURT:



Gerald E. Rosen
Chief Judge

Attachment

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

REPORT & RECOMMENDATION OF THE MERIT SELECTION
PANEL CONSIDERING THE REAPPOINTMENT OF
UNITED STATES MAGISTRATE JUDGE DONALD A. SCHEER

Pursuant to Administrative Order 09-AO-019, the Court appointed this Merit Selection Panel to consider the reappointment of United States Magistrate Judge Donald A. Scheer, whose term expires on February 28, 2010, to a new eight-year term.

The panel met on August 31, 2009 and September 21, 2009, to consider the reappointment. On August 31, 2009 the panel reviewed the summary of responses from randomly selected attorneys to an evaluation questionnaire concerning Magistrate Judge Scheer's performance in court and in his written work product. Limited written correspondence received was also considered. The panel also reviewed the Summary of Magistrate Judge's Workload reports for August 2008 through July 2009.

During the initial meeting the discussion focused on the respective experience that the panel members have had with Magistrate Judge Scheer. Positive comments from the committee members included observations that Magistrate Judge Scheer is eminently fair (criminal cases), pragmatic, maintains "no agenda", well prepared, open minded and maintains the utmost professionalism. Additional discussion touched on a possible defense orientation in discovery matters, close calls on privilege concerns and a possibility of a "pro-employee" tendency in group employment cases with recognition of Magistrate Judge Scheer's open-mindedness and that he strives to "do the right thing"

The non-attorney members of the committee felt that personal background in the form of a resume' would be helpful in their evaluation. The committee also agreed that samples of Magistrate Judge Scheer's written opinions in criminal and civil cases, including a sample of opinions in which his decision was reversed would be beneficial in our ultimate recommendation. It was decided that a request be made for written opinions by Magistrate Judge Scheer in civil and criminal cases (three each). Additionally, for decisions in five cases in which Magistrate Judge Scheer's report and recommendation was overturned by the assigned judge.

Finally, a concern was raised regarding what appeared to be a fairly significant disparity in the number of dispositive motions that were referred to Magistrate Judge Scheer. It appeared that a much greater number of those types of issues were being referred to other Magistrate Judges over the last year. The committee requested information from Mr. Weaver that would address that observation.

Following receipt of the information from Mr. Weaver, the Committee again met on September 21, 2009. The Committee met with Magistrate Judge Scheer who provided additional information regarding his background. During his interview, the panel found Magistrate Judge Scheer's responses and demeanor to be appropriate. Judge Scheer advised that he would be eligible to retire prior to the expiration of his reappointment term.

Magistrate Judge Scheer advised that he takes a direct approach with attorneys. However, he is challenged by those who fail to comply with standing rules regarding preparation or to make attempts at resolution of an issue before bringing it before the court. He also discussed his strengths as a Magistrate Judge and the areas that present a greater challenge. Finally, Magistrate Judge Scheer responded to questions regarding a limited number of comments regarding demeanor concerns in the survey responses. He observed that the person against whom an issue is decided is usually dissatisfied.

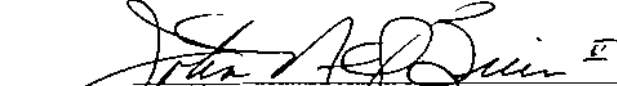
With regard to the high number of Social Security cases and prisoner litigation cases, Magistrate Judge Scheer discussed his practice of focusing on the facts of the case and addressing each claim on its merits in an effort to avoid "becoming jaundiced".

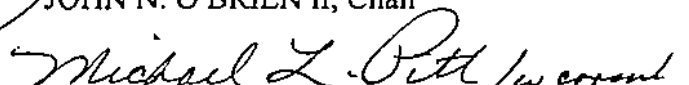
Magistrate Judge Scheer was unable to offer any insight into the dispositive motion disparity, whether a reporting issue or an actual assignment concern, given that over time those numbers should be fairly consistent among the magistrate judges. The committee remains concerned that if the numbers reflect evidence of an unwillingness to assign Magistrate Judge Scheer such work, it should be addressed. Moreover, the committee recommends that the specific criticisms offered by the responding attorneys be discussed with Judge Scheer. Further, that he be encouraged to consider and address those areas as necessary.

At the conclusion of the interview, Magistrate Judge Scheer was asked to provide the committee with five decisions, opinions or reports and recommendations that he felt displayed his best work. The committee has reviewed those materials as well in an effort to fully evaluate Magistrate Judge Scheer.

The large majority of responses from the randomly selected attorneys and related comments show that Magistrate Judge Scheer is highly regarded for his integrity, knowledge and understanding of the law, communication skills, judgment, punctuality. Written work product category received the lowest overall number of responses, but was positive for the majority. The significant majority of the responses and public comment letters were complimentary and in support of reappointment.

Accordingly, this panel unanimously recommends Magistrate Judge Donald A. Scheer for reappointment to a new eight-year term.


JOHN N. O'BRIEN II, Chair


MICHAEL L. PITT, Vice-Chair

Dated: September 21, 2009