

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

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Re: Plan for the Administration  
of the Magistrate Judge System

Administrative Order

No. 22-AO-059

**ADMINISTRATIVE ORDER**

At their regular meeting on December 5, 2022, the Judges of the United States District Court for the Eastern District of Michigan approved the attached Plan for the Administration of the Magistrate Judge System. The Plan has been revised to include the action taken by the Court at its December 7, 2020 Bench meeting when it approved a pilot program to add the magistrate judges to the wheel for social security cases.

This Administrative Order supersedes Administrative Order No. 07-AO-015.

IT IS ORDERED.

FOR THE COURT:

  
\_\_\_\_\_  
Sean F. Cox  
Chief Judge

12/17/22

Attachment

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

**PLAN FOR THE ADMINISTRATION OF THE MAGISTRATE JUDGE SYSTEM**

The Judges of the United States District Court for the Eastern District of Michigan have adopted this Plan for the Administration of the Magistrate Judge System, which supplements the assignment of duties and responsibilities found in 28 U.S.C. § 631 et seq. and local court rules.

**1. Appointment and Tenure of Magistrate Judges**

Magistrate Judges are judicial officers appointed by a majority vote of the district judges in active service for eight-year terms (28 U.S.C. § 631 et seq.). As judicial officers, magistrate judges are subject to a recusal statute (28 U.S.C. § 455), and the Code of Conduct for United States Judges.

**2. Number and Location of Magistrate Judges**

The number of magistrate judges to be appointed within a district and their respective locations are determined by the Judicial Conference of the United States upon the recommendation of the Director of the Administrative Office of the United States Courts (28 U.S.C. § 633). As set forth below, one of the designated magistrate judges shall serve as the Chief Magistrate Judge.

**3. Authority for the Adoption of Local Rules**

Pursuant to 28 U.S.C. § 636(b)(4), this Court has adopted E.D. Mich. LR 72.1, United States Magistrate Judges, and E.D. Mich. LR 73.1, Special Designation to Exercise Civil Consent Authority.

**4. Consent Authority of Magistrate Judges**

Magistrate judges in this district may exercise civil consent jurisdiction under 28 U.S.C. § 636(c) and E.D. Mich. LR 73.1. District judges are encouraged to seek the parties' consent to the jurisdiction of the magistrate judge to conduct all proceedings in civil cases pursuant to this authority. Some of the ways in which this can be done include:

(a) docketing an order at the onset of the case that directs the parties to jointly indicate whether they consent or do not consent;

(b) requiring the parties to include in their Rule 16 discovery plan a section on magistrate judge consent; and

(c) referencing magistrate judge consent in case management requirements that are typically included with the scheduling order (e.g., "Consent to Magistrate Judges: At the beginning of the case, the Court will docket an Order Regarding Consent to Magistrate Judge Jurisdiction. This information is also requested in the parties' discovery plan. The parties are thus encouraged to meet and confer, at any time, regarding consenting to the jurisdiction of the magistrate judge to conduct all proceedings in the case pursuant to 28 U.S.C. § 636(c) and E.D. Mich. LR 73.1.").

**5. Assignment of Cases to Magistrate Judges**

**a. Civil Cases**

- (1) All general civil cases assigned in the Southern Division (except social security cases, special civil cases, and motions to vacate sentence) will be assigned by random method to a magistrate judge in Detroit/Ann Arbor or Flint at the same time the case is assigned to a district judge. The district judge may thereafter refer any civil case or part of the case to the assigned magistrate judge in accordance with 28 U.S.C. § 636.
- (2) All general civil cases assigned in the Northern Division (except social security cases and special civil cases) will be assigned to the magistrate judge in Bay City and may be referred to that magistrate judge in accordance with 28 U.S.C. § 636.
- (3) In making assignment decisions, district judges are encouraged to consider:
  - (a) assigning magistrate judges entire cases or entire phases of cases rather than individual duties or piecemeal motions - for example, referring a case for full case management up to the resolution of dispositive motions rather than assigning discovery motions one at a time; and
  - (b) limiting referrals of case-dispositive motions for reports and recommendations.

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### b. Criminal Cases

- (1) All criminal cases assigned in Ann Arbor, Detroit, and Port Huron will be assigned by random method to a magistrate judge in Detroit/Ann Arbor at the same time the case is assigned to a district judge. The district judge may thereafter refer any criminal case or part of the case to the assigned magistrate judge in accordance with 28 U.S.C. § 636.
- (2) All criminal cases assigned in Flint will be assigned to the magistrate judge in Flint and may be referred to that magistrate judge in accordance with 28 U.S.C. § 636.
- (3) All criminal cases assigned in the Northern Division will be assigned to the magistrate judge in Bay City and may be referred to that magistrate judge in accordance with 28 U.S.C. § 636.

### c. Social Security Cases

Social security cases will be assigned by random method to all magistrate judges in the Eastern District of Michigan at the time the case is filed.

### d. Special Civil Cases

Special civil cases, as defined in E.D. Mich. LR 83.11, will be assigned by random method to all magistrate judges in the Eastern District of Michigan at the same time the case is assigned to a district judge.

### e. Motions to Vacate Sentences

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Habeas corpus petitions under 28 U.S.C. § 2255 may not be referred to magistrate judges for reports and recommendations.

f. **Post-Judgment Motions**

The referral of post-judgment motions to magistrate judges is discouraged because such referrals require reports and recommendations under 28 U.S.C. § 636(b)(3). A post-judgment motion may not be referred for hearing and determination under § 636(b)(1)(A), as that type of referral is available only for pretrial matters.

**6. Duty Magistrate Judge**

- a. The duty magistrate judge schedule is compiled by the Chief Magistrate Judge after consultation with the other magistrate judges.
- b. Each magistrate judge will serve as the duty magistrate judge in his/her designated Courthouse for a period designated by the Court, for the purpose of considering requests made outside of normal business hours, including to issue warrants or hold initial appearances under Federal Rule of Criminal Procedure 5.
- c. The duty magistrate judge will preside on weekdays during normal business hours as may be necessary for the purposes set forth in (g) and (h) below. The duty magistrate judge will be present in his/her Courthouse during business hours, and available by telephone outside of the normal business hours to handle matters when necessary.

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- d. If the duty magistrate judge is not or will not be available, he or she is responsible for getting a replacement and notifying the appropriate parties.
- e. Magistrate judges serving in Flint and Bay City must notify each other when they are unavailable to handle criminal duty matters. When the magistrate judges in Flint and Bay City both will be unavailable to handle criminal duty matters, they must notify the magistrate judge serving duty in Detroit.
- f. Consistent with 28 U.S.C. § 636, the duty magistrate judge may:
  - (1) Accept criminal complaints;
  - (2) Issue arrest and search warrants;
  - (3) Conduct initial appearances (includes setting and denying bond; holding detention hearings under 18 U.S.C. § 3142; and appointing counsel under § 3006A);
  - (4) Conduct preliminary examinations;
  - (5) Accept grand jury returns;
  - (6) Conduct arraignments;
  - (7) Conduct pretrial conferences;
  - (8) Conduct removal proceedings;
  - (9) Conduct petty offense hearings;
  - (10) Dismiss complaints without prejudice; and
  - (11) Issue writs.

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- g. Magistrate judges in this District are designated under 18 U.S.C. § 3401(a) to exercise jurisdiction over all misdemeanor cases, including jurisdiction to try and sentence all persons accused of Class A misdemeanors if consent is given in conformity with 18 U.S.C. § 3401(b), and exclusive jurisdiction to try and sentence in all other misdemeanor cases, regardless of consent. Thus, pursuant to the dictates of 18 U.S.C. § 3401, the duty magistrate judge may accept guilty pleas and conduct trials of misdemeanors in cases which have not been assigned to a district judge.
- h. The duty magistrate judge is responsible for notifying the presiding judge of mass arrests and special circumstances.

### **7. Unavailability of Magistrate Judge**

- a. When a magistrate judge is unavailable to select a jury or perform an assignment for a district judge, the requesting district judge's case manager will be responsible for finding another magistrate judge to perform the task.
- b. In the event of recusal or disqualification of a magistrate judge, another magistrate judge will be assigned by random method.

### **8. Meetings**

The magistrate judges will:

- a. Convene at least eight times a year at the call of the Chief Magistrate Judge to discuss matters of concern to the administration of justice within the Eastern District of Michigan. The Chief Magistrate Judge shall distribute an



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agenda before the meeting. A court staff member shall attend the meetings and take and maintain minutes of the meetings. The Chief District Judge may be invited to any of these meetings.

- b. Meet with the Chief District Judge at least quarterly to discuss matters of concern to the administration of justice within the Eastern District of Michigan;
- c. Join the regular meetings of the district judges at least quarterly.

### **9. Chief Magistrate Judge**

- a. The former designation of Executive Magistrate Judge is now Chief Magistrate Judge.
- b. The Chief Magistrate Judge shall be appointed by the Chief District Judge upon the approval of the majority of the bench to serve for a term of three years, which may be renewed once.
- c. Should the Chief Magistrate Judge fail to satisfactorily perform his or her duties, the Chief District Judge shall have the discretion to appoint a replacement. Before taking such action, the Chief District Judge should seek input from the bench and require an evaluation similar to that provided for in 10(a).
- d. The Chief Magistrate Judge will have the following additional duties:
  - (1) Serve as the principal spokesperson for the magistrate judges.
  - (2) Convene all meetings of the magistrate judges.

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- (3) Attend meetings with the Court Unit Executives.
  - (4) Arrange quarterly meetings of magistrate judges with the Chief District Judge.
  - (5) Provide general supervision of staff attorneys.
  - (6) Compile the duty magistrate judge schedule.
  - (7) Designate a magistrate judge to assume Chief Magistrate Judge responsibilities in his or her absence.
  - (8) Ensure that new magistrate judges are provided training and orientation.
  - (9) Perform such other duties as may be assigned by the Chief District Judge or the Court.
  - (10) The above duties may be designated to another magistrate judge at the discretion of the Chief Magistrate Judge and with the consent of the designated magistrate judge.
- e. The Chief District Judge can consider whether the Chief Magistrate Judge will need additional administrative assistance or an appropriate reduction in case load in carrying out his/her duties.

### **10. Evaluation of Magistrate Judges**

- a. Magistrate judges will be evaluated by a committee of district judges appointed by the Chief District Judge using criterion approved by the Court. The committee shall discuss the results of its evaluation with the magistrate

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judge. The committee shall then file a report with the Chief District Judge containing the results of the evaluation, the items discussed with the magistrate judge, and any areas requiring improvement. The committee's report shall provide the Chief District Judge with information describing any comments or direction given to the magistrate judge which could be used as a benchmark for future evaluations.

- b. Magistrate judges serving their first term will be evaluated three times during their eight-year term:
  - (1) End of second year
  - (2) End of fourth year
  - (3) End of sixth year
- c. Magistrate judges serving their second term (and beyond) will be evaluated twice during their eight-year term:
  - (1) End of third year
  - (2) End of sixth year
- d. After the six-year evaluation, and upon the magistrate judge providing written notice to the Chief District Judge that he/she wishes to be reappointed for another term, the district judges will vote on the reappointment request. If the bench votes to consider reappointment, a public notice of reappointment will be issued and a merit selection panel will be convened by the Chief District Judge to consider comments received

from members of the bar and public, interview the magistrate judge, and make a recommendation to the bench concerning the magistrate judge's reappointment. The bench, after ensuring compliance with the magistrate judge reappointment process set forth in the Guide to Judiciary Policy, Vol. 3, Ch. 4, § 420.60, will then vote on the recommendation of the merit selection panel.

- e. In addition to the evaluations called for under (b) and (c) above, or, depending on the results of an evaluation described in (a), a magistrate judge may be evaluated at any time.
- f. Evaluation results shall be confidential and not shared within anyone other than the district judges, the Court Unit Executive, and the merit selection panel considering a magistrate judge's request for reappointment.
- g. The district and magistrate judges shall review the evaluation criteria every two years to consider whether any changes should be made.

## **11. Reference to Magistrate Judges**

When district judges receive filings that improperly refer to magistrate judges as simply "magistrates," they should include the following footnote in resulting opinions and orders or place the information on the record during a hearing: "(Plaintiff)(Defendant)(Counsel) misidentifies Magistrate Judge ( ) as "Magistrate" ( ). The title magistrate no longer exists in the U.S. Courts, having been changed from "magistrate" to "magistrate judge" in 1990. Judicial Improvements Act of 1990, 104 Stat. 5089, Pub. L. No. 101-650, §321 (1990) ("After the enactment of

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this Act, each United States magistrate . . . shall be known as a United States magistrate judge.”). (Plaintiff)(Defendant)(Counsel) is reminded to use the correct title, in the future, when referring to Judge ( ).”

### **12. Effective Date**

This Plan becomes effective December 5, 2022 and supersedes the previous Plan covered by Administrative Order 07-AO-015.