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JAMES BONINI
CLERK

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WESTERN DIV. DAYTON

IN RE: UNITED STATES MAGISTRATE JUDGES
MICHAEL R. MERZ AND
SHARON L. OVINGTON

GENERAL ORDER OF ASSIGNMENT AND REFERENCE

Criminal Matters

The following criminal matters are referred to United States Magistrate Judges Merz and Ovington:

1. Issuance of search warrants, seizure warrants, trap and trace orders, beeper warrants, and any other orders for the securing of evidence, except wiretap orders, the issuance of which requires approval of an Article III judge.
2. Issuance of arrest warrants or summonses on complaints under Fed. R. Crim. P. 4.
3. The conduct of initial appearances, preliminary examinations, and bond or detention hearings in felony cases.
4. Proceedings for the waiver of speedy presentation to the grand jury.

5. All proceedings in petty offense cases and in Class A misdemeanor cases unless the defendant declines to consent to magistrate judge jurisdiction. Pursuant to 18 U.S.C. §3401, Magistrate Judges Merz and Ovington are specially designated to exercise jurisdiction in misdemeanor cases in this District.

6. Upon request of the assigned District Judge, to conduct any other proceeding in a felony case (except trial and entry of judgment) without further order of reference. (Examples include arraignment, motion to suppress hearings, conducting plea colloquies, and jury voir dire.)

The magistrate judges shall exercise criminal jurisdiction on a monthly rotation basis, beginning with Magistrate Judge Merz as the “duty judge” in July, 2007. The Magistrate Judge who conducts the initial appearance in any case shall remain as the assigned judge regardless of the rotation period. The Magistrate Judges are authorized to transfer cases among themselves on mutual consent and to perform criminal duties in one another’s stead in the absence or unavailability of the magistrate judge on duty.

The magistrate judges will divide the criminal cases among themselves as follows:

1. Applications for felony arrest warrants, search warrants, seizure warrants, pen registers, and the like will be presented to the duty magistrate judge who will thereupon open a “magistrate judge case” which will be docketed as assigned to that magistrate judge. All further proceedings in the case (e.g., search warrants arising out of the same investigation as warrants already issued, continuations of pen registers, motions to seal or unseal, initial appearances, preliminary examinations, detention hearings, and waiver of speedy presentations to the grand jury) will be handled by the same judicial officer.

2. All misdemeanor cases (including petty offense cases) charged by information will be randomly assigned to one of the magistrate judges upon filing for all purposes.
3. The Central Violations Bureau docket call for cases charged by violation notice will be held by the duty magistrate judge. All cases appearing on any such docket shall remain assigned for all further purposes (e.g. issuance of warrants, initial appearance on execution of warrants, trial, sentencing, etc.) to the magistrate judge who held the initial docket call.
4. Until such time as an indictment is returned and the case is assigned to a District Judge, any appeal from a detention order or bond order shall be taken to the District Judge then exercising supervision of the grand jury. In the event that a party seeks to appeal to a District Judge, counsel must request a transcript of the detention hearing from the court reporter at the same time the appeal is filed.

Civil Matters

Assignment of Cases to Magistrate Judges

All civil and miscellaneous cases filed at the Dayton location of court shall be randomly assigned upon filing to one of the three resident District Judges and one of the two resident Magistrate Judges. The Clerk shall note the assignment on the case file. This assignment does not constitute a reference to the assigned magistrate judge for any purpose, but merely selects the magistrate judge to whom referrals in the case, if any, shall be made.

Referral of Cases by Category:

Pursuant to 28 U.S.C. §636(b), the following categories of cases filed at the Dayton location of court are hereby referred to the United States Magistrate Judge to whom the case has been assigned who is authorized to perform in each such case any and all functions authorized for full-time United States Magistrate Judges by statute. In each such case the Magistrate Judge shall proceed in accordance with Fed. R. Civ. P. 72.

If the parties in any such case unanimously consent to plenary magistrate judge jurisdiction under 28 U.S.C. §636(c), the assigned Magistrate Judge is hereby authorized to exercise such jurisdiction in accordance with the applicable statutes and Fed. R. Civ. P. 73, and without further order of reference. As permitted by statute, the assigned Magistrate Judge may remind the parties and counsel of their right to consent under §636(c), but shall also remind them that there will be no adverse substantive consequences to failure to consent.

The referred categories of cases are:

1. **IRS Summonses:** All cases filed pursuant to 26 U.S.C. §§7402(b) and 7604(a) to judicially enforce summonses issued by the Internal Revenue Services. The Federal Rules of Civil Procedure regarding intervention and discovery are suspended in such cases. *See Donaldson v. United States*, 400 U.S. 528 (1971).
2. **Emergency Matters:** If the assigned District Judge is absent and expected to be absent for more than twenty-four hours and an emergency matter is filed in a case assigned to that District Judge, said matter is hereby referred to the assigned Magistrate Judge to undertake any and all procedures necessary to resolve the emergency matter expeditiously. If the parties

unanimously consent under 28 U.S.C. §636(c), the assigned Magistrate Judge may decide any emergency dispositive matter. Otherwise the assigned Magistrate Judge shall proceed pursuant to Fed. R. Civ. P. 72. This paragraph does not apply to motions for temporary restraining orders which should be referred by the Clerk to one of the other resident District Judges.

3. **Government Loans:** All cases filed by the United States seeking recovery of a loan.
4. **Miller Act:** All cases arising under the Miller Act.
5. **Pro Se Cases:** All cases filed by persons proceeding *pro se*. In such cases, the reference shall not terminate if the plaintiff later obtains counsel unless otherwise ordered by the assigned District Judge.
6. **Post-Conviction Relief:** All cases collaterally attacking a criminal judgment, including without limitation those filed under 28 U.S.C. §§2241, 2254, or 2255. All such cases attacking a judgment which includes a sentence of death shall be assigned and referred to Magistrate Judge Merz.
7. **Social Security:** All appeals from decisions of the Commissioner of Social Security regarding Social Security benefits.
8. All post-judgment proceedings in aid of execution (e.g., garnishment, debtors examination proceedings, writs of replevin or eviction, etc.)
9. All miscellaneous cases presenting discovery disputes.

In each case in the above-described categories, this General Order shall act as a reference to the assigned Magistrate Judge without further order. The Clerk shall advise the parties in each

such case of this General Order of Assignment and Reference and of their right to consent to plenary magistrate judge jurisdiction under 28 U.S.C. §636(c).

Plan for General Referral of Civil Cases:

Pursuant to 28 U.S.C. §636(b), all civil and miscellaneous cases filed at the Dayton location of court on or after January 1, 2007 (except bankruptcy appeals and cases arising under the Employee Retirement Income Security Act of 1974), will be referred, as of the date the preliminary pretrial conference order is filed, to the United States Magistrate Judge to whom the case has been assigned who will be authorized to perform in each such case any and all functions authorized for full-time United States Magistrate Judges by statute, including, without limiting the generality of the foregoing, making recommendations on all motions to remand removed cases to state court and all motions to dismiss or for judgment on the pleadings under Fed. R. Civ. P. 12, and deciding all discovery-related motions and issues. These referrals will automatically terminate as of the discovery cut-off date and the case will be returned to the assigned District Judge for all further proceedings.

Absent a specific order of reference in a particular case, the following matters will be excluded from these referrals:

1. Motions for temporary restraining order and preliminary injunction.
2. Motions for summary judgment, including *Markman* hearings in patent cases. (However, summary judgment motions are referred hereby in (1) Social Security appeals, (2) cases in which the plaintiff is proceeding *pro se*, (3) Government loan cases, and (4) Miller Act cases.)
3. Motions in limine relating to the admission of evidence at trial.

This plan does not limit the authority of any District Judge to make referrals.

Recommittal:

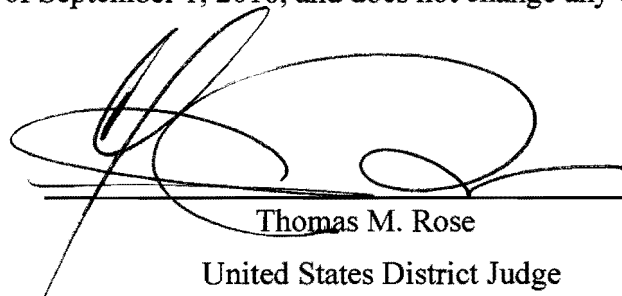
In any case in which a party files objections to a report and recommendations of a magistrate judge or an appeal from a decision of a magistrate judge, the assigned magistrate judge is hereby authorized, pursuant to Fed. R. Civ. P. 72(b), to reconsider and, if deemed advisable by the magistrate judge, to file a supplemental report and recommendations or supplemental decision.

Referral on Unanimous Consent:

If the parties in any case unanimously consent to plenary magistrate judge jurisdiction under 28 U.S.C. §636 (c), the assigned magistrate judge shall prepare and present to the assigned district judge an order of reference on full consent for that judge's consideration. As permitted by statute, the assigned magistrate judge may remind the parties and counsel of their right to consent under §636(c), but shall also remind them that there will be no adverse substantive consequences to failure to consent.

Effective Date

This General Order is effective as of September 1, 2010, and does not change any order of reference entered prior to its filing.



Thomas M. Rose
United States District Judge

Timothy S. Black

Timothy S. Black

United States District Judge

Walter Herbert Rice

Walter Herbert Rice

United States District Judge

Michael R. Merz

Michael R. Merz

United States Magistrate Judge

Sharon L. Ovington

Sharon L. Ovington

United States Magistrate Judge

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