1IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

FILED
JOHN P. HEHMAN
CLERK

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

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

DAYTON GENERAL ORDER NO. 13-01
ASSIGNMENT AND REFERENCE TO MAGISTRATE JUDGES

Criminal Matters

Pursuant to 18 U.S.C. §3401, Magistrate Judges Ovington, Newman, and Merz, are specially designated to exercise jurisdiction in misdemeanor cases in this District.

The following criminal matters are referred by this Order to United States Magistrate Judges Ovington, Newman, and Merz:

1. Issuance of search warrants, seizure warrants, tracking devices, pen registers, trap and trace orders, and any other orders for the securing of evidence (except wiretap orders, which require approval by 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 and, on request of the grand jury judge, grand jury returns.

5. All proceedings in petty offense cases and all proceedings in Class A misdemeanor cases unless the defendant declines to consent to magistrate judge jurisdiction. Appeals from final judgments in all misdemeanor cases shall be assigned to the District Judge then supervising the grand jury and shall have a criminal ("CR") case number assigned by the Clerk upon appeal.

6. Upon request of the assigned District Judge and with the consent of the parties when necessary, 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 Newman in June, 2013. The Magistrate Judges are authorized 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, tracking devices, and the like will be presented to the duty Magistrate Judge who will open a case (with a CM/ECF "MJ" case number designation).
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 ("CV") and miscellaneous ("MC") 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 three resident Magistrate Judges. The Clerk shall note the assignment on the docket. 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 referred by this Order 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.

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 must 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 on 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 shall be assigned and are referred by this Order to Magistrate Judge Merz.

7. **Social Security:** All appeals from decisions of the Commissioner of Social Security regarding Social Security benefits, including post-judgment motions for attorney fees. All such cases shall be randomly assigned to Chief Magistrate Judge Ovington or Magistrate Judge Newman and are hereby referred to the assigned Magistrate Judge.

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 Referral of Civil Cases

As a general matter, the Court plans to continue referring all civil and miscellaneous cases (except bankruptcy appeals) to the assigned Magistrate Judge in the preliminary pretrial

conference order. The Magistrate Judge will usually be authorized to perform in each such case any and all functions authorized for full-time United States Magistrate Judges by statute, including, without limitation, 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. The preliminary pretrial conference order will usually provide that the referrals will 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, except that such motions are referred in *pro se* cases.
2. Motions for summary judgment, including *Markman* hearings in patent cases. (However, summary judgment motions are hereby referred in (l) 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 or to decline to make referrals.

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.

Transfer of Cases

Upon mutual consent, Magistrate Judges may transfer civil or criminal cases among themselves.

Effective Date

This General Order is effective as of June 1, 2013, replacing General Order Day 12-03, and does not change any order of reference entered prior to its filing.

May 30, 2013.

s/ Thomas M. Rose
Thomas M. Rose
United States District Judge

May 30, 2013.

s/ Timothy S. Black
Timothy S. Black
United States District Judge

May 30, 2013.

s/ Walter Herbert Rice
Walter Herbert Rice
United States District Judge