

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

FILED
RICHARD W. NAGEL
CLERK OF COURT

8/4/2021

IN RE: UNITED STATES MAGISTRATE
JUDGES RESIDENT AT THE DAYTON
LOCATION OF COURT

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

GENERAL ORDER NO. DAY 21-01

Criminal Matters

Pursuant to 18 U.S.C. §3401, United States Magistrate Judges resident at the Dayton location of court are specially designated to exercise jurisdiction in misdemeanor cases in this District.

The following criminal matters are referred by this Order to those Magistrate Judges serving full-time:

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; and
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 full-time Magistrate Judges shall exercise criminal jurisdiction on a monthly rotation basis. 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 upon filing to one of the full-time Magistrate Judges 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; and
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 and Referral of Cases to Magistrate Judges

All civil ("CV") and miscellaneous ("MC") cases filed at the Dayton location of court, including those removed from state court, shall be randomly assigned by the Clerk upon filing to one of the three resident District Judges and, except for Appeals from the Bankruptcy Court, to one of the resident full-time Magistrate Judges. The Clerk shall note the assignment on the docket. Each such case is hereby referred to the assigned Magistrate Judge for all further proceedings except as provided herein.

All cases collaterally attacking a criminal judgment, including without limitation those filed under 28 U.S.C. §§2241, 2254, or 2255, shall be assigned and are hereby referred to recalled Magistrate Judge Michael R. Merz.

The Clerk shall advise the parties in each civil 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).

The assigned Magistrate Judge is authorized to perform in each referred 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.

Absent a specific order of reference in a particular case, which a District Judge in his or her discretion may enter, the following matters are 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, except in cases assigned to Judge Newman, 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;
4. Motions for class certification;
5. In civil cases assigned to Judges Newman and Rice, motions to dismiss or for judgment on the pleadings under Fed. R. Civ. P. 12 and summary judgment motions are not referred to the Magistrate Judge; and
6. In civil cases assigned to Judges Newman, Rice, and Rose, the Magistrate Judge reference shall terminate on the discovery deadline set in the Preliminary Pretrial Conference Order.

This General Order does not limit the authority of the assigned District Judge to withdraw a Magistrate Judge reference.

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 August 4, 2021, replacing General Order Day 13-01, and does not change any order of reference entered prior to its filing or act as an order of reference in any case filed before its effective date.

s/ Michael J. Newman

Michael J. Newman
United States District Judge

s/ Walter H. Rice

Walter H. Rice
United States District Judge

s/ Thomas M. Rose

Thomas M. Rose
United States District Judge