

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

PROPOSAL TO AMEND THE LOCAL RULES

The full Court met in executive session on Thursday, 20 January 1994, approved a proposal to amend local General Rule 1.72 as follows (additions shown ~~thus~~ and deletions shown ~~thus~~):

**RULE 1.72 CONDUCT OF CIVIL PROCEEDINGS BY MAGISTRATE
~~JUDGES~~ WITH CONSENT OF PARTIES**

A. ~~Designation of Magistrates Pursuant to 28 U.S.C. §636(e)~~

~~Whenever a United States Magistrate is designated by the judges of this Court to conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in such a case, the Chief Judge will notify the Clerk of the Court. The Clerk shall maintain a list of all magistrates so designated.~~

~~BA.~~ Notification of Right ~~to~~ Consent at Filing.

Whenever a civil action is filed in this District, the ~~Clerk of Court~~ shall notify the parties of their right to consent to proceeding before a ~~United States Magistrate judge designated to conduct all proceedings~~. The form of such notice shall be approved by the Executive Committee. The ~~Clerk of Court~~ shall notify the parties in the following manner:

- (1) *Plaintiffs:* Where there is only one plaintiff or where all of the plaintiffs are represented by the same attorney or firm of attorneys, by providing the person filing the complaint with one copy of the form for each plaintiff. Where there is more than one plaintiff and the same attorney or firm of attorneys does not

represent all of the plaintiffs, by mailing a copy of the notice to each of the plaintiffs listed in the complaints at the address indicated, or where the complaint is filed by counsel, to the attorney or attorneys.

(2) *Defendants:* ~~The plaintiff shall attach a copy of such notice shall be attached to the copy of the complaint and summons which that are to be served on each defendant. The clerk will provide the plaintiff with a sufficient number of copies of the notice in order that the plaintiff can comply with this rule.~~

~~C.~~ B. Notification to Newly Joined Parties of Right to Consent Subsequent to Filing

~~At any time during the proceedings prior to the reassignment of a case to a United States Magistrate, a judge may direct the Clerk of Court to mail further consent notices to parties. Whenever a party is added to a case after its reassignment to a United States Magistrate, the magistrate the district or magistrate judge to whom the case is assigned will direct the Clerk to mail further consent notices to the parties.~~

~~D.~~ C. Consent Files: Notification to the District Judge

Consents filed by parties following notification under sections B and C of this Rule will be maintained by the Clerk in a separate file until such time as consents have been filed by all parties or their counsel. Parties or attorneys representing parties in a given case may see only the consent filed by them or on their behalf. ~~The clerk shall not reveal the contents of any the consent forms shall not be made known to any district or magistrate judge or magistrate, unless all parties have consented to the reassignment to a magistrate judge. No judge,~~

~~magistrate, or other court official may attempt to persuade or induce any party to consent to the reassignment of any matter to a magistrate. This Rule, however, shall not preclude a judge or magistrate from informing the parties that they may have the option of having a case reassigned to a magistrate. At such time as consents are filed by all of the parties, the Clerk of Court will notify the district judge to whom the case is assigned. The notice to the judge and the consents will be docketed and made part of the Court case file.~~

~~ED.~~ Reassignment to a United States Magistrate Judge

~~When a district judge is notified that all of the parties in a civil case assigned to his/her that judge's calendar have filed consents to have a United States Magistrate judge conduct any or all of the proceedings in that case, he/she the district judge may transfer the case to the Executive Committee for reassignment to a certified and designated magistrate judge pursuant to General Rule 2.41.~~

~~F.~~ Withdrawal of Consents Following Reassignment

~~Any party who consented to proceed before a magistrate judge in a case subsequently reassigned to the calendar of a magistrate judge pursuant to Rule 2.41D of these Rules, may withdraw the consent where, following the recusal of that magistrate judge, the case is subsequently reassigned to the calendar of another magistrate judge pursuant to Rule 2.41G(3) of these Rules, provided that notice of such withdrawal be filed with the clerk not later than ten 10 days following the receipt of the notice of reassignment.~~

~~GE.~~ Entry of Consent Judgments by Magistrate Judges

~~A U.S. Magistrate judge designated pursuant to section A of this Rule is~~

authorized to enter a final judgment for a sum certain to which all the parties have consented in writing or a judgment of dismissal to which all of the parties have stipulated in writing, provided that the parties indicate their consent to the entry of the judgment by the magistrate judge either in writing or in open court at the time of the entry of the judgment.

F. Consent to Transfer Part of Proceeding

Parties may consent to the transfer of part of a proceeding to a magistrate judge to act pursuant to 28 U.S.C. § 636(c). For example, the parties may consent to the transfer of a dispositive motion to a magistrate judge. Such consents shall be filed in the same manner as the consents for a transfer of the entire proceeding. Upon notification of the filing of such consents by the parties, the district judge may transfer that portion of the case covered by the consents for reassignment to the designated magistrate judge. Where such a reassignment is made, the case shall remain on the calendar of the district judge.

Comment: One stylistic change made throughout the rule is the change of the title from “U.S. Magistrate” or “United States Magistrate” to “magistrate judge.” In order to avoid any confusion, the term “district judge” is used in this rule rather than simply “judge.” Several other stylistic changes were made, principally to eliminate use of “he/she” and “his/her.”

The Rules Advisory Committee recommends that the current section A be deleted as unnecessary. As a matter of policy this Court routinely certifies each magistrate judge at the time of appointment as being able to exercise civil consent jurisdiction (28 U.S.C. §636(c)). The maintenance of a separate listing

appears superfluous given that policy. Sections B through G are redesignated accordingly. References to the current section A found in current sections B and G (proposed sections A and E) have also been eliminated.

In addition to the stylistic changes recommended for current section B, the Committee recommends that part (2) be revised to make clear that the plaintiff is to provide the defendant with a copy of the notice to parties of their right to consent to proceeding before a magistrate judge. This makes the current procedure explicit.

With respect to the current section C, the Rules Advisory Committee recommended that the first sentence be eliminated as unnecessary and that the title be changed to indicate that the rule deals with notification of newly joined parties of their right to consent to having a magistrate judge handle all matters in a civil case. While the current rule applies only to those situations where parties are added after the reassignment of a case to a magistrate judge on consent, the new rule applies to all cases in order to make certain that the notice is mailed to all parties.

With respect to the current section D, the Rules Advisory Committee recommended that the fourth and fifth sentences be eliminated as unnecessary. The sentences grew out of the earlier provisions of 28 U.S.C. §636(c)(2), namely

Thereafter, neither the district judge nor the magistrate shall attempt to persuade or induce any party to consent to reference of any civil matter to a magistrate. Rules of court for the reference of civil matters to magistrates shall include procedures to protect the voluntariness of the parties' consent.

The language was changed to read as follows:

Thereafter, either the district judge or the magistrate may again advise the parties of the availability of the magistrate, but in so doing, shall advise the parties that they are free to withhold consent without adverse substantive consequences. Rules of court for the reference of civil matters to magistrates shall include procedures to protect the voluntariness of the parties' consent.

The changes proposed for the current sections E and G, involve only changes to add “judge” following the word “magistrate” and the word “district” to clarify references to district judges, and a rewording in E to eliminate the use of “his/her” and “he/she.”

The Rules Advisory Committee recommends that the current section F be deleted. The section deals with withdrawals of consent following reassignment. The section legitimizes a form of forum shopping which, in the view of the Committee, is not in keeping with the rest of the assignment rules with their emphasis on randomness in the assignment of a case to a judicial officer and minimizing the role of parties in the selection of the judicial officer to be assigned to the case.

In addition to its departure from the usual practice of avoiding judge shopping, section F can be read as suggesting that some magistrate judges are better than others, hardly not a point of view worthy of elevation to rule status. Finally, if the reassignment to another magistrate judge does in fact give rise to a legitimate problem, the parties can always request the district judge to whom the case was originally assigned to take back the consents pursuant to 28 U.S.C. §636(c)(6).

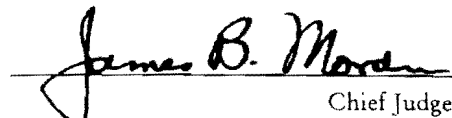
A new section, designated as section F, would implement the suggestion made by the C.J.R.A. Advisory Group that less than a case could be reassigned on consent. This is clearly permitted under 28 U.S.C. § 636 (c)(1). It would, for example, permit a dispositive motion to be handled by a magistrate judge on consent. As with the reassignment of cases on consent, this proposal leaves with the assigned judge the determination of whether or not such a reassignment should be made.

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By direction of the full Court and pursuant to 28 U.S.C. § 2071(b) regarding appropriate public notice and opportunity for comment, the Clerk is directed (a) to cause the proposal to amend local General Rule 1.72 to be posted in the Courthouses at Chicago and Rockford, (b) to cause notice of the proposal and requests for comment to be published in the *Chicago Daily Law Bulletin*, (c) to indicate in such notice a final date for receipt of comments, which date shall be sixty days from the first date of publication in the *Law Bulletin*, (d) to collect and distribute among the members of the Advisory Committee for Local Rules all comments received, and (e) following receipt of a copy of the report and recommendations of the advisory committee, to distribute copies of the comments together with copies of the report and recommendation among the members of the Court for consideration at a regular meeting of the full Court.

ENTER:

FOR THE COURT



Chief Judge

Dated at Chicago, Illinois, this 21st day of January, 1994.