

## Serving as a Law Clerk to a U.S. Magistrate Judge

I had the great honor of clerking for Magistrate Judge Michael J. Newman for an exciting and busy two years. Many attorneys and law students do not know what this entails. The truth is that it varies widely depending not only on the particular court in which you are located, but also upon the particular judge for whom you work.

When I was applying to become a judicial law clerk to a Magistrate Judge, I envisioned myself researching and writing all day, nothing else. While I certainly spent a substantial amount of time doing just that, I was pleasantly surprised to find it was more fast paced and interactive than I had anticipated.

In the Southern District of Ohio, Western Division at Dayton, the District Judges generally refer civil cases to Magistrate Judges until the discovery deadline. (*Pro se* cases are referred through summary judgment.) Magistrate Judges are responsible for monitoring the status of these referred cases, ruling on nondispositive motions, and issuing a report and recommendation for all dispositive motions. In addition, Magistrate Judges have full and final authority in all cases in which the parties consent to entry of final judgment.

As a law clerk, I received a daily e-mail from the Case Management/Electronic Case Files system (CM/ECF) alerting me to the previous day's filings in the cases to which the judge was assigned. I used this daily e-mail to carefully monitor the cases, making note of motions requiring the judge's attention and entering filing deadlines to the calendar. Some motions required immediate attention, such as motions for an extension of time, motions to appear *pro hac vice*, and motions for leave to proceed *in forma pauperis*. I would discuss these motions with the judge every morning; it was not unusual to present him with three or four such motions.

The judge held many telephone conferences in all of his cases. Before these conferences, he would review the substantive claims in the case and its procedural history. An order would issue following each conference.

The judge was responsible for handling all discovery disputes in the cases before him. The local rules required attorneys to call the chambers and schedule an informal discovery conference before filing a motion to compel discovery. If a motion to compel was nonetheless filed, the judge had a policy of scheduling a telephone conference with the parties the same day. These discovery disputes required immediate attention, and there was no way to predict



when they would arise. Sometimes the discovery disputes arose on days when the judge had a full docket, and we would have to be creative in finding a way to schedule the conference.

In addition to these routine matters, I helped the judge conduct research for the cases on his docket. In the Southern District of Ohio, the Magistrate Judges issue detailed reports and recommendations in many kinds of civil cases—for example, Social Security disability appeals and *habeas corpus* proceedings—both of which present voluminous records requiring thorough review.

In addition, a number of *pro se* matters were on the docket. The judge worked hard to liberally construe these filings to ensure that *pro se* parties received the due process to which they are entitled. This required the court to do extensive, independent research to determine whether the *pro se* party was making plausible claims and arguments.

The judge also mediated countless cases on a regular basis. He had an unwavering determination to settle the cases referred to him. The mediations commonly lasted the entire day and sometimes late into the night. In fact, in several cases, the mediation continued

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*Elizabeth Favret formerly clerked for U.S. Magistrate Judge Michael Newman in the Southern District of Ohio. She is now an associate attorney of the Patterson Law Group, APC, in San Diego, Calif.*



for weeks, and even months, with follow-up phone calls with the attorneys to ensure a settlement was reached. I observed several of these and recognized the hard work and patience required to mediate a case.

The judge's high volume of criminal cases certainly impacted my work as well. (The Dayton seat of court is near Wright Patterson Air Force Base and a Veterans Administration hospital, giving rise to a large number of misdemeanor criminal cases.) The judge was on criminal duty every third month and was extremely busy during those times. He had a full morning criminal docket every Wednesday and other criminal proceedings scheduled on most afternoons. While on criminal duty, the judge also reviewed search warrants with federal agents. I occasionally conducted research on matters related to motions to suppress evidence.

In addition to his judicial duties, the judge put tremendous efforts into outreach activities for the court. For example, he hosted a "court camp" last summer to educate high school students about the federal criminal justice system. He also routinely hosted law

school externs. He took the time to genuinely get to know each one and provided mentoring advice. The externs were exposed to many aspects of the law and gained a better understanding of the federal court system. Additionally, the judge worked with his fellow federal judges in Dayton to create a weekly lunch-and-learn program, whereby guest speakers would meet with the court's externs every Tuesday and Wednesday over the lunch hour. Speakers included federal and state judges, assistant U.S. attorneys, federal public defenders, private practitioners, and many others.

Finally, I was fortunate to develop many professional relationships during my clerkship. The judge is very active in the Federal Bar Association, as well as other organizations, and he was regularly asked to speak at CLEs on various topics. I helped him prepare materials for these CLEs and presentations. Through this experience, I had the opportunity to work with the other federal judges in our court and with practicing attorneys. It was wonderful professional training for which I am very thankful. ☺

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## **SELECTED** continued from page 40

additional qualified candidates, such as publication of a second notice of the vacancy and soliciting assistance from bar association officials, law school faculties, and other community leaders.

### **Selection by the Court**

On receiving the merit selection panel's report, the district court reviews the qualifications of the persons recommended. It may accept the findings, or it may conduct additional inquiry into the qualifications of those recommended.

Thereafter, all the District Judges must determine, by a majority vote, a final selectee for appointment from the list provided by the panel. If the district court is unable to select by majority vote a final appointee from the five names on the merit selection panel's list, it must request a second list of five names from the panel. The district court must then choose from either list. If a final appointee still cannot be identified by a majority vote, the Chief Judge of the district is authorized by statute to make the selection from the candidates recommended on either list.

Upon selection, the applicant's name is submitted to the Administrative Office of the U.S. Courts, which will request necessary background reports from the Federal Bureau of Investigation (FBI) and the Internal Revenue Service (IRS). Applicants selected for appointment to either a full-time or part-time Magistrate Judge position must undergo an FBI full-field investigation with a 15-year scope and an IRS tax check. The results of the investigations are forwarded to the Administrative Office, which then transmits the information to the Chief Judge of the district court. Once the district court has reviewed and is satisfied with the results of the investigations, the court issues an order of appointment of the new Magistrate Judge.

Before entering into duty as a Magistrate Judge, the appointee is required to take the judicial oath or affirmation prescribed by 28 U.S.C. § 453 and the constitutional oath of office prescribed by 5 U.S.C. § 3331.

### **The Reappointment Process**

The process for reappointment of a Magistrate Judge shares many of the same basic elements of the process for initial consideration, selection, and appointment, with modification for the fact that the evaluation is of a known individual already holding the position of Magistrate Judge rather than a pool of new applicants for a vacant position.

If a district court desires to consider reappointment of a Magistrate Judge (it can choose not to, by a majority vote of the District Judges), the first step is the issuance of a public notice well before the expiration of the incumbent Magistrate Judge's current term, noting the court's consideration of reappointment of the incumbent Magistrate Judge and seeking comments from the bar and public to assist the members of a merit selection panel in its evaluation on whether to recommend reappointment to the district court. A key difference in the notice of reappointment consideration is that it does not seek applications for the position, but rather comments on the person under consideration for reappointment.

The reappointment process also includes appointment by the district court of a merit selection panel, the composition of which is the same as that appointed to consider the selection of a new Magistrate Judge. The attributes considered by the panel are much the same as those considered by panels evaluating candidates for initial appointment—good character, judgment, legal ability, temperament, and a commitment to equal justice under the law—with one additional factor, the quality of the incumbent Magistrate Judge's performance in office.

After considering the merit selection panel's report, the district court independently decides whether to reappoint the incumbent Magistrate Judge. If a majority of the District Judges vote for reappointment, the Magistrate Judge will be reappointed. The reappointment process for an incumbent Magistrate Judge does not require new FBI and IRS background checks, but does include a retaking of the judicial oath or affirmation and the constitutional oath of office. ☺