

Sworn to Serve: Reflections on Changes in the Duties of U.S. Magistrate Judges

U.S. Magistrate Judges are recognized as valued judicial officers of the U.S. District Courts.¹ Congress initially created the federal Magistrate position within the judicial branch of the federal government to replace the office of U.S. commissioners.² Understanding the historical growth of the office of Magistrate Judge out of the U.S. commissioner system is important for appreciating the value the office brings to the administration of justice.³ This growth is best discussed in the context of the congressional legislation that made it happen.

Federal Magistrates Act of 1968

Congress created the Magistrate position as a judicial officer with greater duties and authority than had been exercised by the commissioners. The Federal Magistrates Act of 1968⁴ empowered Magistrates to exercise the duties previously assigned to the U.S. commissioners in criminal matters, the power to administer oaths and affirmations, and the power to conduct trials of misdemeanor charges.⁵

The 1968 act also authorized the district courts to assign to specially designated Magistrates additional duties not inconsistent with the Constitution and other federal laws. These duties include serving as a special master, conducting preliminary review of applications for post-trial relief in criminal matters, and assisting District Judges in pretrial or discovery proceedings in civil and criminal cases.⁶ District courts assigned these duties to those appointed to the new Office of Magistrate.

Federal Magistrates Act of 1976

By the mid-1970s, the first wave of Magistrates had been appointed and were exercising the limited duties Congress authorized.⁷ In 1974, the Supreme Court, with two justices dissenting, restricted the district courts to the statutory limitations of the duties Magistrates were authorized.⁸

In 1976, Congress amended the act to clarify and to expand the statutory authority of Magistrates to conduct evidentiary hearings in pretrial civil and criminal matters, to make proposed findings and recommendations on dispositive matters, and to decide nondispositive issues.⁹ The positive experiences of district courts using this

new office to efficiently deliver justice to federal litigants preceded a second wave of appointees to newly added Magistrate positions. Much was expected of all Magistrates in fulfilling Congress's and the district courts' expectations for delivering justice in ever-increasing numbers of federal cases, civil and criminal.¹⁰ Congressional support for the legislation included not only the ever-increasing caseloads of the district courts, but also the passage of the Speedy Trial Act of 1984.¹¹ Magistrates took their oaths to serve the district courts and the public with great dedication.¹²

Magistrates were assigned duties in many combinations by the district courts, as was Congress's intent. Some district courts paired Magistrates with District Judges. Other courts assigned pretrial matters randomly to the individual Magistrates irrespective of whom the District Judges were that received the underlying assignment. For the most part, all Magistrates were assigned the commissioners' duties, mostly on a rotating basis in their court depending on the number of available Magistrates.

A major benefit of being a judicial officer in any court is the duty of confronting ever-unique factual circumstances every day in assigned litigation. That benefit was bestowed on federal Magistrates in great abundance, no matter what the character of the assigned matter. One Magistrate in 1978 issued arrest warrants upon a complaint charging three people with conspiracy to hijack a nuclear submarine. A Magistrate presided over misdemeanor charges in 1992 involving Building, Antenna, Span, and Earth (BASE) jumping off the Gateway Arch in St. Louis. In 1985, a Magistrate conducted hearings on pretrial felony motions involving wiretap evidence relating to mob bombings and killings. Statistical reports indicate that all Magistrates are challenged daily with deciding important disputes in the lives of many people.

The Federal Magistrates Act of 1979

Three years later, Congress substantially increased the duties of Magistrates to perform when so designated by their courts. The Federal Magistrates Act of 1979,¹³ among its important provisions, allows district courts to designate Magistrates for deciding any civil case with or without a jury in which all the parties consent.¹⁴ The act

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authorizes Magistrates to preside over full misdemeanors, with or without a jury as the law provides, with the consent of the parties.¹⁵ Congress left up to the district courts the extent to which Magistrate Judges could perform these duties,¹⁶ thereby creating a flexible tool for the administration of justice.

The number of district courts that designated Magistrates to perform the full extent of the duties authorized by Congress, especially presiding over the trials of civil cases with the consent of the parties, increased over the years.¹⁷ Congress's confidence in the appointments of Magistrates was not lost on the practicing bar. The reputations of the first and later appointed Magistrates, and the manner in which they executed the duties authorized by earlier acts, paved the way for litigants' counsel to recommend they consent to the authority of the Magistrates for this purpose.

In the years following the 1979 act, Magistrate Judges benefitted greatly by the culture of professional respect and confidence District Judges demonstrate for the people they appoint to Magistrate Judge positions.¹⁸ Magistrate Judges have understood and upheld the authority and the limitations imposed by Congress on their office. Where Magistrate Judges have been designated to perform their responsible duties—such as the trials of civil cases by consent of the parties—the public, the bar, and the district courts benefit from the efficient and fair administration of justice that Congress desires for the entire nation. Within two decades following the 1979 act, Magistrate Judges have performed many duties and functions in the district court.¹⁹

The Civil Justice Reform Act of 1990

On Dec. 1, 1990, the Judicial Improvements Act of 1990²⁰ was adopted. In Title I of the act, the Civil Justice Reform Act of 1990 (CJRA),²¹ Congress found that active, personal involvement of District Judges and Magistrate Judges²² in case management was critical to reducing the expense and delay in federal civil judicial litigation. Involving Magistrate Judges in civil case management, control of the pretrial discovery process, scheduling litigation events, and alternative dispute resolution (ADR), was consistent with the duties Congress had authorized Magistrate Judges to perform.²³ The act required each district court to develop and adopt an expense and delay reduction plan that implemented the principles and guidelines the act set forth.²⁴

How district courts use their Magistrate Judges may be indicated by the courts' CJRA Expense and Delay Reduction Plans. Often, a salutary grounding principle in such plans is the idea that litigation expense and delay are reduced in civil cases where the number of judges involved in deciding issues and cases is reduced.

Plans in district courts that designate Magistrate Judges to preside over civil actions with the consent of the litigants may provide for the random assignment of civil cases to either District Judges or Magistrate Judges in a determined ratio at the time of filing. By local rule,²⁵ civil cases may be referred to Magistrate Judges under 28 U.S.C. § 636.²⁶ Thus, a Magistrate Judge assigned a case by the clerk of court may exercise authority initially under § 636(b). When all of the litigants, within a reasonable period, consent to the Magistrate Judge's authority under § 636(c), the Magistrate Judge then continues with the case and exercises that authority accordingly.

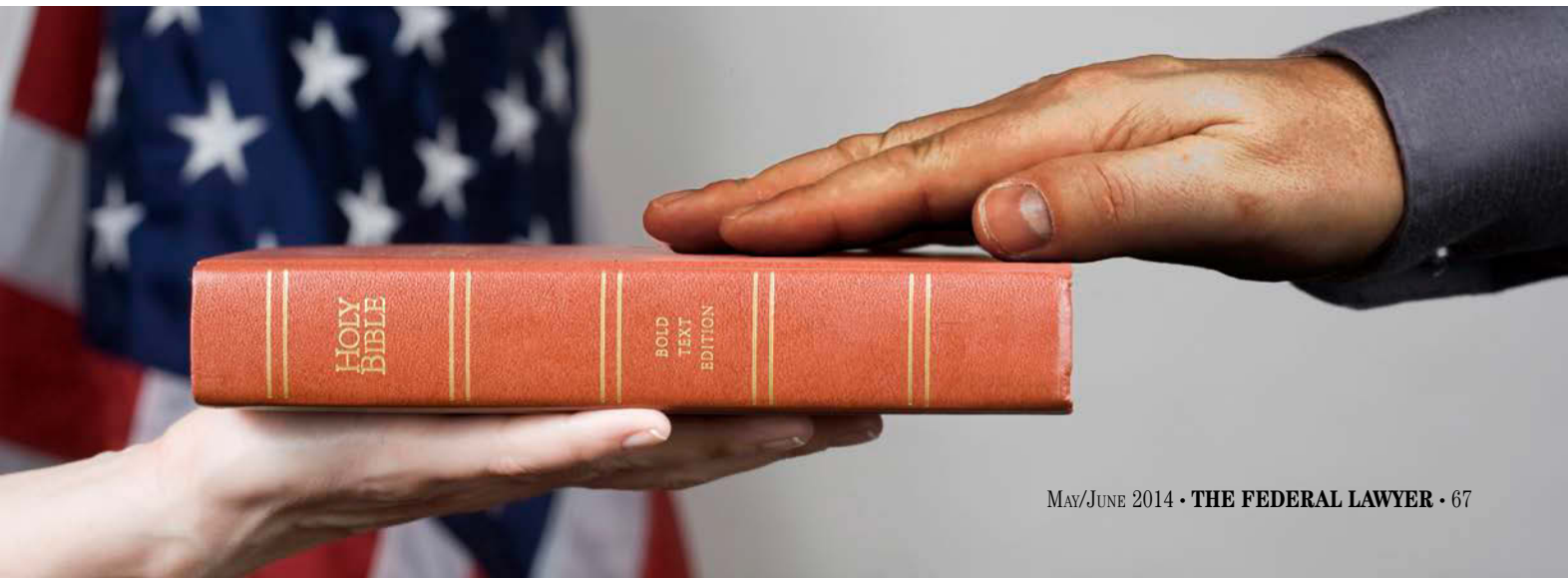
Magistrate Judges preside with great distinction and success over ADR proceedings, usually mediation in civil cases, in an effort to bring the parties to a timely and cost-effective settlement. Other district courts provide litigants an ADR program involving certified neutrals whom the litigants select without involvement of the courts' judicial officers. The case management order in each case issued by the assigned judge may implement such proceedings. Litigants are not limited to the court's list of certified neutrals. If the litigants are unable to agree upon the selection of a neutral, the clerk of court selects one to conduct the ADR proceedings. In such districts, Magistrate Judges are not generally assigned mediation duties.²⁷

Conclusion

The ability of Magistrate Judges to perform their congressionally authorized duties has been immeasurably strengthened by the service of those who led and who worked in the various divisions, especially the Magistrate Judges division, of the Administrative Office of the U.S. Courts. The Magistrate Judges Division, the Federal Judicial Center, and the various committees of the Federal Magistrate Judges Association²⁸ can take great pride for providing Magistrate Judges administrative support,²⁹ expert advice,³⁰ legal advice,³¹ and multifaceted training.³² This has contributed to the high level of professional collegiality and expertise that have infused the performance of duties by Magistrate Judges. This in turn has served the district courts and the American public very well in the administration of justice. ☉

Endnotes

¹E.g., *Peretz v. United States*, 501 U.S. 923, 928 n. 5 (1991); Dessem, R. Lawrence, *The Role of the Federal Magistrate Judge in Civil Justice Reform*, 67 ST. JOHN'S L. REV. 799, 840-41 (1993) ("Magistrate [J]udges are essential to the implementation of [techniques to combat unnecessary delay and expense in civil litigation] and will play an important role in civil justice reform efforts in the federal district



courts”). By oath or affirmation they commit themselves to serve the nation in the impartial administration of justice. 28 U.S.C. § 453.

²P.L. 90-578 (eff. Oct. 17, 1968), preamble (“An Act to abolish the office of United States commissioner, to establish in place thereof within the judicial branch of the Government the office of United States Magistrate, and for other purposes”).

³Excellent resources that describe the growth of the position include McCabe, Peter G., *The Federal Magistrate Act of 1979*, 16 HARV. J. OF LEG. 343 (1979); Foschio, Hon. Leslie G., *A History of the Development of the Office of United States Commissioner and Magistrate Judge System*, 1999 Fed. Cts. L. Rev. 4 (1999); Baker, Hon. Tim A., *The Expanding Role of Magistrate Judges in the Federal Courts*, 39 Val. U. L. Rev. 661 (2005); Dessem, *The Role of the Federal Magistrate Judge in Civil Justice Reform*, *supra*.

⁴P.L. 90-578 (eff. October 17, 1968).

⁵*Id.*, 28 U.S.C. § 636(a) (1968). Magistrates were authorized to sentence defendants convicted of Class A misdemeanors with the consent of the parties. *Id.* at (a)(3)-(5).

⁶*Id.*, at § 636(b).

⁷By 1971, Magistrates were being appointed nationwide. *See* Long-Range Plan for Magistrate Judges System, Ch. 2 The History and Current Status of the Magistrate Court System, § A (1993), found at inet.ao.dcn/court-services/judges-corner/Magistrate-judges/long-range-plan-Magistrate-judges-system#3. Among the first wave of Magistrates were the late William S. Bahn of St. Louis and now retired Magistrate Judge Ila Jeanne Sensenich in Pittsburgh. To these judicial officers, and to the other Magistrates initially appointed in their respective districts, the men and women appointed to the position over the years owe a great deal. They served with honor, dedication, and commitment to the fair administration of justice to the nation and the district courts that appointed them. Without hesitation, they lent their knowledge and expertise in support of later appointees.

⁸*Wingo v. Wedding*, 418 U.S. 461, 471-72 (1974) (ruling that Congress did not authorize district courts to assign to Magistrates the duty of holding evidentiary hearings in *habeas corpus* cases).

⁹90 Stat. 2729 (§ 636(b) (1976)); *Gomez v. United States*, 490 U.S. 858, 868, 872 (1989) (ruling that the Magistrates Act did not delegate to the Magistrate Judges authority to preside over the selection of a jury in a felony trial); *but see Peretz v. United States*, 501 U.S. at 933 (limiting *Gomez* to cases where the parties did not consent).

¹⁰By 1980, the federal judiciary had 186,000 pending civil cases, twice the number in 1970; 14,759 pending criminal cases, less than the 20,910 pending in 1970, but half the 35,308 pending in 1990. Baker, *The Expanding Role of Magistrate Judges in the Federal Courts*, 39 Val. U. L. Rev. App. B. *See also*, Judicial Conference of the United States, Long-Range Plan for the Federal Courts, at 11, Table 1 (1995).

¹¹McCabe, *supra* at 353.

¹²Shortly after appointment in October 1976, one Magistrate received in the mail unbidden from the Administrative Office two thin packages. Each package contained a new, durable leather briefcase large enough for carrying home files and treatises for further consideration.

¹³P.L. 96-82 (eff. Oct. 10, 1979).

¹⁴28 U.S.C. § 636(c).

¹⁵*Id.* at § 636(a)(5).

¹⁶*Id.* at § 636(b), (c).

¹⁷Baker, *supra* at App. B.

¹⁸Soon after the implementation of the 1979 act, a Chief District Judge referred a prisoner civil rights case for the first time to a Magistrate to try with the consent of the litigants. The jury awarded the prisoner \$1,000.00 in actual damages, and judgment was entered accordingly. Unbidden and out of courtesy, the Magistrate informally let the Chief Judge know the outcome of the case. The only comment from the Chief Judge was, “Was it fair?” to which the Magistrate replied, “Yes.” That was the only important fact the Chief Judge was interested in. This was the Magistrate’s first of many consent cases for trial over a decades-long career as a federal judicial officer.

¹⁹*See* Inventory of U.S. Magistrate Judge Duties (Administrative Office of the U.S. Courts 3rd ed. 1999).

²⁰P.L. 101-650.

²¹*Id.* at § 101.

²²Among its many provisions, the act changed the Magistrate’s official title to Magistrate Judge. P.L. 101-650, § 321.

²³P.L. 101-650, § 102.

²⁴*Id.* at § 103, 28 U.S.C. § 471.

²⁵*E.g.*, E.D.Mo. L.R. 40-2.08.

²⁶*Id.*, L.R. 40-2.08 (E) (“For each civil action, criminal action and miscellaneous matter assigned to a Magistrate Judge pursuant to this rule, the Clerk is directed to enter on the public record a designation by the Court stating that the assigned or referred Magistrate Judge is authorized to exercise, as appropriate, full authority under 28 U.S.C. § 636 and 18 U.S.C. § 3401”). The Eastern District of Missouri adopted the following docket entry language: “Pursuant to Local Rule 2.08, the assigned/referred Magistrate Judge is designated and authorized by the court to exercise full authority in this assigned/referred action or matter under 28 U.S.C. Sec. 636 and 18 U.S.C. Sec. 3401.”

²⁷*See e.g.*, E.D.Mo. L.Rs. 16-5.04, 6.01, 6.02, 6.03.

²⁸The FMJA sprung from the National Council of U.S. Magistrates, of which this author was a proud, active member.

²⁹An outstanding example of this support is the steady, ongoing automation of the federal judiciary. In 1989, Congress created the Judiciary Information Technology Fund. The moneys in the fund were made available to the director of the Administrative Office for obtaining information technology resources for the federal courts. P.L. 101-162, Title IV, § 404(b). The Judicial Conference of the United States approved the Long-Range Plan for Automation in the Federal Judiciary and its revisions. With technological expertise and decentralized budgeting, the automation of the federal judiciary has enabled its judges to be increasingly efficient. Federal judges decide more matters more quickly than at any time in history. From such automation technology sprang the system of case management/electronic case filing that has served the courts, the practicing bar, litigants, and the public so very well since its inception. On a more administrative level, the automated Magistrate Judge Statistics Through Automated Records (MJSTAR) decision-activity reporting system has freed chambers from the time-consuming business of recording and reporting the many court activities performed by Magistrate Judges.

³⁰Many expert reference materials are published by the Federal Judicial Center for use by the federal courts. *E.g.*, *Reference Manual on Scientific Evidence* (The National Academies Press 3rd ed. 2011).

³¹*See Legal Manual for U.S. Magistrate Judges*, published by the Magistrates Division of the Administrative Office of the U.S. Courts.

³²Regularly, the Federal Judicial Center conducts mediation skills workshops for Magistrate Judges.