

Top 10 Things You Probably Never Knew About Magistrate Judges

Magistrate Judges have been referred to as an integral part of the federal judicial system,¹ and yet there are many things about Magistrate Judges of which most federal court practitioners are probably unaware. In an effort to remedy this lack of knowledge, this article presents the top 10 things (or at least a list of 10 things) that you may never have known about Magistrate Judges.

10 The Magistrate Judges system, principally established by the Federal Magistrates Act of 1968,² was based on the U.S. Commissioner System³ (1896–1968), which itself was preceded by a system of appointed “discreet persons learned in the law,” who were authorized by Congress in 1793 to be available to set bail for defendants in federal criminal cases.⁴ The title of Commissioner was applied as early as 1817,⁵ and U.S. Commissioner was applied in 1896.⁶ After 22 years of being called “Magistrate,” pursuant to the 1968 act, the title “Magistrate Judge” was made applicable to the position in 1990.⁷ Thus, the Magistrate Judges system, with its predecessors, is just four years younger than the federal judiciary as a whole, which was established by the Judiciary Act of 1789.⁸

9 Although the Judiciary Act of 1789 created a system of lower federal courts, including 13 District and 3 Circuit Courts, the only judgeships designated for service in those courts were the Supreme Court Justices (a Chief Justice and five Associate Justices), and District Judges (13, one for each District Court). The Circuit Court sittings included the Supreme Court Justices assigned to that Circuit, as well as the respective District Judge from the District in which the Circuit Court was sitting.⁹ With the exception of 1801, during which six Circuit Judgeships were established for just over a year,¹⁰ the first Circuit Judge position was established in 1855.¹¹ It is not clear what the status of that position was for the next 14 years, but in 1869, nine Circuit Judge positions were created, one for each Circuit,¹² and the numbers have continued to grow since that date. Thus, the Magistrate Judges system, through its predecessors, predates the existence of Circuit Judges by at least eight years (1793–1801), and predates the continuous existence of Circuit Judges by perhaps as much as 76 years (1793–1869).

8 The Federal Magistrate Judges Association (FMJA), which represents Magistrate Judges nationwide, has been in existence, under a variety of names, for more than 50 years. In 1991, the FMJA became the successor of the National Council of Federal Magistrates, so named in 1973; the National Council was the successor of the National Council of Magistrates, established in 1969; this latter organization was the successor of the Organization of U.S. Commissioners, which was founded in 1961.¹³ The FMJA, along with all of its predecessors, has maintained a three-part core mission: (1) to support the efficient administration of justice, including the need to protect the integrity and dignity of the Magistrate Judge system; (2) to support the continued independence of the federal judiciary; and (3) to encourage scholarly collaboration and influence within the federal judicial system.¹⁴

7 In 1976, the late Hon. Gerard L. Goettel, U.S. Magistrate for the Southern District of New York, who had served for five years in that position, was elevated to a position as a U.S. District Judge. This was the first such elevation, but it has hardly been the last. Judge Goettel’s elevation has been followed through the succeeding 38 years by elevations of 157 full-time Magistrate Judges (including then Magistrates) and seven part-time Magistrate Judges (including then Magistrates) who have been elevated to Article III judgeships, both District Judgeships and Courts of Appeals Judges.¹⁵ Four of those elevations have occurred from the Magistrate Judge ranks directly to the Circuit Courts, including: Barry G. Silverman, District of Arizona, who was elevated to the Ninth Circuit in 1998, after three years as a Magistrate Judge; Bobby E. Shepherd, Western District of Arkansas, who was elevated to the Eighth Circuit in 2006, after 13 years as a Magistrate Judge; Robert E. Bacharach, Western District of Oklahoma, who was elevated to the Tenth Circuit in 2013, after 14 years as a Magistrate Judge; and Patty Shwartz, District of New Jersey, who was elevated to the Third Circuit in 2013, after 10 years as a Magistrate Judge.¹⁶

6 A key difference between Article I Judges (such as Magistrate Judges) and Article III Judges is that Article I Judges do not receive life tenure. Nevertheless, there have been numerous Magistrate Judges who have devoted long periods to their federal service. The longest serving Magistrate Judge ever, including part time and full

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U.S. Magistrate Judges: An Overview

time, as well as recall service after retirement, is Peter R. Palermo, of the Southern District of Florida. He served for 42 years and 11 months, from 1971 to 1991 in active service, and from 1991 to the present on recall status. The longest period of active service by a Magistrate Judge is that of Philip R. Lane, Northern District of Texas, now retired. Judge Lane served for a total of 40 years and 4 months, from 1971 to 2010 as a part-time Magistrate Judge, and from 2010 to 2011 as a full-time Magistrate Judge. The longest serving Magistrate Judge in active service currently serving is John M. Roper of the Southern District of Mississippi, who has served from 1975 to present (38 years and 6 months), including service as a part-time Magistrate Judge. The longest-serving part-time Magistrate Judge who served only part-time, including recall service after retirement, is Richard D. Gist of the District of Wyoming, who served from 1971 to 2006 in active service and from 2006 to the present on recall, for a total of 43 years. The longest-serving female Magistrate Judge ever is Ila Jeanne Sensenich of the Western District of Pennsylvania. She served for 35 years, from 1971 to 2004 in active full-time service and from 2004 to 2006 on recall status. Judge Sensenich was also the first woman to serve as the President of the FMJA.¹⁷

5 In order to qualify for appointment as a Magistrate Judge, a candidate must have five years of membership in a state bar.¹⁸ It is therefore somewhat surprising to learn that the youngest appointees to the position of Magistrate Judge or Magistrate were appointed at the age of 26. There have been four of them—Charles K. McCotter, Jr., of the Eastern District of North Carolina; Glen Conrad, of the Western District of Virginia, subsequently elevated to serve as a U.S. District Judge; John M. Garcia-Nokonechna, of the District of Puerto Rico; and James B. Hodges, of the Northern District of Iowa. The youngest Magistrate Judge currently serving is K. Nicole Mitchell of the Eastern District of Texas.

4 The first woman appointed to serve as a Magistrate (she remained on the bench until after the title changed to Magistrate Judge) was Venetta Tassopulos, appointed to the Central District of California in 1971. Magistrate Judge Tassopulos remained on the bench until 1994. The first African-American woman to be appointed a Magistrate (she also stayed through the change of title) was Joyce London Alexander. Magistrate Judge Alexander served in the District of Massachusetts from 1979 to 2009.

3 Magistrate Judge authority emanates almost entirely from the authority expressly granted by the District Judges (28 U.S.C. § 636(b)), or resulting from the consent of the parties (28 U.S.C. § 636(c)), but Congress has seen fit to delegate certain authority directly to Magistrate Judges. Thus, under 28 U.S.C. § 636(a), a Magistrate Judge may, among other things, administer oaths and affirmations, and issue orders pertaining to the setting of bail or detention in criminal cases, without specific reference or authorization from a District Judge. Pursuant to 18 U.S.C. § 3041, judicial powers relating to arrest and commitment are vouchsafed to “any justice or judge of the United States, or ... any United States Magistrate Judge.” Despite this broad sharing of such responsibility, Federal Rules of Criminal Procedure 4.1 (Complaint, Warrant, or Summons by Telephone or Other Reliable Means), 5 (Initial Appearance), and 5.1 (Preliminary Hearing) only mention action to be taken by a Magistrate Judge, or by a state or local judicial officer in appropriate circumstances, without any reference to a District Judge. Similarly, 18 U.S.C. § 3045 requires

Full-time Magistrate Judges are appointed for eight-year terms, which may be subsequently renewed.¹ Although an acting Magistrate Judge may continue his or her term of service upon turning 70 years old, he or she cannot be reappointed after that time.²

A Magistrate Judge’s jurisdiction is set by 28 U.S.C. § 636. The local rules in each district outline the specific duties assigned to the Magistrate Judges in that district.³ These vary considerably from court to court, but in general, Magistrate Judges act in both criminal and civil cases. In the criminal realm, they have the authority to preside over trials in petty offense cases and in Class A misdemeanor cases with the consent of the parties.⁴ Magistrate Judges may assist in felony preliminary proceedings (e.g., search and arrest warrants, summonses, initial appearances, preliminary examinations, arraignments, and detention hearings) and in felony pretrial matters (e.g., pretrial motions, evidentiary hearings, probation/supervised release hearings, and guilty plea proceedings).⁵

In the civil realm, Magistrate Judges rule on nondispositive motions and resolve discovery disputes.⁶ They issue reports and recommendations to the District Judges on dispositive motions, Social Security disability appeals, and *habeas corpus* cases.⁷ They also conduct pretrial conferences, settlement conferences, and evidentiary hearings.⁸ In addition, Magistrate Judges have the authority to preside over an entire civil case or any civil matter with the consent of the parties.⁹

For more information about Magistrate Judges, please refer to the following articles: Hon. Dennis Cavanaugh, *Magistrate Judges Are Effective, Flexible Judiciary Resource*, 40 THE THIRD BRANCH 10 (2008); Hon. Morton Denlow, *Should You Consent to the Magistrate Judge? Absolutely, and Here’s Why*, 37 LITIG. 3 (2011); and R. Lawrence Dessem, *The Role of the Federal Magistrate Judge in Civil Justice Reform*, 67 ST. JOHN’S L. REV. 799 (1993). ☉

Endnotes

¹28 U.S.C. § 631(d).

²*Id.*

³28 U.S.C. § 636(b)(4).

⁴28 U.S.C. § 636(a)(4)-(5).

⁵Hon. Dennis Cavanaugh, *Magistrate Judges Are Effective, Flexible Judiciary Resource*, 40 THE THIRD BRANCH 10, at 1, 7, 9-11 (2008) (hereafter, *Magistrate Judges Are Effective*).

⁶28 U.S.C. § 636(b)(1).

⁷*Magistrate Judges Are Effective*, *supra* note 6, at 9-11.

⁸*Id.*

⁹28 U.S.C. § 636(c).

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that warrants of arrest for violations of the internal revenue laws may be issued by a Magistrate Judge, with no reference to similar authority granted to a District Judge. While one doubts whether such language excludes the authority of District Judges to engage in these activities, it underscores the importance of Magistrate Judges within the system, particularly with respect to preliminary criminal matters.

2 Although the phrase “Magistrate’s Court” is frequently heard in federal courthouses, there is no such thing in our current federal system. Magistrate Judges are judges of the District Court.¹⁹ The phrase “Magistrate’s Court” frequently refers to courtrooms where all or most of the matters heard are criminal in nature, sometimes with rotating Magistrate Judges handling the criminal duties, but it is a misnomer. Magistrate Judges are appointed by the District Court Judges in that District to serve in the District Court, not in a so-called “Magistrate’s Court.”

1 The title of the position is “U.S. Magistrate Judge.” The predecessors of the FMJA, among others, worked hard to support the change of title, in order to bring Magistrate Judges in line with other Article I judicial officers, such as Bankruptcy Judges, Tax Court Judges, and Claims Court Judges.²⁰ One earlier proposal would have changed the title from Magistrate to “Assistant U.S. District Judge,” but this, thankfully, was not adopted.²¹ Those who practice in the federal courts might observe that just as “District,” “Circuit,” and “Bankruptcy” are descriptive adjectives that modify the title Judge, so is “Magistrate.” As of 1990, Magistrate no longer is a stand-alone title in the federal court, any more than District, Circuit, or Bankruptcy would be. The proper and preferred address is Magistrate Judge, or Judge, or Your Honor. Paraphrasing from Judge Randolph in *A Few Good Men*, we are quite certain that we have earned such a title.²² ©

Endnotes

¹See www.legalgenealogist.com/blog/2013/03/22/the-magistrate-judge, last checked on Jan. 24, 2014 (“Like their colleagues in bankruptcy, these [Magistrate Judges] are not Article III [J]udges but also adjuncts to *and an integral part* of the District Courts” (emphasis added); see also *Report of the Federal Courts Study Committee*, 79 (April 2, 1990) (Magistrate judges perform a “vital role” in the federal courts).

²Pub. L. No. 90-578, 82 Stat. 1107 (1968) (codified as amended at 28 U.S.C. §§ 604, 631-639 and 18 U.S.C. §§ 3060, 3401-3402 (1991)).

³Act of May 28, 1896, ch. 252, §§ 19, 21, 29 Stat. 184.

⁴Act of March 2, 1793, ch. 22, § 4, 1 Stat. 334.

⁵Act of March 1, 1817, ch. 30, 3 Stat. 350.

⁶See n. 2, *supra*.

⁷H.R. REP. NO. 734, 101st Cong., 2d Sess. 31 (1990), *reprinted in*

1990 U.S.C.C.A.N. 6877.

⁸Judiciary Act of 1789, ch. 20, § 33, 1 Stat. 91.

⁹Information in this section is derived from Russell R. Wheeler and Cynthia Harrison, *Creating the Federal Judicial System*, 2nd ed., FEDERAL JUDICIAL CENTER, 1994 (hereafter *Creating the Federal Judicial System*), at p. 4.

¹⁰Act of Feb. 13, 1801, 2 Stat. 89; Act of Mar. 5, 1802, 2 Stat. 132; Act of Apr. 29, 1802, 2 Stat. 118; referenced in *Creating the Federal Judicial System*, n. 41-43.

¹¹Act of March 2, 1855, 10 Stat. 631; referenced in *Creating the Federal Judicial System*, n. 44.

¹²*Creating the Federal Judicial System*, p. 16.

¹³From the FMJA website, “FMJA History,” found at www.fmja.org/about-us.html and last checked Jan. 17, 2014.

¹⁴*Id.*

¹⁵Information obtained from the Administrative Office of the U.S. Courts, data accurate as of Jan. 21, 2014.

¹⁶*Id.*

¹⁷See n. 15, *supra*. This does not include any prior service as a U.S. Commissioner.

¹⁸18 U.S.C. 631(b).

¹⁹See n. 1, *supra*.

²⁰H.R. Rep. No. 734, 101st Cong. 2d Sess. 31 (1990), *reprinted in* 1990 U.S.C.C.A.N.

²¹H.R. 5381, introduced July 26, 1990.

²²The following colloquy from “A Few Good Men” was taken from www.imdb.com/title/tt0104257/quotes, last checked April 14, 2014:

Judge Randolph: Lieutenant, do you have anything further for this witness?

[Jessep defiantly gets up to leave the courtroom]

Col. Jessep: Thanks, Danny. I love Washington.

Kaffee: Excuse me. I didn’t dismiss you.

Col. Jessep: I beg your pardon?

Kaffee: I’m not through with my examination. Sit down.

Col. Jessep: Colonel!

Kaffee: What’s that?

Col. Jessep: I would appreciate it if he would address me as “Colonel” or “Sir.” I believe I’ve earned it.

Judge Randolph: Defense counsel will address the witness as “Colonel” or “Sir.”

Col. Jessep: [to Judge] I don’t know what the hell kind of unit you’re running here.

Judge Randolph: And the witness will address this court as “Judge” or “Your Honor.” I’m quite certain I’ve earned it. Take your seat, Colonel.

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Endangered Species by Recruiting the Sweet Sixteen, BAR LEADER (July-August 2013), available at www.americanbar.org/publications/bar_leader/2012_13/july_august/project_rural_practice_saving_endangered_species_recruiting_sweet_sixteen.html.

⁶*Id.*

⁷*Id.*

⁸Telephone Interview with David E. Gilbertson, chief justice, Supreme Court of South Dakota (Feb. 10, 2014).

⁹*Rural Attorneys and Community Development*, STATE BAR OF SOUTH DAKOTA PROJECT RURAL PRACTICE (Oct. 9, 2012), available at sdrurallawyer.com/rural-attorneys-and-community-development/.

¹⁰Telephone Interview with David E. Gilbertson, chief justice, Supreme Court of South Dakota (Feb. 10, 2014).

¹¹Telephone Interview with Patrick G. Goetzinger, co-chair, Project Rural Practice (Jan. 16, 2014).