

The Expanding Role of Magistrate Judges: One District's Experience

It was summer 1979 in Milwaukee, Wisc. The Magistrate (not yet referred to as “judge”) for the Eastern District of Wisconsin had retired and an announcement was posted regarding the vacancy. Only a limited number of attorneys who practiced in federal court probably noticed the announcement and, of those, the civil practitioners did not even know what a “Magistrate” was. This was because the duties of the retiring Magistrate, who had been a former U.S. commissioner before the U.S. Magistrate system was established, were limited to initial criminal proceedings.

Consequently, the applicant list was small, but contained very qualified individuals. One of the applicants not selected was later appointed the U.S. Attorney for the district and subsequently became a District Judge. Another moved on to the Wisconsin state court bench to serve for many years. And then there was me. I had served as a law clerk for one of the District Judges and handled both civil and criminal matters in federal court. So, I sent in my application—which was not much more than a resume and cover letter. I also was aware that Congress had just passed legislation which increased the jurisdiction of Magistrates in civil cases, enabling them to conduct all proceedings, including the entry of judgment with the consent of the parties. In view of the potential for increased duties, during the interview process, I asked the judges what the role of the new Magistrate would be. The response was that the Magistrate would do “whatever is permissible under the statutes and Constitution.”

This proved to be prophetic. The District Judges of the Eastern District of Wisconsin viewed the position of Magistrate as another judicial officer, who was to be used to the fullest extent possible in order to assist the court. The Magistrate system was created in 1968 to provide additional judicial officers to assist the District Judges in managing the case load. The system was deliberately flexible so that each district could structure the Magistrate's role to best suit its needs. As a result, the Magistrate became the utility ball player of the court system. Since all districts used their Magistrates to continue the

initial criminal duties previously performed by the commissioners, the most flexibility of use was found in the civil area. In some districts where the criminal load was substantial, Magistrates had very limited civil duties; but, in others, they were assigned all of the civil discovery disputes, together with additional pretrial case management.

In our district, the Chief Judge asked me to present a proposal regarding my role. I was the sole full-time Magistrate with four District Judges. The clerk of court served as a part-time Magistrate and assisted with petty offense matters and initial criminal proceedings. Since I could not be expected to perform civil pretrial case management for four judges, it was decided that I would conduct all pretrial case management in criminal cases, including holding evidentiary hearings when needed. In the civil area, the judges would encourage parties to consent so that I could develop my own case load. Also, depending on my availability, I would provide assistance in civil cases on an *ad hoc* basis. I would also conduct settlement conferences. In view of the fact that I was the only Magistrate, the judges invited me to attend their monthly meetings. I was assigned to chair the Local Rules Practice and Procedures Committee.

Three years later, based on the needs of our district, a second Magistrate position was approved, and then a third. Our system had now become more formalized, and, since it was working, we maintained the basic format. The difference was in the civil area: Now, when a civil case was filed, it would be randomly assigned to both a District Judge and Magistrate. The Magistrate's role was expanded to perform all of the pretrial work, including summary judgment motions. At that time, the case would be taken over by the District Judge. If the parties consented at any time to the jurisdiction of the Magistrate, the case would be transferred. In the areas of court governance, participation by Magistrates continues; we attend the judges' meetings, participate in certain selection processes, and of court governance, participation by Magistrates continues; we attend the judges' meetings, participate in certain selection processes, and chair various court committees.

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Hon. Aaron E. Goodstein is a U.S. Magistrate Judge for the Eastern District of Wisconsin. He graduated from the University of Wisconsin-Madison and the University of Wisconsin Law School. Prior to his appointment as a Magistrate Judge, he served as a law clerk to Hon. Myron L. Gordon, U.S. District Judge for the Eastern District of Wisconsin, and engaged in the private practice of law with Milwaukee firm Chernov, Croen & Goodstein. He is a former member of the U.S. Judicial Conference Committee on the Administration and formerly served as chair of the Federal Judicial Center's of the Magistrate Judges Education Committee. Judge Goodstein is a former president of the Federal Magistrate Judges Association, a past officer of the Milwaukee Bar Association and the Milwaukee Young Lawyers Association, and he served as a member of the Board of Governors of the State Bar. He received the Eastern District of Wisconsin Bar Association's Robert W. Warren Public Service Award in 2006. Judge Goodstein is an instructor and panelist at numerous Federal Judiciary Center seminars and other CLE programs.



served as a faculty member at numerous Massachusetts CLE and Boston Bar Association programs over the years and also has taught in the Harvard Law School Trial Advocacy Program. She is a fellow of the Massachusetts Bar Foundation and the Massachusetts Bar Association, the Boston Bar Association, the Women's Bar Association, the Massachusetts Association of Women Lawyers, and the American Bar Association. Judge Dein finds all of these activities to be rewarding, and they give her the opportunity to meet interesting and inspirational people of all ages and backgrounds.

Career Experiences

In the debate over the issue of whether young attorneys should specialize in a given practice area or remain more general, Judge Dein shared her experience in having traveled the more general path. Before her application for and appointment to the bench, she had never intentionally planned to become a judge and does not pinpoint any moment in her legal career in which she seriously thought about serving on the bench. Her career path appears conventional and predictable, with law school leading to clerkships, which led to private civil litigation practice. Throughout it all, she maintained diverse interests and did not specialize in anything particular besides general litigation. She emphasized that the evolution of her career happened in a way that left the perfect open path toward serving on the bench, although she had not specifically mapped out that goal. Judge Dein is a true believer in

keeping an open mind with respect to one's career and advised that being willing to take some risks is important. If an interesting position becomes available, she recommends applying for it to keep one's options open.

With respect to the omnipresent topic of work-life balance, she has no magic answers to share but notes that things generally work themselves out. It helps to have a family and support system that understand the demands on attorneys, and Judge Dein is grateful to her husband and family for their support throughout her career. Although private civil litigation practice required demanding hours, so does her role on the bench. "I still work at night from home," she remarked. At the time she was appointed to the bench, Judge Dein's son was eight years old. Although her hours as a judge are more regular and predictable than they were at her firm, she had to adapt to having less flexibility during the day. She stressed that attorneys should do what they love to do and not bow to any unwanted societal pressure to specialize in a chosen field, especially when just beginning their careers.

Conclusion

Judge Dein's role as a U.S. Magistrate Judge allows her the opportunity to serve as a trial judge, a mediator, and a mentor every day. Her happiness with her position could not be more genuine. She remains steadfastly committed to the judicial system and its integrity, no matter what happens to be wearing at the time. ☺

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Two important changes occurred in the early 1990s that affected our role. First, Congress changed the title of the position to Magistrate Judge. This announced to litigants that Magistrates were judges. No longer would we hear that consent was being withheld because the litigant wanted a "real judge." The second important change in our district came as a result of the Civil Justice Reform Act (CJRA). The CJRA required that each district establish an advisory group to recommend how the processing of cases could be made more efficient and reduce the cost for litigants. The district's advisory committee recommended that it was inefficient, time consuming, and created additional cost and effort to have two judicial officers process one case. In other words, why should a Magistrate Judge handle the pretrial proceedings and make a report and recommendation on a motion for summary judgment—only to have it reviewed by the District Judge assigned to the case? Why should the parties have, in effect, an opportunity to reargue a motion?

The District Judges agreed with the committee's recommendations and decided to adopt a "one case, one judge" system. The Magistrate Judges were placed on the civil assignment wheel and no longer joined with the District Judges in the processing of cases. In other words, now when a civil case is filed, it is randomly assigned to either a District Judge or Magistrate Judge. If the parties consent, the case remains with the Magistrate Judge; if not, it is reassigned to a District Judge. Each District Judge and Magistrate Judge has his or her own case. A Magistrate Judge's name appears on the docket for

cases assigned to the District Judge for the purpose of consent or to handle any settlement conference. The Magistrate Judges continue to perform all of the pretrial duties in criminal cases.

Our district's current system of placing the Magistrate Judges on the civil assignment wheel has created an efficient way in which to process civil cases. The fact that there is only one judge avoids the duplication of time, effort, and expense that is involved when the matter is first heard by the Magistrate Judge and then reviewed by a District Judge. Of course, it takes the support of the bar for this system to work, because the attorneys must discuss consent to a Magistrate Judge with their clients.

Much has changed since I was appointed, especially the color of my hair and my body shape. But the most important change has been the continuing positive expansion of the duties of the Magistrate Judge. The vision of the judges in 1979—to do whatever is permissible under the statutes and Constitution—has been fulfilled in the Eastern District of Wisconsin. ☺