

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

GENERAL ORDER 10-02

February 2, 2010

After public notice dated November 20, 2009 regarding amendments to the Local Rules of the United States District Court for the District of Massachusetts and the Rules for United States Magistrate Judges in the United States District Court for the District of Massachusetts primarily to provide for time periods in multiples of seven days pursuant to the Statutory Time Period Technical Amendments Act of 2009 (Pub. L. No. 111-016) and after review, the Judges of the United States District Court have determined to adopt such rules as proposed, with certain additions and modifications based upon comments received and subsequent reconsideration. Accordingly, the Local Rules have been amended as indicated in the attached summary charts and excerpts of the rules effective December 1, 2009.

So Ordered.

Mark L. Wolf

Mark L. Wolf
Chief Judge

Rya W. Zobel

Rya W. Zobel
United States District Judge

Douglas P. Woodlock

Douglas P. Woodlock
United States District Judge

Richard G. Stearns

Richard G. Stearns
United States District Judge

Nancy Gertner

Nancy Gertner
United States District Judge

George A. O'Toole

George A. O'Toole
United States District Judge

Edward F. Harrington

Edward F. Harrington
Senior United States District Judge

Joseph L. Tauro

Joseph L. Tauro
United States District Judge

William G. Young

William G. Young
United States District Judge

Nathaniel M. Gorton

Nathaniel M. Gorton
United States District Judge

Patti B. Saris

Patti B. Saris
United States District Judge

Michael A. Ponsor

Michael A Ponsor
United States District Judge

F. Dennis Saylor IV

F. Dennis Saylor IV
United States District Judge

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

LOCAL RULE REVISIONS FOR DEADLINES - EFFECTIVE DEC. 1, 2009

Rule	Title	Present Time Period	New Time Period
4.1(b)	Service of Process - Dismissal for Failure to Make Service	tenth day	14 th day
5.1(b)	Form and Filing of Papers - Time and Place for Filing	three (3) business days	seven (7) days
5.4 (F)	Filing and Service by Electronic Means - State Court Record in Removal Proceedings	thirty days	28 days
7.1 (b)(2)	Motion Practice	amended language to exclude s/j motions from 14 day response time - see F.R.Civ.P. Rule 56	
15.1(b)	Addition of New Parties	ten (10) days	14 days
16.1(c)	Early Assessment of cases - Settlement proposals	ten (10) days	14 days
16.1(d)	Early Assessment of Cases - Joint Statement	five (5) business days	seven (7) days
16.3(b)	Case Management Conferences - Obligation of Counsel to Confer	five (5) business days	seven (7) days
16.5(c)	Final Pretrial Conference - Disclosures Preliminary to the Pretrial conference	30 days	28 days
16.5(d)	Final Pretrial Conference - Obligation of Counsel to Confer and Prepare Pretrial Memorandum	fifteen (15) days	14 days
		five (5) business days	seven (7) days
16.5(f)	Final Pretrial Conference - Trial Brief	five (5) business days	seven (7) days
26.2(d)	Sequences of Discovery - Removed and Transferred Actions	twenty (20) days	21 days
35.1(c)	Disclosure of Medical Information in Personal Injury Cases - Removed and Transferred Actions	twenty (20) days	21 days
36.1 (b)	Admissions - Statements in Response to Requests for Admission Following Objection	fifteen (15) days	14 days

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

LOCAL RULE REVISIONS FOR DEADLINES - EFFECTIVE DEC. 1, 2009

Rule	Title	Present Time Period	New Time Period
40.2(a)(4)	Conflict of Court Appearances - Order of Preference and Notice to Clerks	three (3) days	seven (7) days
40.2(d)(5)	Conflict of Court Appearances - Scheduling Policy Regarding Superior Court Cases	three (3) days	seven (7) days
41.1(a)(1)	Dismissal for Want of Prosecution	30 days	28 days
41.1(a)(2)	Dismissal for Want of Prosecution	thirtieth day	28 th day
41.1(a)(3)	Dismissal for Want of Prosecution	30 days	28 days
41.1(b)(1)	Dismissal for Want of Prosecution	twenty (20) days	21 days
		ten (10) business days	14 days
43.1(b)(2)	Trial - Evidence at the Evidentiary Hearing	two (2) court days	seven (7) days
56.1	Motions for Summary Judgment	21 days for response and 14 days for reply - added deadlines pursuant to F.R.Civ.P.Rule 56	
68.2	Settlement	thirty (30) days	28 days
81.1(a)	Removal	thirty (30) days	28 days
81.1(b)	Removal	forty-five (45) days	42 days
83.5.1(a)(4)	Bar of the District Court - Admission to the District Bar	twenty (20) days	21 days
83.6(2)(B)(ii)	Rules of Disciplinary Enforcement - Discipline Imposed by Other Courts	thirty (30) days	28 days
		fifteen (15) days	14 days
83.6(2)(D)	Rules of Disciplinary Enforcement - Discipline Imposed by Other Courts	thirty (30) days	28 days
83.6(5)(C)	Rules of Disciplinary Enforcement - Disciplinary Proceedings	thirty (30) days	28 days

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS			
LOCAL RULE REVISIONS FOR DEADLINES - EFFECTIVE DEC. 1, 2009			
Rule	Title	Present Time Period	New Time Period
83.6(7)(B)	Rules of Disciplinary Enforcement - Reinstatement	thirty (30) days	28 days
116.5(C)	Status Conferences and Status Reports Procedure - Final Status Conference	three (3) business days	seven (7) days
117.1(A)	Pretrial Conferences - Initial Pretrial Conference	thirty (30) days	28 days
117.1(A)(9)	Pretrial Conferences - Initial Pretrial Conference	three (3) days	seven (7) days
203(A)	Bankruptcy Appeals	ten (10) days	14 days

RULES FOR UNITED STATES MAGISTRATE JUDGES IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS			
MAGISTRATE JUDGE LOCAL RULE REVISIONS FOR DEADLINES - EFFECTIVE DEC. 1, 2009			
Rule	Title	Present Time Period	New Time Period
2 (b)	Non-dispositive Pre-trial Matters	10 days	14 days
3 (b)	Dispositive Pre-trial Matters	10 days	14 days
3 (c)	Dispositive Pre-trial Matters	10 days	14 days
		10 days	14 days
4 (c)(3)	Special Master References and Trials by Consent	20 days	21 days
11 (b)	Pretrial Procedures for Class A Misdemeanors	ten days	14 days
		ten days	14 days
12	Record of Proceedings	ten days	14 days

as of 2/16/2010

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

LOCAL RULES AMENDMENTS EFFECTIVE DECEMBER 1, 2009

RULE 4.1 SERVICE OF PROCESS--DISMISSAL FOR FAILURE TO MAKE SERVICE

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(b) Counsel and parties appearing pro se who seek to show good cause for the failure to make service within the 120 day period prescribed by Fed. R. Civ. P. 4(m) shall do so by filing a motion for enlargement of time under Fed. R. Civ. P. 6(b), together with a supporting affidavit. If on the 14th day following the expiration of the 120 day period good cause has not been shown as provided herein, the clerk shall forthwith automatically enter an order of dismissal for failure to effect service of process, without awaiting any further order of the court. ...

Effective September 1, 1990; amended effective January 2, 1995; December 1, 2009.

RULE 5.1 FORM AND FILING OF PAPERS

...

(b) Time and Place of Filing. Except as noted in Rule 33-36(f), the original of all papers required to be served under Fed. R. Civ. P. 5(d) shall, unless otherwise submitted to the court, be filed in the office of the clerk within seven (7) days after service has been made.

...

Effective September 1, 1990; amended effective December 1, 2009.

RULE 5.4 FILING AND SERVICE BY ELECTRONIC MEANS

...

(F) State Court Record in Removal Proceedings. Within 28 days after filing a notice of removal in a civil action, a party removing an action under 28 U.S.C. §§ 1441-52 must file certified or attested copies of all docket entries, records, and proceedings in the state court in paper format. Unless exempt or otherwise ordered by the court, the removing party must also file a disk with the clerk's office containing the state court record in PDF format.

...

Effective January 1, 2006, amended effective January 1, 2009; December 1, 2009.

RULE 7.1 MOTION PRACTICE

....

(b) Submission of Motion and Opposition to Motion.

(1) *Submission of Motion.* A party filing a motion shall at the same time file a memorandum of reasons, including citation of supporting authorities, why the motion should be granted. Affidavits and other documents setting forth or evidencing facts on which the motion is based shall be filed with the motion.

(2) *Submission of Opposition to a Motion.* A party opposing a motion, shall file an opposition within 14 days after the motion is served, unless (1) the motion is for summary judgment, in which case the opposition shall be filed within 21 days after the motion is served, or (2) another period is fixed by rule or statute, or by order of the court. A party opposing a motion shall file, in the same (rather than a separate), document a memorandum of reasons, including citation of supporting authorities, why the motion should not be granted. Affidavits and other documents setting forth or evidencing facts on which the opposition is based shall be filed with the opposition. The fourteen day period is intended to include the period specified by the civil rules for mailing time and provide for a uniform period regardless of the use of the mails.

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Effective September 1, 1990; amended effective October 1, 1992; December 1, 2009.

RULE 15.1 ADDITION OF NEW PARTIES

...

(b) Service on New Party. A party moving to amend a pleading to add a new party shall serve, in the manner contemplated by Fed. R. Civ. P. 5(b), the motion to amend upon the proposed new party at least 14 days in advance of filing the motion, together with a separate document stating the date on which the motion will be filed. A motion to amend a pleading to add a new party shall be accompanied by a certificate stating that it has been served in advance on the new party as required by this rule.

Adopted effective October 1, 1992; amended effective January 2, 1995; December 1, 2009..

RULE 16.1 EARLY ASSESSMENT OF CASES

...

(c) Settlement Proposals. Unless otherwise ordered by the judge, the plaintiff shall present written settlement proposals to all defendants no later than 14 days before the date for the scheduling conference. Defense counsel shall have conferred with their clients on the subject of settlement before the scheduling conference and be prepared to respond to the proposals at the scheduling conference.

(d) Joint Statement. Unless otherwise ordered by the judge, the parties are required to file, no later than seven (7) days before the scheduling conference and after consideration of the topics contemplated by Fed. R. Civ. P. 16(b) & (c) and 26(f), a joint statement containing a proposed pretrial schedule, which shall include:

...

Adopted effective October 1, 1992; amended effective January 2, 1995; December 10, 1996; December 4, 2000; January 2, 2001; December 1, 2009..

RULE 16.3 CASE MANAGEMENT CONFERENCES

...

(b) Obligation of Counsel to Confer. The judicial officer may require counsel for the parties to confer before the case management conference for the purpose of preparing a joint statement containing:

- (1) an agenda of matters that one or more parties believe should be addressed at the conference; and
- (2) a report advising the judicial officer whether the case is progressing within the allotted time limits and in accord with the specified pretrial steps.

This statement is to be filed with the court no later than seven (7) days before the case management conference.

...

Adopted effective October 1, 1992, amended effective December 1, 2009.

RULE 16.5 FINAL PRETRIAL CONFERENCE

...

(c) Disclosures Preliminary to the Pretrial Conference. As provided in LR 26.4(a), the disclosure regarding experts required by Fed. R. Civ. P. 26(a)(2) shall be made at least 90 days before the final pretrial conference. No later than 28 days before the date of the pretrial conference the parties shall make the pretrial disclosures required by Fed. R. Civ. P. 26(a)(3). Any objections to the use of the evidence identified in the pretrial disclosure required by Fed. R. Civ. P. 26(a)(3) shall be made before counsel confer regarding the pretrial memorandum, shall be a subject of their conference and shall not be filed with the court unless the objections cannot be resolved. Filing of such objections shall be made pursuant to subsection (d)(12) of this rule.

(d) Obligation of Counsel to Confer and Prepare Pretrial Memorandum. Unless otherwise ordered by the judicial officer to whom the case is assigned for trial, counsel for the parties shall confer no later than 14 days before the date of the final pretrial conference for the purpose of jointly preparing a pretrial memorandum for submission to the judicial officer. Unless otherwise ordered by the judicial officer to whom the case is assigned for trial, the parties are required to file, no later than seven (7) days prior to the pretrial conference, a joint pretrial memorandum which shall set forth:

...

(f) Trial Brief. A trial brief, including requests for rulings or instructions, shall be filed by each party seven (7) days before the commencement of trial. Each party may supplement these requests at the trial if the evidence develops otherwise than as anticipated.

Adopted effective October 1, 1992; amended effective January 2, 1995; December 1, 2009.

RULE 26.2 SEQUENCES OF DISCOVERY

...

(d) Removed and Transferred Actions. In all actions removed to this court or transferred to this court from another federal court, the submission required by subdivision (a) shall be made as prescribed in that subdivision, and if discovery was initiated before the action being removed or transferred to this court, then the submission required by subdivision (a) shall be made within 21 days of the date of removal or transfer.

Adopted effective October 1, 1992; amended effective January 2, 1995; December 10, 1996; December 4, 2000; December 1, 2009.

RULE 35.1 DISCLOSURE OF MEDICAL INFORMATION IN PERSONAL INJURY CASES

...

(c) Removed and Transferred Actions. In all actions removed to this court from a state court or transferred to this court from another federal court, claimants seeking recovery for personal injuries shall provide the information and materials described in subdivision (a) within 21 days after the date of removal or transfer.

Adopted effective October 1, 1992; amended effective December 1, 2009.

RULE 36.1 ADMISSIONS

...

(b) Statements in Response to Requests for Admission Following Objections. When there is objection to a request for admission and it is subsequently determined that the request is proper, the matter, the admission of which is requested, shall be deemed admitted unless within 14 days after such determination such party to whom the request was directed serves a statement denying the matter or setting forth the reasons why that party cannot admit or deny the matter, as provided in Fed. R. Civ. P. 36.

Adopted effective October 1, 1992; amended effective January 2, 1995; December 1, 2009

RULE 40.2 CONFLICT OF COURT APPEARANCES

(a) Order of Preference and Notice to Clerks.

...

When such conflicts appear, the counsel involved shall notify the deputy clerk assigned to each judge concerned, in writing, not later than seven (7) days after the receipt of the notice or calendar giving rise to such conflict. The notice shall contain the names and docket number of each case, the time of the scheduled hearings in each case, the purpose thereof, and advise which case has precedence and the reason therefor. Upon receipt of such notice and a determination that a conflict in fact exists, the case or cases not having precedence shall be rescheduled.

(d) Scheduling Policy Regarding Superior Court Cases.

...

Counsel shall notify the presiding Superior Court Justice and U.S. District Judge of the scheduling conflict, in writing, not later than seven (7) days after the receipt of the scheduling order giving rise to the conflict. Counsel's notification shall include: a) the names and docket numbers of each case, b) the date and time of the scheduled proceedings in each case, and c) a brief statement as to which case has precedence under this policy. The case or cases not having precedence shall be rescheduled, unless the presiding Justice and Judge agree otherwise. In the event of any conflict between the provisions of this policy and the provisions of the Speedy Trial Plan for the District of Massachusetts, the Speedy Trial Plan shall have precedence.

Effective September 1, 1990; amended effective January 2, 1995; December 1, 2009.

RULE 41.1 DISMISSAL FOR WANT OF PROSECUTION

(a)(1) Whenever in any civil action the clerk shall ascertain that no proceeding has been docketed therein for a period of one (1) year, he shall then mail notice to all persons who have entered an appearance in such a case that, subject to the provisions of subsection (a)(3), the case will be dismissed without further notice 28 days after the sending of the notice.

(2) After the 28th day following the sending of the notice, without order of the court the clerk shall, subject to the provisions of subsection (a)(3), enter an order of dismissal for all cases on the list. It shall not be necessary for the clerk to send additional notice of the dismissal to any counsel or party.

(3) A case shall not be dismissed for lack of prosecution if within 28 days of the sending of notice an explanation for the lack of proceedings is filed and the judge to whom the case is assigned orders that it not be dismissed.

(b)(1) Additionally, each judge may from time to time give notice of not less than 21 days of hearing on a dismissal calendar for actions or proceedings assigned to that judge that appear not to have been diligently prosecuted. Unless otherwise ordered by the assigned judge, each party shall, not less than 14 days prior to the noticed hearing date, serve and file a certificate describing the status of the action or proceeding and showing that good cause exists for the court to retain the case on the docket. Nothing in this rule precludes the filing of a motion for dismissal under Rule 41(b) of the Federal Rules of Civil Procedure.

...

Effective September 1, 1990; amended effective December 1, 2009.

RULE 43.1 TRIAL

...

(b) Evidence at the Evidentiary Hearing.

...

(2) Not later than seven (7) days before it seeks to use the testimony of any witness, or on shorter notice for good cause shown, a party shall advise the judicial officer and all other parties of its intent to use the testimony of the witness on a specified day.

...

Adopted effective October 1, 1992; amended effective December 1, 2009.

RULE 56.1 MOTIONS FOR SUMMARY JUDGMENT

Motions for summary judgment shall include a concise statement of the material facts of record as to which the moving party contends there is no genuine issue to be tried, with page references to affidavits, depositions and other documentation. Failure to include such a statement constitutes grounds for denial of the motion. Opposition to motions for summary judgment must be filed, unless the court orders otherwise, within 21 days after the motion is served. A party opposing the motion shall include a concise statement of the material facts of record as to which it is contended that there exists a genuine issue to be tried, with page references to affidavits, depositions and other documentation. Copies of all referenced documentation shall be filed as exhibits to the motion or opposition. Material facts of record set forth in the statement required to be served by the moving party will be deemed for purposes of the motion to be admitted by opposing parties unless controverted by the statement required to be served by opposing parties. Unless the court orders otherwise, the moving party may file a reply within 14 days after the response is served.

Effective September 1, 1990, amended effective December 1, 2009.

RULE 68.2 SETTLEMENT

When a case is settled, the parties shall file in the office of the clerk a signed agreement for judgment or stipulation for dismissal, as appropriate, within 28 days, unless the court otherwise orders.

Effective September 1, 1990; amended effective December 1, 2009.

RULE 81.1 REMOVAL

(a) Within 28 days after filing a notice for removal of an action from a state court to this court pursuant to 28 U.S.C. § 1446, the party filing the notice shall file certified or attested copies of all records and proceedings in the state court and a certified or attested copy of all docket entries in the state court.

(b) If the clerk of this court has not received the papers required to be filed under section (a) within 42 days of the filing of the notice for removal, the case shall be remanded to the state court from which it was removed, unless this court directs otherwise.

...

Effective September 1, 1990; amended effective December 1, 2009.

RULE 83.5.1 BAR OF THE DISTRICT COURT

(a) **Admission to the District Bar.**

...

(4) Within 21 days after the application is transmitted to the United States Attorney, if concluding on the basis of the information contained in the application that the application should be granted, the United States Attorney shall return the application to the clerk with written approval. The clerk shall place the name of the applicant on the list for the first available admissions ceremony.

...

Effective September 1, 1990; amended effective December 1, 2009.

RULE 83.6 RULES OF DISCIPLINARY ENFORCEMENT

...

(2) **Discipline Imposed By Other Courts.**

...

(B) Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this court has been disciplined by another court, this court shall forthwith issue a notice directed to the attorney containing:

(i) a copy of the judgment or order from the other court; and

(ii) an order to show cause directing that the attorney inform this court within 28 days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in subsection (2)(D) hereof that the imposition of the identical discipline by this court would be unwarranted and the reasons therefor. The order shall state that a hearing on such a claim may be had if requested within 14 days after service of the order; otherwise the matter will be determined on the papers without hearing.

...

(D) Upon the expiration of 28 days from service of the notice issued pursuant to the provisions of subsection (2)(B), or any longer period needed for a hearing and consideration by the court, this court shall impose the identical discipline unless the respondent-attorney demonstrates, or this court finds, that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:

...

(5) Disciplinary Proceedings.

...

(C) To initiate formal disciplinary proceedings, counsel shall obtain an order of this court upon a showing of probable cause, requiring the respondent-attorney to show cause within 28 days after service of that order upon that attorney, personally or by mail, why the attorney should not be disciplined. The order to show cause shall include a certification of all courts before which the respondent-attorney is admitted to practice, as specified in the form appended to these rules.

...

(7) Reinstatement.

...

(B) *Hearing on Application.* Petitions for reinstatement by a disbarred or indefinitely suspended attorney under this rule shall be filed with the Chief Judge of this court. Upon receipt of the petition, the Chief Judge shall promptly refer the petition to counsel and shall assign the matter for prompt hearing before one or more judges of this court provided, however, that if the disciplinary proceeding was predicated upon the complaint of a judge of this court, the complaining judge shall not sit, and if the Chief Judge is the complainant, the judge next senior shall assume his responsibilities in the matter. The judge or judges assigned to the matter shall within 28 days after referral schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice law before this court and that his resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest.

...

Effective September 1, 1990; amended effective August 1, 1997; December 1, 2009.

RULE 116.5 STATUS CONFERENCES AND STATUS REPORTS PROCEDURE

...

(C) Final Status Conference. Before the Magistrate Judge issues the Final Status Report required by subdivision (D) of this Local Rule, the Magistrate Judge shall convene a Final Status Conference with the attorneys for the parties who will conduct the trial. Prior to this conference, counsel shall confer and, not later than seven (7) days before the conference, prepare and file a joint memorandum addressing the following issues, and any other issue relevant to the progress of the case, which counsel must be prepared to discuss at the conference:

...

Adopted September 8, 1998; effective December 1, 1998; amended effective December 1, 2009.

RULE 117.1 PRETRIAL CONFERENCES

(A) Initial Pretrial Conference. After receiving the Magistrate Judge's Final Status Report, and at least 28 days before trial, or at the earliest practicable shorter time before trial consistent with the Speedy Trial Act, the judge who will preside at trial must conduct an Initial Pretrial Conference, which counsel who will conduct the trial must attend. At the Initial Pretrial Conference the judge must:

...

Adopted September 8, 1998; effective December 1, 1998; amended effective December 1, 2009.

RULE 203 BANKRUPTCY APPEALS

(A) The bankruptcy court is authorized and directed to dismiss an appeal filed after the time specified in Bankruptcy Rule 8002 or an appeal in which the appellant has failed to file a designation of the items for the record or a statement of the issues as required by Bankruptcy Rule 8006. The bankruptcy court is also authorized and directed to decide motions to extend the foregoing deadlines and to consolidate appeals which present similar issues from a common record. Bankruptcy court orders entered under this subsection may be reviewed by the district court on motion filed within 14 days of the entry of the order.

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Effective September 1, 1990(as Rule 200); amended effective January 2, 1995; December 1, 2009.

II. AUTHORITY OF UNITED STATES MAGISTRATE JUDGES

Rule 2 - NON-DISPOSITIVE PRE-TRIAL MATTERS

(a) A magistrate judge may hear and determine any pretrial motion or other pretrial matter, in accordance with 28 U.S.C. Section 636(b)(1)(A), other than those motions specified in Rule 3 of these Rules.

(b) A party may not assign as error any aspect of the magistrate judge's order made under subsection (a) hereof, unless a timely objection is made. A party must serve and file any objections to the magistrate judge's order within 14 days of being served with a copy of that order unless a different time is prescribed by the magistrate judge or a district judge. The district judge to whom the case is assigned will consider such objections and will modify or set aside any portion of the magistrate judge's order determined to be clearly erroneous or contrary to law.

(c) The ruling or order of a magistrate judge in a matter that is heard and determined under subsection (a) hereof is the ruling of the Court and is final unless reversed, vacated or modified by a district judge as provided in Fed. R. Civ. P. 72(a) and Fed. R. Crim. P. 59(a). The filing of objections under subsection (b) hereof does not operate as a stay of a magistrate judge's ruling or order unless so ordered by the magistrate judge or a district judge, and then only to the extent specifically ordered by the magistrate judge or district judge. Any party desiring a stay of a magistrate judge's ruling or order, or any part thereof, pending ruling on objections filed under subsection (b) hereof, must first apply therefor to the magistrate judge from whose ruling the objection is taken. If the magistrate judge denies a stay, written application therefor may then be made to the district judge to whom the case is assigned. Any application to the district judge for a stay must have appended to it the certificate of counsel that application for the stay sought has been made to the magistrate judge and denied by the magistrate judge, together with a copy of the magistrate judge's denial.

**Rule 3 - DISPOSITIVE PRE-TRIAL MOTIONS
AND PRISONER CASES**

(a) In accordance with 28 U.S.C. Section 636(b)(1)(B) and (C), a magistrate judge upon a specific referral by the district judge assigned to the case may conduct such evidentiary hearings as are necessary or appropriate, and submit to a district judge proposed findings of fact and recommendations for the disposition of:

- (1) applications for post-trial relief made by individuals convicted of criminal offenses;
- (2) prisoner petitions challenging conditions of confinement;
- (3) motions for injunctive relief (including preliminary injunctions but excluding motions for temporary restraining orders);
- (4) motions for judgment on the pleadings;
- (5) motions for summary judgment;
- (6) motions to dismiss or quash an indictment or information made by a defendant;
- (7) motions to suppress evidence in a criminal case;
- (8) motions to dismiss or permit the maintenance of a class action;
- (9) motions to dismiss for failure to state a claim upon which relief may be granted;
- (10) motions to dismiss an action involuntarily;
- (11) motions for judicial review of administrative determinations;
- (12) motions for review of default judgments;
- (13) motions to dismiss or for judgment by default under Fed. R. Civ. P. 37(b);
- (14) motions to revoke or modify probation or supervised release under the provisions of Fed. R. Crim. P. 32.1(b), in cases not within the consent jurisdiction of a magistrate judge; and

(15) Such other pretrial matters as are dispositive of a claim or a defense.

(b) In all reports and recommendations filed under the provisions of subsection (a) hereof, the magistrate judge must incorporate therein clear notice to the parties that failure to file timely and appropriate objections to that report and recommendation under the provisions of this Rule will result in preclusion of the right to appeal the district court's order to the United States Court of Appeals. That notice may consist of the following language –

The parties are hereby advised that under the provisions of Fed. R. Civ. P. 72(b) or Fed. R. Crim. P. 59(b), any party who objects to these proposed findings and recommendations must file specific written objections thereto with the Clerk of this Court within 14 days of the party's receipt of this Report and Recommendation. The written objections must specifically identify the portion of the proposed findings, recommendations, or report to which objection is made and the basis for such objections. The parties are further advised that the United States Court of Appeals for this Circuit has repeatedly indicated that failure to comply with Fed. R. Civ. P. 72(b), will preclude further appellate review of the District Court's order based on this Report and Recommendation. *See Keating v. Secretary of Health and Human Services*, 848 F.2d 271 (1st Cir. 1988); *United States v. Emiliano Valencia-Copete*, 792 F.2d 4 (1st Cir. 1986); *Park Motor Mart, Inc. v. Ford Motor Co.*, 616 F.2d 603 (1st Cir. 1980); *United States v. Vega*, 678 F.2d 376, 378-379 (1st Cir. 1982); *Scott v. Schweiker*, 702 F.2d 13, 14 (1st Cir. 1983); *see also, Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466 (1985).

The notice will be effective if stated in other language that clearly communicates the effect of failure to comply with the provisions of Fed. R. Civ. P. 72(b), as set forth by the United States Court of Appeals for this Circuit in *United States v. Emiliano Valencia-Copete*, 792 F.2d 4 (1st Cir. 1986).

(c) Within 14 days of being served with a copy of the recommended disposition, a party may serve and file specific, written objections to the proposed findings and recommendations. The written objections must specifically identify the portions of the proposed findings and

recommendations or report to which objection is made and the basis for each objection. A party may respond to another party's objections within 14 days after being served with a copy thereof.

The district judge to whom the case is assigned must make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge's recommended disposition to which specific written objection has been made in accordance with this Rule. The district judge, however, need not conduct a new hearing and may consider the record developed before the magistrate judge, making a determination on the basis of that record. The district judge may accept, reject or modify the recommended disposition, receive further evidence or recommit the matter to the magistrate judge with instructions.

(d) A magistrate judge may exercise the powers enumerated in Rules 2, 3, 6 and 7 of the Rules Governing Section 2254 and 2255 Proceedings, in accordance with the standards and criteria established in 28 U.S.C. Section 636(b)(1), and may recommend to the district judge appropriate orders under Rules 4, 5, 8 and 9 of the Rules Governing Section 2254 and 2255 Proceedings.