

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

PUBLIC NOTICE

UPDATE TO MAGISTRATE JUDGE RULES

The United States District Court for the District of Massachusetts is publishing for comment the attached changes to **Magistrate Judge Rules 3(15)(b) Dispositive Pre-Trial Motions and Prisoner Cases; Rule 8(b) Civil Cases; Rule 15(a) Emergency Magistrate Judge**, and the deletion of **Rule 17 Timing of Referral of Civil Motion; Rule 18 Transmittal of Papers to a Magistrate Judge; Rule 19 Record of Subsequent Proceedings; Rule 20 Form of Referral**.

The attached update and the current rules may be viewed through the following link:

<http://www.mad.uscourts.gov/general/rules-home.htm>

Those wishing to comment on the proposed changes to the Magistrate Judge Rules for the District of Massachusetts may do so in writing or by email. All comments must be received on or before June 3, 2022, and should be addressed to:

Robert M. Farrell, Clerk of Court
United States District Court
One Courthouse Way - Suite 2-300
Boston, MA 02210

or by email to: rules@mad.uscourts.gov

This public notice has been posted to the “Announcements” and “Rules” pages of the court’s web site at <http://www.mad.uscourts.gov>.

May 3, 2022

/s/ Robert M. Farrell
Clerk of Court

Magistrate Judge Rules – Proposed Changes

Rule 3 DISPOSITIVE PRE-TRIAL MOTIONS AND PRISONER CASES

(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~~service 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).

Magistrate Judge Rules – Proposed Changes

Rule 8 CIVIL CASES

(a) Method of Assignment.

(1) *Eastern Division*

(A) Cases filed After January 1, 2003. Civil cases filed on or after January 1, 2003 shall be randomly assigned to both a district judge and a magistrate judge. The manner of referral to the magistrate judge of specific matters in a case shall be in accordance with the provisions of Rule 8(b) below.

(B) Cases Filed Before January 1, 2003. Effective January 1, 1993 until December 31, 2002 each Eastern Division magistrate judge was paired with two or more district judges for purposes of referral of matters and proceedings in civil cases, with pairing rotating every two years. The pairings in effect on December 31, 2002 shall continue to apply to cases filed before January 1, 2003 except where there has been a prior ruling by a magistrate judge as described in section 1(C) below. In the event that one or more district judges were not paired, cases referred by those district judges were and will continue to be randomly drawn.

(C) Effect of Prior Ruling. When a magistrate judge has already ruled on a matter in a particular case, a subsequent referral in that case is assigned to the same magistrate judge.

(D) Effect of Recusal. In the event that a magistrate judge is recused on a particular matter referred under the provisions of these Rules, the case must be returned to the Clerk to be redrawn to another magistrate judge on a random basis.

(2) Central and Western Divisions All civil and miscellaneous cases as described above are referred in the Central and Western Division to the magistrate judge sitting respectively in Worcester and Springfield.

(b) Manner of Referral

~~(1) The following civil matters may be automatically referred to the magistrate judges by the Clerk, if and when timely opposition is filed or the time for opposition has expired, for hearing and decision by a magistrate judge in accordance with Rule 2, unless the district judge orders otherwise in a particular case:~~

~~(A) Motions for enlargement of time to file pleadings or complete discovery, except when the time for the completion of discovery has been established after a pretrial conference by order of the district judge;~~

~~(B) Motions for more definite statement;~~

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~~(C) All motions for discovery and for enforcement of discovery orders under Fed. R. Civ. P. 26 through 37, except motions to dismiss or for a judgment by default under Rule 37, and motions for proceedings under Fed. R. Civ. P. 26(f).~~

~~(2) The following civil matters may be referred to the magistrate judges by the Clerk for hearing and determination by a magistrate judge as soon as they are filed and docketed, whether opposed or not, in accordance with Rule 2 of these Rules:~~

~~(A) Applications to proceed in forma pauperis filed under the provisions of 28 U.S.C. Section 1915 that are not referred to the Pro Se Staff Attorney;~~

~~(B) Motions for appointment of counsel in civil cases that are not referred to the Pro Se Staff Attorney;~~

~~(C) Supplementary proceedings to enforce a money judgment under Fed. R. Civ. P. 69~~

~~(3) Unopposed non-dispositive motions as defined in 28 U.S.C. Section 636(b)(1)(A) may be decided on the merits by the magistrate judge if referred to the magistrate judge by the Clerk.~~

~~(4) All other civil. Civil matters may be referred to the magistrate judges only by order of a district judge. The order must specify the matters to be considered and the action to be taken by the magistrate judge.~~

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V. MISCELLANEOUS

Rule 15 EMERGENCY MAGISTRATE JUDGE

(a) Generally. One of the magistrate judges is designated as the emergency magistrate judge at Boston for each monthday of the calendar year. ~~The That~~ magistrate judge ~~designated as emergency magistrate judge at Boston during a particular month~~ is the emergency magistrate judge for all emergency matters arising during that monthday within the territorial jurisdiction of the Eastern Division. The magistrate judge sitting in Worcester is the emergency magistrate judge for all emergency matters within the territorial jurisdiction of the Central Division. The magistrate judge sitting in Springfield is the emergency magistrate judge for all emergency matters within the territorial jurisdiction of the Western Division.

It is the duty of the Chief Magistrate Judge to advise the Clerk of the Court as to which magistrate judge has been designated as the emergency magistrate judge in Boston for ~~any given month~~ each day of the calendar year.

(b) Original Proceedings. All new original matters within the territorial jurisdiction of the magistrate judges involving the filing of criminal complaints, issuance of warrants of arrest and search warrants, seizure warrants, warrants to permit inspections of worksites sought by or on behalf of OSHA, warrants to inspect sites under CERCLA, presentations for bail or detention, conduct of preliminary examinations pursuant to Fed. R. Crim. P. 5.1, removal proceedings under Fed. R. Crim. P. 40, grand jury returns under Fed. R. Crim. P. 6(f), appointment of counsel in criminal cases in connection with original matters, applications for pen registers, traps and traces, electronic tracking devices, and other matters within the original jurisdiction of magistrate judges, must be filed with the magistrate judge then designated as the emergency magistrate judge.

(c) Referred Proceedings. The following matters not within the original jurisdiction of magistrate judges, or within the concurrent jurisdiction of district judges and magistrate judges, unless otherwise directed by the district judge, must be automatically referred to the emergency magistrate judge:

(1) Applications to proceed in forma pauperis filed under the provisions of 28 U.S.C. section 1915 not otherwise referred to the Pro Se Staff Attorney;

(2) Applications for writs of entry filed by or on behalf of the Internal Revenue Service (see subsection (d)(2), infra);

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(3) Motions for appointment of counsel filed in connection with grand jury proceedings;

(4) Applications for tax returns and tax returns information filed under the provisions of 26 U.S.C. section 6103(i)(1)(B)(see subsection (d)(2), infra);

(5) Any other civil motion that the trial judge (or, in the absence of the trial judge, the district judge assigned to the miscellaneous business docket) determines should be resolved before the time that the magistrate judge previously assigned to the case, or in the absence of such previous assignment, the magistrate judge who would normally be assigned the case, could otherwise hear the motion.

(d) Related Procedures

(1) Previous Proceedings. If, on a previous occasion, an emergency magistrate judge has received a criminal complaint or has issued a search warrant under the provisions of Fed. R. Crim. P. 41, in connection with an ongoing investigation, subsequent applications for warrants or arrest, search warrants, or other matters within the original jurisdiction of a magistrate judge, must be made to the magistrate judge who had conducted previous proceedings in the case, unless the new application or matter is not directly related to the previous investigation. If, as a result of that continuing investigation, an indictment is returned, or an information is filed, the attorney for the government must, before the return of the indictment or the filing of the information, record the docket or case number(s) of those prior proceedings before the magistrate judge on the required Form JS 45.

If the United States Attorney seeks the issuance of a search warrant on the day an indictment is returned in Boston in a case in which no previous proceedings before a magistrate judge have occurred, the United States Attorney must present the application for a search warrant to the magistrate judge to whom the indictment is drawn after the indictment is returned. If the presentation of the application for the search warrant cannot be delayed until the indictment is returned and the indictment is drawn to a magistrate judge, the United States Attorney may present the application for the search warrant to the emergency magistrate judge for issuance. In that instance, the issuance of the search warrant is not treated as a previous proceeding so as to cause the case to be drawn to that magistrate judge when the indictment is returned.

(2) Applications for Writs of Entry and Tax Information. Applications for writs of

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entry filed by or on behalf of the Internal Revenue Service referred to in subsection (c)(2) hereof, motions for appointment of counsel filed in connection with grand jury proceedings referred to in subsection (c)(3) hereof, and applications for returns and returns information filed under the provisions of 26 U.S.C. Section 6103(i)(1)(B) referred to in subsection (c)(4) hereof, must first be filed with the Clerk of the Court to be docketed on the miscellaneous business docket of the court. All such matters must then be referred, unless otherwise directed by the district judge then serving as the miscellaneous business judge, to the magistrate judge who was designated as the emergency magistrate judge at the time of the filing of the application or motion.

(3) Pen Registers, Traps and Traces, Orders for Telephone Subscriber Information and Electronic Tracking Devices. Renewals of applications for pen registers, traps and traces, telephone subscriber information, and electronic tracking devices, must be made to the magistrate judge who issued the original order allowing the requested relief. For the purposes of this Rule, however, a renewal does not include an application made after the expiration or termination of the original order. If an order authorizing a pen register, trap and trace, telephone subscriber information, or electronic tracking device, has expired by its terms, a subsequent application must be made to the current emergency magistrate judge.

(4) Violations of Conditions. If a person has been arrested for violation of a condition of release, a violation of a condition of probation, or a violation of a condition of supervised release, that matter must be presented to the magistrate judge who conducted previous proceedings in connection with that case; otherwise, the matter must be presented to the current emergency magistrate judge.

(5) Unavailability of Emergency Magistrate Judge. For all matters referred under Rule 15(c) above, if the emergency magistrate judge is not available, and the matter so referred requires appropriate action before the emergency magistrate judge, the matter must be referred to another magistrate judge sitting in Boston by random draw.

(6) Internal Revenue Service Summons Enforcement. Applications for Orders to Show Cause in matters related to Internal Revenue Service Summonses are not emergency matters within the meaning of these Rules. Those applications must be filed with the Clerk of the Miscellaneous Business Docket and must, if ordered referred to a magistrate judge, be drawn to a magistrate judge on a random basis.

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(e) Matters Ancillary to Proceedings in Other Districts. The emergency magistrate judge is responsible for all matters in this district ancillary to proceedings in other districts. Such proceedings include the appearance of a Massachusetts resident before a magistrate judge in this district to co-sign a surety bond or post property for a defendant who is being prosecuted in another district. In all such cases, the emergency magistrate judge must assign a Magistrate Judge Docket number to the ancillary proceeding and open a file; the file must be maintained in the same manner as a file maintained in connection with an application for a search warrant.

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Rule 16 CONTEMPT OF COURT

Magistrate judges in the District of Massachusetts have all powers granted to magistrate judges by the provisions of 28 U.S.C. Section 636(e) with respect to contempt of court, and all proceedings they conduct pursuant to these powers must be in conformity with these statutory provisions.

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~~Rule 17 — TIMING OF REFERRAL OF CIVIL MOTION~~

~~The rule stated here does not apply to those motions referred to in Rule 8(b) of these Rules. In the absence of any extraordinary circumstances warranting prompt referral, no civil motion can be referred to a magistrate judge until such time as the non-moving parties are required to file an opposition under Rule 7.1(B)(2) of the Local Rules of this Court. The order of reference must state whether or not an opposition to the motion or motions has been filed.~~

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~~Rule 18 — TRANSMITTAL OF PAPERS TO A MAGISTRATE JUDGE~~

~~After referral of a case to a magistrate judge, the docket clerk must promptly docket all subsequently filed papers relating to that case and promptly must transmit the filed papers to the magistrate judge for consideration.~~

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~~Rule 19~~ — ~~RECORD OF SUBSEQUENT PROCEEDINGS~~

~~In any case in which a party has filed objections to a magistrate judge's determination under Rule 2(b) of these Rules, or to a magistrate judge's proposed findings, recommendations or report under Rule 3(b) of these Rules, or has filed an appeal under Fed. R. Crim. P. 58(g)(2), the docket clerk assigned to the district judge to whom the motion for reconsideration, objections, or appeal, has been assigned must promptly transmit to the magistrate judge who conducted the previous proceedings all records and opinions relating to the subsequent action taken by the district judge.~~

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~~Rule 20 — FORM OF REFERRAL~~

~~All referrals to magistrate judges must be made by uniform orders of reference in civil, criminal, miscellaneous, and post-conviction cases in the form annexed to these Rules. In those civil cases referred to a magistrate judge for proceedings consistent with the provisions of Fed. R. Civ. P. 16, however, and in other pretrial management functions, non-dispositive motions may be referred to a magistrate judge under the provisions of Rule 17 of these Rules without a form of reference.~~

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Rule 3 DISPOSITIVE PRE-TRIAL MOTIONS AND PRISONER CASES

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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 service 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).

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(a) Method of Assignment.

(1) Eastern Division

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(C) Effect of Prior Ruling. When a magistrate judge has already ruled on a matter in a particular case, a subsequent referral in that case is assigned to the same magistrate judge.

(D) Effect of Recusal. In the event that a magistrate judge is recused on a particular matter referred under the provisions of these Rules, the case must be returned to the Clerk to be redrawn to another magistrate judge on a random basis.

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V. MISCELLANEOUS

Rule 15 EMERGENCY MAGISTRATE JUDGE

(a) Generally. One of the magistrate judges is designated as the emergency magistrate judge at Boston for each day of the calendar year. That magistrate judge is the emergency magistrate judge for all emergency matters arising during that day within the territorial jurisdiction of the Eastern Division. The magistrate judge sitting in Worcester is the emergency magistrate judge for all emergency matters within the territorial jurisdiction of the Central Division. The magistrate judge sitting in Springfield is the emergency magistrate judge for all emergency matters within the territorial jurisdiction of the Western Division.

It is the duty of the Chief Magistrate Judge to advise the Clerk of the Court as to which magistrate judge has been designated as the emergency magistrate judge in Boston for each day of the calendar year.

(b) Original Proceedings. All new original matters within the territorial jurisdiction of the magistrate judges involving the filing of criminal complaints, issuance of warrants of arrest and search warrants, seizure warrants, warrants to permit inspections of worksites sought by or on behalf of OSHA, warrants to inspect sites under CERCLA, presentations for bail or detention, conduct of preliminary examinations pursuant to Fed. R. Crim. P. 5.1, removal proceedings under Fed. R. Crim. P. 40, grand jury returns under Fed. R. Crim. P. 6(f), appointment of counsel in criminal cases in connection with original matters, applications for pen registers, traps and traces, electronic tracking devices, and other matters within the original jurisdiction of magistrate judges, must be filed with the magistrate judge then designated as the emergency magistrate judge.

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(2) Applications for writs of entry filed by or on behalf of the Internal Revenue

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Service (see subsection (d)(2), *infra*);

(3) Motions for appointment of counsel filed in connection with grand jury proceedings;

(4) Applications for tax returns and tax returns information filed under the provisions of 26 U.S.C. section 6103(i)(1)(B)(see subsection (d)(2), *infra*);

(5) Any other civil motion that the trial judge (or, in the absence of the trial judge, the district judge assigned to the miscellaneous business docket) determines should be resolved before the time that the magistrate judge previously assigned to the case, or in the absence of such previous assignment, the magistrate judge who would normally be assigned the case, could otherwise hear the motion.

(d) Related Procedures

(1) Previous Proceedings. If, on a previous occasion, an emergency magistrate judge has received a criminal complaint or has issued a search warrant under the provisions of Fed. R. Crim. P. 41, in connection with an ongoing investigation, subsequent applications for warrants or arrest, search warrants, or other matters within the original jurisdiction of a magistrate judge, must be made to the magistrate judge who had conducted previous proceedings in the case, unless the new application or matter is not directly related to the previous investigation. If, as a result of that continuing investigation, an indictment is returned, or an information is filed, the attorney for the government must, before the return of the indictment or the filing of the information, record the docket or case number(s) of those prior proceedings before the magistrate judge on the required Form JS 45.

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for issuance. In that instance, the issuance of the search warrant is not treated as a previous proceeding so as to cause the case to be drawn to that magistrate judge when the indictment is returned.

(2) Applications for Writs of Entry and Tax Information. Applications for writs of entry filed by or on behalf of the Internal Revenue Service referred to in subsection (c)(2) hereof, motions for appointment of counsel filed in connection with grand jury proceedings referred to in subsection (c)(3) hereof, and applications for returns and returns information filed under the provisions of 26 U.S.C. Section 6103(i)(1)(B) referred to in subsection (c)(4) hereof, must first be filed with the Clerk of the Court to be docketed on the miscellaneous business docket of the court. All such matters must then be referred, unless otherwise directed by the district judge then serving as the miscellaneous business judge, to the magistrate judge who was designated as the emergency magistrate judge at the time of the filing of the application or motion.

(3) Pen Registers, Traps and Traces, Orders for Telephone Subscriber Information and Electronic Tracking Devices. Renewals of applications for pen registers, traps and traces, telephone subscriber information, and electronic tracking devices, must be made to the magistrate judge who issued the original order allowing the requested relief. For the purposes of this Rule, however, a renewal does not include an application made after the expiration or termination of the original order. If an order authorizing a pen register, trap and trace, telephone subscriber information, or electronic tracking device, has expired by its terms, a subsequent application must be made to the current emergency magistrate judge.

(4) Violations of Conditions. If a person has been arrested for violation of a condition of release, a violation of a condition of probation, or a violation of a condition of supervised release, that matter must be presented to the magistrate judge who conducted previous proceedings in connection with that case; otherwise, the matter must be presented to the current emergency magistrate judge.

(5) Unavailability of Emergency Magistrate Judge. For all matters referred under Rule 15(c) above, if the emergency magistrate judge is not available, and the matter so referred

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requires appropriate action before the emergency magistrate judge, the matter must be referred to another magistrate judge sitting in Boston by random draw.

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