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Magistrate Judges in the Montana Federal District

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MAGISTRATE JUDGES IN THE MONTANA FEDERAL DISTRICT

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Over the last three decades, growing caseloads and finite resources have fostered expansion of the jurisdiction, responsibilities, prestige and compensation of United States Magistrate Judges. Passage of the Civil Justice Reform Act (CJRA) of 1990, which required local experimentation with procedures for reducing expense and delay in civil litigation, [1] propelled this development in many of the ninety-four federal districts across the country. The United States District Court for the District of Montana has quite strongly evidenced these phenomena. Perhaps most important, the CJRA expense and delay reduction plan that the district prescribed in 1991 included an opt-out procedure which it intended would secure a larger number of consents to magistrate judge jurisdiction in civil cases. That procedure's adoption, related developments, such as the need for the district's Article III judges to devote considerable resources to resolving their criminal dockets, and the perception that the magistrate judges concomitantly resolve civil cases as efficiently, fairly and expeditiously as the Article III judges have led many lawyers and parties in the Montana District to view magistrate judges as similar to Article III judges for the purpose of civil dispute resolution.

The factors mentioned above, the increasingly complex nature of criminal and civil caseloads, the steadily expanding character of civil dockets in the United States and the Montana District, and the need to find innovative ways of resolving these disputes with limited resources mean that the office of magistrate judge in the country and in the Montana District warrants analysis. This essay undertakes that effort. The piece initially examines the origins and development of the office of magistrate judge nationally and in the Montana Federal District Court, emphasizing the recent expansion of magistrate judges' roles and responsibilities. The paper concludes with suggestions for the future.

*515 I. The Origins, Development And Recent Expansion Of The Office Of Magistrate Judge

A. National Developments

The historical background of the office of magistrate judge warrants comparatively circumscribed examination in this essay. Several studies that the Federal Judicial Center (FJC) commissioned and numerous independent authors have comprehensively evaluated the origins and developments of the office of magistrate judge, [2] and the research which they have performed can rather easily be summarized here.

Congress created the office of United States magistrate in the Federal Magistrates Act of 1968 [3] partly because it was dissatisfied with the office of United States commissioner, officials who assisted Article III judges with minor responsibilities associated with criminal dockets. [4] A 1976 amendment of this legislation clarified magistrates' power to hear prisoner civil rights actions, review administrative decisions involving Social Security benefits, and issue reports and recommendations on motions to dismiss and for summary judgment. [5] Congress soon thereafter passed the Federal Magistrate Act of 1979, [6] which it intended to improve federal court access by expanding magistrates' civil and criminal jurisdiction. [7] More specifically and perhaps most

importantly, the legislation empowered magistrates with parties' consent to treat all pretrial and trial matters and enter final judgments in civil litigation. [8]

Section 636 in Title 28 of the United States Code prescribes the powers and jurisdiction of magistrate judges, authorizing these judicial officers to undertake a broad spectrum of duties implicating civil and criminal litigation. ***516** [9] This statutory section confers on magistrate judges all powers and duties that United States commissioners formerly had. [10] On the criminal law side of the docket, magistrate judges are authorized to issue search and arrest warrants, [11] treat criminal complaints, [12] preside at initial appearances in criminal suits, [13] appoint attorneys for impoverished criminal defendants, [14] perform preliminary examinations to ascertain whether probable cause exists to hold a criminal defendant for additional proceedings, [15] conduct extradition hearings, [16] and handle grand jury proceedings. [17] District courts can also designate magistrate judges to try and to sentence defendants when charged with misdemeanors, if the parties consent. [18] Magistrate judges, therefore, normally handle misdemeanor proceedings and pretrial matters in federal felony cases. The Federal Magistrate Act, however, does not authorize magistrate judges to try criminal felony cases. [19]

Twenty-eight U.S.C. Section 636 assigns magistrate judges numerous responsibilities for civil lawsuits. That provision empowers district judges to designate magistrate judges to hear any pretrial matter, except for dispositive motions, such as motions for summary judgment and to dismiss, and permits Article III judges to reconsider these magistrate judge decisions only if “clearly erroneous or contrary to law.” [20]

District judges can even refer matters that 28 U.S.C. Section 636(b)(1)(A) prohibits magistrate judges from hearing, and prisoner petitions which seek post-conviction relief or challenge conditions of confinement, to magistrate judges for consideration and the submission of reports and recommendations. [21] Moreover, Article III judges can designate magistrate judges to ***517** serve as special masters. [22] Finally, magistrate judges “may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.” [23]

With litigants' consent, a magistrate judge “may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves.” [24] A party who consents can appeal the magistrate judge's determination directly to the appeals court as if a district judge had entered the judgment [25] and until recently could have appealed to a district judge “in the same manner as on an appeal from a district court judgment to the court of appeals.” [26]

The United States Code created the office of magistrate judge and prescribes jurisdiction; however, each district decides the specific responsibilities of these judicial officers. During the early 1980s, the FJC sponsored a study of the duties of magistrate judges in nine districts and found three essential models: (1) magistrate judges as effectively additional Article III judges, resolving their own civil caseloads; (2) magistrate judges as specialists either by case types or in specific features of pretrial case management; and (3) magistrate judges as “team players,” hearing all pretrial matters and preparing cases for district judges to try. [27] The study also ascertained that particular magistrate judges could have different responsibilities within the same district. [28]

In short, the developments described above and several related developments have coalesced since 1968 to change substantially, if not transform, the duties, roles and perceptions of magistrate judges in numerous districts. Congress gradually expanded magistrate judge jurisdiction and compensation for these judicial officers. [29] The enhanced responsibilities, reimbursement,

and prestige of the office correspondingly made the positions more competitive and appointment of magistrate judges more meritocratic. Mounting civil caseloads in state and federal trial courts and the growing complexity and number of federal court criminal prosecutions, for which the Speedy Trial Act requires prompt disposition, made federal district judges increasingly willing to enlarge magistrate judges' roles and responsibilities, particularly for resolving civil disputes. The perception, and probably the ***518** reality, in numerous districts that magistrate judges would resolve civil cases as competently, fairly, and expeditiously as Article III judges has apparently led growing numbers of lawyers and parties to consent to magistrate judge jurisdiction.

Finally, the passage and implementation of the CJRA has propelled all of the developments described in the paragraph immediately above. The CJRA "actually enhanced the potential role and status of federal magistrate judges," while the Senate Judiciary Committee Report which accompanied the legislation stated that "magistrates can and should play an important role, particularly in the pretrial and case management process." [30]

Professor Larry Dessem made several important findings in an early study of the CJRA's effectuation. [31] He stated that "magistrate judges generally have been viewed as having a significant role to play in solving the perceived problems that the CJRA was intended to address," although CJRA advisory groups and districts reached varying conclusions regarding the most efficacious use of the judicial officers. [32] Professor Dessem determined that districts employed magistrate judges as team players, specialists or additional judges. [33] He also found that numerous districts prescribed four approaches for encouraging increased consents to magistrate judge jurisdiction in civil cases: (1) affording litigants more information regarding consent; (2) requiring counsel specifically to address possible consent; (3) offering incentives for parties to consent; and (4) redefining ways of manifesting consent to jurisdiction. [34] Professor Dessem concluded that ways of employing magistrate judges varied among the districts and that their most effective use could only be determined within the context of districts' overall efforts to decrease cost and delay, while he surmised that the office's importance would grow under the CJRA and that magistrate judges would be essential to the implementation of expense and delay reduction procedures and would "play an important role in civil justice reform efforts in the federal districts courts." [35]

Many of the developments examined above and the historical time frame delineated are reflected in the experience of the Montana Federal District Court, which has been particularly willing to maximize the employment of magistrate judges, especially when resolving the civil caseload. More specific analysis of increasing reliance on magistrate judges in this district is explored below.

B. Developments in the Montana District

The Montana District actively participated in, or responded to, many of the national developments described in the subsection above. As recently ***519** as the mid-1980s, the Article III judges relied on part-time magistrate judges who were situated in each of the district's five divisions. [36] However, in the late 1980s, the court consolidated these positions into three full-time magistrate judge positions, and the Article III judges appoint these officers for eight-year terms of service. [37]

In 1990, Congress passed the CJRA and soon thereafter the Montana District implemented that statute in ways which the court intended would maximize employment of the magistrate judges. The Civil Justice Expense and Delay Reduction Plan provided that the Article III judges were to "utilize to the fullest extent allowed by law, the magistrate judges." [38] Perhaps most critical was the opt-out procedure which effectively assigned equal numbers of civil cases to Article III judges and magistrate judges and authorized magistrate judges to resolve the civil cases so assigned if litigants did not object within a specific period. [39]

Magistrate judges have also assumed expanded responsibility for pretrial proceedings, particularly involving discovery, in those civil cases for which Article III judges have ultimate responsibility.

Early experience with the opt-out procedure suggested that it did help to expedite resolution of civil cases. The Annual Report which the district prepared in 1994 showed that the district secured consents in a substantial number of civil cases which enabled Article III judges to devote greater attention to other litigation primarily involving criminal cases and relatively complex civil actions. [40] The Billings Division has experimented with the opt-out procedure for the longest period. [41] The Montana District modified the provision in 1995 by compressing the time afforded parties for requesting assignment to an Article III judge. [42] The Ninth Circuit invalidated it in 1996. [43] Nevertheless, most of the divisions are now essentially employing a procedure that resembles the opt-out mechanism to acquire consents under an October 1996 General Order. [44] Moreover, anecdotal evidence suggests ***520** that the district continues to secure a significant number of consents. [45]

Another important function that Magistrate Judges discharge is conducting settlement conferences. [46] For instance, Magistrate Judge Robert Holter holds approximately five conferences each month, and he has successfully assisted lawyers and litigants in settling cases. Settled lawsuits can obviously save the parties and the court expense and delay, particularly cost and time associated with trials.

II. Suggestions For The Future

A. National

As CJRA experimentation draws to a close, those individuals and entities which are evaluating the reform should institute special efforts to assess the roles and responsibilities of magistrate judges in reducing expense and delay in civil litigation. The RAND study of the ten pilot districts and the Federal Judicial Center (FJC) study of the five demonstration courts are not specifically intended to focus on magistrate judges. [47] However, the two studies may develop some information on whether these judicial officers have saved money or time and, if so, how much and in what ways. For example, reliance on magistrate judges in the demonstration districts which experimented with differentiated case management or with alternative dispute resolution could enhance understanding of how courts might employ the officials. [48] Moreover, each of the ninety-four districts, when discharging their statutory obligation to conduct annual assessments may have evaluated the use of magistrate judges. [49] Indeed, the District of New Mexico recently modified its civil case assignment plan to "more effectively benefit from the talents and abilities of Magistrate Judges of" the court. [50]

It would also be valuable to secure information on the use of magistrate judges nationwide during the CJRA's implementation since 1990. For instance, we need to know exactly how many of the ninety-four districts relied on these officers in experimentation, the precise ways in which courts depended on the magistrate judges, and how effective use of the officials was in terms, for instance, of reducing expense or delay. No one has apparently collected this material in a very systematic way, although the FJC, the Administrative Office of the United States Courts, and individual ***521** districts may have considerable relevant data. That information should be systematically collected, analyzed and synthesized as promptly as possible. This work may soon become urgent because much applicable material may be lost or destroyed, if the Congress allows the CJRA to sunset in late 1997. [51]

B. Montana District

The Montana District should undertake as many of the tasks enumerated in the above subsection that apply to it as possible. Perhaps most importantly, the court should evaluate whether the district has realized the aspiration that it espoused at the outset of CJRA experimentation to maximize the use of magistrate judges in the court. [52] The district ought to assemble, assess and synthesize all of the relevant empirical data that it has, for example, on the consents to magistrate judge jurisdiction secured and their impact on expense and delay reduction. It might also be advisable to survey lawyers and litigants to ascertain their perceptions of use of magistrate judges in the court. [53]

Once the district has gathered this material, the court ought to consult it and all of the information on national developments that I call for above. The district should then evaluate the efficacy of magistrate judges' use in CJRA experimentation and formulate plans for future employment of the judicial officers. For example, if the district ascertains that the opt-out procedure has been successful, the court should explore ways of encouraging consents in the future. Because most attorneys and parties that participate in civil litigation in the district seem to have considerable confidence in the magistrate judges, and rather readily consent to their jurisdiction, there should be relatively little difficulty in securing numerous voluntary consents in the future. The court, therefore, might consider abrogating the opt-out mechanism which the Ninth Circuit invalidated and employing a procedure for securing consents during scheduling conferences analogous to that which Magistrate Judges Erickson and Holter use. [54]

Conclusion

The jurisdiction, responsibilities and prestige of magistrate judges have increased substantially in the United States and the Montana Federal District Court over the last three decades. Implementation of the CJRA of 1990 has propelled this development. As CJRA experimentation concludes, evaluators should analyze the enhanced roles and responsibilities of magistrate judges to ascertain whether increased use of these judicial officials has reduced expense or delay or had other beneficial or adverse impacts. Once that information has been collected, assessed and synthesized, it should be ***522** possible to ascertain exactly how the office of magistrate judge has changed and how reliance on the officials might improve resolution of federal court disputes in the future.

Footnotes

a1 Copyright (c) 1997 by Carl Tobias. Professor of Law, University of Montana. I wish to thank Magistrate Judge Leif “Bart” Erickson, James Conwell, and Peggy Sanner for valuable suggestions, Cecelia Palmer and Charlotte Wilmerton for processing this piece, and Ann and Tom Boone and the Harris Trust for generous, continuing support. I serve on the Ninth Circuit District Local Rules Review Committee and on the Advisory Group that the United States District Court for the District of Montana has appointed under the Civil Justice Reform Act of 1990; however, the views expressed here and errors that remain are mine.

1 *See* 28 U.S.C. §§ 471-82 (1994). *See generally* Carl Tobias, *Improving the 1988 and 1990 Judicial Improvements Acts*, 46 Stan.L.Rev. 1589 (1994).

2 The FJC studies are Carroll Seron, The Role of Magistrates in Federal District Courts (1983) and Carroll Seron, The Roles of Magistrates: Nine Case Studies (1985) [hereinafter Seron, Nine Case Studies]. Illustrative of independent treatment are Christopher E. Smith, United States Magistrates in the Federal Courts (1990) and R. Lawrence Dessem, *The Role of the Federal Magistrate Judge in Civil Justice Reform,* 67 St. John's L.Rev. 799 (1993). I emphasize magistrate judge responsibilities for civil cases in this essay because they are more important to the issues treated here.

3 Pub.L. No. 90-578, 82 Stat. 1108 (1968). *See generally* Joseph F. Spaniol, Jr., *The Federal Magistrates Act: History and Development,* 1974 Ariz.St.L.J. 565. I rely substantially in the remainder of this section on Dessem, *supra* note 2.

4 *See* Linda J. Silberman, *Masters and Magistrates, Part II: The American Analogue,* 50 N.Y.U.L.Rev. 1297, 1297-98 (1975); *see also* Richard W. Peterson, *The Federal Magistrates Act: A New Dimension in the Implementation of Justice,* 56 Iowa L.Rev. 62 (1970).

5 Pub.L. No. 94-577, 90 Stat. 2729 (1976) (codified at 28 U.S.C. § 636(b) (1994)); *see* S.Rep. No. 625, 94th Cong., 2d Sess. 3-4 (1976), *reprinted in* 1975 U.S.C.C.A.N. 6162, 6162-63.

6 Pub.L. No. 96-82, 93 Stat. 643 (1979). *See generally* Peter G. McCabe, *The Federal Magistrate Act of 1979,* 16 Harv.J. on Legis. 343, 401 (1979).

7 Pub.L. No. 96-82, 93 Stat. 643 (1979) (purpose clause).

8 Pub.L. No. 96-82, § 2, 93 Stat. 643, 643 (1979) (codified as amended at 28 U.S.C. § 636 (1994)).

9 For a comprehensive evaluation of these powers and this jurisdiction, *see* Admin. Office of the U.S. Courts, Inventory of United States Magistrate Judge Duties (1991) [hereinafter Inventory of Duties]; *see also* 28 U.S.C. § 636 (1994).

10 28 U.S.C. § 636(a)(1) (1994).

11 Fed.R.Crim.P. 4, 41.

12 Fed.R.Crim.P. 3.

13 Fed.R.Crim.P. 5, 58(b)(2).

14 18 U.S.C. § 3006A(b) (1994).

15 *Id.* § 3060; Fed.R.Crim.P. 5.1.

16 18 U.S.C. § 3184 (1994).

17 Fed.R.Crim.P. 6.

18 18 U.S.C. § 3401 (1994); Fed.R.Crim.P. 58.

19 Gomez v. United States, 490 U.S. 858, 871-72, 109 S.Ct. 2237, 2245-46, 104 L.Ed.2d 923 (1989).

20 28 U.S.C. § 636(b)(1)(A) (1994); *see* Fed.R.Civ.P. 72(a) (appeal from magistrate judge's order on nondispositive matters); *see also* A. Wallace Tashima, *A Modest Proposal to Revise the Federal Magistrates Act,* 144 F.R.D. 437 (1993).

21 28 U.S.C. § 636(b)(1)(B) (1994). Should a litigant object to the magistrate judge's proposed findings and recommendations within ten days, the district judge is to "make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* § 636(b)(1); *see* Fed.R.Civ.P. 72(b).

22 28 U.S.C. § 636(b)(2) (1994); *see* Fed.R.Civ.P. 53 (prescribing appointment and powers of master).

23 28 U.S.C. § 636(b)(3) (1994); *see also* Inventory of Duties, *supra* note 9 (compiling duties).

24 28 U.S.C. § 636(c)(1) (1994).

25 *Id.* § 636(c)(3).

26 *Id.* § 636(c)(4); *see also* Fed.R.Civ.P. 74-76 (affording procedure for appeals from judgments of magistrate judge to district judges); Federal Courts Improvement Act of 1996, Pub.L. No. 104-317, 110 Stat. 3847, § 207 (abolishing appeals to district judges); Federal Courts Improvement Act of 1996, Pub.L. No. 104-317, 110 Stat. 3847, § 207 (abolishing appeals to district judges).

27 *See* Seron, Nine Case Studies, *supra* note 2, at 35-36.

28 *See id.* at 41-45.

29 *See, e.g., supra* notes 3-7 and accompanying text.

30 *See* Dessem, *supra* note 2, at 811 (first quotation); S.Rep. No. 416, 101st Cong., 2d Sess. 20 (1990) (second quotation).

31 *See* Dessem, *supra* note 2, at 811-40.

32 *See id.* at 811.

33 *See id.* at 812-32; *see also supra* note 27 and accompanying text.

34 *See* Dessem, *supra* note 2, at 825-32.

35 *See id.* at 840-41. Professor Dessem could not posit definitive conclusions when he wrote because districts had not fully implemented the CJRA.

36 Telephone conversation with Leif "Bart" Erickson, U.S. Magistrate Judge for the Montana District (Dec. 18, 1996).

37 *See id.; see also* 28 U.S.C. § 631(e) (1994).

38 *See* U.S.Dist.Ct. for the District of Mont., Civil Justice Expense and Delay Reduction Plan, at 3-4 (Dec. 1991).

39 *See* Mont.R. 105-2(d). *See generally* Carl Tobias, *Updating Federal Civil Justice Reform in Montana,* 54 Mont.L.Rev. 89, 92-93 (1993).

40 *See* Annual Assessment of the Civil Justice Expense and Delay Reduction Plan of the U.S.Dist.Ct. for the Dist. of Mt. 3-4 (Oct. 1994). *See generally* Carl Tobias, *Re-evaluating Federal Civil Justice Reform in Montana,* 56 Mont.L.Rev. 307, 312-13 (1995).

41 *See* Tobias, *supra* note 39, at 92-93.

42 *See* Mont.R. 105-2(d); *see also* U.S.Dist.Ct. for the Dist. of Mt., Order, Amendments to the Rules of Procedure of the U.S.Dist.Ct. for the Dist. of Mt. (1995). *See generally* Carl Tobias, *Continuing Federal Civil Justice Reform in Montana,* 57 Mont.L.Rev. 143, 147 (1996).

43 *See* Laird v. Chisholm, 85 F.3d 637, 1996 WL 205487 (9th Cir.1996).

44 *See* U.S.Dist.Court for the Dist. of Mont., Order in the Matter of Assignment of Cases (Oct. 9, 1996). For example, Magistrate Judge Erickson informs lawyers and parties about the possibility of consenting during scheduling conferences. Conversation, *supra* note 36. Magistrate Judge Robert Holter similarly informs attorneys and litigants while furnishing them with waiver and consent forms. Conversation with James Conwell, Law Clerk to Magistrate Judge Holter (Dec. 19, 1996).

45 This assertion is premised on conversations with numerous individuals who are familiar with consents in the district.

46 Conversation, *supra* note 44.

47 *See* Judicial Improvements Act of 1990, tit. I, Pub.L. No. 101-650, § 104(c), 105(c), 104 Stat. 5089, 5097-98.

48 *See* Judicial Improvements Act of 1990, tit. I, Pub.L. No. 101-650, § 104(b), 104 Stat. 5097.

49 *See* 28 U.S.C. § 475 (1994); *see also* Annual Assessment, *supra* note 40.

50 *See* U.S.Dist.Ct. For the Dist. of New Mexico, In the Matter of the Modification of Civil Case Assignments, Admin. Order No. Misc. 96-137 (1996) (on file with author).

51 *See* 28 U.S.C. § 482(b)(2) (1994).

52 *See supra* note 38 and accompanying text.

53 Perhaps the CJRA Advisory Group could conduct such a survey. Any survey conducted, of course, must maintain the anonymity of those surveyed.

54 *See supra* note 44.

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