

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

VOTING: Chief Judge Hogan, Judges Lamberth, Kessler, Friedman, Sullivan, Robertson, Kollar-Kotelly, Kennedy, Roberts, Huvelle, Walton, Bates, Leon, Collyer

ORDER

It is this 10th day of April, 2007 ordered that effective immediately Local Criminal Rules 57.17, 58, 59.1, 59.2, 57.27(d)(1) and (d)(3), 57.31(a) and Local Civil Rules 72.1, 72.2, 72.3, 73.1, 83.16(d)(1) and (d)(3), 83.20(a)(c) and 7(n) were amended as follows:

[New language in bold and underlined; old language stricken]

LCrR 57.17

DUTIES AND POWERS OF MAGISTRATE JUDGES

(a) GENERAL DUTIES.

The United States Magistrate Judges appointed by this Court pursuant to 28 U.S.C. § 631 shall have the duty and the power to:

- (1) Act as committing magistrate judge in holding preliminary hearings for violations of the United States Code.
- (2) Issue arrest warrants or summonses for violations of the United States Code.
- (3) Issue search warrants.
- (4) Conduct ~~federal removal~~ **transfer** proceedings **and conduct proceedings incident to the transfer of criminal cases**, and ~~issue warrants of removal as provided in Rules 5, 5.1 and 40, Federal Rules of Criminal Procedure.~~
- (5) Receive indictments returned by the grand jury and issue bench warrants, when necessary, for defendants named in indictments.**
- ~~(5)~~**(6)** Conduct international extradition proceedings **pursuant to 18 U.S.C. § 3181 et seq.**
- ~~(6)~~**(7)** Administer oaths and affirmations and take acknowledgments, affidavits and depositions.
- ~~(7)~~**(8)** Impose or review conditions of release under applicable federal law.

- (8)(9) Order the return or the forfeiture of collateral or surety bonds.
- (9)(10) Issue subpoenas, writs of *habeas corpus ad testificandum* or *habeas corpus ad prosequendum*, or other orders necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings.
- (10)(11) Order lineups, photographs, fingerprinting, palm-printing, voice identification, handwriting exemplars, medical or physical examinations, and the taking of blood, urine, fingernail, hair and bodily secretion sampling (with any appropriate medical safeguards required by due process considerations).
- (11)(12) Ascertain whether defendants or any other persons entitled to counsel in criminal cases docketed in this Court matters are represented by counsel and, in instances where any defendant such person is financially unable to obtain counsel, appoint counsel to represent the defendant throughout all proceedings in this Court person.
- ~~(12) Supervise proceedings conducted pursuant to letters rogatory in accordance with 28 U.S.C. § 1782.~~
- (13) Conduct proceedings and enter orders as described in Rules 502 and 505 of these Rules LCrR 57:20 58.
- (14) Refer a defendant to an available facility for a preliminary opinion; hear motions and enter orders for examinations to determine mental competency; and conduct competency hearings to determine a defendant's ability to understand and to participate in any proceeding which a magistrate judge is authorized to conduct.
- ~~(15) Conduct hearings and enter orders regarding persons believed to be mentally ill found in certain federal reservations, in accordance with 21 D.C. Code §§ 901-909.~~
- ~~(16) Perform any additional duty not inconsistent with the Constitution and laws of the United States.~~

(b) POWERS EXERCISED AT THE REQUEST OF A JUDGE. UPON REFERRAL FROM A DISTRICT JUDGE

At the request of the **district** judge to whom the case is assigned, a magistrate judge shall: ~~have the duty and power to:~~

- (1) Conduct proceeding and enter orders or recommendations as described in LCrR ~~57:18~~ 59.1 and LCrR. ~~19~~ 59.2 of these Rules.
- (2) Dismiss indictments on motion of the United States ~~Attorney~~ and with the consent of the defendants.

- (3) Conduct arraignments **in felony cases** to the extent of taking and entering pleas of not guilty: **pursuant to Rule 10, Federal Rules of Criminal Procedure.**
- ~~(4) Enter scheduling orders and exercise other powers provided in Rules 16 and 26(f), Federal Rules of Civil Procedure, and LCvR 76.3 of these Rules.~~
- ~~(5) Serve as a special master in civil actions pursuant to Rule 53, Federal Rules of Civil Procedure.~~
- ~~(6)~~**(4)** Conduct *voir dire* and select petit juries **in felony cases, upon consent of the defendant.**
- ~~(7) Accept petit jury verdicts in civil cases in the absence of a judge.~~
- ~~(8) Conduct examinations of judgment debtors in accordance with Rule 69 of the Federal Rules of Civil Procedure.~~
- (5) Conduct guilty plea proceedings in felony cases upon consent of the parties, and forward recommendations to the district judge to whom the case is assigned.**
- (6) Perform any additional duty not inconsistent with the Constitution and laws of the United States.**

~~(c) — **POWERS EXERCISED AT THE REQUEST OF THE CHIEF JUDGE.**~~

~~At the request of the Chief Judge, the magistrate judge shall have the duty and power to:~~

- ~~(1) Receive indictments returned by the grand jury and issue bench warrants, when necessary, for defendants named in the indictments.~~
- ~~(2) Conduct proceedings incident to the transfer of cases pursuant to Rule 20, Federal Rules of Criminal Procedure.~~

COMMENT TO LCrR 57.17: *The Rule has been revised to make it clear that a magistrate judge's authority to make competency determinations is limited to proceedings which a magistrate judge is authorized to conduct and is not a final dispositive order on the question of a defendant's competency to stand trial to remove references to civil procedure. Determinations as to competency of a defendant to stand trial will continue to be made by the trial judge. Section (a)(5) has been moved from the previous section (c) to clarify that indictments may be returned to magistrate judges in accordance with Rule 6(f), Federal Rules of Criminal Procedure. Other changes have also been made to conform to the Federal Rules of Criminal Procedure. Section (b)(4) has been amended to make explicit that, in order for voir dire to be conducted before a magistrate judge in a felony case, the parties must consent, in accordance with Peretz v. United States, 501 U.S. 923 (1991). Section (b)(5) has been added to give magistrate judges the authority to conduct guilty plea proceedings in felony cases upon the consent*

of the parties. Section (b)(6) has been moved from section (a) to make clear that it is one of the duties that may be performed only at the request of a judge.

[New language in bold and underlined; old language stricken]

LCrR 57-2058

~~REFERRAL OF MISDEMEANOR CASES TO~~ BEFORE ~~MAGISTRATE JUDGES FOR ALL PURPOSES~~

(a) JURISDICTION TO CONDUCT TRIALS OF MISDEMEANOR CASES.

A magistrate judge may conduct trials (with or without a jury), accept pleas, impose sentence, and otherwise exercise jurisdiction in cases of misdemeanor offenses in accordance with 18 U.S.C. § 3401 and Rule 58, Federal Rules of Criminal Procedure.

(b) ~~REQUEST FOR STENOGRAPHIC REPORTER~~ RECORDING THE PROCEEDINGS

~~In the case of a misdemeanor other than a petty offense, the proceedings shall be stenographically reported upon request of a party made at the time of execution of the written consent to be tried by the magistrate judge, or at such other later time as the magistrate judge may allow.~~

The court must record any proceedings under this rule by using a court reporter or a suitable recording device.

(c) PRESENTENCE INVESTIGATION AT THE REQUEST OF A MAGISTRATE JUDGE.

When requested by a magistrate judge, the Probation ~~Service~~ **Office** shall conduct a presentence investigation and render a report on any person convicted or who pleads guilty or nolo contendere before the magistrate judge.

(d) PAYMENT OF FIXED SUM IN LIEU OF APPEARANCE.

(1) In accordance with Rule 58(d), Federal Rules of Criminal Procedure, the magistrate judge may in suitable ~~types of~~ misdemeanor cases accept payment of a fixed sum in lieu of appearance. In such cases, payment of the fixed sum shall terminate the proceeding. A schedule of fixed sums for misdemeanor cases subject to this Rule shall be approved by the Court on recommendation of the magistrate judges. The schedule may provide that the fixed sums will be increased depending on the stage of the proceedings at which the sum is paid, but the sum shall may not exceed the maximum fine ~~which could be imposed upon conviction~~ **allowed by law.**

- (2) If the defendant fails to pay a fixed sum, request a hearing, or appear in response to a citation or violation notice, the Clerk or a magistrate judge may issue a notice for the defendant to appear before the court on a date certain. The notice may give the defendant an additional opportunity to pay a fixed sum in lieu of appearance. The Clerk must serve the notice on the defendant by mailing a copy to the defendant's last known address.
- (3) Upon an indictment, or upon a showing by one of the other charging documents specified in Federal Rules of Criminal Procedure 58(b)(1) of probable cause to believe that an offense has been committed and that the defendant has committed it, the court may issue an arrest warrant or, if no warrant is requested by an attorney for the government, a summons. The showing of probable cause must be made under oath or under penalty of perjury, but the affiant need not appear before the court. If the defendant fails to appear before the court in response to a summons, the court may summarily issue a warrant for the defendant's arrest.

(e) APPEAL

Appeal from a magistrate judge's order or judgment under this Rule is governed by Federal Rule of Criminal Procedure 58(g).

COMMENT TO LCrR 57.1758: The Rule has been renumbered as LCrR 58 to conform with the numbering of Federal Rule of Criminal Procedure 58. Changes and additions have been made to conform with Federal Rule of Criminal Procedure 58.

[New language in bold and underlined; old language stricken]

LCrR 57.18 59.1

REFERRAL OF MOTIONS AND PRETRIAL MATTERS TO MAGISTRATE JUDGES

(a) **MATTERS DETERMINABLE BY A MAGISTRATE JUDGE.**

At the request of the **district** judge to whom **a felony** case is assigned, a magistrate judge may hear and determine any **nondispositive** pretrial motion or matter other than those motions specified in ~~LCrR 72.3~~ **LCrR 59.2** of these Rules, and may conduct pretrial proceedings and enter orders pursuant to ~~LCrR 72.3~~ **LCrR 57.2** of these Rules.

(b) **~~OBJECTIONS TO MOTION FOR RECONSIDERATION OF THE~~
MAGISTRATE JUDGE'S RULING.**

Any party may **file written objections** request the judge to reconsider a magistrate judge's ruling under paragraph (a) ~~by filing a motion to reconsider within 10 days after being served with the order of the magistrate judge~~ **or after the oral order is stated on the record**, unless a different time is prescribed by the magistrate judge or the **district**

judge. The **objections** ~~motion~~ shall specifically designate the order or part thereof to which objection is made, and the basis for the objection. **The filing of oppositions and replies shall be governed by LCrR 47(b) and (d).**

(c) **DETERMINATION OF OBJECTIONS BASIS FOR RECONSIDERATION.**

~~Upon a motion for reconsideration or sua sponte~~ **consideration of objections filed in accordance with this Rule**, a **district** judge may modify or set aside any portion of a magistrate judge's order under this Rule found to be clearly erroneous or contrary to law. ~~A judge may modify or set aside any portion of a magistrate judge's order pursuant to Rule LCvR 16.4(a)(b)(c)(d)(e)(f) of these Rules whenever the judge deems such a modification necessary or appropriate.~~

COMMENT TO LCrR 57.1759.1: The Rule has been revised to remove references to civil procedure. Section (a) has been amended to make clear that magistrate judges may determine only nondispositive motions or matters in a felony case. See Federal Rule of Criminal Procedure 58 and 59(a). Additionally, the Rule has been renumbered as LCrR 59.1 to conform with the numbering of new Federal Rule of Criminal Procedure 59. Finally, the Rule is intended to make clear that objections to the magistrate judge's proposed findings and recommendations should not be called motions for reconsideration and are to be directed to the district judge.

[New language in bold and underlined; old language stricken]

LCrR 57.1959.2

**REFERRAL OF MATTERS FOR HEARING AND RECOMMENDATION BY
MAGISTRATE JUDGES**

(a) **MATTERS REFERABLE TO A MAGISTRATE JUDGE FOR HEARING AND RECOMMENDATION.**

At the request of the **district** judge to whom the case is assigned, a magistrate judge may conduct hearings, including evidentiary hearings, and submit to the **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~~) **(2) applications for revocation or modification of probation or supervised release, in accordance with LCrR 57.1(e) of these Rules 32.1(e) and Federal Rules of Criminal Procedure 32.1(b) and (c); and**

- ~~(4) motions for injunctive relief (including temporary restraining orders and preliminary injunctions);~~
- (5) **(3) motions for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information, made by the defendant, or otherwise to dismiss an action involuntarily motions to suppress evidence, or any matter that may dispose of a charge or defense.**
- ~~(6) motions to set aside default judgments;~~
- ~~(7) petitions for judicial review of administrative determinations; and~~
- ~~(8) petitions for civil commitment arising under Title III of the Narcotic Addict Rehabilitation Act of 1966, 18 U.S.C. § 4251, et. seq.~~

(b) OBJECTIONS TO RECOMMENDATIONS OF THE MAGISTRATE JUDGE.

Any party may file **for consideration by the district judge** written objections to the magistrate judge's proposed findings and recommendations issued under paragraph (a) within ten days after being served with a copy thereof. **The objections shall be denominated "Objections to the Magistrate Judge's Proposed Findings and Recommendations."** The objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for the objection. **The filing of oppositions and replies shall be governed by LCrR 47(b) and (d).**

Failure to file timely objections may waive appellate review of a District Court order adopting the magistrate judge's report. All magistrate judge's reports shall contain a notice substantially as follows:

Failure to file timely objections to the findings and recommendations set forth in this report may waive your right of appeal from an order of the District Court adopting such findings and recommendations. See *Thomas v. Arn*, 474 U.S. 140 (1985).

(c) DETERMINATION BY THE COURT.

A **district** judge shall make a *de novo* determination of those portions of a magistrate judge's findings and recommendations to which objection is made as provided in paragraph (b). A **district** judge may make a determination based solely on the record developed before the magistrate judge, or may conduct a new hearing, ~~and~~ receive further evidence, ~~The judge may also receive further evidence~~ and recall witnesses. A **district** judge may accept, reject, or modify, in whole or in part, the findings and recommendations of the magistrate judge, or may recommit the matter to the magistrate judge with instructions.

COMMENT TO LCrR 57.1859.2: The Rule has been revised to remove references to civil procedure. Additionally, the Rule has been renumbered as LCrR 59.2 to conform with the numbering of new Federal Rule of Criminal Procedure 59. Finally, the Rule is intended to make clear that objections to the magistrate judge's proposed findings and recommendations should not be called motions for reconsideration and are to be directed to the trial district judge.

LCrR 57.27

GROUND AND PROCEDURES FOR DISCIPLINE

(d) COMPLAINTS OF MISCONDUCT FILED IN THIS COURT.

(1) COMPLAINTS GENERALLY

Any person seeking to charge an attorney subject to the Rules with any act or omission which may justify disbarment, suspension, censure, reprimand or other discipline shall do so in writing by a clear and concise written statement of facts in support of the allegations, subscribed and under oath or affirmed under the penalty of perjury pursuant to the United States Code, Title 28 Section 1746. The Complaint shall be presented to the Committee by lodging it with the Clerk to the Committee. The Committee shall have the inherent power without any formal Complaint to inquire into misconduct of attorneys subject to these Rules.

COMMENT TO RULE 57.27(d)(1): This rule was modified to require that written complaints of misconduct contain a clear and concise statement of facts supporting the allegations made against attorneys.

LCrR 57.27

GROUND AND PROCEDURES FOR DISCIPLINE

(d) COMPLAINTS OF MISCONDUCT FILED IN THIS COURT

(3) INVESTIGATION

Complaints received by the Committee shall be reviewed to determine if the Complaint is appropriate for action. If the Complaint is insufficient on its face to warrant investigation, the Committee may discharge the Complaint and advise the complainant that no action will be taken. If the Committee decides that the Complaint or information otherwise received by the Committee requires action, the Committee is authorized to (1) investigate the matter itself; (2) refer the matter to the Office of Bar

Counsel, the Board on Professional Responsibility, District of Columbia Court of Appeals; (3) informally seek information from the respondent; or (4) require a formal Answer from the respondent in accordance with subsection (d)(4). To further any investigation, the Chairman, or in his absence, the Vice Chairman is authorized to issue subpoenas commanding the production of books, papers, documents, records or tangible items. If following any of these actions the Committee decides no further action is warranted, the Committee may, if its investigation was based on receipt of a complaint, discharge the Complaint and so inform the complainant and the respondent. If the Committee's investigation was based on information otherwise received and the respondent was made aware by the Committee of its investigation, the Committee shall notify the respondent that it has decided that no further action is warranted. **The Committee may, as part of its notice to the respondent discharging the Complaint, provide an informal, non-reportable cautionary or educational statement, which shall not be considered discipline.**

*COMMENT TO RULE 57.27(d)(3): Subsection (d)(3) ~~grants to the Committee at the investigative stage as well as at the hearing stage the authority to use subpoenas commanding the production of books, papers, documents, records or tangible items. It also specifies that the Committee can act based on a Complaint or information otherwise received, and is authorized to discharge a Complaint during the investigative stages~~ **was amended to clarify that the Committee on Grievances may include an informal, non-reportable cautionary or educational statement as part of a notice discharging a Complaint without further action.***

LCrR 57.31

LAWYER COUNSELING PANEL

(a) **REFERRAL OF ATTORNEYS FOR COUNSELING.**

Judges **or the Committee on Grievances** may refer to the **lawyer** counseling panel established by this Rule any member of the Bar of this Court who exhibits a deficiency in performance and who, in the judge's **or the Committee's** opinion, would likely benefit from counsel by other trial attorneys on matter of litigation practice, ethics or apparent abuse of alcohol or drugs. The judge **or the Committee** will notify **both** the panel **and the attorney** of the referral and the basis therefor., ~~and may also the attorney.~~ The referral shall be confidential.

(c) **PANEL PROCEEDINGS.**

The chairperson of the **lawyer** counseling panel shall receive references from judges **or the Committee on Grievances** and assign the referred member to a particular panel member for counseling. Participation in the counseling program by referred attorneys shall be voluntary. Any conversations between the referred attorney and members of the panel shall be confidential and shall not waive any attorney client privilege. The panel will make no findings or report of its action as to any referred attorney, other than a report to the referring judge, **or the Committee on Grievances**, as to whether the attorney did or did not participate in counseling.

COMMENT TO RULE 57.31(a) and (c): This rule was modified to permit the Committee on Grievances to refer attorneys to the Lawyer Counseling Panel and receive reports from the Panel concerning whether the referred attorney participated in counseling.

[New language in bold and underlined; old language stricken]

LCvR 72.1

DUTIES AND POWERS OF MAGISTRATE JUDGES

(a) GENERAL DUTIES.

The United States Magistrate Judges appointed by this Court pursuant to 28 U.S.C. § 631 shall have the duty and the power to:

- ~~(1)~~ Act as committing magistrate judge in holding preliminary hearings for violations of the United States Code.
- ~~(2)~~ Issue arrest warrants or summonses for violations of the United States Code.
- ~~(3)~~ Issue search warrants.
- ~~(4)~~ Conduct federal removal proceedings and issue warrants of removal as provided in Rule 40, Federal Rules of Criminal Procedure.
- ~~(5)~~ Conduct international extradition proceedings.
- ~~(6)~~ **(1)** Administer oaths and affirmations and take acknowledgments, affidavits and depositions.
- ~~(7)~~ Impose or review conditions of release under applicable federal law.
- ~~(8)~~ **(2)** Order the return or the forfeiture of collateral or surety bonds.

~~(9)~~ **(3)** Issue subpoenas, writs of *habeas corpus ad testificandum* or *habeas corpus ad prosequendum*, or other orders necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings.

~~(10)~~ Order lineups, photographs, fingerprinting, palm-printing, voice identification, medical or physical examinations, and the taking of blood, urine, fingernail, hair and bodily secretion sampling (with any appropriate medical safeguards required by due process considerations) and handwriting exemplars.

~~(11)~~ Ascertain whether defendants in criminal cases docketed in this Court are represented by counsel and, in instances where any defendant is financially unable to obtain counsel, appoint counsel to represent the defendant throughout all proceedings in this Court.

~~(12)~~ **(4)** Supervise proceedings conducted pursuant to letters rogatory in accordance with 28 U.S.C. § 1782.

~~(13)~~ **(5)** Conduct proceedings and enter orders as described in LCvR 73.1 and ~~LCvR 73.2~~ of these rules.

~~(14)~~ Refer a defendant to an available facility for a preliminary opinion; hear motions, and enter orders for examinations to determine mental competency; and conduct competency hearings to determine a defendant's ability to understand and to participate in any proceeding which a magistrate judge is authorized to conduct.

~~(15)~~ **(6)** Conduct hearings and enter orders regarding persons believed to be mentally ill found in certain federal reservations, in accordance with 21 D.C. Code §§ 901-909.

(7) Consider petitions by adopted persons to open adoption records of the Court.

~~(16)~~ Perform any additional duty not inconsistent with the Constitution and laws of the United States.

(b) POWERS EXERCISED AT THE REQUEST OF A DISTRICT JUDGE.

At the request of the **district** judge to whom the case is assigned, a magistrate judge shall have the duty and power to:

(1) Conduct proceedings and enter orders or recommendations as described in LCvR 72.2 and LCvR 72.3 of these Rules.

~~(2)~~ Dismiss indictments on motion of the United States Attorney and with the consent of the defendants.

- ~~(3)~~ — Conduct arraignments to the extent of taking and entering pleas of not guilty.
- ~~(4)~~ **(2)** Enter scheduling orders and exercise other powers provided in Rules 16 and 26(f), Federal Rules of Civil Procedure, and ~~LCvR 76.3~~ **LCvR 16.4** and **LCvR 16.5** of these Rules.
- ~~(5)~~ **(3)** Serve as a special master in civil actions pursuant to Rule 53, Federal Rules of Civil Procedure.
- ~~(6)~~ **(4)** Conduct *voir dire* and select petit juries **in civil cases with the consent of the parties.**
- ~~(7)~~ **(5)** Accept petit jury verdicts in civil cases in the absence of a **district** judge.
- ~~(8)~~ **(6)** Conduct examinations of judgment debtors **and other persons** in accordance with Rule 69 ~~of the~~, Federal Rules of Civil Procedure.
- (7) Perform any additional duty not inconsistent with the Constitution and laws of the United States.**

~~(c)~~ — **POWERS EXERCISED AT THE REQUEST OF THE CHIEF JUDGE.**

~~At the request of the Chief Judge, the magistrate judge shall have the duty and power to:~~

- ~~(1)~~ — Receive indictments returned by the grand jury and issue bench warrants, when necessary, for defendants named in the indictments.
- ~~(2)~~ — Conduct proceedings incident to the transfer of cases pursuant to Rule 20, Federal Rules of Criminal Procedure.

COMMENT TO LCvR 72.1: The Rule has been revised to make it clear that a magistrate judge's authority to make competency determinations is limited to proceedings which a magistrate judge is authorized to conduct and is not a final dispositive order on the question of a defendant's competency to stand trial: remove references to criminal procedure. Determinations as to competency of a defendant to stand trial will continue to be made by the trial judge. Section (a)(7) has been added to preserve the responsibility that was originally located in Section 8(B) of the Civil Justice Expense and Delay Reduction Plan, which has been eliminated. Section (b)(7) has been moved from section (a) to make clear that the stated duties may be performed only at the request of a district judge.

[New language in bold and underlined; old language stricken]

REFERRAL OF MOTIONS AND PRETRIAL MATTERS TO MAGISTRATE JUDGES

(a) **MATTERS DETERMINABLE BY A MAGISTRATE JUDGE.**

At the request of the **district** judge to whom the case is assigned, a magistrate judge may hear and determine any pretrial motion or matter other than those ~~motions~~ specified in LCvR 72.3 of these Rules, and may conduct ~~pretrial~~ proceedings and enter orders pursuant to LCvR 16.4 of these Rules.

(b) **~~OBJECTIONS TO MOTION FOR RECONSIDERATION OF THE~~
MAGISTRATE JUDGE'S RULING**

Any party may **file written objections** ~~request the judge to reconsider~~ a magistrate judge's ruling under paragraph (a) ~~by filing a motion to reconsider~~ within 10 days after being served with the order of the magistrate judge, unless a different time is prescribed by the magistrate judge or the **district** judge. The **objections** ~~motion~~ shall specifically designate the order or part thereof to which objection is made, and the basis for the objection. **The filing of oppositions and replies shall be governed by LCvR 7(b) and (d).**

(c) **~~DETERMINATION OF OBJECTIONS~~ BASIS FOR RECONSIDERATION**

Upon **consideration of objections filed in accordance with this Rule,** ~~a motion for reconsideration or sua sponte,~~ a **district** judge may modify or set aside any portion of a magistrate judge's order under this Rule found to be clearly erroneous or contrary to law. A **district** judge may modify or set aside any portion of a magistrate judge's order issued pursuant to ~~Rule~~ LCvR 16.5 of these Rules whenever the **district** judge deems such a modification necessary or appropriate.

COMMENT TO LCvR 72.2: The Rule is intended to make clear that objections to the magistrate judge's proposed findings and recommendations should not be called motions for reconsideration and are to be directed to the district judge.

[New language in bold and underlined; old language stricken]

LCvR 72.3

REFERRAL OF MATTERS FOR HEARING REPORT AND RECOMMENDATION BY MAGISTRATE JUDGES

(a) **MATTERS REFERABLE TO A MAGISTRATE JUDGE FOR HEARING
REPORT AND RECOMMENDATION.**

At the request of the **district** judge to whom the case is assigned, a magistrate judge may conduct hearings, including evidentiary hearings, and submit to the **district** judge proposed findings of fact and recommendations for the disposition of:

- ~~(1)~~ ~~applications for posttrial relief made by individuals convicted of criminal offense;~~
- ~~(2)~~ **(1)** prisoner petitions challenging conditions of confinement;
- ~~(3)~~ ~~applications for revocation of probation, in accordance with LCrR 57.1 (c) of these Rules;~~
- ~~(4)~~ **(2)** motions for injunctive relief (including temporary restraining orders and preliminary injunctions);
- ~~(5)~~ **(3)** motions for judgment on the pleadings, for summary judgment, ~~to dismiss an indictment or information made by the defendant,~~ **to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted,** or otherwise to dismiss an action involuntarily;
- ~~(6)~~ **(4)** motions to set aside default judgments;
- ~~(7)~~ **(5)** petitions for judicial review of administrative determinations; and
- ~~(8)~~ **(6)** petitions for civil commitment arising under Title III of the Narcotic Addict Rehabilitation Act of 1966, 18 U.S.C. § 4251, *et. seq.*

(b) OBJECTIONS TO RECOMMENDATIONS OF THE MAGISTRATE JUDGE.

Any party may file **for consideration by the district judge** written objections to the magistrate judge's proposed findings and recommendations issued under paragraph (a) within ten days after being served with a copy thereof. **The objections shall be denominated "Objections to the Magistrate Judge's Proposed Findings and Recommendations."** The objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for the objection. **The filing of oppositions and replies shall be governed by LCvR 7(b) and (d).**

Failure to file timely objections may waive appellate review of a District Court order adopting the magistrate judge's report. All magistrate judge's reports shall contain a notice substantially as follows:

Failure to file timely objections to the findings and recommendations set forth in this report may waive your right of appeal from an order of the District Court adopting such findings and recommendations. See *Thomas v. Arn*, 474 U.S. 140 (1985).

(c) **DETERMINATION BY THE COURT.**

A **district** judge shall make a *de novo* determination of those portions of a magistrate judge's findings and recommendations to which objection is made as provided in paragraph (b). A **district** judge may make a determination based solely on the record developed before the magistrate judge, or may conduct a new hearing, ~~and~~ receive further evidence, ~~The judge may also receive further evidence~~ and recall witnesses. A **district** judge may accept, reject, or modify, in whole or in part, the findings and recommendations of the magistrate judge, or may recommit the matter to the magistrate judge with instructions.

COMMENT TO LCvR 72.3: The Rule has been revised to remove references to criminal procedure. Moreover, the Rule is intended to make clear that objections to the magistrate judge's proposed findings and recommendations should not be called motions for reconsideration and are to be directed to the district judge.

[New language in bold and underlined; old language stricken]

LCvR 73.1

REFERRAL OF CIVIL CASES TO MAGISTRATE JUDGES FOR ALL PURPOSES

(a) **CONSENT TO ASSIGNMENT.**

By consent of all parties, ~~and with the approval of the judge to whom the case is assigned~~, a magistrate judge may conduct any and all proceedings in a civil case including trials (with or without a jury), and may thereafter order entry of judgment, in accordance with 28 U.S.C. § 636(c).

(b) **PROCEDURE FOR CONSENT.**

The Clerk shall notify the parties of their voluntary right to consent to assignment of a civil case to a magistrate judge as soon as practicable after the action is filed. If the parties consent to such an assignment, a notice of consent signed by the parties or their attorneys shall be filed with the Clerk. The notice of consent should be filed prior to entry of a pretrial order under ~~Rule~~ LCvR 16.5 of these Rules. Thereafter, either the ~~district court~~ judge or the magistrate judge may again advise the parties of the availability of the magistrate judge, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences.

(c) **APPEAL TO THE UNITED STATES COURT OF APPEALS.**

An appeal from a judgment of a magistrate judge, **entered in proceedings under this Rule**, shall be taken to the United States Court of Appeals for the District of Columbia

Circuit, in the same manner as an appeal from any other judgment of the district court in a civil action.

COMMENT TO LCvR 73.1: This Rule has been amended to make clear that if all parties consent to the assignment to a magistrate judge, then the district judge need not formally approve that decision.

LCvR 83.16

GROUND AND PROCEDURES FOR DISCIPLINE

(d) COMPLAINTS OF MISCONDUCT FILED IN THIS COURT.

(1) COMPLAINTS GENERALLY

Any person seeking to charge an attorney subject to the Rules with any act or omission which may justify disbarment, suspension, censure, reprimand or other discipline shall do so ~~in writing~~ **by a clear and concise written statement of facts in support of the allegations**, subscribed and under oath or affirmed under the penalty of perjury pursuant to the United States Code, Title 28 Section 1746. The Complaint shall be presented to the Committee by lodging it with the Clerk to the Committee. The Committee shall have the inherent power without any formal Complaint to inquire into misconduct of attorneys subject to these Rules.

*Subsection (d)(1) specifies that the Committee has the inherent power to inquire into misconduct of attorneys subject to these Rules, without formal Complaint. Subsection(d)(1): **This rule was modified to require that written complaints of misconduct contain a clear and concise statement of facts supporting the allegations made against attorneys.***

LCvR 83.16

GROUND AND PROCEDURES FOR DISCIPLINE

(d) COMPLAINTS OF MISCONDUCT FILED IN THIS COURT

(3) INVESTIGATION

Complaints received by the Committee shall be reviewed to determine if the Complaint is appropriate for action. If the Complaint is insufficient on its face to warrant investigation, the Committee may discharge the Complaint and advise the complainant that no action will be taken. If the Committee decides that the Complaint or information otherwise received

by the Committee requires action, the Committee is authorized to (1) investigate the matter itself; (2) refer the matter to the Office of Bar Counsel, the Board on Professional Responsibility, District of Columbia Court of Appeals; (3) informally seek information from the respondent; or (4) require a formal Answer from the respondent in accordance with subsection (d)(4). To further any investigation, the Chairman, or in his absence, the Vice Chairman is authorized to issue subpoenas commanding the production of books, papers, documents, records or tangible items. If following any of these actions the Committee decides no further action is warranted, the Committee may, if its investigation was based on receipt of a complaint, discharge the Complaint and so inform the complainant and the respondent. If the Committee's investigation was based on information otherwise received and the respondent was made aware by the Committee of its investigation, the Committee shall notify the respondent that it has decided that no further action is warranted. **The Committee may, as part of its notice to the respondent discharging the Complaint, provide an informal, non-reportable cautionary or educational statement, which shall not be considered discipline.**

Subsection (d)(3) grants to the Committee at the investigative stage as well as at the hearing stage the authority to use subpoenas commanding the production of books, papers, documents, records or tangible items. It also specifies that the Committee can act based on a Complaint or information otherwise received, and is authorized to discharge a Complaint during the investigative stages was amended to clarify that the Committee on Grievances may include an informal, non-reportable cautionary or educational statement as part of a notice discharging a Complaint without further action.

LCvR 83.20

LAWYER COUNSELING PANEL

(a) REFERRAL OF ATTORNEYS FOR COUNSELING.

Judges **or the Committee on Grievances** may refer to the Lawyer Counseling Panel established by this Rule any member of the Bar of this Court who exhibits a deficiency in performance and who, in the judge's **or the Committee's** opinion, would likely benefit from counsel by other trial attorneys on matter of litigation practice, ethics or apparent abuse of alcohol or drugs. The judge **or the Committee** will notify **both** the panel **and the attorney** of the referral and the basis therefor., ~~and may also notify the attorney.~~ The referral shall be confidential.

(c) **PANEL PROCEEDINGS.**

The chairperson of the Lawyer Counseling Panel shall receive references from judges **or the Committee on Grievances** and assign the referred member to a particular panel member for counseling. Participation in the counseling program by referred attorneys shall be voluntary. Any conversations between the referred attorney and members of the panel shall be confidential and shall not waive any attorney client privilege. The panel will make no findings or report of its action as to any referred attorney, other than a report to the referring judge, **or the Committee on Grievances**, as to whether the attorney did or did not participate in counseling.

COMMENT TO RULE 83.20(a) and (c): This rule was modified to permit the Committee on Grievances to refer attorneys to the Lawyer Counseling Panel and receive reports from the Panel concerning whether the referred attorney participated in counseling.

LCvR 7

MOTIONS

(n) MOTIONS INVOLVING JUDICIAL REVIEW OF ADMINISTRATIVE AGENCY ACTIONS.

1) In cases involving the judicial review of administrative agency actions, counsel shall provide the Court with an appendix containing copies of those portions of the administrative record that are cited or otherwise relied upon in any memorandum in support of or in opposition to any dispositive motion. Counsel shall not burden the appendix with excess material from the administrative record that does not relate to the issues raised in the motion or opposition.

2) The appendix shall be prepared jointly by the parties and filed within 10 days following the final memorandum on the subject motion. The parties are encouraged to agree on the contents of the appendix which shall be filed by plaintiff. In the absence of an agreement, the plaintiff must serve on all other parties an initial designation and provide all other parties the opportunity to designate additional portions of the administrative record. Plaintiff shall include all parts of the record designated by all parties in the appendix.

3) In appropriate cases, the parties may request the option to submit separate appendices to be filed with any memorandum in support of, or in opposition to, the dispositive motion.

Comment to LCvR7(n): This rule is intended to assist the Court in cases involving a voluminous record (e.g., environmental impact statements) by providing the Court with copies of relevant portions of the record relied upon in any dispositive motion. This rule is patterned after Local Rule 30 of the D.C. Circuit and Rule 30 of the Federal Rules of Appellate Procedure. The rule does not relieve any party from any obligation to file the complete record with the Clerk of Court. Pages should retain the original pagination from the administrative record.

FOR THE COURT:

Thomas F. Hogan
Chief Judge