

# UNITED STATES MAGISTRATE JUDGE

## The Utility Fielder of the Federal Courts

**Judge Lawrence Anderson** is a native Phoenician who graduated from Brophy College Preparatory in 1966, the University of San Francisco in 1971 and Arizona State University's College of Law in 1974. He was appointed to the Maricopa County Superior Court in July 1990 by Gov. Rose Mofford. He was appointed a United States Magistrate Judge in September 1998. He is married to Superior Court Commissioner Aimee L. Anderson.

The retirement of one District of Arizona magistrate judge in Phoenix creates one vacancy in 2007, and perhaps more will be authorized in the near future. Increased law enforcement and the deployment of National Guard troops along the southwestern border,<sup>1</sup> expanding criminal caseloads and national attention focused on Arizona's rising illegal immigration and drug-trafficking problems present an opportune time to educate the bar on this unique federal trial judge.

The subtitle's baseball analogy references the do-everything player on the baseball field to describe the unusual combination of responsibilities and duties of a United States magistrate judge. Perhaps the wide variety of duties of this judgeship contributes to the lack of understanding of the magistrate judge's role in the federal courts. This article is intended to provide a better understanding of this role and offer practical tips about practicing before a United States magistrate judge.

### Rooted in History

The roots of the magistrate judge position run deep in our country's history, tracing back to the United States commissioner first created in 1793.<sup>2</sup> The modern-day judicial position of "United States magistrate judge"<sup>3</sup> begins with Congress' 1968 enactment of the Federal Magistrates Act<sup>4</sup> ("Act") which authorized magistrate judges to exercise those functions previously exercised by United States commissioners and to discharge the additional duties assigned by district judges "as are not inconsistent with the Constitution and laws of the United States."<sup>5</sup>

As the U.S. Supreme Court has stated, "Congress intended magistrate [judges] to play an integral and important role in the federal judicial system."<sup>6</sup> The Act's main purpose, as stated in its committee reports and in subsequent cases, was to relieve district judges of certain judicial responsibilities that can be separated from their exclusive constitutional duties in order to reduce increasingly unmanageable case loads.<sup>7</sup>

The Act has been amended several times over the intervening 38 years to significantly broaden the scope of authority that magistrate judges exercise as "congressional concerns regarding [their] abilities [have] decreased" after recognizing their "integral and important role in the Federal judicial system" in "handl[ing] subsidiary matters to enable district judges to concentrate on trying cases."<sup>8</sup>

### Selection and Term

Most Americans are familiar with the selection of federal circuit judges and district judges, a political process of nomination by the President and confirmation by the Senate. In contrast, magistrate judges are selected without regard to political affiliation, subsequent to an application and screening process, solely on the basis of merit.<sup>9</sup> That selection is made by a committee of local lawyers and lay persons appointed by a district's chief judge. The successful magistrate judge nominee is ultimately selected by a majority of the district judges<sup>10</sup>—but is not sworn in as a federal judge until after completing and passing a thorough FBI background investigation.

A magistrate judge is appointed to an eight-year term,<sup>11</sup> renewable for a like term if approved by a majority of the district judges, and is paid the same salary as a bankruptcy judge, which is eight percent less than that of a district judge.<sup>12</sup> Currently, there are 12 magistrate judges in the District of Arizona—six in the Phoenix division, which includes Yuma and Flagstaff, and six in the Tucson division.

### The Magistrate Judge's Authority

As a non-Article III judge,<sup>13</sup> a magistrate judge's jurisdiction and specific authority are found in 28 U.S.C. § 636<sup>14</sup> and the case law interpreting this statute. In addition, the Act<sup>15</sup> mandates that each district court "shall" adopt local rules governing the additional duties assigned to magistrate judges. In Arizona, the Rules of Practice of the United States District Court for the District of Arizona (the "Local Rules") describe the duties of magistrate judges in criminal<sup>16</sup> and civil cases.<sup>17</sup> Occasionally, however, a local rule approved by district judges authorizing magistrate judges to perform a particular duty is successfully challenged as "inconsistent with the Constitution and laws of the United States"<sup>18</sup>—referred to as the "catch-all provision."<sup>19</sup>

The Act does not establish a magistrate court or an independent court system, separate from the district court.<sup>20</sup> Rather, the statute expanded the powers previously exercised by magistrates



Old railroad station in Patagonia, Ariz.



and commissioners to assist district judges in their duties.

Most civil cases<sup>21</sup> filed in the District of Arizona are initially assigned by random selection to a district judge for adjudication of pretrial matters and a determination on the merits. The Act, however, gives magistrate judges “described power and duties” in the following areas:

- Civil trials with the parties’ express<sup>22</sup> consent<sup>23</sup>
- Class A misdemeanor trials and sentencings with the parties’ express consent
- Certain responsibilities in civil and criminal pretrial matters if referred by the assigned district judge.<sup>24</sup>

It is the U.S. Constitution, however, that prohibits magistrate judges, as non-Article III judges,<sup>25</sup> from conducting felony trials and felony sentencings even with the consent of the parties.

## Pretrial Prohibitions

Absent express consent of all parties pursuant to 28 U.S.C. § 636(c)(1), the Act prohibits magistrate judges from exercising authority in eight pretrial dispositive areas unless referred by a district judge to make a recommendation, called a Report and Recommendation (“R&R”), to which a party may file a timely<sup>26</sup> objection.<sup>27</sup> If a timely objection is filed, the district judge reviews the R&R *de novo* and rules on the underlying motion.

These prohibited areas are motions:

- for injunctive relief
- for judgment on the pleadings
- for summary judgment
- to dismiss or quash an indictment
- to suppress evidence in a criminal case
- to dismiss or to permit a class action
- to dismiss a case for failure to state a claim upon which relief can be granted
- to involuntarily dismiss an action.<sup>28</sup>

Except for these eight express prohibitions, the Act permits a district judge to refer “any pretrial matter” by direct order or local rule to a magistrate judge without the consent of the parties to directly resolve, as long as the referral is not “inconsistent with the Constitution and laws of the United States.”<sup>29</sup>

## Making the Determination

But how is that distinction made? How does the district court determine whether the issue is a subsidiary matter that may be properly referred or a critical stage requiring consent? The Ninth Circuit fashioned a test when it held, “[W]here discretion is exercised, the scope of magistrate judge’s authority is construed more narrowly” and consent would be required if the duty performed by the magistrate judge requires “a final and independent determination of fact or law.”<sup>30</sup>

Consent of the parties, however, is not necessary for a magistrate judge to have authority to issue an R&R to a district judge because a “magistrate judge’s R&R [is] not a final and independent determination of fact or law, as the district judge review[s] the habeas petition [or other referred matter] *de novo*.”<sup>31</sup> Thus, for example, a district judge may designate a magistrate judge to hear a motion to dismiss or motion to suppress evidence and thereafter submit pro-

posed findings of fact and a recommendation for disposition of the motion.<sup>32</sup> Thereafter, the district judge exercises his or her discretion *de novo*, rather than summarily accepting or denying the magistrate judge’s findings.<sup>33</sup>

But some of the so-called dispositive issues—wherein a magistrate judge lacks authority to act, absent the express consent of the parties—are not readily apparent. For example, a referral to a magistrate judge to conduct an equitable allocation hearing in a CERCLA<sup>34</sup> case to determine the percentage of clean-up costs that each party should bear and to thereafter submit an R&R to the assigned district judge is not a lawful referral, because the magistrate judge, in fact, resolved the core issues in the case.<sup>35</sup> Thus, one must look to the effect of a particular motion rather relying solely on the motion’s characterization as a “dispositive or non-dispositive ... claim or defense of a party.”<sup>36</sup>

Although the statutory provisions lack clarity, partly because of their complicated history,<sup>37</sup> case law has clarified that a magistrate judge, without the parties’ consent, has no authority to make a final determination of damages<sup>38</sup> because “Congress did not intend [28 U.S.C. § 636(b)(1)] subparagraph (A)’s reference to ‘pretrial matter’ to encompass a final determination of liability or damages in a civil action.”<sup>39</sup> Similarly, a magistrate judge, absent consent, may not decide a motion to remand to state court,<sup>40</sup> order the involuntary medication of a criminal defendant<sup>41</sup> or set aside an entry of default or default judgment.<sup>42</sup>

It may seem odd that a court clerk is empowered to enter a default judgment for a sum certain alleged in a civil complaint while a magistrate judge, absent consent, cannot lawfully order such an entry even after a (presumably more reliable) evidentiary hearing to determine a non-liquidated claim. But any irony wanes when considering that one judgment rests on a defendant’s default, and the other assumes a “judicial” determination by a court.<sup>43</sup> A district judge may, of course, refer either a motion to set aside an entry of default under Rule 55(c) or motion to set aside a default judgment pursuant to Rule 60(c) to a magistrate judge to conduct an evidentiary hearing and submit proposed findings of fact and recommendations on such motions.<sup>44</sup>

A magistrate judge has jurisdiction to preside over class action lawsuits if the named parties consent, even though the unnamed members of the class have not expressly consented,<sup>45</sup> and to enter a default judgment if the plaintiff has consented and a properly served defendant has not answered or otherwise formally appeared in the case.<sup>46</sup> “[V]alid consent is the linchpin” of constitutional magistrate judge jurisdiction.<sup>47</sup>

To demonstrate the technical nature of this area of the law, in the Ninth Circuit, a district judge may properly delegate to a magistrate judge the acceptance and filing of a felony verdict without the defendant’s consent.<sup>48</sup> However, it is reversible error for a district judge to delegate the acceptance of a felony verdict to a magistrate judge, if in doing so, the magistrate judge, without the express consent of the parties, is asked to, and does, poll the jurors to determine if the verdict rendered was, in fact, each juror’s true verdict.<sup>49</sup> The Ninth Circuit, however, has held that a magistrate judge may preside over a court reporter’s readback of trial testimony in a felony jury trial even over a defendant’s timely objection.<sup>5</sup>

In 2000, President Clinton signed into law the Federal Courts Improvement Act. Among its provisions, the amendments to the Act clarified the contempt authority of magistrate judges,<sup>51</sup> eliminated the consent requirement in Class B misdemeanor (petty offense) cases,<sup>52</sup> and expanded magistrate judge authority in juvenile cases.<sup>53</sup> Magistrate judges, however, have limited direct contempt power (may not exceed 30 days' incarceration and/or \$5000 fine).<sup>54</sup> For more egregious conduct that warrants a contempt sanction in excess of these express limitations, a magistrate judge must certify the facts that warrant a finding of contempt to a district judge for further proceedings.<sup>55</sup>

## Varying Duties

It seems that each of the 94 districts in the federal judicial system utilizes magistrate judges differently.

In the District of Arizona, Phoenix division, a magistrate judge is on criminal duty for a one-or two-week period out of every four or eight weeks. During criminal duty week, a single magistrate judge:


- conducts all initial appearances for every defendant arrested in the Phoenix division on a new federal charge or on petitions for violations of probation and supervised release<sup>56</sup>
- conducts every arraignment<sup>57</sup> following the return of an indictment
- conducts preliminary hearings to determine if probable cause exists subsequent to the arrest of a defendant upon the issuance of a criminal complaint
- presides over detention hearings to determine if a defendant should be detained pending trial and, if not, sets the terms and conditions of pretrial release
- issues all search warrants,<sup>58</sup> seizure warrants and criminal complaints for all federal law enforcement agencies
- takes guilty pleas on felony<sup>59</sup> and misdemeanor cases and presides over various other criminal matters, such as mental competency<sup>60</sup> and extradition<sup>61</sup> hearings.<sup>62</sup>

When not on criminal duty, magistrate judges in the Phoenix division preside over civil trials and hearings, conduct settlement conferences<sup>63</sup> and rule upon a variety of motions in civil cases, including cases wherein jurisdiction is predicated upon diversity of citizenship, claims pursuant to 42 U.S.C. § 1983 involving a violation by a person acting under color of law of a right provided in the U.S. Constitution and petitions for writs of habeas corpus involving a prisoner's claim that he is wrongfully being held in violation of the U.S. Constitution or the laws of the United States.

A magistrate judge also may consider various dispositive or non-dispositive motions in cases in which jurisdiction is based upon a federal question, such as Title VII or Americans With Disabilities Act lawsuits alleging various forms of discrimination (age, race, gender, national origin and disability) that have been referred to a magistrate judge or the parties have expressly consented to a magistrate judge exercising jurisdiction over all matters of the case. When all parties expressly consent to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c), that judge will have the same duties and responsibilities as a district judge with any appeal directly to the appropriate circuit court of appeals.<sup>64</sup> This is also true if express consent is given by all parties on a petition for writ of habeas corpus.<sup>65</sup>

## Conclusion

It is likely the role of U.S. magistrate judges will expand as Congress and chief district judges consider new methods in which magistrate judges may assist the district judges in reducing their high number of cases.<sup>66</sup> In the meantime, civil practitioners who consent to magistrate jurisdiction pursuant to 28 U.S.C. § 636(c)(1) may receive quicker resolution of their case. District judges, whose calendars are filled with criminal cases that demand priority in view of applicable law, such as the Speedy Trial Act,<sup>67</sup> may be compelled to continue a civil case's trial or hearing. Magistrate judges, however, are able to schedule firm trial dates. Magistrate judges in Phoenix know their criminal duty schedules 12 to 18 months into the future, so trial dates may be set, facilitating early scheduling of expert and out-of-state witnesses and subpoenaing witnesses with little risk of last-minute continuances due to calendar conflicts.

Magistrate judges in Phoenix and Tucson possess significant trial experience, so practitioners and litigants are assured that their cases will be handled by an experienced trial judge, whether they voluntarily consent to magistrate judge jurisdiction or elect assignment to a district judge. 

## endnotes

1. "In 2005, more than one-third of all federal felonies prosecuted in the United States came from five of the 94 judicial districts—the southwest border courts of the District of New Mexico, the Southern and Western Districts of Texas, the District of Arizona and the Southern District of California." *Immigration Crisis Tests Federal Courts on Southwest Border*, 38 THE THIRD BRANCH 6, at 6 (June 2006).
2. *United States v. Maresca*, 266 F. 713, 720 (S.D.N.Y. 1920) ("In 1793 (1 Stat. 334) the Circuit Courts were authorized to appoint 'discreet persons learned in the law' to take bail in criminal causes."); *United States v. Douleh*, 220 F.R.D. 391, 393 (W.D.N.Y. 2003) ("From 1793 to 1968, the position of United States magistrate judge did not exist; rather, the first level of the federal judiciary was comprised of United States commissioners.")
3. Congress changed the formal title of United States Magistrate to United States Magistrate Judge in the Judicial Improvement Act of 1990, effective Dec. 1, 1990. Section 321 of Pub. L. No. 101-650 § 102, 104 Stat. 5089, 5116, as set out as a note under 28 U.S.C. § 631; *United States v. Steelwright*, 179 F. Supp. 2d 567, 569 n.3 (D. Md. 2002). Thus, a magistrate judge may be appropriately called judge, not magistrate. The official title was changed because it "[was] believed [it would] 'help educate attorneys and litigants about the magistrate judges' status as authoritative judicial officers within the federal courts.'" *In re 4330 N. 35th St.*, 142 F.R.D. 161, 165 (E.D. Wis.1992) (quoting Christopher Smith, *From U.S. Magistrate to U.S. Magistrate Judges*, 75 JUDICATURE 210, 212 (1992)).
4. 28 U.S.C. §§ 631-639.
5. *Id.* § 636(b).
6. *Peretz v. United States*, 501 U.S. 923, 928 (1991).
7. *United States v. Schronce*, 727 F.2d 91, 93 (4th Cir. 1984).
8. *Gomez v. United States*, 490 U.S. 858, 865-72 (1989) (outlining the evolution of the Act).
9. The six minimum qualifications are: (1) is, and has been for at least five years, a member in good standing of the bar of the State's highest court; (2) has been engaged in the active practice of law for at least five years or the substantial equivalent; (3) is competent to perform the duties of the office, committed to equal justice under the law, in good health, patient, courteous, and capable of deliberation and decisiveness when required to act on his or her own reason and judgment; (4) not related by blood or marriage to a district judge of the appointing court; (5) is less than seventy years of age at the time of an initial appointment; and (6) any additional qualification established by the district court, taking into account the specif-



- ic responsibilities anticipated for that position so long as the additional qualification is not inconsistent with the court's policy as an equal opportunity employer. 28 U.S.C. § 631(b); §§ 1.01 and 1.02 of the Regulations of the Judicial Conference of the United States for the selection, appointment, and reappointment of United States Magistrate Judges.
10. 28 U.S.C. § 631(a).
  11. *Id.* § 631(e).
  12. In 2006, magistrate judges are paid \$151,984.
  13. Article III, Section I, of the U.S. Constitution provides: "The judicial power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office."
  14. 28 U.S.C. § 636.
  15. "Each district court shall establish rules pursuant to which the magistrate judges shall discharge their duties." *Id.* § 636(b)(4).
  16. LRCrim 57.6.
  17. LRCiv 72.2.
  18. *Hajek v. Burlington N. R.R. Co.*, 186 F.3d 1105 (9th Cir. 1999) (a local rule that provided that failure to timely demand reassignment was deemed to be a waiver and consent to magistrate judge jurisdiction in a civil case was held invalid due to failure to obtain consent under Article III, Section 1, of the Constitution and the Federal Rules of Civil Procedure).
  19. *Wang v. Masaitis*, 416 F.3d 992 (9th Cir. 2005); 28 U.S.C. § 636(b)(3).
  20. *Conetta v. National Hair Care Ctrs., Inc.*, 236 F.3d 67, 73 (1st Cir. 2001) ("The Magistrates Act does not set up a new and independent court system, rigidly separated from the district court: rather, the statute enlarges powers previously exercised by magistrates and commissioners to assist district judges in their duties. The case itself belongs to the district judge throughout.") (citing 12 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & RICHARD MARCUS, FEDERAL PRACTICE AND PROCEDURE §§ 3066 & 3069, at 302-17 & 354 (2d ed. 1997)).
  21. Currently, 25 percent of all civil cases in the District of Arizona are assigned by automated random selection to U.S. magistrate judges except for prisoner cases, bankruptcy appeals and cases seeking preliminary injunctive relief on an emergency basis. LRCiv 3.8(a) and 73(d). LRCiv 3.8(a) also expressly provides that consent to magistrate judge jurisdiction does not constitute a waiver of any jurisdictional defense.
  22. In *Roell v. Withrow*, 538 U.S. 580 (2003), the Supreme Court, by a 5-4 majority, held that implied consent may be inferred from a party's conduct "where the litigant or counsel was made aware of the need for consent and the right to refuse it, and still voluntarily appeared to try the case before the Magistrate Judge."
  23. 28 U.S.C. § 636(c)(1) ("Notwithstanding any provision of law to the contrary— (1) Upon the consent of the parties, a full-time United States 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.") No precise written form is required. *Kofoed v. IBEW, Local 48*, 237 F.3d 1001, 1004 (9th Cir. 2001); FED.R.Civ.P. 73(b), advisory committee note. Although not the preferred practice, oral consent on the record may suffice. *Kofoed*, 237 F.3d at 1004; *but see Morrison v. International Programs Consortium, Inc.*, 205 F.R.D. 61 (D.D.C. 2002).
  24. *Id.* § 636(a), (b)(1)-(2), (c); *United States v. Gomez-Lepe*, 207 F.3d 623, 627 (9th Cir. 2000).
  25. *United States v. Jenkins*, 734 F.2d 1322, 1325 n.1 (9th Cir. 1983) ("It is well established that [ ] magistrate[ judges] are not Article III judges."). In Section 8, Clause 9, of Article I of the U.S. Constitution, Congress is given the power "To constitute Tribunals inferior to the supreme Court." Examples of Article I courts are the U.S. Tax Court, U.S. Court of Federal Claims and the U.S. Bankruptcy Court. Because magistrate judges are judges of the district court and exercise jurisdiction of the district court, they are not Article I judges either. They are, however, federal judges. A "Federal judge" means "a magistrate judge." Rule 1(b)(3), FED.R.CRIM.P.
  26. FED.R.Civ.P. 72(a) provides that within 10 days of being served with a copy of a magistrate judge's non-dispositive order, a party may file objections to the order with the district judge to whom the case is assigned. *Simpson v. Lear Astronics*, 77 F.3d 1170, 1173-74 (9th Cir. 1996). Criminal case orders likewise require an appeal to a district judge within 10 days or there may be a finding of waiver. FED.R.CRIM.P. 59(a).
  27. Failure to object to a magistrate judge's recommendation waives all objections to the magistrate judge's findings of fact. *Smith v. Frank*, 923 F.2d 139, 141 (9th Cir. 1991). Unlike most other circuits where failure to object waives any objection to purely legal conclusions, failure to object in the Ninth Circuit is a factor to be weighed in considering the propriety of finding waiver on an issue on appeal. *Martinez v. Ylst*, 951 F.2d 1153, 1156 (9th Cir. 1991); *Turner v. Duncan*, 158 F.3d 449, 454 (9th Cir. 1998). District courts are not required to conduct "any review at all ... of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) ("statute makes it clear that the district judge must review the magistrate judge's findings and recommendations de novo if objection is made, but not otherwise") (emphasis in original); *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003).
  28. "A district judge may not designate a magistrate judge to hear and determine a motion to involuntarily dismiss an action." *Hunt v. Piler*, 384 F.3d 1118, 1123 (9th Cir. 2004); *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991) ("[W]ith respect to dispositive matters, a magistrate [judge] is only permitted to make recommendations for final disposition by an Article III judge who reviews his findings and recommendations, if objected to, *de novo*.").
  29. 28 U.S.C. § 636(b)(1).
  30. *Gomez-Lepe*, 207 F.3d at 629.
  31. *Wang*, 416 F.3d at 999 (holding that the magistrate judge was well within her authority to issue an R&R on Wang's habeas petition without Wang's consent for *de novo* review by district judge); LRCiv 72.2(a).
  32. 28 U.S.C. § 636(b)(1)(B); *Hunt*, 384 F.3d at 1123.
  33. *United States v. Howell*, 231 F.3d 615, 622 (9th Cir. 2000), *cert. denied*, 534 U.S. 831 (2001).
  34. Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675.
  35. *Beazer East, Inc. v. The Mead Corp.*, 412 F.3d 429 (3rd Cir. 2005).
  36. *Maisonville v. F2 Am., Inc.*, 902 F.2d 746 (9th Cir. 1990) (holding that the imposition of Rule 11 sanctions was a non-dispositive matter within the jurisdiction of the magistrate judge without the parties' consent). Magistrate judges may impose sanctions pursuant to Rule 37 where such sanctions are necessary to enforce compliance with a valid discovery order or request. *Grimes v. City and County of San Francisco*, 951 F.2d 236, 241 (9th Cir. 1991) (\$85,000 discovery sanction imposed by magistrate judge for party's obstruction of the discovery process, causing unnecessary delay and expense and wilful disobedience of magistrate judge's order is within the authority of a magistrate judge).  
A Rule 37 order, however, precluding plaintiff's expert from testifying as a discovery sanction effectively resulted in a dispositive order because plaintiff was thereafter unable to present a prima facie case at trial. *Yang v. Brown Univ.*, 149 F.R.D. 440, 442-43 (D.R.I. 1993) ("[T]he Magistrate[ Judge]'s order crosses the line from non-dispositive to dispositive decision-making. His ruling vitiates plaintiff's case. It is tantamount to an involuntary dismissal."); *but see Jesselson v. Outlet Assocs. of Williamsburg, Ltd. P'ship*, 784 F. Supp. 1223, 1228 (E.D. Va. 1991) (Motions in limine granted by magistrate judge precluding certain documents in evidence. "It is true that ... the exclusion of certain evidence can substantially affect a party's ability to present its case. The 'dispositive' nature ... is simply a function of the case itself.").
  37. See 12 WRIGHT ET AL., *supra* note 19, § 3066.
  38. *Callier v. Gray*, 167 F.3d 977, 98283 (6th Cir. 1999).
  39. *Conetta*, 236 F.3d at 73.
  40. *Nasca v. Peoplesoft*, 160 F.3d 578 (9th Cir. 1999).
  41. *United States v. Rivera-Guerrero*, 377 F.3d 1064 (9th Cir. 2004) (holding that a magistrate judge

- does not have authority to issue a final order authorizing involuntary administration of medication to restore competency because it is dispositive of a claim or defense of a party and may not be delegated except by R&R with *de novo* review by the district judge).
42. *Conetta*, 236 F.3d at 73.
  43. *Id.*
  44. *McLeod, Alexander, Powell & Appfel, P.C. v. Quarles*, 925 F.2d 853 (5th Cir. 1991).
  45. *Williams v. General Elec. Capital Auto Lease, Inc.*, 159 F.3d 266, 269 (7th Cir. 1998) (noting that where the named plaintiffs consented to proceed before a magistrate judge under 28 U.S.C. § 636 prior to the certification of the class, the unnamed class members were bound by the consent); *Gomez v. Vernon*, 255 F.3d 1118 (9th Cir. 2001) (upholding case where a magistrate judge presided over a class action in a civil rights suit brought by six Idaho prisoners against the State Department of Corrections and a new warden was subsequently named in the suit); *Crawford v. Equifax Payment Servs., Inc.*, 201 F.3d 877 (7th Cir. 2000) (allowing magistrate judge to certify class and approve class settlement); *In re U.S. Bancorp Litig.*, 291 F.3d 1035 (8th Cir. 2002) (upholding magistrate judge's approved settlement of class action litigation by bank customers seeking punitive relief and damages arising from bank's alleged disclosure of private information to third parties).
  46. *United States v. Real Property*, 135 F.3d 1312, 1316 (9th Cir. 1998) (holding that in an *in rem* civil forfeiture action wherein the plaintiff consented, magistrate judge had jurisdiction to enter a final judgment over defaulted-person who was technically not a "party" to the litigation); *Giave v. Stanko*, 882 F.2d 1316, 1318 (8th Cir. 1989) (determining that judgment debtor who failed to intervene in garnishment action was not automatically a party to that action and need not have consented for magistrate judge to have jurisdiction).
  47. *Jaliwala v. United States*, 945 F.2d 221, 224 (7th Cir. 1991) (citing *Adams v. Heckler*, 794 F.2d 303, 30607 (7th Cir. 1986)).
  48. *United States v. Foster*, 57 F.3d 727, 732 (9th Cir. 1995), *rev'd on other grounds*, 133 F.3d 704 (1998) (en banc), *vacated as to that ground*, 525 U.S. 801 (1998).
  49. *Gomez-Lepe*, 207 F.3d at 629-31.
  50. *United States v. Carr*, 18 F.3d 738, 740 (9th Cir.), *cert. denied*, 513 U.S. 821 (1994) (reasoning that because presiding over the readback constituted a subsidiary matter, the assignment was proper even absent the defendant's express consent as Congress indicated that "additional duties" may include "subsidiary matters in felony cases.")
  51. 28 U.S.C. § 636(e).
  52. 18 U.S.C. § 3401. A Class B misdemeanor is a petty offense because it carries a maximum punishment of six months' imprisonment and a fine not to exceed \$5000. 18 U.S.C. § 19 defines a petty offense as "a Class B misdemeanor ... for which the maximum fine is no greater than the amount set forth for such an offense in section 3571(b)(6) or (7) in the case of an individual."
  53. 28 U.S.C. § 3401(g).
  54. *Id.* § 636(e)(5).
  55. *Id.* § 636(e)(6).
  56. A magistrate judge needs both the consent of the defendant and the referral from the assigned district judge to have the authority to accept an admission to a defendant's violation of his or her probation or supervised release on a felony conviction. *United States v. Sanchez-Sanchez*, 333 F.3d 1065 (9th Cir. 2003).
  57. A magistrate judge has authority to take a not-guilty plea to a felony at an arraignment. *United States v. Smith*, 424 F.3d 992, 999 (9th Cir. 2005) ("Rule 72-302(b)(1) of the Local Rules of the United States District Court for the Eastern District of California grants authority to magistrate judges to handle pre-trial matters in felony cases, and does not exclude the arraignment process for a not guilty plea."); LRCrim 57.6(d)(5) ("[F]ull time Magistrate Judges in the District of Arizona shall ... conduct arraignments, accept not guilty pleas, and set time for filing of motions and responses thereto in criminal cases.")
  58. Where no criminal proceeding is pending, a magistrate judge lacks subject matter jurisdiction to rule on a plaintiff's FED.R.CRIM.P. 41(e) motion that seeks purely a civil remedy (return of property seized by the FBI and unseal the search warrant affidavit) absent consent of the parties. *In re Search of S & S Custom Cycle Shop*, 372 F. Supp. 2d 1048 (S.D. Ohio 2003); *but see Matter of 4330 N. 35th St., Milwaukee, Wisconsin*, 142 F.R.D. 161 (E.D. Wis. 1992) (magistrate judge holding that a Rule 41(e) motion could be filed as a standalone civil action and decided by the magistrate judge without referral from a district court judge under the catch-all provision of 28 U.S.C. § 636(b)(3)).
  59. A defendant must voluntarily consent to a magistrate judge's taking a felony guilty plea. In every felony case, except perhaps for a felony plea prior to the assignment of a district judge per LRCrim 57.6(d)(25) or pursuant to General Order 03-03, a written Order of Referral must be signed by the district judge in advance of the guilty plea proceeding. This authority is expressly given magistrate judges in six circuits, including the Ninth Circuit in *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003).
  60. In the Ninth Circuit, it is likely a magistrate judge has authority to order a mental competency evaluation on a defendant pursuant to 18 U.S.C. § 4241(a). *United States v. Simmons*, 993 F. Supp. 168 (W.D.N.Y. 1998); *United States v. White*, 887 F.2d 705 (6th Cir. 1989); *United States v. Hemmings*, 1991 WL 79586, \*4 (D.D.C. May 2, 1991); *but see United States v. Weisberger*, 951 F.2d 392 (D.C. Cir. 1991) (holding that the magistrate judge was without authority to order competency examination without a referral order from a district judge). It is not likely, however, that a magistrate judge in the Ninth Circuit, absent an R&R, has the authority to determine competency in a contested competency hearing despite the apparent authority granted by LRCrim 57.6(8).
  61. *Vo v. Benov*, 447 F.3d 1235 (9th Cir. 2006) ("The authority of a magistrate judge serving as an extradition judicial officer is thus limited to determining an individual's eligibility to be extradited, which he does by ascertaining whether a crime is an extraditable offense under the relevant treaty and whether probable cause exists to sustain the charge.") (citing *Prasoprat v. Benov*, 421 F.3d 1009, 1014 (9th Cir. 2005)).
  62. Effective, Dec. 1, 2005, FED.R.CRIM.P. 59(a) provides that when a district judge refers a criminal matter to a magistrate judge, or the Local Rules do, a party must object to the magistrate judge's order within 10 days of being served with a copy of the order or after the oral order is stated on the record or at some other time set by the court. Failure to timely file an objection may be deemed a waiver of that party's right to appeal on that issue. *United States v. Tooze*, 236 F.R.D. 442 (D. Ariz. 2006).
  63. In *Omega Eng'g, Inc. v. Omega, S.A.*, 432 F.3d 437 (2d Cir. 2005), the Second Circuit held that knowledge about a case that a magistrate judge gained from the discharge of his judicial functions when conducting a settlement conference was not grounds for disqualification under 28 U.S.C. § 455(b)(1) in a subsequent motion and evidentiary hearing to enforce settlement agreement.
  64. 28 U.S.C. § 636(c)(3).
  65. *Hanson v. Mahoney*, 338 F.3d 964 (9th Cir. 2003), *opinion withdrawn on other grounds*, 357 F.3d 880 (9th Cir. 2004).
  66. The May 2006 District of Arizona statistics indicate that the eight active (non-senior) district judges in the Phoenix division average 334 civil cases each and are assigned 189 defendants in 106 criminal cases.
  67. The Speedy Trial Act provides that, unless time is excluded under any of the nine statutory exclusions, a defendant must be brought to trial within 70 days of indictment or his initial appearance, whichever is later. 18 U.S.C. § 3161(c)(1) and (h); *United States v. Hoslett*, 998 F.2d 648, 653 (9th Cir. 1993). This 70-day deadline has been described as "a ticking time bomb." *United States v. Moss*, 217 F.3d 426, 433 (6th Cir. 2000). "If a trial does not begin on time, the defendant may move, before the start of trial or the entry of a guilty plea, to dismiss the charges, and if a meritorious and timely motion to dismiss is filed, the district court must dismiss the charges, though it may choose whether to dismiss with or without prejudice," *Zedner v. United States*, 126 S. Ct. 1976, 1984 (2006).