

59.1 Magistrate Judge Duties in Felony Cases.

In addition to the powers and duties set out in 28 U.S.C. § 636(a), after an indictment is returned or an information is filed in a felony case, magistrate judges are authorized under 28 U.S.C. § 636(b) to perform any duties assigned to them by any district judge of this court that are consistent with the Constitution and laws of the United States.

(a) Pretrial Matters.

In the absence of a district judge’s decision to reserve a proceeding for decision by a district judge, see NECrimR 59.1(e), and with the exception of the motions and petitions listed in Nebraska Criminal Rule 59.1(c), a magistrate judge of this court is authorized and assigned to hear and determine pretrial matters including but not limited to:

- (1) accepting criminal complaints and issuing arrest warrants or summonses, see Fed. R. Crim. P. 3 and 4; NECrimR 3.1 and 4.1;
- (2) conducting initial appearances and imposing release conditions, see Fed. R. Crim. P. 5; NECrimR 5.1;
- (3) conducting preliminary examinations, see Fed. R. Crim. P. 5.1; 18 U.S.C. § 3060;
- (4) receiving grand jury returns, see Fed. R. Crim. P. 6(f); NECrimR 6.4;
- (5) accepting waivers of indictment, see Fed. R. Crim. P. 7(b);
- (6) receiving executed or cancelling unexecuted arrest warrants, see Fed. R. Crim. P. 4(c)(4), 9(c)(2);
- (7) conducting arraignments, see Fed. R. Crim. P. 10;
- (8) hearing motions and entering orders for examinations to determine mental competency, see 18 U.S.C. §§ 4241-4248; Fed. R. Crim. P. 12.2(c);
- (9) hearing and determining discovery motions and motions to sever, see Fed. R. Crim. P. 12, 14-16; NECrimR 12.1-12.3, 16.2;
- (10) issuing subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for

court proceedings, *see* Fed. R. Crim. P. 17; NECrimR 17.2;

- (11) conducting initial appearances and preliminary hearings in probation and supervised release revocation proceedings, *see* Fed. R. Crim. P. 32.1;
- (12) conducting proceedings for defendants arrested in this district under a warrant issued in another district for allegedly failing to appear or violating release conditions and issuing all necessary orders incident thereto, *see* Fed. R. Crim. P. 40;
- (13) issuing search warrants and receiving warrant returns, *see* Fed. R. Crim. P. 41; NECrimR 41.1;
- (14) authorizing the installation of pen registers and devices including trap and trace devices (and issuing orders to assist), beeper devices (transponders), and clone beepers;
- (15) determining if defendants have knowingly and voluntarily waived counsel, appointing attorneys for defendants who cannot afford them, and approving attorney expense vouchers, *see* 18 U.S.C. § 3006A; Fed. R. Crim. P. 44; NECrimR 44.1, 44.2, 44.3; NEGenR 1.7(g);
- (16) determining issues of release or detention of defendants, material witnesses, and confidential informants, *see* 18 U.S.C. §§ 3141-3156; Fed. R. Crim. P. 46 (a), (d), (e)-(j); NECrimR 46.1, 46.3;
- (17) ordering exoneration or forfeiture of bonds, *see* Fed. R. Crim. P. 46 (f)-(g); NECrimR 46.1;
- (18) determining the propriety of joint representation of criminal defendants, *see* Fed. R. Crim. P. 44; NECrimR 44.4;
- (19) hearing and determining applications for admission to practice before this court, *see* NEGenR 1.7(d)-(f);
- (20) directing the payment of basic transportation and subsistence expenses for defendants financially unable to bear the costs of travel to required court appearances, *see* 18 U.S.C. § 4285;
- (21) conducting initial proceedings upon the appearance of an individual accused of an act of juvenile delinquency, *see* 18 U.S.C. § 5034; and

- (22) performing the functions specified in 18 U.S.C. §§ 4107, 4108, and 4109 regarding (1) offenders' verification of consent to transfer to or from the United States and (2) attorney appointments.

(b) Additional Pretrial Matters.

Upon written order or a district judge's specific oral referral, a magistrate judge is also authorized to:

- (1) rule on pre-indictment challenges to grand jury subpoenas or other motions related to grand jury proceedings, see NECrimR 6.2;
- (2) exercise general supervision of criminal calendars, including the handling of calendar and status calls, and motions to continue or expedite trials, see NECrimR 12.1; and
- (3) conduct pretrial conferences in a criminal case, see Fed. R. Crim. P. 17.1.

(c) Dispositive Matters.

(1) Magistrate Judge's Recommendation.

A magistrate judge may submit to a district judge a report containing proposed findings of fact and a recommendation for disposition by the district judge of the following matters:

- (A) motions to dismiss or quash an indictment or information;
- (B) motions to suppress evidence;
- (C) with the consent of the parties and the assigned district judge, petitions to enter a plea of guilty;
- (D) petitions to revoke probation and supervised release, including the conduct of the final probation or supervised release revocation hearing; and
- (E) petitions for habeas corpus and motions for post-conviction relief filed under 28 U.S.C. §§ 2241, 2254, and 2255.

(2) Authority to Conduct Proceedings.

A magistrate judge may issue any preliminary order and conduct any necessary evidentiary hearing or other proceeding arising in the

exercise of the authority conferred by this subsection.

(d) Duties Under 28 U.S.C. § 636(b)(3).

Magistrate judges are also authorized to:

- (1) supervise this court's Criminal Justice Act plan; and
- (2) perform any additional duty assigned to them by a district judge and not contrary to the Constitution and laws of the United States.

(e) Exception.

Nothing in this rule precludes a district judge from (1) reserving any proceeding for conduct by a district rather than a magistrate judge or (2) modifying the method of assigning matters to a magistrate judge, as circumstances warrant.