COMMENT OF DIVISION IV OF THE DISTRICT OF COLUMBIA BAR TO THE ADVISORY COMMITTEE ON DISTRICT COURT RULES REGARDING THE PROPOSED AMENDMENTS TO RULE 3-8

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"The views expressed herein represent only those of Division IV: Courts, Lawyers and the Administration of Justice of the D.C. Bar and not those of the D.C. Bar of of its Board of Governors."

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DIVISION IV COMMENTS ON PROPOSED CHANGES TO LOCAL RULE 3-8

I. Overview

At the outset, we must note that the views expressed herein are being presented only on behalf of Division IV: Courts, Lawyers, and the Administration of Justice of the District of Columbia Bar. They do not represent the views of the District of Columbia Bar or of its Board of Governors.

The recent passage of the Federal Magistrates Act of 1979, Public Law 96-82, 93 Stat. 643 (Oct. 10, 1979) has prompted the District Court for the District of Columbia to modify the local rule that describes the duties and powers of magistrates. The rule change is intended to implement the new powers that the recent statute confers upon magistrates.

Division IV of the District of Columbia Bar appreciates the opportunity to comment upon the District Court's implementation of the Federal Magistrates Act. Nonetheless, Division IV is concerned that the proposed local rule, as drafted, creates several ambiguities that may undermine the intent of the 1979 Magistrates Act. We therefore suggest that the District Court's proposed changes be modified in certain limited respects.

II. Proposed Changes

The Clerk of the Court has proposed two major changes to Local Rule 3-8. First, the District Court has proposed that Rule 3-8(a)(13) be changed to include the magistrate's

right to conduct a jury trial in criminal cases and to impose sentences in cases of misdemeanor offenses, as opposed to "minor offenses." Secondly, Rule 3-8(b)(8) is proposed to be changed to make it clear that a magistrate has the power to conduct all proceedings (including trials with juries) upon the consent of the parties, that a magistrate can enter a judgment upon the prior consent of the parties and that a magistrate's final judgment is appealable to the U.S. Court of Appeals unless, by prior stipulation, the parties have agreed to an appeal to the District Court.

III. The Committee's Comments

A. Proposed Change to Rule 3-8(a)(13).

The District Court's proposed insertion of new language stating that magistrates can arraign, accept pleas, and conduct trials "with or without a jury" is acceptable, but should be supplemented to insure that accused persons recognize that they have a right to a jury trial in the District Court. Section 7(a)(2) of the Magistrates Act of 1979 specifically amends 18 U.S.C. § 3401(b) to state:

> Any person charged with a misdemeanor may elect, ... to be tried before a judge of the district court for the district in which the offense is committed. The magistrate shall carefully explain to the defendant that he has a right to trial, judgment and sentencing by a judge of the district court and that he may have a right to trial by jury before a district judge or a magistrate. The magistrate shall not proceed to try the case unless the defendant, after such explanation, files a written consent to be tried before the magistrate that specifically waives trial, judgment, and sentencing by a judge of the district court.

The statutory changes make it clear that defendants have special rights to have their cases heard by district court judges, if so requested. Also, the legislative history emphasizes that a defendant's written consent is required before a magistrate can conduct a trial, even for misdemeanor offenses. The Senate Report notes that "[i]t is expected that this waiver [written consent] should be considered a critical stage requiring the opportunity to consult counsel, as should the decision to proceed before a magistrate in more serious petty offense cases where there is a significant possibility of punishment by imprisonment." S. Rep. No. 96-74 at 7 (1979).

In view of the explicit statutory and congressional concern that the magistrate's power and duty to conduct a trial "with or without a jury" depends primarily on a defendant's written waiver of the right to a district court hearing, we recommend that the local rule explicitly incorporate this important guarantee to defendants.*/

In a similar vein, § 7(a)(3) of the Magistrates Act of 1979 provides a special procedure whereby the District Court may order that the Court as opposed to the Magistrate hear a particular case. Section 7(a)(3) states:

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*/ The proposed local rule change does refer to 18 U.S.C. § 3401, the statute that explains the safeguards intended to ensure that a defendant does not waive the right to a trial by jury in the District Court. Nonetheless, we feel that the local rule should explicitly mention these required safeguards to better protect the rights of defendants and to make clear the magistrate's duties in that regard.

> The District Court may order that proceedings in any misdemeanor case be conducted before a district judge rather than United States magistrate upon the court's own motion or, for good cause shown, upon petition by the attorney for the government. Such petition should note the novelty, importance, or complexity of the case, or other pertinent factors, and be filed in accordance with regulations promulgated by the Attorney General.

The Committee feels that the procedure whereby a district judge, on his or her own motion, or on government motion for good cause shown, may order that a case <u>not</u> be heard by a magistrate, should be reflected in the local rule. This will insure that all parties are fully aware of their rights with regard to the assignment of misdemeanor cases to magistrates or to District Court judges.

In accordance with the above suggestions, we recommend that Local Rule 3-8(a)(13) be changed as follows:

> (a) GENERAL DUTIES. The United States magistrates appointed by this court pursuant to 28 U.S.C. § 631 shall have the duty and power to:
>
> * * *
>
> (13) arraign, accept pleas, conduct the trial <u>(with or without a jury)</u> of, and impose sentences in cases of "~~minor offenses" as defined in, and~~ <u>misdemeanor offenses.</u> In accordance with

18 U.S.C. § 3401, any person charged with a misdemeanor may elect to be tried before a Judge of the District Court. The magistrate shall explain to the defendant that he has a right to trial, judgment and sentencing by a Judge of the District Court or by a magistrate. This trial may be a trial by jury or a trial to the Court or magistrate. The magistrate shall not proceed to try the case unless the defendant files a written consent to be tried before the magistrate, which waives trial, judgment, and sentencing by a Judge of the District Court. The District Court may order that proceedings in any misdemeanor case be conducted before a District Judge rather than a United States magistrate upon the court's own motion, or, for good cause shown, upon petition by the attorney for the government. Such petition should note the novelty, importance, complexity of the case or other pertinent factors. When requested by United States magistrate, the probation service of the court shall conduct a presentence investigation and render a report on any person convicted or who pleads guilty or nolo contendere before the United States magistrate.

B. Proposed Changes to Rule 3-8(b)(8).

The District Court has suggested that Local Rule 3-8(b)(8) be amended to reflect that the Magistrates Act of 1979 empowers magistrates to conduct trials, including jury trials, and enter appealable orders of judgment. It also states that a "consent stipulation shall be signed by both parties," and that an appeal from a magistrate's final order shall be taken to the Court of Appeals unless the parties "affirmatively state" that the appeal should first be taken to the District Court Judge.

Division IV is concerned that the broad language of the proposed amendment to Rule 3-8(b)(8) would open trials conducted by consent stipulation to attack. For example, it is unclear when the parties shall enter into a "consent stipulation." In order to avoid charges on appeal that a party's consent was pressured or induced, parties should be notified at the earliest opportunity of their right to agree to have their case heard by a magistrate. We suggest such notice be given in writing, when suit is filed.*

The statute itself states:

> [T]he clerk of the court shall, at the time the action is filed, notify the parties of their right to consent to the exercise of [a magistrate's] jurisdiction. Thereafter, neither the district judge nor the magistrate shall attempt to persuade or induce any party to consent to reference of any civil matter to a magistrate. Rules of the court for the reference of civil matters to magistrates shall include procedures to protect the voluntariness of the parties' consent.

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*/ We understand that the Clerk of the Court now provides such notice upon filing of a suit as a matter of practice. The local rule should explain this practice, and make it mandatory.

In accordance with the above concerns, Division IV recommends that Local Rule 3-8(b)(8) be changed as follows:

(b) POWERS EXERCISED AT THE REQUEST OF A JUDGE

In addition to the powers listed in section (a), a magistrate, at the request of a judge to whom the case is assigned, may:

* * *

(8) conduct, <u>any and all proceedings, including</u> trials, (<u>with or without a jury</u>), <u>and thereafter order entry of judgment</u>, in civil cases by consent of all parties and with the approval of the judge to whom it is assigned. <u>The Clerk of the Court shall, at the time the action is filed, notify the parties of their right to consent or not to consent to a hearing of their case by a magistrate instead of a District Court Judge. Thereafter, neither the District Judge nor the magistrate shall attempt to persuade or induce any party to consent to refer a civil matter to a magistrate. The consent stipulation shall clearly state that the parties wish to have their case heard by a magistrate, and that the consent has been entered into freely and voluntarily. The stipulation shall be signed by both parties or their counsel</u>.

The proposed rule also introduces ambiguity concerning the parties' stipulation of the right to appeal from a magistrate's judgment. The rule should make it clear that the

parties can choose to have an appeal to the District Court, but that such choice must be made at the time that the parties consent to a magistrate's hearing of the case. A stipulation entered into after the entry of the magistrate's judgment would give the parties an unfair opportunity to choose appeal procedures depending upon the nature of the judgment.

Parties have a right of appeal from the judgment of the United States Magistrate to the United States Court of Appeals or the United States District Court. It shall be presumed that parties have elected their right to appeal directly to the United States Court of Appeals unless, at the time of entering into a consent stipulation for trial before a magistrate, both parties enter into a consent stipulation requesting appeal directly to the United States District Court.

The Committee suggests that there be additional study concerning the manner of appeal to the District Court. Questions of uniformity in the application, the standard of review, the timing of notice of appeal, and the manner of perfecting an appeal would be facilitated by a detailed rule. For example, such a rule could address whether the standards to be applied by the District Court are rules of the United States Court of Appeals or procedures followed by District Courts when reviewing the findings of a Special Master.

Once again, we wish to express appreciation that the District Court, through its comment procedure, has provided this opportunity to participate in the rules amendment process.

Respectfully submitted,

The Subcommittee to Monitor Proposed Court Rules Changes

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