Pat Spears

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

MISCELLANEOUS ORDER NO. 6

ORDER FOR THE ADOPTION OF RULES FOR THE

EXERCISE OF POWERS AND PERFORMANCE OF DUTIES BY

UNITED STATES MAGISTRATES

Rule 1

Powers and Duties of Magistrates under 28 U.S.C. §636(a)

All United States magistrates serving within the territorial jurisdiction of the Northern District of Texas shall have the power and duty to:

(a) Process criminal complaints and issue appropriate warrants or summons.

(b) Issue search warrants.

(c) Conduct initial appearances.

(d) Impose conditions of release and admit persons to bail.

(e) Impose conditions of bail for material witnesses.

(f) Conduct preliminary hearings.

(g) Conduct removal hearings and issue warrants of removal.

(h) Administer oaths and affirmations; take acknowledgments, affidavits and depositions.

(i) Conduct preliminary hearings, by whatever name called, in proceedings for the revocation of parole, mandatory release or probation.

(j) Issue administrative inspection warrants.

(k) Hold to security of the peace and for good behavior under 18 U.S.C. §3043.

(l) Discharge indigent prisoners or persons imprisoned for debt under process or execution issued by a federal court, pursuant to 18 U.S.C. §3569 and 28 U.S.C. §2007.

(m) Institute proceedings against persons violating certain Civil Rights Statutes under 42 U.S.C. §1987 and 1989.

(n) Settle and certify the non-payment of seaman's wages and conduct proceedings for the disposition of deceased seaman's effects under 42 U.S.C. §603, 604, 627, 628.

(o) Enforce awards of foreign consul and arbitrate differences between captains and crews of vessels of the consul's nations under 22 U.S.C. §258a.

(p) Upon the consent of the defendant, conduct trial of persons accused of, and sentence persons convicted of misdemeanor offenses, including petty offenses (a misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than $500.00, or both) pursuant to 18 U.S.C. §3401. Upon the filing with the clerk of an indictment, information or complaint charging a misdemeanor other than a petty offense such indictment or information shall be referred to a United States District Judge who may in turn refer such non-petty misdemeanor charge to a United States magistrate for trial and disposition. Any citation or violation notice charging a petty offense upon which the accused requests a trial, and any citation or violation notice charging a petty offense to which the accused fails to respond within a reasonable time shall be referred to a United States magistrate for trial and disposition.

(1) If the defendant consents to disposition of the case by the magistrate specifically waiving trial before a judge of the district court, the magistrate shall proceed as provided in Rule 2(c), Rules of Procedure for the Trial of Misdemeanors Before United States Magistrates. If the defendant

does not consent to disposition of the case by the magistrate, the magistrate shall:

(a) If the defendant is charged with a petty offense for which no sentence of imprisonment will be imposed, order the defendant to appear before a judge of the district court for further proceedings on notice.

(b) In all other cases, proceed in accordance with the provisions of Rule 5(c), Federal Rules of Criminal Procedure.

(2) All misdemeanor cases, except petty offenses, transferred to the Northern District of Texas under the provisions of Rule 20, Federal Rules of Criminal Procedure shall be referred to a United States District Judge who may in turn refer such matter to a United States magistrate for plea and sentence as provided for in Rule 1(p), supra.

(3) Appeals. An appeal from a judgment and conviction or from a decision or order of a magistrate shall be taken in the manner and within the time provided in Rule 7(b), Rules of Procedure for the Trial of Misdemeanors Before United States Magistrates. If a transcript of the proceedings before the magistrate is desired, the parties shall designate those portions of the proceedings to be transcribed, as provided in Rule 10(b), Federal Rules of Appellate Procedure. When the transcript has been certified by the magistrate he shall forward it to the clerk's office for filing and shall at the same time notify the judge and the parties of the filing of the transcript. Within fifteen days of the date on which the transcript is

filed in the clerk's office, or if there is to be no transcript, within fifteen days of the filing of the notice of appeal with the magistrate, the appellant shall serve and file a brief which shall enumerate each reversible error claimed to have occurred in the proceedings before the magistrate. Within fifteen days of service of appellant's brief the appellee shall serve and file a brief. The appellant may serve and file a reply brief within seven days of service of appellee's brief. Copies of all briefs shall be submitted to the judge at the time of filing. The judge to whom the appeal is assigned may hear oral argument or may decide the appeal on the briefs. Any party desiring oral argument shall so specify in his brief, but oral argument shall be discretionary with the judge, notwithstanding request therefor by one or more of the parties.

(q) Exercise all other powers and perform all other duties conferred or imposed upon United States magistrates or United States commissioners by law or by the Federal Rules of Criminal Procedure.

Rule 2

Additional Powers and Duties of Magistrates under 28 U.S.C. §636(b)

Upon entry of an order of reference by a District Judge, or when required to do so under the provisions of a local rule or general order of this Court, a magistrate may perform any of the following additional duties, and shall have all powers necessary to perform such duties. Provided, however, that no part time magistrate specially designated to perform such additional duties, nor any partner or associate of such part time magistrate, shall appear as counsel in any case before this Court when to do so would constitute a violation of the Conflict of Interest Rules for Part Time Magistrates promulgated by the Director of the Administrative Office of the United States Courts [§1.3(b)(i)-(viii), Regulations of the Director of the Administrative Office of the United States Courts Governing the Administration of the United States Magistrates System].

(a) Criminal Proceedings.

(1) General supervision of the criminal calendar, including calendar calls and motions to expedite or postpone the trial of the case.

(2) Conduct of post indictment and post information arraignments, acceptance of not guilty pleas, and the ordering of a presentence report on a defendant who signifies the desire to plead guilty.

(3) Conduct of pretrial conferences, omnibus hearings, and related proceedings.

(4) Hearing and deciding motions by the Government to dismiss an indictment or information without prejudice to further proceedings, and any other

motion or pretrial matter which is not specifically enumerated as an exception in 28 U.S.C. §636(b)(1)(A).

(5) The review of motions to dismiss or quash an indictment or information made by a defendant and motions to suppress evidence, including the conduct of all necessary evidentiary and other hearings or oral argument thereon, and the submission of reports and recommendations to the district judge assigned to the case.

(6) Conduct of probation revocation hearings and submission of a report and recommendations to the district judge to whom the case is assigned.

(7) Receipt of grand jury returns, in accordance with Rule 6(f), Federal Rules of Criminal Procedure.

(8) Conduct hearings and issue orders upon motions arising out of grand jury proceedings including, but not limited to, enforcement or modification of subpoenas, lineups, finger and palmprinting, voice identification, medical examination and the taking of blood, urine, fingernail, hair and body secretion samples with appropriate medical safeguards.

(9) Accept waivers of indictments and permit amendments of informations.

(10) Establish a bail schedule for petty offenses as defined in 18 U.S.C. §1(3) providing for the posting of collateral, waiver of appearance before the court and consent to forfeiture of collateral.

(11) Conduct extradition proceedings under 18 U.S.C. §3184.

(b) Prisoner Petitions.

(1) Review of petitions of state prisoners seeking post conviction relief from state custody under 28 U.S.C. §2254 and other petitions of state prisoners seeking to attack the fact or duration of their state confinement, the issuance of orders to show cause and other necessary orders or writs to obtain a complete record, the conduct of evidentiary and other hearings and oral arguments, performing all other duties authorized to be formed by a magistrate under the Rules Governing §2254 Cases, and the preparation and submission to the district judge to whom the case is assigned of a report and recommendations as to the appropriate disposition of the petition.

(2) Review of motions of federal prisoners for vacation of sentence under 28 U.S.C. §2255, and review of other petitions of federal prisoners for relief from custody, the issuance of orders to answer the motion or petition and other orders necessary to the magistrate's review of such motion or petition, the conduct of evidentiary and other hearings and oral arguments, performing all other duties authorized to be performed by a magistrate under the Rules Governing §2255 Cases, and the preparation of a report and recommendations to the district judge to whom the case is assigned as to the appropriate disposition of the motion or petition.

(3) The review of civil suits by prisoners for deprivation of civil rights arising out of conditions of confinement under 42 U.S.C. §1983 and related statutes; the conduct of evidentiary and other hearings and oral arguments and the preparation of reports and recommendations to the district judge to whom the case is assigned.

(4) Taking on-site depositions, gathering evidence, conducting pretrial conferences, and serving as a mediator at the holding facility in connection with civil rights suits filed by prisoners contesting conditions of confinement under 42 U.S.C. §1983 and related statutes.

(5) Conduct of periodic reviews of proceedings to insure compliance with previous orders of the Court regarding conditions of confinement.

(6) Review of prisoner correspondence.

(c) Civil Proceedings.

(1) General supervision of the civil calendar, including the handling of calendar calls and motions to expedite or postpone the trial of cases.

(2) Conduct of preliminary and final pretrial conferences, status calls and settlement conferences, and the formulation or preparation of pretrial orders.

(3) Hearing and determining pretrial procedural and discovery motions and any other motion or pretrial matter which is not specifically enumerated as an exception in 28 U.S.C. §636(b)(1)(A).

(4) The review of motions:

(A) for injunctive relief,

(B) to dismiss for failure to state a claim upon which relief may be granted,

(C) to involuntarily dismiss an action,

(D) to vacate or set aside default judgments,

(E) to dismiss or permit the maintenance of a class action,

(F) for judgment on the pleadings, or

(G) for summary judgment

including the conduct of all necessary evidentiary and other hearings or oral arguments thereon, and the submission of reports and recommendations to the District Judge assigned to the case.

(5) Acceptance of petit jury returns in the absence or disability of the trial judge.

(6) Examining judgment debtors under Rule 69, Federal Rules of Civil Procedure.

(7) Conduct proceedings for the enforcement of civil penalties under the Federal Boat Safety Act, 46 U.S.C. §1451-1489.

(8) Issuance of orders prior to ratification of sale in mortgage foreclosure proceedings on properties financed through government loans.

(9) Review of default judgments and conduct of inquests on damages in cases involving default judgments.

(10) Appoint persons to serve process pursuant to Rule 4(C), Federal Rules of Civil Procedure, except that, as to in rem process, such appointments shall be made only when the United States Marshal, or his deputies, are not immediately available to execute such process, and the individual appointed has been approved by the United States Marshal for such purpose.

(d) Special Master References.

(1) Serving as a special master in accordance with Rule 53, Federal Rules of Civil Procedure: hearing testimony and submitting a report and findings on complicated issues in jury cases or in matters of account, difficult computation of damages and exceptional conditions in nonjury cases.

(2) Conducting hearings and resolving specific issues in patent, antitrust, and other complex cases where there are a great many issues, claims and documents, or in multiple disaster and class action cases where there are numerous claimants and diverse claims.

(3) Serving as a special master in any matter with the consent of the parties.

(4) Serving as a commissioner to determine compensation and assess damages in land condemnation cases under Rule 71A(h), Federal Rules of Civil Procedure.

(5) Conducting evidentiary hearings and preparing findings in employment discrimination cases under Title VII of the Civil Rights Act of 1964 whenever a judge has not scheduled a case for trial within 120 days after issue has been joined and upon reference to the magistrate by a District Judge.

(e) Administrative Proceedings.

(1) Reviewing the record of administrative proceedings in suits for judicial review of final decisions of administrative agencies and submitting to the district judge to whom the case is assigned a report and recommendations as to (a) whether there are any defects in the agency proceedings which

rise to the level of a deprivation of due process or a violation of a statute or regulation, (b) whether there should be a remand to the agency for additional factual determinations to complete the record, and (c) whether there is substantial evidence in the record to support the ultimate decision of the agency.

(f) Miscellaneous Duties.

(1) The review of petitions in civil commitment proceedings under Title III of the Narcotic Addict Rehabilitation Act.

(2) Issuance of subpoenas and writs of habeas corpus ad testificandum and ad prosequendum or other orders necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings in civil and criminal cases.

(3) Coordination of the Court's efforts in the promulgation of local rules and procedures and the administration of the forfeiture of collateral systems, as well as in similar or related matters.

(4) Supervision of proceedings on requests for letters rogatory in civil and criminal cases.

(5) Conduct of voir dire and selection of juries for district judges in civil and criminal cases with consent of the parties and the District Judge.

(6) Exoneration or forfeiture of bonds and bail.

(7) Service as a member of the district's Speedy Trial Act Planning Group, (including service as the reporter).

(8) Administer the Court's Criminal Justice Act Plan, including maintenance of a list of eligible attorneys, appoint attorneys and approve vouchers

for compensation and expenses.

(9) Any other duties assigned by the Court, or any Judge thereof, which are not inconsistent with the Constitution and laws of the United States.

Rule 3

Conduct of trials and Disposition of Civil Cases Upon Consent of the Parties, 28 U.S.C. §636(c)

Upon the consent of the parties and the approval and referral of the district judge to whom the case is assigned a full-time magistrate or a part-time magistrate who serves as a full-time judicial officer may conduct any or all proceedings in any civil case which is filed in this court, including the conduct of a jury or nonjury trial, and may order the entry of a final judgment, in accordance with 28 U.S.C. §636(c). In the course of conducting such proceedings a magistrate may hear and determine any and all pretrial and posttrial motions which are filed by the parties, including case-dispositive motions.

(a) In general

In the course of conducting proceedings in accordance with 28 U.S.C. §636(c) a magistrate shall conform to all applicable provisions of federal statutes and rules, and to the general procedural rules of this court.

(b) Special provisions for the disposition of cases

(1) Notice.

The clerk of court shall notify the parties in all civil cases that they may consent to have a magistrate conduct any or all proceedings in the case and order the entry of a final judgment. Such notice shall be given on the form attached hereto as Exhibit 1 and shall be handed or mailed to the plaintiff or his representative at the time an action is filed and to other parties as attachments to copies of the complaint and summons, when served. The clerk may

serve the parties with a consent form, attached as Exhibit 2 in the same manner and contemporaneously with the notice or upon the request of any of the parties. Additional notices may be furnished to the parties at later stages of the proceedings, and may be included with pretrial notices and instructions.

(2) Execution of Consent.

The clerk shall not accept a consent form unless it has been signed by all parties in a case. The plaintiff shall be responsible for securing the execution of a consent form by the parties and for filing such form with the clerk of court. No consent form will be made available, nor will its contents be made known to any judge or magistrate, unless all parties have consented to the reference to a magistrate. No magistrate, judge or other court official may attempt to persuade or induce any party to consent to the reference of any matter to a magistrate. This rule, however, shall not preclude a judge or magistrate from informing the parties that they may have the option of referring a case to a magistrate.

In the absence of receipt of a consent form executed by all parties within twenty days of the date that all parties have filed answers or have otherwise responded it shall be deemed that consent of all the parties has not been effected, and the cause of action shall proceed before the judge to whom the cause was assigned at the time suit was filed. This provision shall not preclude a judge's exercise of discretion to thereafter transfer the

case to a magistrate if the judge be advised that all parties have consented to a trial before a magistrate.

The reference of a civil case to the magistrate for trial by a District Judge shall not preclude the judge from thereafter revoking the reference at any time, and in any such case in which the reference is revoked the case will thereafter be reinstated on the referring judge's docket.

(3) Reference.

After the consent form has been executed and filed, the clerk shall transmit it to the judge to whom the case has been assigned for approval and referral of the case to a magistrate. Once the case has been assigned to a magistrate, the magistrate shall have the authority to conduct any and all proceedings and to direct the clerk of court to enter a final judgment in the same manner as if the judge had presided.

Rule 4

Review and Appeal

(a) Review of case-dispositive motions and prisoner litigation - 28 U.S.C. §636(b)(1)(B)

(1) In all matters upon which a magistrate is required to submit a report and recommendations to a district judge the magistrate shall prepare his report and recommendations in writing and shall file the same with the clerk. The clerk shall transmit a copy thereof to the judge to whom the action is assigned and to each of the parties, or to their counsel, if represented by counsel. Each party shall have ten days after service of a copy of the magistrate's report and recommendations in which to serve and file written objections to the report or recommendations to the magistrate, unless a greater or shorter time is fixed by the magistrate or judge. All such objections shall be filed with the clerk and served upon the other parties, as in other cases, and copies thereof shall also be forwarded to the judge to whom the action is assigned and to the magistrate. If the judge shall desire a response to the objections, he shall call upon the other party or parties for a response or responses thereto, and shall fix the time within which such response or responses may be served and filed. All such responses shall be served and filed as required in the case of objections. No objection to a magistrate's report or recommendations shall be sustained unless the other party or parties have been called upon to respond thereto.

(2) The district judge shall make a de novo determination of those portions of the magistrate's report and recommendation to which specific objection is made. However, the district judge need not conduct a new hearing on the issues raised by the objections, but may base his determination upon the record made before the magistrate and may consider the magistrate's report and recommendations. The district judge may also receive further evidence, conduct further hearings, or remand the matter to the magistrate with instructions. After such further proceedings, if any, as the district judge deems appropriate, he may adopt, reject or modify, in whole or in part, the report or recommendations of the magistrate.

(b) Appeal of non-dispositive matters - 28 U.S.C. §636 (b)(1)(A)

(1) In any matter which a magistrate is empowered to hear and determine, a party aggrieved by the ruling of the magistrate may appeal the magistrate's ruling to the district judge to whom the action is assigned. Such an appeal may be perfected by serving and filing within ten days of the magistrate's ruling an application for review of such ruling specifying the grounds upon which the magistrate's ruling is claimed to be erroneous. All such applications for review shall be filed and served upon the other party or parties as in other cases, and copies thereof shall be promptly transmitted to the judge to whom the action is assigned and to the magistrate. The district judge may call upon the other party or parties to respond to the application for review, and no ruling of a

magistrate shall be reversed, vacated or modified unless the other party or parties shall have been called upon to respond to the application for review.

(2) No ruling of a magistrate in any matter which he is empowered to hear and determine shall be reversed, vacated or modified on appeal unless the district judge shall determine that the findings of the magistrate are clearly erroneous, or that the magistrate's ruling is contrary to law or constitutes an abuse of discretion.

(3) The ruling of a magistrate in a matter which he is empowered to hear and determine is the ruling of the Court and is final unless reversed, vacated or modified by the district judge to whom the action is assigned, as provided in this rule. An appeal to the district judge shall not operate as a stay of a magistrate's ruling unless so ordered by the magistrate or the district judge, and then only to the extent specifically ordered by the magistrate or district judge. Any party desiring a stay of a magistrate's ruling or any part thereof, pending appeal to the district judge shall first apply therefore to the magistrate from whose ruling the appeal is taken. If the magistrate denies a stay, written application therefor may then be made to the district judge. Any application to the district judge for a stay shall have appended thereto the certificate of counsel that application for the stay sought has been made to the magistrate and denied by him.

(c) Special Master Reports - 28 U.S.C. §636(b)(2). Any party may seek review of, or action on, a special

master report filed by a magistrate in accordance with the provisions of Rule 53(e) of the Federal Rules of Civil Procedure.

(d) Appeal from Judgments in Civil Cases Disposed of on Consent of the Parties - 28 U.S.C. §636(c).

(1) Appeal to the Court of Appeals.

Upon entry of judgment in any civil case disposed of by a magistrate under authority of 28 U.S.C. §636(c) and Rule 3 of these rules, supra, on consent of the parties wherein the parties agreed to appeal any judgment directly to the Fifth Circuit, an aggrieved party shall appeal directly to the United States Court of Appeals for the Fifth Circuit in the same manner as an appeal from any other judgment of this court.

(2) Appeal to the District Judge.

(a) Notice of Appeal

Upon the entry of judgment in any civil case disposed of by a magistrate when authority of 28 U.S.C. §636(c) on consent of the parties wherein the parties agreed to appeal any judgment to a judge of this court in accordance with 28 U.S.C. §636(c)(4), rather than directly to the Court of Appeals for the Fifth Circuit, an aggrieved party shall file written notice of appeal with the clerk of the court within thirty days after entry of the magistrate's judgment, but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within sixty

days of entry of the judgment. Upon a showing of excusable neglect or good cause, the magistrate or a judge of this court may extend the time for filing a notice of appeal upon motion filed not later than thirty days after the expiration of the time prescribed by Rule 4(a), Federal Rules of Appellate Procedure.

In the event a timely motion for new trial is filed pursuant to Rule 59, Federal Rules of Civil Procedure, the time for appeal for all parties shall run from the date of the ruling on the motion.

(b) Service of the Notice of Appeal

The clerk of court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record for all parties other than the appellant, or if a party is not represented by counsel to the party at his last known address.

(c) Record on Appeal

The record on appeal to a judge shall consist of the original papers and exhibits filed with the court and the transcript of the proceedings before the magistrate, if any. Every effort shall be made by the parties, counsel, and the court to minimize the production and costs of transcriptions of the record, and otherwise to render the appeal expeditious and inexpensive, as mandated by 28 U.S.C. §636(c)(4). If a

transcript of the proceedings is desired the party shall designate those portions of the proceedings to be transcribed in the manner provided in Rule 10(b), Federal Rules Appellate Procedure.

(d) Memoranda

The appellant shall within forty days of the filing of the notice of appeal file a typewritten memorandum with the clerk, together with two additional copies, stating the specific facts, points of law, and authorities on which the appeal is based. The appellant shall also serve a copy of the memorandum on the appellee or appellees. The appellees shall file an answering memorandum within thirty days of the filing of the appellant's memorandum. The court may extend these time limits upon a showing of good cause made by the party requesting the extension. Such good cause may include reasonable delay in the preparation of any necessary transcript. If an appellant fails to file his memorandum within the time provided by this rule, or any extension thereof, the court may dismiss the appeal.

(e) Disposition of the Appeal by a Judge

The judge shall consider the appeal on the record, in the same manner as if the case had been appealed from a judgment of the district court to the court of appeals and may affirm, reverse, or modify the magistrate's

judgment, or remand with instructions for further proceedings. The judge shall accept the magistrate's findings of fact unless they are clearly erroneous, and shall give due regard to the opportunity of the magistrate to judge the credibility of the witness.

(f) Appeals from other others of a Magistrate

Appeals from any other decisions and orders of a magistrate not provided for in this rule should be taken as provided by governing statute, rule or decisional law.

Rule 5

Priorities in Performance of Magistrate's
Duties and in Assignment of Duties to Magistrates

A magistrate shall give priority to the following types of matters above other matters pending on his docket:

(a) Criminal matters of all types.

(b) Prisoner petitions for relief from custody under 28 U.S.C. §2254 and 2255.

(c) Any matter pending in an action which has been set for trial and in which delay might result in postponement of trial, including but not limited to, pretrial conferences and motions to maintain or dismiss class actions.

(d) Matters pending in actions brought pursuant to Title VII, Civil Rights Act of 1964.

(e) Social Security Reviews.

(f) Prisoner complaints challenging conditions of confinement under 42 U.S.C. §1983 and related statutes.

(b) Any other matter designated as a priority matter by a district judge.

A magistrate shall endeavor to dispose of all priority matters pending before him which are ready for disposition before reaching non-priority matters. References of non-priority matters to a magistrate shall be the exception, rather than the rule, and all such references shall be consistent with the magistrate's work load and his resulting ability to give reasonably prompt attention to non-priority matters.

Rule 6

Inherent Powers of District Judges

The specification of these rules of powers and duties of magistrates shall not be construed as vesting such powers or conferring such duties exclusively upon magistrates, but the district judges of this district retain their inherent powers to act in any and all such matters. Notwithstanding reference of any of the foregoing matters to a magistrate, a district judge retains the power to act therein if, in the opinion of the district judge, the proceedings will thereby be expedited or the efficient administration of justice advanced.

This rule shall become effective on February 1, 1982, and upon these rules becoming effective the former Miscellaneous Order No. 6 and all amendments thereto shall be and are repealed.

ENTERED this 5th day of February, 1982.

Chief United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE

_____ DISTRICT OF _____

_____ Plaintiff	)	
vs.	)	Docket No._____
_____ Defendant	)	

CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE

In accordance with the provisions of 28 U.S.C. §636(c), the parties to the above captioned civil matter hereby waive their right to proceed before a judge of the United States district court and consent to have a United States magistrate conduct any and all further proceedings in the case (including the trial) and order the entry of a final judgment.

The parties further agree and consent to the following method of appeal, in the event an appeal is sought from the judgment of the magistrate (check one):

_____ In accordance with 28 U.S.C §636(c)(3) any appeal shall be taken to the United States Court of Appeals for the Fifth Circuit.

_____ In accordance with 28 U.S.C. §636(c)(4) any appeal shall be taken to a judge of the district court. *

* An appeal under §636(c)(4) does not bar an appeal to the Fifth Circuit as provided by §636(c)(5).

Party or Counsel of Record	Date
_____	_____
_____	_____
_____	_____

NOTE: Return this form to the District Clerk only if it has been executed by all parties to the case.

ORDER OF REFERENCE

IT IS HEREBY ORDERED that the above captioned matter be referred to United States Magistrate _____ for the conduct of all further proceedings and the entry of judgment in accordance with 28 U.S.C. §636(c) and the foregoing consent of the parties.

_____ DATE

_____ UNITED STATES DISTRICT JUDGE

28-

NOTICE OF RIGHT TO CONSENT TO DISPOSITION OF A

CIVIL CASE BY A UNITED STATES MAGISTRATE

In accordance with the provisions of 28 U.S.C. §636(c), you are hereby notified that the United States magistrates of this district court, in addition to their other duties, may, upon the consent of all the parties in a civil case, conduct any or all proceedings in a civil case, including a jury or non-jury trial, and order the entry of a final judgment. Copies of appropriate consent forms for this purpose are available from the clerk of the court.

You should be aware that your decision to consent, or not to consent, to the referral of your case to a United States magistrate for disposition is entirely voluntary and should be communicated solely to the clerk of the district court. Only if all parties to the case consent to the reference to a magistrate will either the judge or magistrate to whom the case has been assigned be informed of your decision. The parties must consent within twenty days of the date answer(s) or responsive pleadings are filed by the defendant(s), unless otherwise permitted by the district court. Upon consent of all parties reference to a magistrate is subject to the approval and order of the district judge to whom the case is assigned.

The provisions of 28 USC §636(c)(3) and (4) permit alternative appeals procedures, either directly to the United States Court of Appeals for the Fifth Circuit or to the district judge that referred the case to the magistrate. An appeal to the district judge does not bar a party from thereafter appealing to the Fifth Circuit as provided by §636(c)(5). In the event that the parties consent to a trial before the magistrate, they must also agree to the method of appeal at the time the consent form is executed, unless otherwise permitted by the district court.