

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:11mc25**

**IN RE: HONORABLE MAX O. COGBURN, JR., PRESIDING JUDGE
REFERRALS TO MAGISTRATE JUDGES IN THE WESTERN
DISTRICT OF NORTH CAROLINA.**

THIS MATTER is before the court on its own motion regarding the referral of motions and other duties (“reference of duties”) in accordance with 28, United States Code, Section 636, to United States Magistrate Judges serving in the Western District of North Carolina (“magistrate judges”), either by commission or designation.

REGARDING CRIMINAL CASES, IT IS ORDERED THAT pursuant to 28, United States Code, Sections 636(a) and (b), and Local Criminal Rule 57.1, magistrate judges shall be referred the following duties:

- (1) as to Class B misdemeanors (“petty offenses”) and infractions, to dispose of such matters and enter a sentence, and as to Class A misdemeanors, to dispose of such matters and enter a sentence where the parties consent to proceed before a magistrate judge;
- (2) as to felony matters, to accept tendered guilty pleas subject to acceptance by the district judge. The magistrate judge may make the 18, United States Codes, Section 3143, determination of release or detention after

acceptance of the plea, including whether exceptional circumstances exist under Section 3145(c). The magistrate judge may further review that determination up to the day of sentencing upon the filing of any *motion for reconsideration*. Any *motions to review* a magistrate judge's bond conditions at any time shall be directed to the district judge. On a case-by-case basis, and for the convenience of the parties, the undersigned may accept guilty pleas at other times, including regularly scheduled terms of court;

- (3) to conduct hearings pursuant to 18 U.S.C. § 3142, and 28 U.S.C. § 636(a)(2);
- (4) to enter a final order on any other non-dispositive criminal pretrial motions, subject only to review by the district judge for clear error (if properly appealed);
- (5) to make findings of fact, conclusions of law, and to recommend disposition of any dispositive criminal motion, excluding motions to suppress evidence, through submission of a Memorandum and Recommendation to the district judge. All motions to suppress shall be directed to the district judge, which may be referred to a magistrate judge on a case-by-case basis for hearing and entry of a Memorandum and

Recommendation;

- (6) beginning two (2) weeks prior to calendar call for any trial term (or peremptory setting), all trial-related motions such as motions in limine, motions for issuance of subpoenas pursuant to Rule 17(b), Federal Rules of Criminal Procedure, shall be directed to the district Judge for disposition;
- (7) motions to continue cases from the trial calendar shall be directed to the district judge; and
- (8) to perform all other duties as authorized in Local Criminal Rule 57.1 that are not contrary to the specific duties as set forth within this order.

REGARDING CIVIL AND MISCELLANEOUS CASES, IT IS ORDERED THAT pursuant to 28, United States Code, Section 636(b) and Local Civil Rule 72.1, in civil and miscellaneous cases, magistrate judges shall be specifically referred the following duties:

- (1) to preside over any pretrial conference requested and issue all initial pretrial scheduling orders as a result of the conference or filing of Certificate of Initial Attorneys Conference and proposed discovery plan as authorized by Local Civil Rule 16.1(B);
- (2) to dispose of civil pretrial motions pertaining to discovery arising under

the Federal Rules of Civil Procedure, including but not limited to any motion for sanctions under Rule 37(b) arising out of these referred motions, to compel, for protective orders, to quash, to amend, and to strike, all subject to review by the district judge for clear error (if properly appealed);

- (3) to dispose of non-dispositive civil motions, including but not limited to motions for *pro hac vice* or special admission of counsel, transfer to another division or district, stay and stay pending arbitration, to compel arbitration, and requests for international judicial assistance under 28 U.S.C. 1782(a). Where a non-dispositive motion is pled in the alternative to a dispositive motion, a Memorandum and Recommendation will be entered as to both motions;
- (4) to make findings of fact, conclusions of law, and to recommend disposition of any dispositive motions, including but not limited to motions for remand, for sanctions (other than Rule 37(b) motions), to dismiss or for judgment on the pleadings under Rule 12, and to dismiss for failure to join a party under Rule 19. Rule 12 motions filed on or before March 31, 2011, shall not be transferred to magistrate judges, but shall be retained by the district judge for disposition. Summary judgment

motions will not automatically be referred to a magistrate judge; rather, the court will refer by separate Order of Referral such motions on a case-by-case basis for a recommended disposition;

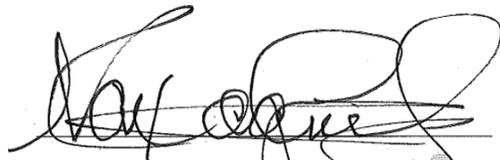
- (5) to make findings of fact, conclusions of law, and to recommend disposition of any dispositive motion filed on Social Security Appeals through submission of a Memorandum and Recommendation to the district judge;
- (6) to hear bankruptcy appeals and make recommendations, if referred by the district judge a case-by-case basis;
- (7) to enter orders involving post-judgment execution proceedings; and
- (8) to perform all other duties as authorized in Local Civil Rule 72.1 which are not contrary to the specific duties as set forth within this order.

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In all cases, the undersigned retains the option, in consultation with the referral United States Magistrate Judge, to refer or un-refer any motion or matter to a magistrate judge for purposes of conducting a hearing and/or for entry or an appropriate order or Memorandum and Recommendation on a case-by-case basis. The referral of a specific motion or matter not contemplated by this Order or in a manner not consistent with this Order will be communicated to the Clerk of Court and the

parties by a separate Order of Reference, therein authorizing the magistrate judge to take appropriate action.

Signed: March 16, 2011



Max O. Cogburn Jr.
United States District Judge