

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IN RE: :
 :
 UTILIZATION OF : STANDING ORDER
 UNITED STATES :
 MAGISTRATE JUDGES. :
 :

ORDER RELATING TO UTILIZATION OF MAGISTRATE JUDGES

At Wilmington this 3rd day of November, 2011, IT IS HEREBY ORDERED that:

A. PILOT PROJECT

1. Magistrate Judge Utilization. In its ongoing effort to: (i) promote timely and careful consideration and disposition of this Court's growing and complex caseload; and (ii) make efficient and effective utilization of this Court's judicial resources, the Court shall undertake a Pilot Project to evaluate Magistrate Judge utilization.

2. Duration. This Standing Order shall govern the use of the Court's Magistrate Judges during the term of the Pilot Project, which shall be one (1) year. The Pilot Project shall begin on October 28, 2011.

3. Review and Revision. The Court will review the results of the Pilot Project periodically during its pendency. The Court may revise this Standing Order at any time and reserves the right to shorten or extend the length of the Pilot Project.

B. AUTHORITY OF MAGISTRATE JUDGES

1. Magistrate Judge Authority. Magistrate Judges are authorized to perform all judicial duties assigned by the Court that are consistent with the Constitution and laws of the United States (e.g., 28 U.S.C. § 636) and Federal Rules (e.g., Federal Rule of Civil Procedure 72).

2. Magistrate Judge Duties. Magistrate Judges shall have the following duties:

a. Alternative Dispute Resolution. Conduct various

alternative dispute resolution processes, including but not limited to judge-hosted settlement conferences, mediation, arbitration, early neutral evaluation, and summary trials (jury and nonjury).

b. Bankruptcy Mediation. Magistrate Judges shall be available to mediate

appeals from judges of the Bankruptcy Court, as part of the Court's program of mandatory bankruptcy mediation.

c. Consent Jurisdiction. Where the parties consent, a Magistrate Judge may

conduct a jury or nonjury trial in any civil action and order the entry of final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 72-73. In the course of conducting proceedings in any civil action upon the consent of the parties, a Magistrate Judge may hear and determine any and all pretrial and post-trial motions, including case-dispositive motions.

d. Nondispositive Motions. Hear and determine any pretrial motion or other

pretrial matter, other than those motions specified in Section B.2.e below, in accordance with 28 U.S.C. § 636(b)(1)(A) and Fed. R. Civ. P. 72.

e. Dispositive Motions. Hear and conduct such proceedings as are necessary

or appropriate and submit to a District Judge proposed findings of fact and recommendations for the disposition of motions for proposed injunctive relief (including temporary restraining orders and preliminary injunctions), for judgment on the pleadings, for summary judgment, to dismiss or permit maintenance of a class action, to dismiss for failure to state a claim upon which relief may be granted, to involuntarily dismiss an action, for judicial review of administrative determinations, for review of default judgments, and for review of prisoners' petitions

challenging conditions of confinement, in accordance with 28 U.S.C. § 636(b)(1)(B) and (C) and Fed. R. Civ. P. 72.

f. Civil Case Management. Exercise general supervision of the civil calendars of the Court, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the District Judges. Magistrate Judges may conduct scheduling and pretrial conferences as set forth in Fed. R. Civ. P. 16 and 26(f), which include but are not limited to scheduling, settlement, discovery, preliminary and final pretrial conferences, and entry of appropriate orders.

g. Subpoenas and Writs. Issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings.

h. Examination of Debtors. Conduct examinations of judgment debtors, in accordance with Fed. R. Civ. P. 69.

i. Administration of Oaths. Administer oaths and affirmations and take acknowledgments, affidavits, and depositions.

j. Foreign Tribunals. Supervise proceedings conducted pursuant to 28 U.S.C. § 1782 with respect to foreign tribunals and to litigants before such tribunals.

k. Service as Special Master. Serve as a special master in an appropriate civil action pursuant to 28 U.S.C. § 636(b)(2) and Fed. R. Civ. P. 53. A Magistrate Judge may, where the parties consent, serve as a special master in any civil action. The entry of final judgment in the civil action, however, shall be made by a District Judge or at the direction of a District Judge with the consent of the parties.

l. Sanctions. Adjudicate nondispositive sanctions under the Federal Rules of

Civil Procedure, the Court's Local Rules, or applicable statutes.

m. Felony Criminal Matters. Conduct and preside over initial appearances, preliminary hearings, bail and detention hearings, and arraignments in felony criminal matters.

n. Warrants. Issue warrants or entering orders permitting entry into and inspection of premises, and/or seizure of property, in noncriminal proceedings, as authorized by law, when properly requested by the IRS or other governmental agencies.

o. Non-Felony Criminal Matters. Conduct trials of persons accused of, and sentence persons convicted of, petty offenses and, with the consent of the defendant, other misdemeanors committed within this District, as allowed by 18 U.S.C. § 3401(a).

p. Postconviction Relief. A Magistrate Judge may perform any or all of the duties imposed upon a District Judge by the rules governing proceedings in the United States district courts under § 2254 and § 2255 of Title 28, United States Code. In so doing, a Magistrate Judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a District Judge a report containing proposed findings of fact and recommendations for disposition of the petition by the District Judge. Any order disposing of the petition may only be made by a District Judge.

C. OBJECTIONS TO MAGISTRATE JUDGE RULINGS AND RECOMMENDATIONS

1. Objections. Except in cases in which all parties have consented to Magistrate Judge jurisdiction, and except with respect to motions to which all parties have consented to Magistrate Judge jurisdiction, parties may object to Magistrate Judge rulings and recommendations as follows:

a. Nondispositive Matters. All orders of the Magistrate Judge authorized by 28 U.S.C. § 636(b)(1)(A) shall be final unless a party timely files written objections. The

objections shall specify the matters to which the party objects and the manner in which it is claimed that the order is clearly erroneous or contrary to law.

b. Dispositive Motions. Written objections to proposed findings of fact and recommendations for disposition submitted by a Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) shall specify the portions of the proposed findings and recommendations to which objection is made and the basis for each objection, and shall be supported by legal authority.

c. Certification. Any party filing objections to a Magistrate Judge's order or recommended disposition must include with the objections to the District Judge a written statement either certifying that the objections do not raise new legal/factual arguments, or identifying the new arguments and demonstrating good cause for failing to raise the new arguments before the Magistrate Judge.

d. Timing of Objections. Unless otherwise ordered, objections to a Magistrate Judge's ruling or recommendation are due no later than fourteen (14) days after the date of the Magistrate Judge's ruling or recommendation. Applications for extension of time to file or respond to objections shall be reviewed by the Magistrate Judge, unless otherwise ordered.

e. Briefing. Briefing on objections consists solely of the objections and an answer thereto. No reply in support of objections may be filed without leave of the Court. Objections and answers are limited to ten (10) pages. Applications for modification of these limits shall be reviewed by the Magistrate Judge, unless otherwise ordered.

f. Effect of Magistrate Judge Orders and Recommendations. Until a District Judge has completed his or her review of an objection to a Magistrate Judge order, such order shall govern further proceedings. Until a District Judge has completed his or her review of an

objection to a Magistrate Judge recommended disposition of a dispositive matter, the Magistrate Judge may, in his or her discretion, conduct further proceedings in any manner the Magistrate Judge deems appropriate.

g. Motions to Reconsider/Reargue Not Permitted. A party seeking review of an order, decision, or recommended disposition issued by a Magistrate Judge pursuant to Fed. R. Civ. P. 72 shall be limited to the filing of objections permitted under Fed. R. Civ. P. 72, and, pursuant to D. Del. LR 7.1.5(a), shall not be permitted to file a motion for reargument before either the Magistrate Judge or the District Judge.

D. DIRECT ASSIGNMENT OF CASES TO MAGISTRATE JUDGES

1. Direct Assignment. Effective October 28,2011, the Clerk of the Court shall randomly assign to the Court's Magistrate Judges a percentage of civil cases filed on or after October 28,2011. The exact percentage of direct assignments shall be determined periodically by the Judges of the Court. Any matter randomly assigned to a Magistrate Judge pursuant to this procedure shall not initially be assigned to a District Judge.

2. Excluded Matters. The following exceptions shall be made in implementing the direct assignment portion of this Standing Order: all petitions under 28 U.S.C. §§ 2241,2254, and 2255; bankruptcy appeals, including motions to withdraw the reference; actions filed by incarcerated litigants proceeding pro se; cases in which a petition for temporary restraining order, motion for preliminary injunction, or application for other emergency relief is pending at the time of case assignment; and patent cases in which one or more "related" cases are pending at the time of case assignment.

3. Magistrate Judge Authority. In cases directly assigned to a Magistrate Judge pursuant to this Section, the Magistrate Judge randomly selected shall be responsible for all

pretrial management of the case, including determination of all nondispositive motions and scheduling.

4. Procedure for Effectuating Consent or Assignment to District Judge.

a. Notice. In any case directly assigned to a Magistrate Judge, the Clerk of the Court shall provide to the filing party a Notice of Assignment of Magistrate Judge ("Notice") (Attachment A).

b. Service of Notice. The plaintiff shall serve the Notice along with the summons and complaint. The plaintiff is responsible for obtaining the other parties' decisions concerning consent.

c. Filing of Form AO 85. In all civil cases, including any case directly assigned to a Magistrate Judge, the Clerk of the Court shall provide the parties with the "Notice, Consent, and Reference of a Civil Action to a Magistrate Judge" ("Form AO 85") (Attachment B). In a case directly assigned to a Magistrate Judge, if all parties consent to Magistrate Judge jurisdiction, the plaintiff shall, as soon as practicable, file Form AO 85, indicating that there is unanimous consent. The case shall then remain assigned to the Magistrate Judge for all purposes, including jury and non-jury trials and the entry of final judgment, pursuant to the provision of 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73. Consent is effective upon the filing of Form AO 85, and the Clerk is not required to enter any additional order.

d. Assignment to District Judge. Unless a fully-executed Form AO 85 is submitted to the Court before the filing of any case-dispositive motion or within sixty (60) days following direct assignment of the case to a Magistrate Judge, whichever is earlier, any case directly assigned to a Magistrate Judge shall be randomly reassigned to a District Judge. In cases that are directly assigned to a Magistrate Judge pursuant to this Section D, no requests for

extension of time to file Form AO 85 shall be filed. Any directly assigned case will be reassigned to a District Judge after the expiration of sixty days following the initial case assignment unless a fully-executed Form AO 85 is filed prior to that date.

e. Removal Cases. The same procedures set forth in this Section D apply in cases removed from state court, with the exceptions that: (i) the removing party, rather than the plaintiff, is responsible for obtaining the other parties' decisions concerning consent, and filing Form AO 85; and (ii) the Notice of Removal shall be treated as the complaint.

f. Referral of Cases Previously Directly Assigned. A case that is initially directly assigned to a Magistrate Judge and subsequently reassigned to a District Judge, may, in the discretion of the District Judge, be referred back to the previously-assigned Magistrate Judge for such purposes allowed by statute, as deemed appropriate by the assigned District Judge.

**E. CONSENT TO MAGISTRATE JUDGE
JURISDICTION IN NON-DIRECT ASSIGNMENT CASES**

1. Availability of Magistrate Judge in All Cases. In all cases other than those directly assigned to a Magistrate Judge (see Section D), the Clerk of Court shall, at the time the action is filed, notify the parties that they may consent to the jurisdiction of a Magistrate Judge to conduct any or all proceedings and order the entry of judgment in the case.

2. Procedure for Making Consent Known. If all parties consent to Magistrate Judge Jurisdiction, they shall file the "Notice, Consent, and Reference of a Civil Action to a Magistrate Judge," Form AO 85 (Attachment B).

3. Reassignment by District Judge. If consent is given by all parties in a case assigned to a District Judge, the District Judge may, upon receipt of an executed Form AO 85, reassign it to a Magistrate Judge or may decline to do so. In such a case reassigned to a Magistrate Judge by a District Judge, the Magistrate Judge shall exercise full dispositive

jurisdiction, pursuant to 28 U.S.C. § 636(c).

F. PARTIAL CONSENT TO MAGISTRATE JUDGE JURISDICTION

1. Availability of Magistrate Judge as to Specific Case-Dispositive Motions. In all cases, the parties may consent to a Magistrate Judge entering a final order as to any case-dispositive motion, pursuant to the procedures set forth below.

2. Procedure for Making Consent Known. If all parties consent to Magistrate Judge jurisdiction with respect to a particular case-dispositive motion, they shall file the "Notice, Consent, and Reference of a Dispositive Motion to a Magistrate Judge" ("Form AO 85A") (Attachment C).

3. Reassignment by District Judge. Upon receipt of an executed Form AO 85A, the assigned District Judge may reassign the listed motion(s) to a Magistrate Judge or may decline to do so. If any such a motion is reassigned to a Magistrate Judge by a District Judge, the Magistrate Judge shall exercise full dispositive jurisdiction, pursuant to 28 U.S.C. § 636(c), with respect to that motion.

G. EFFECTUATING CONSENT WHEN NEW PARTIES ARE ADDED

In order for Magistrate Judge jurisdiction to continue after a new party is added to an action, the parties must again file a Form AO 85, signed by all parties to the case. If Form AO 85 is not filed within thirty (30) days after a new party is added to a case in which Magistrate Judge consent jurisdiction has previously been exercised, the case shall be assigned to a District Judge.

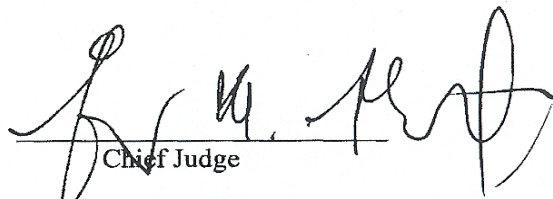
H. RIGHT TO WITHHOLD CONSENT

Litigants are hereby advised that "they are free to withhold consent without adverse substantive consequences." 28 U.S.C. § 636(c)(2). At no time should any party advise the Court of the identity of the party or parties withholding consent to Magistrate Judge jurisdiction.

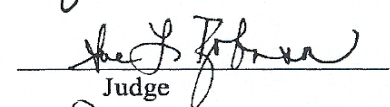
I. EFFECT OF CONSENT ON DEFENSES AND APPELLATE RIGHTS

1. Certain Defenses. Consent to the jurisdiction of a Magistrate Judge does not waive jurisdictional or other defenses. Parties may still challenge removal, personal jurisdiction, venue, etc. in a case in which a Magistrate Judge has consent jurisdiction.

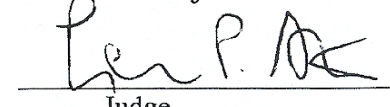
2. Appeals. In cases in which the parties have consented to Magistrate Judge jurisdiction, any appeal from a final order or judgment shall be solely to the appropriate Court of Appeals (i.e., the United States Court of Appeals for the Third Circuit or the Federal Circuit). In cases in which the parties have not consented to Magistrate Judge jurisdiction as to the entire case, but have consented to Magistrate Judge jurisdiction with respect to particular motions, any appeal of the Magistrate Judge's ruling on such motions shall be solely to the appropriate Court of Appeals (i.e., the United States Court of Appeals for the Third Circuit or the Federal Circuit).



Chief Judge



Judge



Judge

Attachment A

Notice of Assignment of Magistrate Judge

This case has been randomly selected for direct assignment to a Magistrate Judge. If all parties consent to the case proceeding before a Magistrate Judge, they should submit Form AO 85 ("Notice, Consent, and Reference of a Civil Action to a Magistrate Judge"), signed by all parties or their attorneys, within sixty (60) days; that is, on or before November 3, 2011. All parties have a right to proceed before a District Judge. Accordingly, this case will be randomly reassigned to a District Judge upon the earlier of: (a) the filing of a case-dispositive motion (e.g., motion to dismiss, motion for judgment on the pleadings, or motion for summary judgment) or (b) the expiration of sixty (60) days without the filing of a signed copy of Form AO 85. No request to extend the sixty day period shall be filed. More information on the Court's Pilot Program on direct assignment of cases to Magistrate Judges is available in the Court's Standing Order, dated November 3, 2011, available on the Court's website.

Attachment B

**Notice, Consent, and Reference of a Civil Action to a Magistrate Judge
(Form AO 85)**

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
v.)	Civil Action No.
_____)	
<i>Defendant</i>)	

NOTICE, CONSENT, AND REFERENCE OF A CIVIL ACTION TO A MAGISTRATE JUDGE

Notice of a magistrate judge's availability. A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States court of appeals like any other judgment of this court. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

Consent to a magistrate judge's authority. The following parties consent to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

<i>Parties' printed names</i>	<i>Signatures of parties or attorneys</i>	<i>Dates</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Reference Order

IT IS ORDERED: This case is referred to a United States magistrate judge to conduct all proceedings and order the entry of a final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73.

Date: _____

District Judge's signature

Printed name and title

Note: Return this form to the clerk of court only if you are consenting to the exercise of jurisdiction by a United States magistrate judge. Do not return this form to a judge.

Attachment C

**Notice, Consent, and Reference of a Dispositive Motion to a Magistrate Judge
(Form AO 85A)**

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
v.)	Civil Action No.
_____)	
<i>Defendant</i>)	

NOTICE, CONSENT, AND REFERENCE OF A DISPOSITIVE MOTION TO A MAGISTRATE JUDGE

Notice of a magistrate judge's availability. A United States magistrate judge of this court is available to conduct all proceedings and enter a final order dispositive of each motion. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have motions referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

Consent to a magistrate judge's consideration of a dispositive motion. The following parties consent to have a United States magistrate judge conduct any and all proceedings and enter a final order as to each motion identified below (*identify each motion by document number and title*).

Motions: _____

Parties' printed names

Signatures of parties or attorneys

Dates

_____	_____	_____
_____	_____	_____
_____	_____	_____

Reference Order

IT IS ORDERED: The motions are referred to a United States magistrate judge to conduct all proceedings and enter a final order on the motions identified above in accordance with 28 U.S.C. § 636(c).

Date: _____

District Judge's signature

Printed name and title

Note: Return this form to the clerk of court only if you are consenting to the exercise of jurisdiction by a United States magistrate judge. Do not return this form to a judge.