

Fact Sheet

[Duties and Powers of Part-time Magistrate Judges](#)

[Conflict-of-Interest and Ethics Rules](#)

[Reimbursement of Expenses of Part-time Magistrate Judges](#)

[Health Insurance, Life Insurance and Retirement Benefits for Part-time Magistrate Judges](#)

I. Duties and Powers of Part-time Magistrate Judges

A. Under 28 U.S.C. 636(a), part-time magistrate judges have jurisdiction in a variety of matters.

1. All powers and duties formerly held by United States Commissioners, including:

- a. Acceptance of criminal complaints. (Fed. R. Crim. P. 4)
- b. Issuance of arrest warrants and summonses. (Fed. R. Crim. P. 4)
- c. Issuance of search warrants. (Fed. R. Crim. P. 41)
- d. Initial appearances in criminal proceedings. (Fed. R. Crim. P. 5)
- e. Appointment of attorneys for indigent defendants (18 U.S.C. 3006A)
- f. Preliminary Examinations. (Fed. R. Crim. P. 5.1)
- g. Extradition Proceedings. (18 U.S.C. 3184)

2. Power to Issue Oaths and Affirmations

3. Power to issue orders concerning release or detention of persons pending trial pursuant to 18 U.S.C. 3142.

4. Power to take acknowledgements, affidavits and depositions.

5. Power to conduct trials and enter sentences in misdemeanor cases upon consent of the parties pursuant to 18 U.S.C. 3401.

B. Under 28 U.S.C. 636(b), a district judge may also designate a part-time magistrate judge to handle a variety of pretrial and posttrial motions, applications and petitions. **Please note:** Both district judges and part-time magistrate judges should be aware of Rule 7 of the Conflict-of-Interest Rules for Part-time Magistrates promulgated by the Judicial Conference which prohibits a part-time magistrate judge designated to perform most duties under 636(b) from appearing in **any** case, civil or criminal, in the district court for which he or she is appointed. For a further explanation of this rule, see Section II, below, discussing conflict-of-interest rules governing part-time magistrate judges.

1. Pursuant to 28 U.S.C. 636(b)(1)(A), a district judge may designate a part-time magistrate judge to hear and determine a variety of non-case-dispositive pretrial matters, such as discovery motions. The district judge applies a clearly erroneous or contrary to law standard of review in reviewing a magistrate judge's decision on such motions.

2. Under 28 U.S.C. 636(b)(1)(B), a district judge may designate a part-time magistrate judge to conduct hearings and submit to the district judge findings of fact and recommendations of dispositions in case-dispositive pretrial matters in civil and criminal cases, including:

- a. Motions for injunctive relief;
- b. Motions for judgment on the pleadings;
- c. Motions for summary judgment;
- d. Motions to dismiss/quash indictments or informations;
- e. Motions to suppress evidence;
- f. Motions to dismiss or maintain a class action;
- g. Motions to dismiss an action for failure to state a cause of action;
- h. Motions to involuntarily dismiss an action;
- i. Applications for posttrial relief made by individuals convicted of criminal offenses;
- j. Prisoner petitions challenging conditions of confinement.

The applicable standard of review by a district judge of those portions of a magistrate judge's report of proposed findings or recommendations to which objection is made is de novo review.

3. Under 28 U.S.C. 636(b)(2), a district judge may designate a part-time magistrate judge to serve as a special master.

4. Under 28 U.S.C. 636(b)(3), a part-time magistrate judge may be assigned such additional duties as are not inconsistent with the Constitution and the laws of the United States.

a. "Additional duties" include arraignments under Fed. R. Crim. P. 10.

b. Section 636(b)(3) is intended to give district judges the power to experiment in delegating various other duties to magistrate judges as need arises.

C. Pursuant to 28 U.S.C. 636(c), a part-time magistrate judge may be designated to hear civil cases upon the consent of the parties and pursuant to the parties' specific written request, if the chief judge of the district court certifies that a full-time magistrate judge is "not reasonably available" in accordance with guidelines established by the judicial council of the circuit.

II. Conflict-of-Interest and Ethics Rules

A. Part-time magistrate judges are governed by the Code of Conduct for United States Judges, specific conflict-of-interest rules for part-time magistrate judges promulgated by the Judicial Conference, and certain provisions of the Ethics Reform Act of 1989 (Pub. L. No. 101-194). See Volume II (Codes of Conduct for Judges and Judicial Employees) of the **Guide to Judiciary Policies and Procedures**.

1. Code of Judicial Conduct

a. Part-time magistrate judges are governed by most of the Canons of the Code of Conduct for United States Judges. A regulation of the Judicial Conference governing compliance with the Code of Conduct for United States Judges states that part-time magistrate judges should not practice law in the court on which he or she serves or in any court subject to appellate jurisdiction of the court on which he or she serves except as provided in the conflict-of-interest rules.

b. Part-time magistrate judges are **exempted** from certain parts of the Code, as follows:

(1) Canon 5(C)(2)--prohibiting judges from serving as officer, director, active partner, manager, advisor, or employee in a non-family business.

(2) Canon 5(D)--prohibiting judges from serving as fiduciaries, executors, administrators or trustees for a non-family estate.

(3) Canon 5(E)--prohibiting judges from acting as arbitrators or mediators.

(4) Canon 5(F)--prohibiting judges from practicing law.

(5) Canon 5(G)--prohibiting judges from accepting appointments to government committees, commissions or other positions concerning matters other than improvement of the legal system.

(6) Canon 6(C)--requiring judges to report all compensation received from extra-judicial activity. **Please note:** The Ethics Reform Act of 1989 contains financial disclosure requirements applicable to some part-time magistrate judges. See subsection 3(b)(2) below.

2. Conflict-of-Interest Rules

a. 28 U.S.C. 632(b) sets forth the basic conflict-of-interest rule governing part-time magistrate judges:

Part-time magistrates may practice law, but may not serve as counsel in any criminal action in any court of the United States.

b. Pursuant to authority stated in 28 U.S.C. 632(b), the Judicial Conference has promulgated conflict-of-interest rules governing part-time magistrate judges. These rules provide as follows:

(1) A part-time magistrate judge, his or her partners and associates, may appear as counsel in any civil action in any court or government agency, including matters in which the United States is a party or has a direct and substantial interest, but they may not appear in cases in which the part-time magistrate judge has been involved in connection with his or her official duties.

(2) A part-time magistrate judge, his or her partners and associates, may appear as counsel in any matter before the Internal Revenue Service, other than in those matters in which the part-time magistrate judge has been involved in connection with his or her official duties.

(3) A part-time magistrate judge may appear as counsel in a criminal action in any state court, but is precluded from appearing as counsel in any criminal action

in any court of the United States.

(4) A part-time magistrate judge's partners and associates may appear as counsel in any criminal action in any state court and in any federal court other than in the district in which the part-time magistrate judge serves, provided that the part-time magistrate judge has not been involved in such criminal proceeding in connection with his or her official duties.

(5) A part-time magistrate judge is precluded from using his or her official office to refer cases to his or her partners, associates, or to others.

(6) Generally, a part-time magistrate judge represents conflicting interests when, on behalf of the Government, it is his or her official duty to take certain action or contend for that which duty to another would require him or her to oppose.

(7) A part-time magistrate judge who is assigned additional duties under Section 636(b) or who conducts civil proceedings with the consent of the parties under Section 636(c) of Title 28, U.S.C., may not appear as counsel in any case, civil or criminal, in the district court for which he or she is appointed. This prohibition shall not extend to a part-time magistrate judge whose additional assignments are limited to:

- (a) the review of prisoner petitions;
- (b) service as a special master in a specified case;
- (c) the receipt of indictments returned by grand juries; or
- (d) the conduct of arraignments.

(8) A part-time magistrate judge may not use his or her official position in any way to promote his or her private law practice. In this regard, he or she may not use his or her official stationery in the conduct of his or her law practice nor include his or her official title on general office letterhead.

c. A part-time magistrate judge may not accept any additional fees when serving as a special master.

3. Ethics Reform Act of 1989 (Pub. L. No. 101-94)

a. The Ethics Reform Act of 1989 imposes restrictions upon outside income, honoraria and gifts that may be accepted by government officials, including judges. **However, most of these restrictions do not apply to part-time magistrate judges.**

b. Exceptions

(1) **Gifts**--5 U.S.C. 7353, which severely restricts the acceptance of gifts or anything else of value by government officials from persons seeking official action from, doing business with, or whose interests would be substantially affected by the performance or nonperformance of official duties, applies to all government officers and employees, including part-time magistrate judges. The Judicial Conference has promulgated regulations interpreting the legislation with respect to the judicial branch.

(2) **Financial Disclosure**--The Ethics Reform Act requires that certain part-time "judicial employees" who perform more than 60 days of service in one year make financial disclosure of outside income. Magistrate judges are defined as "judicial employees" under the statute, and each year must generally file a report or certify their exempt status. Since part-time magistrate judges whose annual salaries are less than 16.4% of the salary of a full-time magistrate judge (\$20,156 or less) will normally work less than 61 days each year, they are not required to certify their exempt status. However, such magistrate judges are still required to file reports for years in which they perform more than 60 days of service. Further details on disclosure requirements are found in the Act and reporting instructions.

III. Reimbursement of Expenses of Part-time Magistrate Judges

A. Section 635(b) of Title 28 U.S.C. is the statutory framework for reimbursement of part-time magistrate judges for official expenses. It states that "Under such regulations as the Director shall prescribe with the approval of the conference, the Director shall reimburse part-time magistrates for actual expenses necessarily incurred by them in the performance of their duties under this chapter. Such reimbursement may be made, at rates not exceeding those prescribed by such regulations, for expenses incurred by such part-time magistrates for clerical and secretarial assistance, stationery, telephone and other communications services, travel, and such other expenses as may be determined to be necessary for the proper performance of the duties of such officers."

B. **Specific exclusions:** Part-time magistrate judges may not be reimbursed for expenses incurred for the procurement of office space, furniture or judicial robes.

C. Regulations have been promulgated by the Director of the Administrative Office governing reimbursement of expenses. See Chapter VIII of Volume IX (Magistrate Judges' Manual) of the **Guide to Judiciary Policies and Procedures**.

1. Budget Allotments for Reimbursable Expenses

a. **Budget Allotments**--Budget allotments for part-time magistrate judges' staff salaries, related employment expenses, and miscellaneous office expenses are made to each district court.

b. **Salary and Related Employment Expenses Budget**--A part-time magistrate judge's salary and related employment expenses budget allotment for staff is calculated by determining the hourly cost of staff and the approximate number of staff support hours needed based upon the magistrate judge's workload. As a general rule, a part-time magistrate judge may claim up to two hours of staff support for every hour devoted to official duties. Both the hours reported by the magistrate judge on the JS-43 and the salary level of the part-time magistrate judge are used to determine the allowable number of staff support hours.

c. **Miscellaneous Office Expense Budget**--District courts will also receive allotments for part-time magistrate judges' miscellaneous office expenses. The amount claimed by a part-time magistrate judge may not exceed 10% of his or her annual salary.

2. Reimbursable Expense Guidelines

a. Salaries

(1) Secretarial/clerical salaries are reimbursable. Law clerk/paralegal salaries are not.

(2) Secretaries

(a) The maximum reimbursable rate of compensation for secretarial assistance is equal to the JSP-10-1 level.

(b) A secretary's salary should be consistent with local pay scales.

(3) Clerical Staff

(a) Reimbursable salary is generally limited to the JSP-8-1 level.

b. Related Employment Expenses

(1) Employer's portion of health insurance, equal to a percentage of insurance cost tied to percentage of work related to official business, up to \$1,600 per year for a full-time secretary.

(2) Unemployment compensation.

(3) Social Security taxes (F.I.C.A.).

c. Miscellaneous Office Expenses

(1) Telephone

(a) Local usage--the portion of the magistrate judge's monthly local phone bill attributable to official duties is reimbursable.

(b) Long-distance--long-distance calls made for official business are reimbursable.

(2) Consumable Office Supplies

(a) Some supplies, such as cassettes for courtroom recording equipment, stationery, and forms, are available from the Administrative Office. Please consult with the clerk of the district court to determine availability of such supplies and procedures to obtain them. In instances where those items and/or other miscellaneous office supplies are purchased locally, reimbursement may be claimed on an AO Form 206.

(3) Amortization of Office Equipment

(a) The cost of equipment used for official duties may be amortized and reimbursed.

(b) Types of equipment covered include personal computers, typewriters, photocopiers, answering machines and dictaphones.

(4) Other Reimbursable Expenses

(a) Leased Office Equipment; Photocopying; Equipment Maintenance Agreements.

(b) Lawbooks--Please note that certain basic texts are provided directly from the Administrative Office. Contact circuit librarian before purchasing additional lawbooks.

3. Reimbursement Procedure

- a. All claims for reimbursement are paid through the clerk of court for the magistrate judge's district.
- b. Relevant receipts and bills should accompany Reimbursement Voucher (AO Form 206).
- c. Vouchers should be submitted within 30 days after the close of the month/quarter in which the expenses are accrued.
- d. All vouchers paid by clerks of court are subject to post-audit by the Administrative Office in compliance with 28 U.S.C. 635(b).

D. Travel Expenses

1. Travel by magistrate judges is governed by the same regulations which cover travel by district judges. These regulations, promulgated by the Director of the Administrative Office with approval of the Judicial Conference, are found at Chapter XV in Volume III (Judges' Manual) of the **Guide to Judiciary Policies and Procedures**. Travel reimbursements are made through the clerk of the district court for which the magistrate judge serves.
2. When necessary transportation and subsistence expenses are incurred by a part-time magistrate judge's staff member, the staff member shall be included on the magistrate judge's travel voucher, and will be allowed only on an **actual expense basis** not to exceed the allowances which would be reimbursable if the travel were performed by a salaried Federal employee. (See Chapter VI in Volume I of the **Guide to Judiciary Policies and Procedures**.)

IV. Health Insurance, Life Insurance and Retirement Benefits for Part-time Magistrate Judges

A. Pursuant to 28 U.S.C. 634(c), part-time magistrate judges are entitled to certain health insurance benefits, life insurance benefits and retirement benefits as federal employees.

1. Health Insurance

Part-time magistrate judges are eligible to participate in the Federal Employees Health Benefits Program, 5 U.S.C. 8901, et seq. The statute provides federal employees with a variety of health insurance options offered by insurance carriers that are contracted for by the Office of Personnel Management to offer coverage to federal employees. Premiums for such coverage are shared by the employee and the government.

2. Life Insurance

Part-time magistrate judges come within the provision of the Federal Employees' Group Life Insurance (FEGLI) Program, 5 U.S.C. 8701, et seq. FEGLI consists of Basic Life Insurance and three optional coverages. Basic Life Insurance is a prerequisite to the purchase of any of the three options. Basic Life is equal to the amount of the part-time magistrate judge's salary (rounded to the next \$1,000), plus an additional \$2,000. Option A (Standard) allows an additional \$10,000 in coverage, and Option B (Additional) permits coverage of up to 5 times the annual rate of a part-time magistrate judge's salary (rounded to the next \$1,000). Option C (Family) permits purchase of small amounts of coverage for family members. A part-time magistrate judge is automatically covered by Basic Life on the date of entrance to duty. To waive Basic Life insurance coverage or to obtain additional insurance coverage, a part-time magistrate judge must execute and file Standard Form 2817, Life Insurance Election, within 31 days after entrance on duty.

3. Social Security

Part-time magistrate judges are covered by the social security system, Pub. L. No. 98-21 (1983). They are subject to the social security Federal Insurance Contributions Act (FICA) tax, which includes a tax for Old Age, Survivors, Disability Insurance (OASDI) and the Medicare hospital tax.

4. Retirement Benefits

- a. Part-time magistrate judges may be covered under either the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS)

depending upon the date the magistrate judge commenced government service. A summary description and analysis of the retirement benefits available are set forth in **Retirement Benefits for Bankruptcy Judges and Magistrate Judges** (2d. ed. Sept. 1995).

b. Service as a part-time magistrate judge is **not** eligible for credit under the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 (JRS), codified at 28 U.S.C. 377.

c. Civil Service Retirement System (CSRS) -- Only part-time magistrate judge who were appointed on or before December 31, 1983, or who were appointed afterwards, but who completed at least 5 years of creditable service before December 31, 1986 can be covered under CSRS, which is codified at 5 U.S.C. 8331 et. seq. A part-time magistrate judge receives an annuity equal to 2.5% of his or her high-three average salary for each year of part-time magistrate judge service performed before April 7, 1986. Service on or after that date is prorated to credit only the proportion that the judge's part-time service bears to full-time service.

d. Federal Employees' Retirement System (FERS) -- Part-time magistrate judges who were appointed on or after January 1, 1984 are enrolled in FERS, codified at 5 U.S.C. 8401 et seq., unless they completed at least five years of government service before December 31, 1986, in which case they are covered by CSRS (unless FERS is elected within six months of appointment).

e. Thrift Savings Plan (TSP)--Part-time magistrate judges under either CSRS or FERS are eligible to participate in TSP, codified at 5 U.S.C. 8431 et seq., which permits federal employees to save on a tax-deferred basis certain percentages of their salaries as supplemental retirement income. Part-time magistrate judges covered by CSRS may contribute up to 5% of gross pay to TSP. No matching government contributions are provided. Part-time magistrate judges covered by FERS may contribute up to 10% of salary to TSP. Matching government contributions are provided, not to exceed 5% of salary.

[Back to Graphical Site](#)