

*Continuing Legal Education*  
CERTIFICATE OF ATTENDANCE

**2026 Civil Seminar:  
To Consent or Not to Consent – That is the Question  
Let's Us Help You Find the Answer!**

**PRESENTED BY:**



**Federal Bar Association**

**William D. Browning Tucson Chapter**

**Thursday, June 4, 2026  
12:00 pm – 1:30 pm**

**Evo A. DeConcini Federal Courthouse  
Jury Assembly Room**

**Speakers:**

**Hon. John C. Hinderaker, U.S. District Court Judge;  
Hon. Angela M. Martinez, U.S. District Court Judge;  
Hon. Eric J. Markovich, U.S. Magistrate Judge;  
Hon. Lynnette C. Kimmins, U.S. Magistrate Judge;  
Joe Kroeger, Partner at Snell & Wilmer;  
Alexandra Tracy-Ramirez, Partner at Farhang & Medcoff; and  
Cole Hernandez, Assistant United States Attorney (Retired)**

By signing below I certify that I attended the Tucson Chapter of the FBA's 2026 Civil Seminar on June 4, 2026, at the Evo A. DeConcini Federal Courthouse and am entitled to claim **1.0 hours** of Continuing Legal Education credit and **0.25 hours** of Ethics Continuing Legal Education credit.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Attorney Name and Bar Number (Please Print)

**KEEP THIS CERTIFICATE IN YOUR FILE.  
THIS IS NOT AN OFFICIAL DOCUMENT. DO NOT SEND THIS CERTIFICATE TO THE STATE BAR OF ARIZONA.**



Thursday, June 4, 2026

12:00 pm – 1:30 pm

District Court of Arizona (Tucson) Jury Assembly Room  
Federal Bar Association, William D. Browning Chapter presents:

**2026 Civil Seminar: To Consent or Not to Consent – That is the Question**  
**Let's Us Help You Find the Answer!**

Consenting to a Magistrate Judge can streamline discovery, motion practice, and trial. Learn how civil cases are assigned in federal court, how to consent to a Magistrate Judge, and what it means for your case. Many of our Magistrate Judges have valuable civil experience. This seminar gives you an opportunity to hear about their backgrounds and experience. Learn the pros and cons of consenting from both District Judges and Magistrate Judges. Our judges also want to hear from you! What do you see as the benefits of consenting? Why do you consent or do not consent? Is this something you discuss with your clients? What other information do you want to know or learn ahead of time before consenting? Share your experiences with the judges. Many Districts have moved to an opt-out process for MJ consent . . . learn what that means and how that it is different from the District of Arizona's current process.

Join a panel of Civil Attorneys, Federal District Judges, and Magistrate Judges including:

Hon. John C. Hinderaker, U.S. District Court Judge;  
Hon. Angela M. Martinez, U.S. District Court Judge;  
Hon. Eric J. Markovich, U.S. Magistrate Judge;  
Hon. Lynnette C. Kimmins, U.S. Magistrate Judge;  
Joe Kroeger, Partner at Snell & Wilmer;  
Alexandra Tracy-Ramirez, Partner at Farhang & Medcoff; and  
Cole Hernandez, Assistant United States Attorney (Retired)

Cost: FREE FOR ALL

**Lunch provided | 1 Hour of CLE Credit!**

[Registration Link](#)  
and QR Code:



[Pre-Seminar Survey](#)  
and QR Code:  
Tell us your thoughts!



**Federal Bar Association, William D. Browning Chapter presents:  
2026 Civil Seminar: To Consent or Not to Consent – That is the Question  
Let's Us Help You Find the Answer!**

Speaker Bios:

Joseph A. Kroeger  
Snell & Wilmer

Joe Kroeger is a nationally recognized labor and employment attorney and partner at Snell & Wilmer, where he represents clients ranging from small businesses to Fortune 500 companies across diverse industries. Known for his proactive, business-minded approach, he counsels employers on preventing workplace claims and skillfully positions complex matters for strong defense when litigation becomes necessary. Joe is ranked by Chambers USA and has been recognized as Southern Arizona's Lawyer of the Year in the category of Employment Litigation by The Best Lawyers in America for four of the past five years.

Alex Tracy-Ramirez  
Farhang & Medcoff

Alexx Tracy-Ramirez is a partner at the Tucson-based law firm Farhang & Medcoff, PLLC. She is a trial attorney and civil litigator focusing on business and commercial litigation. She also represents individual clients, small businesses, and non-profit organizations throughout Arizona and Colorado, focusing on reputation management, strategic and crisis communications, and alternative dispute resolution. Alexx is often accompanied by a therapy dog named Elvis, an 8-year-old border collie mix. Elvis joins her at the office most days, where he meets with clients and occasionally goes to court. In his free time, he volunteers at assisted living facilities in Tucson.

J. Cole Hernandez  
U.S. Attorney's Office, District of AZ (Retired)

J. Cole Hernandez was a private sector civil litigator for 13 years. He defended individuals, employees and companies in personal injury litigation on behalf of several national insurance carriers and retailers in Texas, Arizona and New Mexico. He joined the United States Attorney's Office in February 2005 where he primarily represented the United States and its employees in Federal Tort Claims Act litigation based on claims of medical negligence, use of force and general negligence. He has litigated cases on behalf of the United States in Arizona, New Mexico, California and Nevada.

John C. Hinderaker  
U.S. District Court Judge

Judge Hinderaker received a BA in business economics from the University of California, Santa Barbara in 1991. He graduated *magna cum laude* from the University of Arizona James E. College of Law in 1996. Judge Hinderaker clerked for United States District Judge John M. Roll and United States Magistrate Judge Raymond T. Terlizzi. Judge Hinderaker joined Lewis and Roca in 1998. His civil litigation practice focused on real estate, land use, eminent domain, commercial and construction matters.

In 2018, Governor Doug Ducey appointed Judge Hinderaker to the Arizona Superior Court in Pima County. Judge Hinderaker sat on both the family and criminal law benches during his tenure on the Superior Court. President Donald J. Trump nominated Judge Hinderaker to the United States District Court for the District of Arizona on December 2, 2019. He received his commission on September 23, 2020.

Angela M. Martinez  
U.S. District Court Judge

Angela Martinez was appointed a district judge for the District of Arizona on July 2, 2024. Prior to that, Judge Martinez served as a magistrate judge for the District of Arizona. Before joining the bench, Judge Martinez served as Senior Litigation Counsel for the United States Attorney's Office in Tucson, Arizona, where she also served as a federal prosecutor for over twelve years prosecuting a wide range of criminal cases, including immigration related offenses, drug trafficking offenses, violent crimes, and white-collar offenses. Prior to her career as a prosecutor, Judge Martinez served as a law clerk to the Honorable John M. Roll (2000–2002) and the Honorable Jennifer G. Zipp (2013–2015) of the U.S. District Court of Arizona. In 2008 and 2009 she served as an adjunct professor at the University of Arizona James E. Rogers College of Law, where she taught legal writing and oral advocacy to first-year law students. She also worked in private practice at the law firms of Lewis & Roca (2002–2004) and Farhang & Medcoff (2012–2013), where she primarily practiced employment law.

Judge Martinez received her J.D. from the University of Arizona James E. Rogers College of Law in 2000. As a law student she was a member of the Arizona Law Review and an Ares Fellow. Before law school, Judge Martinez worked as a team leader in therapeutic group homes and crisis shelters for at risk youth. In 1995, she earned her B.A. with honors from the University of Arizona.

Eric J. Markovich  
U.S. Magistrate Judge

Judge Markovich graduated *summa cum laude* from Ohio University in 1989 and *summa cum laude* from Syracuse University College of Law in 1992. He served as the Business Editor on the *Syracuse University Law Review*. Judge Markovich was a judicial law clerk to The Honorable Theodore A. McKee, United States Court of Appeals for the Third Circuit. He was a litigation associate at White & Case, in New York City, where he practiced commercial litigation involving the representation of large corporations in complex commercial litigation both in federal and state courts. He then joined Morvillo, Abamowitz, et al., a small white collar criminal defense law firm in New York City, where he represented individuals and corporations charged with federal and state white collar crimes.

Judge Markovich transitioned to the Department of Justice, where he was a trial attorney in the Criminal Enforcement Section of the Tax Division in Washington, D.C. He then transferred to the United States Attorney's Office for the District of Arizona in Tucson. He was a line Assistant U.S. Attorney until January 2008, when he became the Deputy Chief of the White Collar and Public Integrity Section. In September 2012, he became Criminal Chief of the Tucson Division and remained in that position until he took the bench in 2014.

Lynnette C. Kimmins  
U.S. Magistrate Judge

Lynnette Kimmins received her B.S. in Justice Studies from Arizona State University in 1988 and became a Maricopa County Juvenile Probation Officer. She graduated from the University of Arizona, College of Law in 1992. She was a prosecutor at the Pima County Attorney's Office 6 ½ years where she prosecuted violent crimes, narcotics, and property offenses. In 1999, she became an Assistant U.S. Attorney where she prosecuted immigration, narcotics, and violent crimes. As a state and federal prosecutor, she tried 100+ jury trials. While with the U.S. Attorney's Office, she served as Chief Assistant, Criminal Chief, and Deputy Chief in the Tucson Office, as well as Interim First Assistant for the District of Arizona. For five years, she was assigned to the Civil Division representing the United States in suits brought under the Federal Torts Claims Act, heads of agencies when suit was brought against them in their federal capacity, and employees in their individual capacities in *Bivens* lawsuits. In 2013, she returned to the Criminal Division as Senior Litigation Counsel training new attorneys while also prosecuting financial and public integrity crimes.

She has been active in the Federal Bar Association, Arizona High School Mock Trial, and National Charity League. Lynnette was sworn in as a U.S. Magistrate Judge on April 5, 2016. Both as a civil attorney and Magistrate Judge she has participated in numerous settlement conferences, civil jury trials, and FTCA bench trials.

### Other Tucson Magistrate Judges Bios:

Maria S. Aguilera  
U.S. Magistrate Judge

Judge Maria S. Aguilera earned her bachelor's degree from the University of Arizona in 1990 and her law degree from the University of Arizona College of Law in 1993.

Her legal career began as a Deputy County Attorney at the Pima County Attorney's Office, where she served for three years. In 1997, she moved to the Arizona Federal Public Defender's Office for one year before joining the United States Attorney's Office, where she served for seven years. In 2005, she established Davila Law Office, PC, a sole-practice firm, focusing primarily on representing individuals charged with criminal offenses, including many indigent defendants facing serious felonies and class one misdemeanors. She represented clients in the United States District Court, the Pima County Superior Court, the Maricopa County Superior Court, and various courts of limited jurisdiction throughout Arizona.

In addition to managing her law practice, Judge Aguilera was an active member of the Federal Bar Association. She served as the District Court liaison for Criminal Justice Act attorneys and mentored children in the Lawyers for Literacy and Courts Are Us summer programs. In 2018, she was appointed Judge Pro Tempore of the Marana Municipal Court, a position she held until her appointment as a United States Magistrate Judge on April 1, 2019. Because of her extensive trial experience, Judge Aguilera was inducted into the American College of Trial Lawyers in 2019, prior to her appointment to the bench.

Michael A. Ambri  
U.S. Magistrate Judge

Judge Ambri was appointed Magistrate Judge for the District of Arizona, Tucson, on March 16, 2023. He was a civil litigator for 20 years before his appointment. Judge Ambri was civil chief at the United States Attorney's Office for the District of Arizona, where he oversaw the office's civil practice. His litigation practice at the USAO included a broad array of areas including, for example, wrongful death/injury, medical malpractice, law enforcement use of force, §1983/*Bivens*, employment discrimination, road design, FOIA, constitutional challenges, prisoner actions, financial litigation, and False Claims litigation. Before joining the USAO, Judge Ambri was a commercial litigator with Lewis and Roca and as a sole practitioner, primarily in construction, banking, securities, insurance, real estate and contract-related litigation. He received his J.D. *summa cum laude* from the University of Arizona and bachelor's *cum laude* from Arizona State University.

James E. Marner  
U.S. Magistrate Judge

Judge Marner was sworn in as a U.S. Magistrate Judge for the District of Arizona in Tucson on April 2, 2025. He was previously a Superior Court judge in Pima County, Arizona for 12+ years and served on the Civil, Family and Criminal benches. Regarding his Civil bench rotations, Judge Marner handled thousands of cases covering a very wide spectrum of claims. He ruled on hundreds of summary judgment motions, presided over numerous jury trials and bench trials, and covered elections challenges, preliminary injunctions, TROs and lower court appeals. Prior to taking the bench, Judge Marner practiced in a three-lawyer firm in Tucson handling civil matters for approximately 15 years. His practice included medical malpractice claims, product liability litigation, employment claims, civil rights claims and wrongful death/catastrophic injury matters, as well as smaller personal injury lawsuits. He started his legal career as a deputy prosecutor in Seattle.

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

**CONSENT TO EXERCISE OF JURISDICTION  
BY A UNITED STATES MAGISTRATE JUDGE  
(FOR USE IN CIVIL CASES WITH A MAGISTRATE JUDGE AS PRESIDERS)**

INSTRUCTIONS TO ALL PARTIES  
ACTION REQUIRED WITHIN 14 DAYS

Pursuant to Local Rule of Civil Procedure 3.7(a)(1), all civil cases will be randomly assigned to a U.S. District Court Judge or to a U.S. Magistrate Judge.

When a case is filed and assigned to a Magistrate Judge, a consent form is provided to the individual or attorney who is filing the case. On the form, consent may be given to the jurisdiction of the Magistrate Judge by signing the consent section of the form. If all parties consent, the case will remain with the Magistrate Judge, pursuant to Title 28, U.S.C. § 636(c)(1). These cases are assigned to a Magistrate Judge for all purposes, including trial and final entry of judgment. Any appeal from a judgment entered by the Magistrate Judge may be taken directly to the United States Court of Appeals for the Ninth Circuit in the same manner as an appeal from any other judgment of a district court.

Consent to proceed before a Magistrate Judge is voluntary and no adverse consequences of any kind will be felt by any party or attorney who objects to the assignment of a case to the Magistrate Judge.

**The party filing the case or notice of removal is responsible for serving all parties with the consent form.**

This case has been assigned to a Magistrate Judge. Therefore, pursuant to Local Rule of Civil Procedure, 3.7(b), each party must execute and file within fourteen (14) days of its appearance either a written consent to the exercise of authority by the Magistrate Judge under Title 28, U.S.C. § 636(c) or a written election to have the action reassigned to a District Judge using the form provided.

If any party chooses the District Judge option, the case will be randomly reassigned to a U.S. District Court Judge. To elect to have the case heard before a U.S. District Court Judge, the District Judge Option section of the form must be completed.

**Each party must file the completed consent form and certificate of service with the court no later than 14 days after the filing of the Complaint, the filing of the Notice of Removal, or entry of appearance.**

Attorneys and pro se parties who have been given permission to file electronically must **e-file** the form using the appropriate restricted event located in the **Other Documents category: Consent/Election Form LRCiv 3.7(b)**. Pro se filers who have not been authorized to e-file should submit the completed paper form to the Clerk's Office. The completed consent form must be served by mail or hand-delivery to all parties of record in the case.

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VS.

Defendant.

In accordance with the provisions of Title 28, U.S.C. § 636(c)(1), the undersigned (party)(counsel of record for \_\_\_\_\_) in the above-captioned civil matter hereby voluntarily consents to have a United States Magistrate Judge conduct any and all further proceedings in the case, including trial and entry of a final judgment, with direct review by the Ninth Circuit Court of Appeals if an appeal is filed.

Signature

Pursuant to Title 28, U.S.C. § 636(c)(2) the undersigned (party)(counsel of record for \_\_\_\_\_  
\_\_\_\_\_) in the above captioned civil matter acknowledges the availability of a  
United States Magistrate Judge but elects to have this case randomly assigned to a United States District Judge.

Signature

I hereby certify that a true copy of the foregoing Consent was served (by mail) (by hand delivery) on all parties of record in this case, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**\*\*E-file this form using the event Consent/Election Form LRCiv 3.7(b) under Other Documents\*\***

# Arizona Rules of Professional Conduct

## **ER 1.2. Scope of Representation and Allocation of Authority between Client and Lawyer**

(a) Subject to paragraphs (b), (c), and (d), and (e), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by ER 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter pursuant to applicable law. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A government lawyer has a duty to abide by decisions that are made by the appropriate client representative regarding the goals of representation in a particular matter, unless the client representative's decisions concerning the objectives of representation are clearly inconsistent with the client representative's legal authority under applicable law or properly delegated authority.

(c) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(d) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(e) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

## **2003 Comment [amended 2025]**

### **Allocation of Authority between Client and Lawyer**

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. At the same time, a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. There may be circumstances where authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships has been delegated to a government lawyer pursuant to applicable law, and in that instance, the client representative with decision-making authority is the government lawyer. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client unless applicable law provides otherwise. See ER 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by ER 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation or as provided by applicable law.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about

which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See ER 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See ER 1.16(a)(3).

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to ER 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to have diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to ER 1.14.

### **Independence from Client's Views or Activities**

[5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities, including where such representation is generally required by applicable law as in the circumstance of a government lawyer.

### **Agreements Limiting Scope of Representation**

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. Representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See ER 1.1.

[8] Although paragraph (c) does not require that the client's informed consent to a limited representation be in writing, a specification of the scope of representation will normally be a necessary part of the lawyer's written communication of the rate or basis of the lawyer's fee as required by ER 1.5(b). See ER 1.0(e) for the definition of "informed consent".

[9] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., ERs 1.1, 1.8 and 5.6.

### **Criminal, Fraudulent and Prohibited Transactions**

[10] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual

consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[11] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See ER 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. In extreme cases, a lawyer may be required to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. See ER 4.1.

[12] The duties of a government lawyer as specified by applicable law may include the duties to investigate the conduct of a client representative, and to criminally prosecute or bring a civil or administrative action against that client representative, either directly or through referral to a different government law firm or outside counsel. See ER 1.7 and ER 1.16 with regard to addressing conflicts of interest associated with these duties. This rule does not limit investigations or actions against a government law firm's employees.

[13] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a sham transaction; for example, a transaction to effectuate criminal or fraudulent escape of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[14] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See ER 1.4(a)(5).

# Arizona Rules of Professional Conduct

## ER 1.4. Communication

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in ER 1.0(e), is required by these Rules;
  - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
  - (3) keep the client reasonably informed about the status of the matter;
  - (4) promptly comply with reasonable requests for information; and
  - (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- (c) In a criminal case, a lawyer shall promptly inform a client of all proffered plea agreements.
- (d) All lawyers/legal paraprofessionals in private practice shall inform the client in writing, prior to or at the commencement of the representation, if they do not have professional liability insurance. If notice has not been provided at or before the commencement of the representation, the lawyer/legal paraprofessional shall inform the client in writing within thirty (30) days of the date the lawyer/legal paraprofessional knows that the lawyer/legal paraprofessional no longer has professional liability insurance during the representation.
- (e) Unless these requirements are otherwise satisfied by applicable law, a government lawyer must proactively identify and provide the appropriate client representative with written confirmation of the scope and pertinent details of the government lawyer's representation. The writing must also confirm that the client representative is usually not an individual client of the government law firm. Where the government lawyer also functions as the client representative, such notice is not required.

(f) A government lawyer must advise government officials, as well as any other client representative when appropriate, of the identity of the lawyer's client, the nature of the relationship between the government lawyer and the client representative, the potential impact of the government lawyer's other legal duties on the representation, and the circumstances under which a client representative may be treated as a separate client of the government lawyer. See ER 1.13 and ER 4.3 for further guidance.

## 2003 Comment [Amended 2025]

[1] Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

## Identifying the client representatives for government lawyers

[2] Section (d) requires a government lawyer to timely identify the client representative(s) who is authorized to make decisions on behalf of the client in each type of matter and in each case. The “appropriate client representative” typically includes the client's elected and appointed officials who are regularly advised by the government lawyer and have constitutional or statutory authority for decision-making on behalf of the client. In addition to providing the written confirmation to identified client representatives, a government lawyer should determine whether it is also appropriate to provide it to other officials and employees of the client. The frequency with which the advisement referenced in section (d) is required is at least as often as client representatives are elected or appointed. The requirement in Rule 1.4(d) may be satisfied by directing the identified client representative to publicly available information, such as on the organization's public website or in published regulations or policies.

## **Communicating with Client**

[3] If these Rules require that a particular decision about the representation be made by the client, paragraph (a) (1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or reject the offer. See ER 1.2(a).

[4] Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations--depending on both the importance of the action under consideration and the feasibility of consulting with the client--this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[5] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. A lawyer should promptly respond to or acknowledge client communications.

## **Explaining Matters**

[6] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in ER 1.0(e).

[7] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from mental disability. See ER 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See

ER 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

### **Withholding Information**

[8] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. ER 3.4(c) directs compliance with such rules or orders.

Monday, June 1, 2026

<https://www.azbar.org/for-legal-professionals/ethics/rules-of-professional-conduct>

# Arizona Rules of Professional Conduct

## ER 2.1. Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

### Comment

#### Scope of Advice

[1] A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

[2] Advice couched in narrowly legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

[3] A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

[4] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

#### Offering Advice

[5] In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer's duty to the client under ER 1.4 may require that the lawyer offer advice if the client's course of action is related to the representation. Similarly, when a matter is likely to involve litigation, it may be necessary under ER 1.4 to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

### **LRCiv 3.7**

#### **ASSIGNMENT OF CASES; CIVIL**

**(a) Assignment of Civil Cases.**

(1) Generally. Unless otherwise provided in these Rules or ordered by the Court, the Clerk must assign civil cases to Judges within each division by automated random selection and in a manner so that neither the Clerk nor any parties or their attorneys will be able to make a deliberate choice of a particular Judge. The cases so assigned will remain with the Judge to whom assigned unless otherwise ordered by the Court. Unless otherwise ordered by the Court or set forth in these Rules, the Clerk must assign each civil case to a District Judge or a Magistrate Judge, except that when preliminary injunctive relief is requested in a separate motion the Clerk must assign the case to a District Judge.

(2) Refiling. If a civil action is voluntarily dismissed and a related civil action is later filed in this District, the filing party must file a separate notice with the party's complaint identifying the dismissed action by its complete case number, including the initials of the assigned Judge. The Clerk will assign the newly filed action to the Judge who was last assigned to the dismissed action. If that Judge is not available for assignment, the Clerk will randomly assign the newly filed action pursuant to this Rule. For the purposes of this Rule, a newly filed action is "related" to a dismissed action if both involve the same or similar claims and if both involve at least some of the same plaintiffs and at least some of the same defendants.

**(b) Random Assignment to Magistrate Judges.** When an action is assigned to a Magistrate Judge, each party must execute and file within fourteen (14) days of its appearance either a written consent to the exercise of authority by the Magistrate Judge under 28 U.S.C. § 636(c), or a written election to have the action reassigned to a District Judge. Each party must indicate consent or election on the form provided by the Clerk. Prior to the completed consent or election forms being received by the Clerk of the Court, the assigned Magistrate Judge may act pursuant to 28 U.S.C. § 636(b)(1)(A). Any dispositive motion submitted by a party before that party has filed a consent or election

form may be stricken or deferred by the Court. If one or more parties elect to have a case heard by a District Judge, the Clerk must reassign it to a District Judge. After one or more consents to a Magistrate Judge have been filed with the Clerk and until such time as an election is made by any party for assignment to a District Judge, the Magistrate Judge may continue to act pursuant to 28 U.S.C. § 636(c)(1) even though all parties have not been served or have not filed their appearances. Consent to a Magistrate Judge's authority does not constitute a waiver of any jurisdictional defense unrelated to the grant of authority under 28 U.S.C. § 636(c).

**(c) Assignment of Bankruptcy Matters.** The Clerk of Court must randomly assign bankruptcy appeals and motions to withdraw the reference to a District Judge unless a matter arising out of the same or administratively consolidated bankruptcy case has been previously filed with the Court, in which case the matter must be assigned to the District Judge who presided over the related matter.

**(d) Assignment of Capital Habeas Corpus Cases.** The Clerk of Court must randomly assign capital habeas corpus cases to a District Judge. The Clerk of Court must assign any civil rights action filed by a prisoner who has an active warrant of execution, or for whom the state is currently seeking a warrant of execution from the Arizona Supreme Court, to the same District judge who presided over the prisoner's capital habeas corpus petition, regardless of division.

**(e) Assignment of Complaints Filed by Incarcerated Persons and Habeas Corpus Petitions.** The Clerk of Court must randomly assign complaints filed by incarcerated persons and habeas corpus petitions to a District Judge and randomly refer them to a Magistrate Judge. Any future pleadings filed by the incarcerated person or habeas corpus petitioner must be directly assigned and referred to the same District Judge and Magistrate Judge to whom the earlier case was assigned and referred, unless otherwise ordered by the Court.

**(f) Assignment of Miscellaneous Matters.** The Clerk of Court must randomly assign civil miscellaneous matters to a District Judge. If contested, the Clerk of

Court must assign the matter a regular civil case number and directly assign the case to the District Judge to whom the miscellaneous matter was assigned.

**(g) Temporary Reassignment of Cases.** A case assigned to a particular District Judge may be temporarily reassigned to another District Judge, if the District Judge to whom the case is assigned is unavailable and an exigency exists which requires prompt action by the Court. The Clerk of Court must randomly make the reassignment to an available District Judge for the limited purpose of hearing or determining the matter that is the subject of the exigency.

## **F.R.Civ.P. 72. Magistrate Judges: Pretrial Order**

### **LRCiv 72.1**

#### **ASSIGNMENT OF MATTERS TO MAGISTRATE JUDGES**

**(a) Civil Cases.** Upon the order of a District Judge, a civil case shall be referred by the Clerk of the Court to a Magistrate Judge by automated random selection for the conduct of such pretrial conferences as are necessary, and for the hearing and determination of any or all pretrial matters in accordance with 28 U.S.C. § 636 (b)(1). If the referral is for a determination of one of the eight categories of dispositive motions set forth in 28 U.S.C. § 636 (b)(1) or is one which a Magistrate Judge is prohibited from determining by the Constitution or laws of the United States, the Magistrate Judge shall file a written report and recommendation for final disposition by the referring District Judge.

**(b) Supplementary Proceedings.** The Clerk of the Court shall refer to a Magistrate Judge, in addition to the assignment made to a District Judge, any supplementary proceedings pursuant to Rule 69, Federal Rules of Civil Procedure, and post-judgment proceedings, such as garnishments and judgment-debtor examinations, unless: (1) the matter has already been referred by a District Judge to a Magistrate Judge pursuant to 28 U.S.C. § 636(b)(3), or (2) the matter has been assigned to a Magistrate Judge for final determination pursuant to the express written consent of the parties according to 28 U.S.C. § 636(c).

**(c) Habeas Corpus, Other Post Conviction Petitions, and Prisoner and certain other Civil Rights Complaints.** All petitions for writs of habeas corpus, applications for post-trial relief made by individuals convicted of criminal offenses, civil rights complaints by state or federal prisoners challenging conditions of their confinement, and all other civil actions to which a District Judge has been assigned shall also be referred by the Clerk of the Court to a Magistrate Judge according to Local Rules of Civil Procedure, Rule 3.7(e). The referred Magistrate Judge shall proceed in accordance with the Rules Governing Section 2254 Cases In The United States District

Courts, or the Rules Governing Section 2255 Proceedings For The United States District Courts, as the case may be, and with 28 U.S.C. § 636 (b)(1)(A) and (B).

**(d) Part-Time Magistrate Judges.** The only limitations on the duties and responsibilities delegated to and performed by a part-time Magistrate Judge are those limitations specifically set forth in 28 U.S.C. § 636 or other applicable statute or General Order.

## LRCiv 72.2

### OTHER DUTIES OF MAGISTRATE JUDGES

**(a) Other Duties.** Subject to the Constitution and laws of the United States, Magistrate Judges in the District of Arizona shall perform the following duties:

(1) Assist the District Judges in the conduct of pretrial discovery proceedings in civil actions. A Magistrate Judge may hear and determine a procedural or discovery motion or other pretrial matter in a civil case other than the motions that are specified in 28 U.S.C. § 636 (b)(1)(A). As to such specified motions so assigned, a Magistrate Judge shall, upon designation by a District Judge, submit to that District Judge a report containing proposed findings of fact and recommendations for disposition by the District Judge. In any motion in which the parties are seeking sanctions, if the Magistrate Judge is inclined to grant such requests regarding dispositive sanctions, the Magistrate Judge shall be limited to filing a report and recommendation with the District Court; a Magistrate Judge may enter an order granting requests for nondispositive sanctions (including monetary sanctions) or denying any sanctions request. A Magistrate Judge may, when designated by a District Judge, conduct any necessary hearings, including evidentiary hearings, or other proceedings arising in the exercise of the authority conferred by 28 U.S.C. § 636 and by these Local Rules.

(2) Review petitions for writs of habeas corpus, applications for post-trial relief made by individuals convicted of criminal offenses, and civil rights complaints lodged or filed by prisoners challenging conditions of their confinement pursuant to 42 U.S.C. § 1983, Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971), or otherwise, and all other civil rights claims relating to the investigation and prosecution of criminal matters or to correctional agencies and institutions in connection with their decisions or acts arising out of their custodial functions; make such orders as are necessary to obtain appropriate information which may be of assistance in determining the merits of any such writ or complaint; and submit reports and recommendations thereon to facilitate the decisions of the District Judge having jurisdiction over the case as to whether there should be a hearing. The authorization given the Magistrate Judge by

this Local Rule shall include, but is not limited to, the entry of appropriate orders directing answers to complaints and petitions assigned to the Magistrate Judge by the Clerk of the Court or by a District Judge, and the submission to a District Judge proposed findings of fact and recommendations for the disposition of such case. A Magistrate Judge is further authorized to conduct hearings preliminary to the submission of proposed findings of fact and recommendations to a District Judge.

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

(4) Make determinations and enter appropriate orders pursuant to 28 U.S.C. § 1915 with respect to any suit, action, or proceedings in which a request is made to proceed *in forma pauperis* consistent with federal law except that a Magistrate Judge may not deny a request for *in forma pauperis* status unless the person requesting such status has expressly consented in writing to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c).

(5) Conduct pretrial conferences, settlement conferences, and related pretrial proceedings in civil cases.

(6) Conduct examinations of judgment debtors in accordance with Rule 69 of the Federal Rules of Civil Procedure.

(7) Issue orders and search warrants authorizing civil administrative and other examinations, inspections, searches, and seizures as permitted by law.

(8) Perform such additional duties as are not inconsistent with the Constitution and laws of the United States as may be referred by a District Judge pursuant to 28 U.S.C. § 636(b).

(9) Perform the duties set forth in Chapter 176 of Title 28, United States Code, as referred by a District Judge pursuant to the Federal Debt Collection Procedures Act, 28 U.S.C. § 3008.

(10) Review and submit reports and recommendations on the following types of cases which come before the Court on a developed administrative record: (A)

actions to review administrative determinations under the Social Security Act and related statutes; (B) actions to review the administrative award of licenses and similar privileges; and (C) civil service cases involving such matters as adverse actions, retirement questions, and reduction in force.

(11) Review petitions and submit reports and recommendations to a District Judge in civil commitment cases arising under Title III of the Narcotic Rehabilitation Act 1966.

(12) Conduct voir dire examinations and select juries as referred by a District Judge in civil cases with the express written consent of the parties.

(13) With the express written consent of the parties pursuant to 28 U.S.C. § 636(c), a Magistrate Judge may hear and determine all motions, conduct the trial, and enter findings of fact, conclusions of law, and final judgments when the case is either randomly assigned by the Clerk to a Magistrate Judge upon the filing of the case or when a case is initially assigned to a District Judge and thereafter the case is reassigned to a Magistrate Judge with the District Judge's approval.

(14) Accept petit jury verdicts in civil cases upon request of a District Judge with the express written consent of the parties.

(15) Conduct proceedings for the collection of civil penalties of not more than two hundred dollars (\$200) assessment under the Federal Boat Safety Act of 1971 in accordance with 46 U.S.C. §§ 4311(d) and 12309(c).

(16) Hold hearings and issue orders or reports and recommendations as may be appropriate in connection with garnishment and other post-judgment proceedings pursuant to 28 U.S.C. § 636(b)(3).

(b) All Magistrate Judges in the District of Arizona shall perform the duties authorized by 28 U.S.C § 636.

# Opt-out system for magistrate judge assignments to start in Central District

DJ [dailyjournal.com/articles/381541-opt-out-system-for-magistrate-judge-assignments-to-start-in-central-district](https://dailyjournal.com/articles/381541-opt-out-system-for-magistrate-judge-assignments-to-start-in-central-district)

Oct. 25, 2024

Instead of opting in to have a magistrate judge handle their litigation, attorneys will have to opt out if they prefer an Article III district judge under the changed local rules that go into effect Dec. 1.

Chief Magistrate Judge Karen L. Stevenson U.S. magistrate judges in the Central District of California who've been on the bench for more than a year will soon be among the first in the nation to be randomly assigned cases to supervise from start to finish, without needing to hand them off to a district judge.

Departing from a longtime practice of allowing attorneys to opt in to have a magistrate judge hear their cases, they will now have to opt out if their case has been randomly assigned to a magistrate. The changed local rule goes into effect Dec. 1.



Only two other district courts in the nation, the Eastern and Western Districts of Washington, have such a system now, but the Idaho, Montana and Nevada districts plan to adopt it by the end of 2025, according to Chief Magistrate Judge Karen L. Stevenson of the Central District.

"It is a service that helps relieve congestion at the district court level. It's also a benefit to the bar community because it gives them a path to speedy resolution of their cases," she said. "The caseloads at the court are going up. Hearings are up. Criminal appearances are up."

The Central District court, which serves more than 19 million people in seven counties, is the largest in the nation.

Stevenson and 18 other magistrate judges will begin receiving direct civil assignments in December on a basis of 10 cases per month.

Attorneys can opt out without the assigned magistrate judge knowing, Stevenson explained.

"There will be no repercussions for them exercising their right to say, 'Nope. I want to keep a district judge,'" Stevenson said. "It's not going to be filed. It will be sent back to the court to a particular designated email box that's only accessible to the clerk's office. The judges will not be seeing this."

Matthew D. Umhofer, a partner at Umhofer Mitchell & King LLP, said the modification would allow him and his clients to move cases more efficiently because the entire judicial roster will be immediately utilized.

"You can often get a case moving faster with a magistrate judge involved than with an overburdened district judge. So, you get a great judge who may have more time and availability to move your case along," Umhofer said. "The rule excepts death penalty cases and class actions, but beyond that, I can't think of a case that I wouldn't want before a highly qualified magistrate judge. The roster of magistrate judges in this district is really impressive, and they already handle so much in terms of discovery battles, so it can be very helpful to have that judge see a case all the way through trial or settlement."

Magistrate judges also won't be assigned cases in which immediate injunctive relief or a preliminary injunction is sought, Stevenson said.

Attorneys will have 14 calendar days from the date of service to review the magistrate judge assignment and decide if they would like to have their case tried before a district judge instead. Pro se litigants will have a deadline of 21 calendar days.

The changes were implemented through modifications to Local Rules 83 and 73 after the Central District judges unanimously approved, Stevenson said. "And I would say, particularly, it was the vision of our former chief district judge, Phillip S. Gutierrez, and the absolute support of our current chief district judge, Dolly M. Gee, that really moved this initiative forward."

The legal rationale for the system was established in a 9th U.S. Circuit Court of Appeals decision in the Western District of Washington case last year. The panel found magistrate judges have the authority to exercise the full civil jurisdiction of Article III district judges established by the Constitution. *Washington v. Kijakazi*, 22-35320 (9th Cir. 2023).

Although magistrate judges in the Northern District of California, under Title 28 U.S.C. Section 636, have been authorized to be included in the case assignment wheel with the district judges, that court has not set up an opt-out procedure, Stevenson said.

Attorneys who practice in the Central District said the direct assignment modification will open the court like never before and allow its roster of magistrate judges to more fully utilize their law skills, experience and knowledge.

"There are a number of wonderful magistrate judges in the Central District, and they're underutilized hearing mostly discovery disputes. Meanwhile the Article III judges are drowning in cases," Jennifer L. Keller, a partner at Keller/Anderle LLP, said. "If the magistrate judge is handling the entire case, you don't have the delay associated with having discovery disputes being first heard by the magistrate judge, and then waiting to see if the district court will confirm the magistrate judge's decision."

Waymaker LLP partner Ryan G. Baker said the modification would not only allow more hearing availability, but the faster pace could save costs. "Generally, a better allocation of court resources (in this case magistrates) should increase court efficiency, which will benefit most litigants. To the extent the new program stands to improve the equal distribution of work, it will improve efficiency and should reduce litigation costs all around."

Wendy E. Musell, an Oakland based attorney who also practices in the Central District courts, said the modification is a step in the right direction that benefits lawyers because it allows for more individualized evaluation of the jurist who could potentially be handling the case.

"I think it's a really excellent idea in order to make sure that overburdened federal courts can actually process their docket," Musell said. "For me, it's about what I know about the magistrate judge's reputation. I do employment and civil rights cases, so their experience in those cases and how they tend to rule is important to know. ... So really, we're evaluating the expertise and experience that we'll have for that particular case versus who else we may get in the wheel, if we're randomly assigned."

Stevenson said the Federal Bar Association was helpful in sharing ideas for how the Central District's magistrate judges could be more efficiently utilized.

Jeffrey A. Koncius, a partner at Kiesel Law LLP, is president of the Federal Bar Association's Los Angeles chapter. "The chapter was very much behind any change that would help people get exposure to the magistrate judges. We're very happy that we were able to help in that regard because we think this is a very positive development for the district," Koncius said.

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Only the Westlaw citation is currently available.  
United States Court of Appeals, Ninth Circuit.

Victor WASHINGTON, Plaintiff-Appellant,  
v.  
Kilolo KIJAKAZI, Acting Commissioner  
of Social Security, Defendant-Appellee.

No. 22-35320

Submitted May 8, 2023 \* Seattle, Washington

Filed July 3, 2023

### Synopsis

**Background:** Claimant brought pro se action challenging Social Security Administration's denial of claim for disability benefits in connection with symptoms from various ailments, including sarcoidosis, depression, and anxiety. The United States District Court for the Western District of Washington, Brian A. Tsuchida, United States Magistrate Judge, 2022 WL 522618, entered final judgment reversing and remanding, and 2022 WL 549628, denied claimant's motion for clarification. Claimant appealed.

**Holdings:** The Court of Appeals, Clifton, Circuit Judge, held that:

[1] pro se claimant impliedly consented to magistrate judge jurisdiction;

[2] district court specially designated magistrate judge with authority to enter a final order; and

[3] remand for further proceedings, rather than payment of benefits, was warranted.

**Affirmed.**

Fletcher, Circuit Judge, filed concurring opinion.

**Procedural Posture(s):** On Appeal; Review of Administrative Decision.

### West Headnotes (20)

[1] **United States Magistrate**

**Judges** ⇌ Decisions reviewable

Where a magistrate judge enters a final order on behalf of the district court, Court of Appeals' jurisdiction depends on the magistrate judge's lawful exercise of jurisdiction; if it is concluded that the magistrate judge lacked authority to enter a final judgment in a given case, the jurisdiction of the Court of Appeals is undermined, because there is no final decision for the Court to review. ¶ 28 U.S.C.A. § 1291.

[2] **United States Magistrate**

**Judges** ⇌ Decisions reviewable

Court of Appeals has authority to review question whether the magistrate judge validly entered judgment on behalf of the district court. ¶ 28 U.S.C.A. § 1291.

[3] **United States Magistrate**

**Judges** ⇌ Particular cases, contexts, and questions

Court of Appeals reviews the question of magistrate judge jurisdiction de novo.

[4] **United States Magistrate**

**Judges** ⇌ Jurisdiction, Powers, and Authority to Act, Preside, or Rule

The Federal Magistrate Act governs the jurisdiction and authority of federal magistrate judges. ¶ 28 U.S.C.A. §§ 631-639.

[5] **United States Magistrate Judges** ⇌ Consent

Unlike provision of Federal Magistrate Act governing referral jurisdiction and setting out procedures through which magistrate judges consider non-dispositive pretrial matters and provide reports and recommendations on

dispositive pretrial matters, **jurisdiction** under section of Act providing that a **magistrate judge** may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case if (1) voluntary consent is obtained from all parties and (2) the **magistrate judge** is specially designated by the **district court** gives the **magistrate judge's** ruling the same effect as if it had been made by a **district judge**.  28 U.S.C.A. §§ 636(b)(1),  636(c)(1).

[6] **United States Magistrate Judges** ⇌ Consent  
Consent is the touchstone of **magistrate judge jurisdiction**; it may be express or implied.  28 U.S.C.A. § 636(c)(1).

[7] **United States Magistrate Judges** ⇌ Consent  
A party may expressly consent to **magistrate judge jurisdiction** by selecting the consent box on a court-provided form.  28 U.S.C.A. § 636(c)(1).

[8] **United States Magistrate Judges** ⇌ Consent  
A party impliedly consents to **magistrate judge jurisdiction** when the party was made aware of the need for consent and the right to refuse it, and still voluntarily appeared to try the case before the **magistrate judge**.  28 U.S.C.A. § 636(c)(1).

[9] **United States Magistrate Judges** ⇌ Consent  
Pro se claimant impliedly consented to **magistrate judge jurisdiction** in challenge to denial of application for social security disability benefits in connection with symptoms from ailments including anxiety, by voluntary decision to appear before **magistrate judge** without reservation after being notified of right to refuse in form addressed to parties explicitly stating that consent was voluntary and clearly informing parties that they knowingly and

voluntarily consent to a **magistrate judge's** final entry of judgment if they **do not** decline, and after being told that **magistrate judge** intended to exercise case-dispositive authority; claimant did not sign and return declination-of-consent form, and did not object when **district court** docketed that there was consent by all parties to proceed before **magistrate judge** or when Commissioner of Social Security conceded that ALJ committed harmful error, but rather objected only after **magistrate judge** rendered unfavorable decision.  28 U.S.C.A. § 636(c)(1).

[10] **United States Magistrate Judges** ⇌ Consent  
As long as parties are notified of the availability of a **district judge** as required by Federal Magistrate Act and rule governing consent procedure, a litigant's general appearance before the **magistrate judge** will usually indicate the necessary consent.  28 U.S.C.A. § 636(c)(2); Fed. R. Civ. P. 73(b).

[11] **United States Magistrate Judges** ⇌ Reference, Designation, or Delegation  
**District court** specially designated **magistrate judge** with authority to enter a final order in pro se claimant's case seeking review of decision of Commissioner of Social Security denying application for disability benefits in connection with symptoms from various ailments, including sarcoidosis, depression, and anxiety; general orders of the **district court** and local rule provided that cases seeking review of decision of the Commissioner of Social Security would be **assigned to magistrate judge**, and neither general orders nor local rules contained a carveout for pro se plaintiffs. Social Security Act § 205,  42 U.S.C.A. § 405(g).

[12] **United States Magistrate Judges** ⇌ Reference, Designation, or Delegation

A **district** court must specially designate a **magistrate judge's** authority to enter a final order.

[13] **Social Security** ⇌ Disability benefits

Court of Appeals reviews the **district** court's decision to remand for further proceedings or for an immediate payment of social security disability benefits for abuse of discretion.

[14] **Social Security** ⇌ Discretion and judgment of agency in general; deference

Court of Appeals finds an abuse of discretion in a social security disability case only when the Court is convinced firmly that the reviewed decision lies beyond the pale of reasonable justification under the circumstances.

[15] **Social Security** ⇌ Disability benefits

In reviewing **district** court's decision to remand for further proceedings or for an immediate payment of social security disability benefits, courts first ask whether the ALJ has failed to provide legally sufficient reasons for rejecting evidence, whether claimant testimony or medical opinion.

[16] **Social Security** ⇌ Disability benefits

In reviewing **district** court's decision to remand for further proceedings or for an immediate payment of social security disability benefits, courts determine whether the record has been fully developed, whether there are outstanding issues that must be resolved before a determination of disability can be made, and whether further administrative proceedings would be useful.

[17] **Social Security** ⇌ Disability benefits

If no outstanding issues remain when reviewing the **district** court's decision to remand for further proceedings or for an immediate payment of

social security disability benefits, and further proceedings would not be useful, only then does Court of Appeals have discretion to find the relevant testimony credible as a matter of law.

[18] **Social Security** ⇌ Determination and Disposition

**Social Security** ⇌ Disability Benefits

The decision whether to remand a case for additional evidence or simply to award social security disability benefits is in the Court of Appeals' discretion.

[19] **Social Security** ⇌ Disability benefits

Step two of reviewing the **district** court's decision to remand for further proceedings or for an immediate payment of social security disability benefits, reviewing whether the record has been fully developed, whether there are outstanding issues that must be resolved before a determination of disability can be made, and whether further administrative proceedings would be useful, is merely a de minimis screening device to dispose of groundless claims; it is not meant to identify the impairments that should be taken into account when determining a claimant's residual functional capacity (RFC), which proceeds next, so that, regardless of whether the evidence at issue is credited, outstanding issues must be resolved before a disability determination can be made.  20 C.F.R. § 404.1520(c).

[20] **Social Security** ⇌ Determination and Disposition

**Social Security** ⇌ Particular cases

**District** court properly identified contradictory evidence in administrative record appropriate for remand to Commissioner of Social Security for further proceedings to resolve contested issues, rather than payment of social security disability benefits in connection with claimant's symptoms from various ailments, including sarcoidosis, depression, and anxiety; **district** court noted

conflict between determination of claimant's treating doctor, that claimant was unable to perform even sedentary work activity on a consistent basis, and that of consulting medical expert, that claimant could perform work-related activities with certain exertional, postural, and environmental limitations, and **district** court could not determine whether testimony from psychiatrist or disability determination from the Department of Veterans Affairs (VA) proved claimant was disabled within the regulatory meaning. 20 C.F.R. § 404.1520(c).

Appeal from the United States **District** Court for the Western **District** of Washington, Brian Tsuchida, **Magistrate Judge**, Presiding, D.C. No. 2:21-cv-01195-BAT

#### Attorneys and Law Firms

Victor Washington, Shoreline, Washington, pro se Plaintiff-Appellant.

Sarah E. Moum, Special Assistant United States Attorney; Office of the General Counsel, Social Security Administration; Baltimore, Maryland; Matthew W. Pile, Associate General Counsel; Office of Program Litigation; Seattle, Washington; Kerry Jane Keefe, Assistant United States Attorney; Nicholas W. Brown, United States Attorney; Office of the United States Attorney; Seattle, Washington; Joshua M. Salzman, Attorney; United States Department of Justice; Washington, D.C.; for Defendant-Appellee.

Robin Wechkin, Sidley Austin LLP, Issaquah, Washington; David R. Carpenter, Sidley Austin LLP, Los Angeles, California; for Amicus Curiae the Federal **Magistrate Judges** Association.

Before: William A. Fletcher, Richard R. Clifton, and Sandra S. Ikuta, Circuit Judges.

Opinion by Judge Clifton;

Concurrence by Judge W. Fletcher

#### OPINION

CLIFTON, Circuit Judge:

Victor Washington filed in the U.S. **District** Court for the Western **District** of Washington a pro se action to challenge the denial of his claim for disability benefits by the Social Security Administration. A **magistrate judge** of that court, acting with the full civil authority of that court, reversed and remanded the matter to the agency for rehearing after the government conceded that there was an error in the agency's adjudication.

\*3 Washington, still appearing pro se, appeals that decision. He presents two arguments. First, he contests the **magistrate judge's** authority or **jurisdiction** to issue a final judgment, arguing that he did not consent to **magistrate judge jurisdiction**. The primary question before us is whether consent to a **magistrate judge's** authority to exercise the full civil authority of the **district** court may be inferred from the failure of the litigant to return a declination-of-consent form issued under the general orders and local rules of the Western **District** of Washington. We conclude that Washington knowingly and voluntarily consented to **magistrate judge jurisdiction** by failing to return the form that notified him of his rights and by thereafter proceeding with the litigation before the **magistrate judge**.

Washington's second argument is that this case should not be remanded to the agency for further proceedings but that, instead, he should be granted an immediate award of benefits under a credit-as-true analysis. We disagree, concluding that questions remain to be answered before benefits could properly be awarded.

We thus **affirm** the judgment of the **district** court.

#### I. Background

Washington filed a claim for disability benefits under Title II of the Social Security Act based on symptoms from various ailments, including sarcoidosis, depression, and anxiety. In May 2021, the Administrative Law Judge ("ALJ") denied Washington's application.

In September 2021, Washington filed a complaint challenging the ALJ's decision in the Western **District** of Washington. The **district** court **assigned** the case to **Magistrate Judge** Brian A. Tsuchida, a full-time **magistrate judge** for that **district**, for all purposes and sent the parties a form titled "NOTICE OF ASSIGNMENT TO A U.S. **MAGISTRATE**

**JUDGE AND DECLINATION OF CONSENT FORM.**” The first page of the form stated:

This matter is assigned to United States **Magistrate Judge** Brian A. Tsuchida for all purposes, including trial, final entry of judgment, and direct review by the Ninth Circuit Court of Appeals. *See* Second Amended General Order 02–19.

Consent to a **Magistrate Judge** is voluntary. A party may decline consent by signing and emailing this form [to the court]. The form must be received by the court no later than **October 1, 2021**. Please **do not** file the form. Each party will be deemed to have knowingly and voluntarily consented to proceed before **Magistrate Judge** Tsuchida if this form is not returned by October 1, 2021. The identity of the parties consenting or declining consent will not be communicated to any judge.

The second page of the form contained a box titled “I decline consent and request the case be assigned to a **District Judge**.” Below the box contained signature lines for the “Attorney/Party’s Signature,” “Party Represented,” and “Date Signed.”

Neither party responded to the form by declining consent to the assignment by the stated date. The **district** court entered a docket entry confirming that the parties had consented to proceed before **Magistrate Judge** Tsuchida.

Washington then filed his opening brief in **district** court. At that point, the Commissioner conceded that the ALJ had erred and asked the court to remand Washington’s case to the agency for further administrative proceedings. Washington requested instead that he be granted an immediate award of benefits. Five days after Washington filed his reply brief, **Magistrate Judge** Tsuchida ordered reversal of the ALJ’s decision and remand of the matter to the agency for further administrative proceedings.

Washington promptly filed a motion for clarification. He contended that “he may have unknowingly waived a right to have a [d]istrict court judge review” his objection to the **magistrate judge’s** ruling. He stated that he expected the **magistrate judge** to issue a report and recommendation, not a final judgment. **Magistrate Judge** Tsuchida denied his motion on grounds that Washington consented to a **magistrate judge** “to issue a final order and judgment.”

\*4 Washington also filed an objection to **jurisdiction**, later amended, arguing that the declination-of-consent procedure

used in this case was improper. **District Judge** Ricardo S. Martinez, then-chief judge of the **district**, reviewed the underlying order, held that the **magistrate judge** had **jurisdiction** over the case, and independently affirmed the decision on the merits. In that order, Chief Judge Martinez concluded that Washington “consented to a **magistrate judge** according to [the procedures and general orders of the **district**] and certainly did not decline to consent in a timely fashion.” Chief Judge Martinez further found “that [Washington] knew he consented, and only took issue with this consent after the presiding judge issued what [Washington] has determined to be an unfavorable ruling.”

## II. Discussion

### A. This Court’s Jurisdiction

As a threshold matter, we consider whether the **magistrate judge** had authority to exercise the full civil **jurisdiction** of the **district** court over Washington’s claim. There is no doubt that the **district** court had **jurisdiction** over the case, but Washington challenges whether he had given the consent that is required for a **magistrate judge** to exercise that **jurisdiction**. Such a challenge is often described in terms of “**magistrate judge jurisdiction**.”

[1] Although there is no question that the **district** court had **jurisdiction**, a challenge to the **magistrate judge’s** authority raises a question regarding the **jurisdiction** of this court over this appeal. We have **jurisdiction** over “appeals from all final decisions of the **district** courts of the United States.” <sup>28</sup> 28 U.S.C. § 1291. Where a **magistrate judge** enters a final order on behalf of the **district** court, “our **jurisdiction** depends on the **magistrate judge’s** lawful exercise of **jurisdiction**.” *Ashker v. Newsom*, 968 F.3d 975, 980 (9th Cir. 2020) (citation and internal quotation marks omitted). If it is concluded that the **magistrate judge** lacked authority to enter a final judgment in a given case, the **jurisdiction** of the court of appeals is undermined, because there is no final decision for us to review.

[2] [3] Nonetheless, we have authority “to review the antecedent question of whether the **magistrate judge** validly entered judgment on behalf of the **district** court.” <sup>Allen v. Meyer</sup> *Allen v. Meyer*, 755 F.3d 866, 867 (9th Cir. 2014). We thus start with the question of **magistrate judge jurisdiction** in this case because it controls this court’s **jurisdiction** over the appeal, including the challenge raised by Washington to the merits decision to reverse and remand the ALJ’s decision rather

than to order the award of benefits. We review the question of **magistrate judge jurisdiction** de novo. *Wilhelm v. Rotman*, 680 F.3d 1113, 1118 (9th Cir. 2012).

#### B. The Magistrate Judge's Jurisdiction or Authority

[4] The Federal Magistrate Act “governs the **jurisdiction** and authority of federal **magistrate judges**.” *Parsons v. Ryan*, 912 F.3d 486, 495 (9th Cir. 2018); see 28 U.S.C. §§ 631–39. Pursuant to the Act, a **magistrate judge** “may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case” if (1) voluntary consent is obtained from all parties and (2) the **magistrate judge** is specially designated by the **district court**. See *Roell v. Withrow*, 538 U.S. 580, 585, 123 S.Ct. 1696, 155 L.Ed.2d 775 (2003) (quoting 28 U.S.C. § 636(c)(1)); see also Fed. R. Civ. P. 73(a) (“[A] **magistrate judge** may, if all parties consent, conduct a civil action or proceeding, including a jury or nonjury trial.”).

[5] **Jurisdiction** under 28 U.S.C. § 636(c) is distinct from that under 28 U.S.C. § 636(b), which governs referral **jurisdiction** and sets out procedures through which **magistrate judges** consider non-dispositive pretrial matters and provide reports and recommendations on dispositive pretrial matters. See 28 U.S.C. § 636(b)(1)(A)–(C). Unlike 28 U.S.C. § 636(b)(1), **jurisdiction** under 28 U.S.C. § 636(c)(1) gives the **magistrate judge's** ruling “the same effect as if it had been made by a **district judge**.” *Robert Ito Farm, Inc. v. County of Maui*, 842 F.3d 681, 685 (9th Cir. 2016).

#### 1. General Orders and Local Rules

\*5 General Order (“G.O.”) 05-17<sup>1</sup> of the **District Court** for the Western **District** of Washington went into effect in June 2017. It provided that some **civil cases** newly filed in the court would be directly **assigned** to **magistrate judges**, and it established procedures to solicit consent by the parties in those cases to the **assignments** to **magistrate judges**. The order notes that its goal is “to increase the percentage of consent cases.” G.O. 05-17 at 1. It states that **magistrate jurisdiction** is voluntary, “all parties are provided with a consent form” that they may decline, and “each party will be deemed to have knowingly, and voluntarily, consented

to proceed before the **assigned Magistrate Judge**” if the declination-of-consent form is not signed and returned before the stated date. *Id.* (bolding omitted). It also states that, upon a party's declination of consent, the identity of the declining party is kept confidential from any judge and immediate reassignment of the case to a **district judge** occurs. *Id.*<sup>2</sup>

Two other general orders for the **district court** are relevant here: Amended G.O. 01-15<sup>3</sup> and Amended G.O. 02-19.<sup>4</sup> These orders state that the clerk of the court **assigns** social security cases to a **magistrate judge** if the “plaintiff timely consents, and if the United States does not timely withdraw consent[.]” See Am. G.O. 01-15 at 2; Am. G.O. 02-19 at 1. As the orders note, the United States had already given its “general” consent to **magistrate judge jurisdiction** in social security cases. See Am. G.O. 01-15 at 2; Am. G.O. 02-19 at 1. If either party timely declines consent, the case is then reassigned to a **district judge**. See Am. G.O. 01-15 at 2; Am. G.O. 02-19 at 1–2.

The **district court** reiterates the same procedure for **magistrate judge jurisdiction** in Local **Magistrate Judge Rule** (“MJR”) 13.<sup>5</sup> The rule states that 28 U.S.C. § 636(c), G.O. 05-17, and Amended G.O. 01-15 “shall constitute general notice to all parties in **civil cases** in [the Western **District** of Washington]” concerning **magistrate judge jurisdiction**. See Local Rule MJR 13(b). It notes that “[w]hen a case is direct **assigned** to a **magistrate judge**, the clerk of court will provide the parties with a form to decline [c]onsent via the Court's CM/ECF System.” Local Rule MJR 13(c). Like G.O. 05-17, Amended G.O. 1-15, and Amended G.O. 02-19, the rule specifies that if a party declines consent, “the clerk will immediately reassign the case to a **district judge** by random selection.” *Id.*

#### 2. Knowing and Voluntary Consent

[6] [7] [8] Consent is the “touchstone of **magistrate judge jurisdiction**.” *Anderson v. Woodcreek Venture Ltd.*, 351 F.3d 911, 914 (9th Cir. 2003). It may be express or implied. See *Roell*, 538 U.S. at 591 n.8, 123 S.Ct. 1696; see also *Wilhelm*, 680 F.3d at 1118–19. For example, a party may expressly consent to **magistrate judge jurisdiction** by “selecting the ‘consent’ box on [a] court-provided form.” *Wilhelm*, 680 F.3d at 1119; cf. *Anderson*, 351 F.3d at

915 (holding that, in general, filing a “signed form would provide a clear, unambiguous, and explicit expression of consent”). Alternatively, a party impliedly consents when it “was made aware of the need for consent and the right to refuse it, and still voluntarily appeared to try the case before the” **magistrate judge**. *Roell*, 538 U.S. at 590, 123 S.Ct. 1696.

\*6 In *Roell*, the Supreme Court held that two defendants impliedly consented to **magistrate judge jurisdiction** by voluntarily participating in the proceedings and voicing “no objection when, at several points, the [m]agistrate [j]udge made it clear that she believed they had consented.” *Id.* at 584, 123 S.Ct. 1696. In *Wellness International Network, Ltd. v. Sharif*, the Court extended the “implied consent standard articulated in *Roell*” to bankruptcy court **jurisdiction**. *Id.* 575 U.S. 665, 684–85, 135 S.Ct. 1932, 191 L.Ed.2d 911 (2015). The Court emphasized that both express and implied consent must “be knowing and voluntary.” *Id.* at 685, 135 S.Ct. 1932. In so doing, the Court preserved two “pragmatic virtues” that *Roell* espoused: “increasing judicial efficiency and checking gamesmanship.” *Id.*

[9] We conclude that the declination-of-consent form used in this case fulfills the requirements of implied consent set forth in *Roell* and *Wellness International Network*. The form apprised Washington of the consequences of consent, the voluntary nature of consent, and the availability of a **district judge** upon declining consent. It stated explicitly that consent was “voluntary. A party may decline consent by signing and emailing this form.” It stated in an underscored sentence that “[e]ach party will be deemed to have knowingly and voluntarily consented to proceed before **Magistrate Judge Tsuchida** if this form is not returned by October 1, 2021.” The right of a party to refuse consent was made clear, as was the result if the party did not sign and return the form declining consent. See *Roell*, 538 U.S. at 587 n.5, 123 S.Ct. 1696 (“[N]otification of the right to refuse the **magistrate judge** is a prerequisite to any inference of consent[.]”). That the case would be reassigned to a **district judge** if consent was declined was also explicitly stated. The box to decline consent said that in so many words: “I decline consent and request the case be **assigned** to a **District Judge**.”

The form's language is substantively similar to consent forms in other cases where we held that a pro se plaintiff impliedly consented to **magistrate judge jurisdiction**. See, e.g., *Wilhelm*, 680 F.3d at 1117–18. In *Wilhelm*, a case involving the process then used in the Eastern **District** of California, the parties were provided with a consent form that stated: “Without the written consent of the parties presently appearing pursuant to 28 U.S.C. Sec. 636(c), a **magistrate judge** cannot conduct all proceedings and enter judgment in this case[.]” *Id.* at 1117. The box for declination of consent contained language very similar to the language in the form in our case, stating: “The undersigned declines to consent to the United States **Magistrate Judge** assigned to this case and requests random **assignment** to a United States **District Judge**.” *Id.* at 1118.

The consent form in *Wilhelm* was different in one substantive respect. It contained two boxes, one for consent and one for declination of consent, and instructed each party to select one of the boxes. *Id.* at 1117–18. We do not, however, view that difference to be sufficient to undermine the consent provided here in response to the Western **District** of Washington form, which states that (1) consenting to **magistrate judge jurisdiction** authorizes the **magistrate judge** to enter a final entry of judgment; (2) appearing in front of a **magistrate judge** is voluntary and declination is permitted; and (3) declining consent is concomitant with a request to a **district judge** to hear the case. Accordingly, the declination-of-consent form “advised [Washington] of the need for consent and his right to refuse it.” *Id.* at 1120.

Washington also voluntarily proceeded with the litigation before the **magistrate judge**. After being put on notice of the effects of **magistrate judge jurisdiction**, he did not sign and return the declination-of-consent form by October 1, 2021. When the **district court** docketed that there was “consent by all parties to proceed before a **Magistrate Judge**. Case remains **assigned** to Hon. Brian A. Tsuchida[.]” Washington did not object. He instead filed an opening brief. Subsequently, the Commissioner conceded that the ALJ committed harmful error, and Washington responded with his contention that the **district court** should order an award of benefits rather than reversing the ALJ decision and remanding for further proceedings. He did not object to the **assignment** to the **magistrate judge** at that point, either. It was only after the **district court**, by the **magistrate judge**, rendered a

decision that Washington found unfavorable that he objected to the **magistrate judge** decision as a final order.

\*7 Washington does not dispute that he received the notice and declination-of-consent form. The record indicates he registered to receive electronic communications from the **district** court prior to its confirmation of consent. He thus “clearly implied [his] consent by [his] decision to appear before the [m]agistrate [j]udge, without expressing any reservation, after being notified of [his] right to refuse and after being told that [the **magistrate judge**] intended to exercise case-dispositive authority.” See *Roell*, 538 U.S. at 586, 123 S.Ct. 1696 (internal quotation marks omitted); see also *Wilhelm*, 680 F.3d at 1120 (“[H]e presented his case to [the **magistrate judge**] without objection[.]”). Holding otherwise would provide Washington “the luxury of waiting for the outcome before denying the **magistrate judge's** authority[.]” which is exactly the type of gamesmanship the Court warned against. See *Roell*, 538 U.S. at 590, 123 S.Ct. 1696.<sup>6</sup> As Chief Judge Martinez found: Washington “knew he consented, and only took issue with this consent after the presiding judge issued what [Washington] has determined to be an unfavorable ruling.”

This case is therefore distinguishable from instances in which we have declined to **affirm magistrate judge jurisdiction** based on consent of the parties. For example, in *Anderson*, a case involving procedures then used in the **District** of Oregon, we held that it could not be concluded from the existing record that a pro se plaintiff had voluntarily consented to **magistrate judge jurisdiction** after she was given a notice form that stated: “The above referenced case has been **assigned** to the [magistrate judge] for disposition, to include the conduct of trial and/or entry of final judgment.” 351 F.3d at 912 (footnote marker omitted). We remanded the case to the **district** court to determine whether the objecting party had voluntarily consented to the **magistrate judge assignment**. *Id.* at 911.

At the bottom of the page, the form used in that case stated that “parties are strongly encouraged to file a *Consent to Trial and Entry of Final Judgment*.” *Id.* at 912. In concluding that the record did not establish that the plaintiff voluntarily consented based on that notice form, we observed that the form was addressed to “counsel” and not to the parties, the form was “ambiguous as to whether the [magistrate

**judge] assignment** is partial,” and the form was uncertain “on whether full **magistrate judge jurisdiction** is contingent upon” voluntary consent by the parties. *Id.* at 915–16; cf. *Wilhelm*, 680 F.3d at 1120 n.6 (distinguishing *Anderson* because its notice form “failed to alert the parties of the need to consent, of their right to decline, or of their right to a **district judge**”). By contrast, the form used in Washington's case was addressed to the parties, explicitly stated that consent was voluntary, and clearly informed the parties that they “knowingly and voluntarily” consent to a **magistrate judge's** final entry of judgment if they **do not** decline. The option to decline and request reassignment of the case to a **district judge**—when combined with a statement on voluntary consent and citation to Amended G.O. 02-19—plainly apprises litigants of their right to appear before a **district judge**.<sup>7</sup>

\*8 Washington argues that, as a pro se litigant, he believed he was consenting to the **magistrate judge's** issuance of a report and recommendation, not a final judgment. See 28 U.S.C. § 636(b)(1)(B)–(C). In his reply brief to this court, he argued that he did not “totally grasp” that the objection he stated in his opening brief to us “was a [j]urisdiction matter” instead of “a matter of fairness” until after he read the government's answering brief.

We appreciate the claim but are not persuaded by the contention. The term “**jurisdiction**” confuses lawyers and courts. As the Supreme Court has famously observed on multiple occasions, “**Jurisdiction** ... is a word of many, too many, meanings.” See, e.g., *Fort Bend County v. Davis*, — U.S. —, 139 S. Ct. 1843, 1848, 204 L.Ed.2d 116 (2019) (citation and internal quotation marks omitted), and cases cited there. The question here is whether Washington was sufficiently informed of his ability to decline **assignment** of his case to a **magistrate judge** for all purposes. By the time of the appeal to our court, two separate orders, one by Chief Judge Martinez and the other by **Magistrate Judge** Tsuchida, both described above, had already discussed and rejected his objection to the exercise of the **district** court's authority by the **magistrate judge**. Even if he may not have understood his objection as raising a question of “**jurisdiction**,” Washington had been informed of the **district** court's conclusion that he had knowingly and voluntarily consented to the **assignment** to the **magistrate judge**. That conclusion was not erroneous.

We recognize that Washington's status appearing pro se may be relevant to the question before us. At least one other circuit court has held that a litigant's ability to imply consent is affected by their pro se status. See *Yeldon v. Fisher*, 710 F.3d 452, 453 (2d Cir. 2013) (per curiam) (vacating **magistrate judge's** decision because of a lack of **jurisdiction**). But in *Yeldon*, the pro se litigant—though he later appeared in front of the **magistrate judge**—expressly declined his consent in writing. *Id.* The Second Circuit held that the litigant “may not have appreciated that participating in proceedings before the **Magistrate Judge** could impugn the effectiveness of his written refusal to consent.” *Id.* Applied to this case, it might be a more difficult question if Washington *had* signed the declination-of-consent form and then proceeded before the **magistrate judge**. Yet that is not what happened here.

We recognize that Washington did not have the benefit of representation by counsel, but we have never held that pro se litigants are incapable of knowingly or voluntarily consenting to **magistrate judge jurisdiction**. Individuals who are not lawyers are regularly held to have given effective consent or agreement in many different circumstances. It is appropriate to review notices and forms to satisfy ourselves that they can be understood by a litigant representing himself, but there are limits to what a court must do to accommodate a party appearing pro se. See, e.g., *Pliler v. Ford*, 542 U.S. 225, 231, 124 S.Ct. 2441, 159 L.Ed.2d 338 (2004) (stating that “[d]istrict judges have no obligation to act as counsel or paralegal to pro se litigants”); *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995) (noting that although courts “construe pleadings liberally in their favor, pro se litigants are bound by the rules of procedure”); *Carter v. C.I.R.*, 784 F.2d 1006, 1008–09 (9th Cir. 1986) (collecting cases) (explaining that a pro se litigant is “expected to abide by the rules of the court in which he litigates”). We **do not** doubt that the **district** court could have prepared a notice that might have spelled out in more detail what the form here sought to communicate. We conclude, nonetheless, that the process used in this case was sufficient and that the **district** court's conclusion that Washington had knowingly and voluntarily consented was not erroneous.

\*9 [10] To the extent that we construe Washington's post-objection motions as a motion to withdraw consent, that argument fails too. Under *§* 636(c)(4), the **district** court

“may, for good cause shown on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a **magistrate judge** under this subsection.” We have stated that the “extraordinary circumstances” standard sets “a high bar that is difficult to satisfy.” *Branch v. Umphenour*, 936 F.3d 994, 1004 (9th Cir. 2019) (citation and internal quotation marks omitted). In fact, “[n]either mere dissatisfaction with a **magistrate judge's** decision, nor unadorned accusations that such decisions reflect judicial bias, will suffice.” *Id.* Washington is unable to show good cause or extraordinary circumstances to withdraw consent. As Chief Judge Martinez held below, “[t]he procedures in this case are identical to all other social security cases” and **do not** violate the general orders of the Western **District** of Washington. And, as the Supreme Court observed, “as long as parties are notified of the availability of a **district** judge as required by *§* 636(c)(2) and Rule 73(b), a litigant's general appearance before the **magistrate judge** will usually indicate the necessary consent.” *Roell*, 538 U.S. at 591 n.7, 123 S.Ct. 1696. For these reasons, we **affirm** the conclusion of the **district** court that Washington consented to **magistrate judge jurisdiction**.

### 3. Specially Designated

[11] [12] **Magistrate judge jurisdiction** requires more than consent. A **district** court “must also specially designate a **magistrate judge's** authority to enter a final order.” *Ashker*, 968 F.3d at 982. Washington argues that the general orders of the Western **District** of Washington **do not** authorize “automatic **assignment** of **magistrate [judges]** for [p]ro se [plaintiffs] in civil matters” or social security cases. We disagree.

As previously discussed, G.O. 05-17 approved the procedure outlined in the declination-of-consent form and applied it to “all **civil cases** filed after June 1, 2017, that have been randomly **assigned** to a U.S. **Magistrate Judge**.” See G.O. 05-17 at 2. This is supported by Amended G.O. 02-19, Amended G.O. 01-15, and Local Rule MJR 13. Amended G.O. 02-19 states that the clerk for the **district** court “shall randomly **assign** to a **Magistrate Judge**, upon filing, cases in which plaintiff seeks review, under *§* 42 U.S.C. *§* 405(g), of the decision of the Commissioner of Social Security.” See Am. G.O. 02-19 at 1. Amended G.O. 01-15 and Local Rule MJR 13 contain comparable language. See Am. G.O. 01-15 at 2 (replacing “shall” with “may”); Local Rule MJR 13(c)

("The [district court] direct assigns a percentage of all civil cases to a magistrate judge."). Neither the general orders nor local rules contain a carveout for pro se plaintiffs. Thus, the district court "specially designate[d]" the magistrate judge in this case with authority to enter a final order. *See Ashker*, 968 F.3d at 982.

### C. Credit-as-True Rule

Moving to the merits of his appeal, Washington contends that the ALJ failed to properly consider his symptom testimony, his treating physician's assessment concerning his risk for heart attack, and other evidence in the record. He requests under the "credit-as-true" rule that we hold this evidence to be credible and remand to the Commissioner with instructions for an immediate award of benefits.

[13] [14] We review the district court's decision to remand "for further proceedings or for an immediate payment of benefits ... for abuse of discretion[.]" *Miskey v. Kijakazi*, 33 F.4th 565, 570 (9th Cir. 2022) (citation and internal quotation marks omitted). We find an abuse of discretion only when we are "convinced firmly that the reviewed decision lies beyond the pale of reasonable justification under the circumstances." *Id.* (citation and internal quotation marks omitted).

The district court concluded:

\*10 In sum, the evidence in this case does not conclusively establish Plaintiff is disabled under the Social Security disability regulations. Rather the evidence must still be weighed and evaluated properly. There are conflicts that exist in the evidence that only the ALJ may resolve. Remand for further proceedings is thus not only necessary but appropriate and [this court] therefore orders this matter is remanded for further administrative proceedings.

[15] [16] [17] [18] The credit-as-true rule has three steps. First, we ask whether the "ALJ has failed to provide legally sufficient reasons for rejecting evidence, whether claimant testimony or medical opinion." *Treichler v.*

*Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1100–01 (9th Cir. 2014) (citation and internal quotation marks omitted). Second, we determine "whether the record has been fully developed, whether there are outstanding issues that must be resolved before a determination of disability can be made, and whether further administrative proceedings would be useful." *Id.* at 1101 (citations and internal quotation marks omitted). And third, if "no outstanding issues remain and further proceedings would not be useful," only then do we have discretion to find the "relevant testimony credible as a matter of law[.]" *Id.* Even if all three steps are met, "[t]he decision whether to remand a case for additional evidence or simply to award benefits is in our discretion[.]" *Id.* at 1101–02 (first alteration in original) (citation and internal quotation marks omitted).

[19] Because the ALJ found no severe impairment prior to the date last insured, the ALJ did not proceed past step two in Washington's disability analysis. *See* 20 C.F.R. § 404.1520(c). But step two is merely "a de minimis screening device to dispose of groundless claims." *Edlund v. Massanari*, 253 F.3d 1152, 1158 (9th Cir. 2001) (citation and internal quotation marks omitted). Step two "is not meant to identify the impairments that should be taken into account when determining" a claimant's residual functional capacity ("RFC"), which proceeds next. *Buck v. Berryhill*, 869 F.3d 1040, 1048–49 (9th Cir. 2017); *see* 20 C.F.R. § 404.1520 (describing five-step sequential evaluation process). So, regardless of whether the evidence at issue is credited, outstanding issues must be resolved before a disability determination can be made. *See Treichler*, 775 F.3d at 1101.

[20] Further, the district court properly identified contradictory evidence in the record appropriate for remand. For instance, the district court noted the conflict between Washington's treating doctor and the consulting medical expert. *See Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002) ("The opinions of non-treating or non-examining physicians may ... serve as substantial evidence when the opinions are consistent with independent clinical findings or other evidence in the record."). While Washington's doctor determined that Washington was "unable to perform even sedentary work activity" on a consistent basis, the consulting medical expert concluded that Washington could perform

work-related activities with “certain exertional, postural, and environmental limitations.” The **district** court also explained that it could not determine whether testimony from a psychiatrist or the disability determination from the Department of Veterans Affairs (“VA”) proved Washington was disabled within the regulatory meaning. See *Luther v. Berryhill*, 891 F.3d 872, 876–77 (9th Cir. 2018) (discussing the elements that cause an ALJ to discount the VA determination); *Rounds v. Comm’r Soc. Sec. Admin.*, 807 F.3d 996, 1006 (9th Cir. 2015) (“[T]he ALJ is responsible for translating and incorporating clinical findings into a succinct RFC.”).<sup>8</sup> As a result, the **district** court did not abuse its discretion in remanding to the Commissioner to resolve the contested issues.

### III. Conclusion

\*11 In summary, Washington impliedly consented to **magistrate judge jurisdiction** when he was apprised of his rights and still litigated his case before the **magistrate judge**. The **district** court also did not err when it remanded this case to the Commissioner of Social Security for further factual proceedings rather than a payment of benefits.

### AFFIRMED.

W. Fletcher, J., concurring

I concur in Judge Clifton's opinion but write separately to encourage the **district** court, and other **district** courts in the same position, to revise consent forms for **magistrate judge jurisdiction**.

The relevant text of the consent form in this case is as follows:

This matter is **assigned** to United States **Magistrate Judge** Brian A. Tsuchida for all purposes, including trial, final entry of judgment, and direct review by the Ninth Circuit Court of Appeals.

This language is easily understood by lawyers. But appellant Victor Washington is not a lawyer. He contends that he did not understand that if he consented to the **jurisdiction** of the **magistrate judge** he could not ask a **district** judge to review what the **magistrate judge** did.

It would not be hard to add language to the form to make its meaning crystal-clear to pro se litigants like Mr. Washington. Such added language might read: “You have a right for a United States **District** Court Judge to hear your case. Consenting on this form means that you waive that right, and that **Magistrate Judge** Tsuchida will take the place of a United States **District** Judge in all respects. No **District** Judge will supervise or review the work of **Magistrate Judge** Tsuchida.”

### All Citations

--- F.4th ----, 2023 WL 4308948

### Footnotes

- \* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).
- 1 Available at <https://www.wawd.uscourts.gov/sites/wawd/files/06-01-17GOreConsenttoMagistrateJudges.pdf> (last accessed June 26, 2023).
- 2 G.O. 05-17 was amended in June 2017. Although the order remains substantively unchanged from the original, Amended G.O. 05-17 notes that it “supersedes” Local **Magistrate Judge** Rule 13 and Amended G.O. 01-15 insofar as those authorities “provide[ ] that failing to return the form will be deemed as non-consent[.]” See Am. G.O. 05-17 at 2, available at <https://www.wawd.uscourts.gov/sites/wawd/files/06-29-17AmendedGOreConsenttoMagistrateJudges.pdf> (last accessed June 26, 2023).

- 3 Available at *at* <https://www.wawd.uscourts.gov/sites/wawd/files/01-15-15AmendedGOinreConsentsandReferralsUSMagistrateJudges.pdf> (last accessed June 26, 2023).
- 4 Available at [https://www.wawd.uscourts.gov/sites/wawd/files/Amended% 20GO% 2002-19% 20in% 20re% 20Consent% 20and% 20Referrals% 20to% 20Magistrate% 20Judges.pdf](https://www.wawd.uscourts.gov/sites/wawd/files/Amended%20GO%202002-19%20in%20re%20Consent%20and%20Referrals%20to%20Magistrate%20Judges.pdf) (last accessed June 26, 2026).
- 5 Available at <https://www.wawd.uscourts.gov/sites/wawd/files/WAWDMJRules12.1.2018.pdf> (last accessed June 26, 2023).
- 6 Other circuit courts have also inferred implied consent from the parties' delayed objection. See, e.g., *Stevo v. Frasor*, 662 F.3d 880, 885 (7th Cir. 2011) (holding parties impliedly consented to reassignment to a **magistrate judge** where no party objected within 30 days after reassignment); *Chambless v. La.-Pac. Corp.*, 481 F.3d 1345, 1350–51 (11th Cir. 2007) (concluding "eight months of continual participation in pretrial proceedings justifies the inference of consent" where plaintiff "consented to the **magistrate judge's jurisdiction** over her original case").
- 7 We further held in *Anderson* that consent was not implied where the plaintiff refused **magistrate jurisdiction** twice and consented only after the **district** judge denied her motion to reject **magistrate jurisdiction**. *351 F.3d* at 916–919. Indeed, the plaintiff's "first post-Notice Form pleading" was "Plaintiffs Deny Magistrates [sic] **Jurisdiction**." *Id.* at 912–13 (emphasis added). Conversely, Washington did not contest the **district** court's initial finding of consent. Nor did he express "persistent resistance to the **magistrate judge's jurisdiction**" sufficient to show a lack of implied consent. See *id.* at 918.
- 8 Washington contends this case is analogous to *Garrison v. Colvin*, 759 F.3d 995 (9th Cir. 2014). In *Garrison*, we "found nothing that would create doubt as to Garrison's entitlement to the benefits she seeks" and held all elements of the credit-as-true rule were met. *Id.* at 1022–23. But Washington's administrative record is distinguishable as it contains several disagreements and inconsistencies. Therefore, the **district** court's decision did not "lie[ ] beyond the pale of reasonable justification under the circumstances." See *Miskey*, 33 F.4th at 570 (citation and internal quotation marks omitted).

**(For Use In Civil Cases With District Judge as Presider)**

UNITED STATES DISTRICT COURT

District of \_\_\_\_\_

Plaintiff

v.

Defendant

NOTICE, CONSENT, AND ORDER OF REFERENCE-  
EXERCISE OF JURISDICTION BY A UNITED STATES  
MAGISTRATE JUDGE

Case Number:

**NOTICE OF AVAILABILITY OF A UNITED STATES MAGISTRATE JUDGE  
TO EXERCISE JURISDICTION**

In accordance with the provisions of 28 U.S.C. 636(c) and Fed.R.Civ.P. 73, you are hereby notified that a United States magistrate judge of this district court is available to conduct any or all proceedings in this case including a jury or nonjury trial, and to order the entry of a final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

An appeal from a judgment entered by a magistrate judge shall be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of a district court.

**CONSENT TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE**

In accordance with the provisions of 28 U.S.C. 636(c) and Fed.R.Civ.P. 73, the parties in this case hereby voluntarily consent to have a United States magistrate judge conduct any and all further proceedings in the case, including the trial, order the entry of a final judgment, and conduct all post-judgment proceedings.

Signatures

Party Represented

Date

\_\_\_\_\_

\_\_\_\_\_

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**ORDER OF ASSIGNMENT**

IT IS HEREBY ORDERED that this case be assigned to \_\_\_\_\_  
United States Magistrate Judge, for all further proceedings and the entry of judgment in accordance with 28 U.S.C. 636(c), Fed.R.Civ.P. 73 and the foregoing consent of the parties. All further documents filed with the court are to carry the following case number \_\_\_\_\_.

Date

United States District Judge

**NOTE: RETURN THIS FORM, IN PAPER, TO THE CLERK OF THE COURT ONLY IF ALL PARTIES HAVE CONSENTED ON THIS FORM TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE.**

**PLEASE DO NOT FILE THIS FORM ELECTRONICALLY.**

## **Opt-In and Opt-Out Districts**

### **Opt-In**

Arizona (LRCiv 3.7, 72.1, 72.2)

Northern District California

Eastern District Washington

District of Idaho

### **Opt-Out**

Central District California\*

Eastern District California\*

Western District Washington

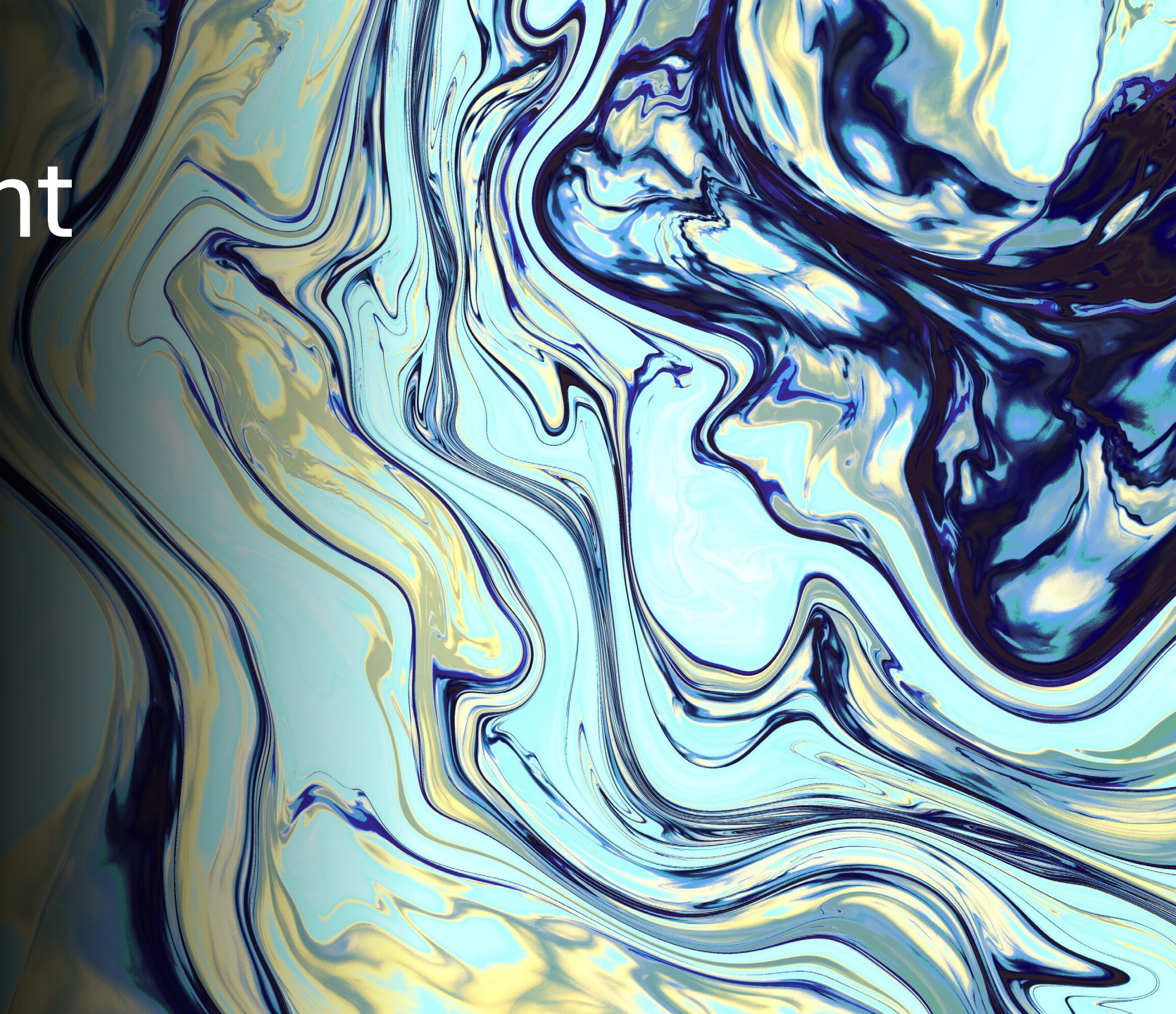
District of Nevada\*

District of Oregon\*

\*Recent Change\*

Eastern and Western District Washington; District of Nevada and District of Oregon – U.S. gives “general consent” to MJs for Social Security cases.

To Consent  
or Not to  
Consent



# Panel Members

- U.S. District Court Judges  
John Hinderaker and Angela Martinez
- U.S. Magistrate Judges  
Eric Markovich and Lynnette Kimmins
- Joe Kroeger, Partner, Snell & Wilmer
- Alexandra Tracy-Ramirez, Partner,  
Farhang & Medcoff
- Cole Hernandez, AUSA, U.S. Attorney's Office  
(retired)
- Clerk's Office Neftali Cota and Dora Valenzuela

# Consent Process

- 25% of General Civil Cases referred to Magistrate Judges – resolved by consent or R&R.
- 100% of Specific Cases referred to MJs – resolved by consent or R&R.
  - Writ of Habeas Corpus (28 U.S.C. 2241, 2254).
  - Social Security Disability Appeals.



## District of Arizona's Consent Opt-In

- Local Rules Civil  
Procedure  
LRCIV 3.7, 72.1, 72.2

## LRCIV 3.7

- Random Assignment to DJ & MJ (25% of cases to MJ).
- Preliminary Injunction DJ only.
- When case assigned to MJ, each party must execute consent to MJ or elect to DJ within 14 days (consent to MJ requires consent of all parties).
- Writs of Habeas 18 U.S.C. 2241 and 2254 assigned to DJ but 100% referred to MJ.

## LRCiv 72.1

- Civil Cases - allows for referral to MJ for pretrial conferences, hearing and determination of any or all pretrial matters in accordance with 28 U.S.C. 636(b)(1).
- MJ shall file a written R&R for final dispositions.

## LRCiv 72.2 – Other Duties of MJs

Assist DJs in pretrial discovery proceedings.

Conduct necessary hearings, including evidentiary hearings or other proceedings in cases referred by DJ and under MJ authority conferred by 28 U.S.C. 636 and LRs.

## LRCiv 72.2 – Other Duties of MJs

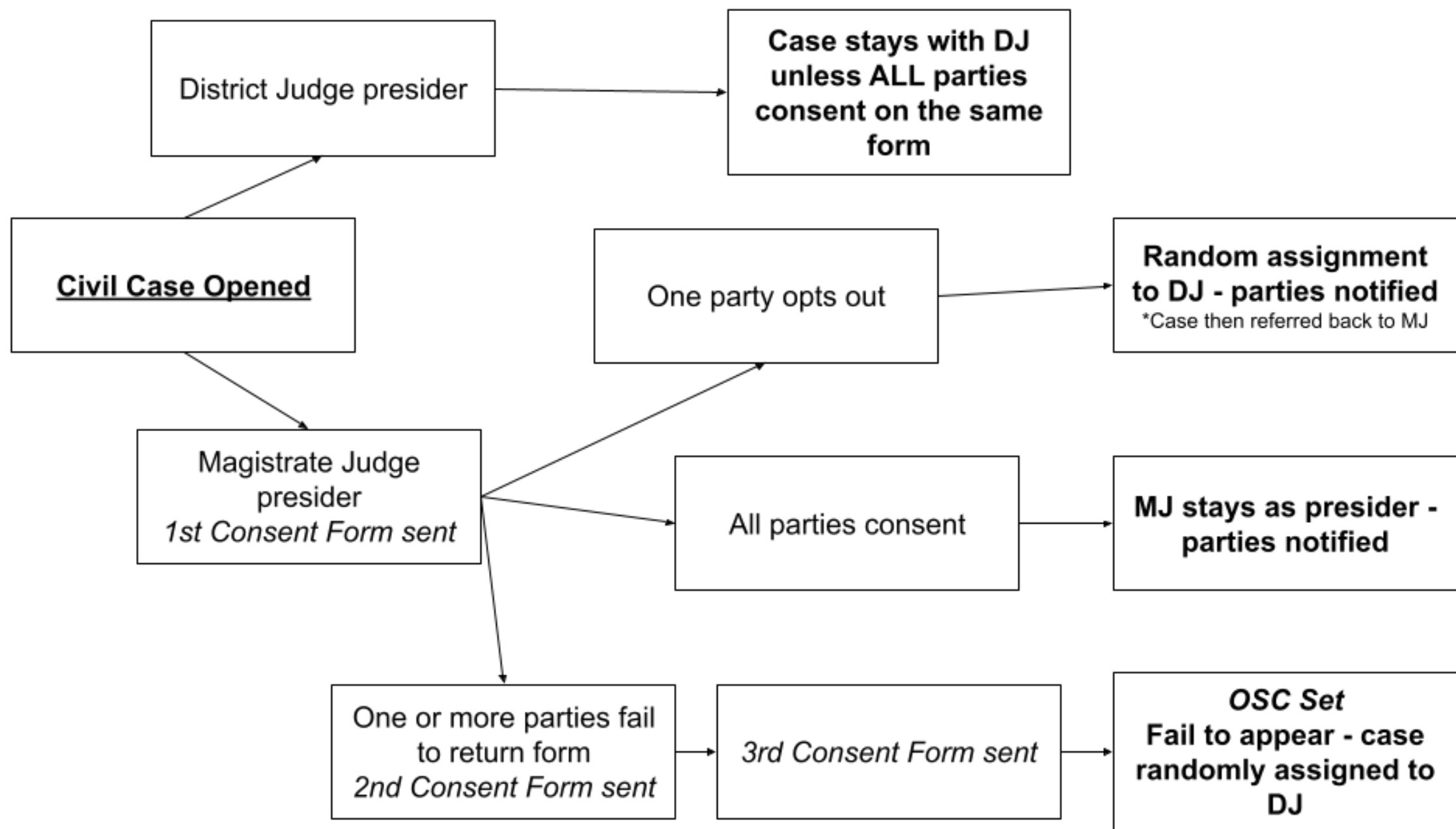
Conduct pretrial conferences, settlement conferences & related pretrial proceedings.

Additional duties as may be referred by DJ per 28 U.S.C. 636(b).

Submit R&Rs on Social Security Disability Cases.

Conduct voir dire and select juries with consent.

Hear/determine all motions, conduct trial and enter findings of fact, conclusions of law and final judgments with consent.



# Opt-In and Opt-Out Districts

- Opt-In

Arizona

Northern District California

Eastern District Washington

District of Idaho

- Opt-Out

Central District California\*

Eastern District California\*

Western District Washington

District of Nevada\*

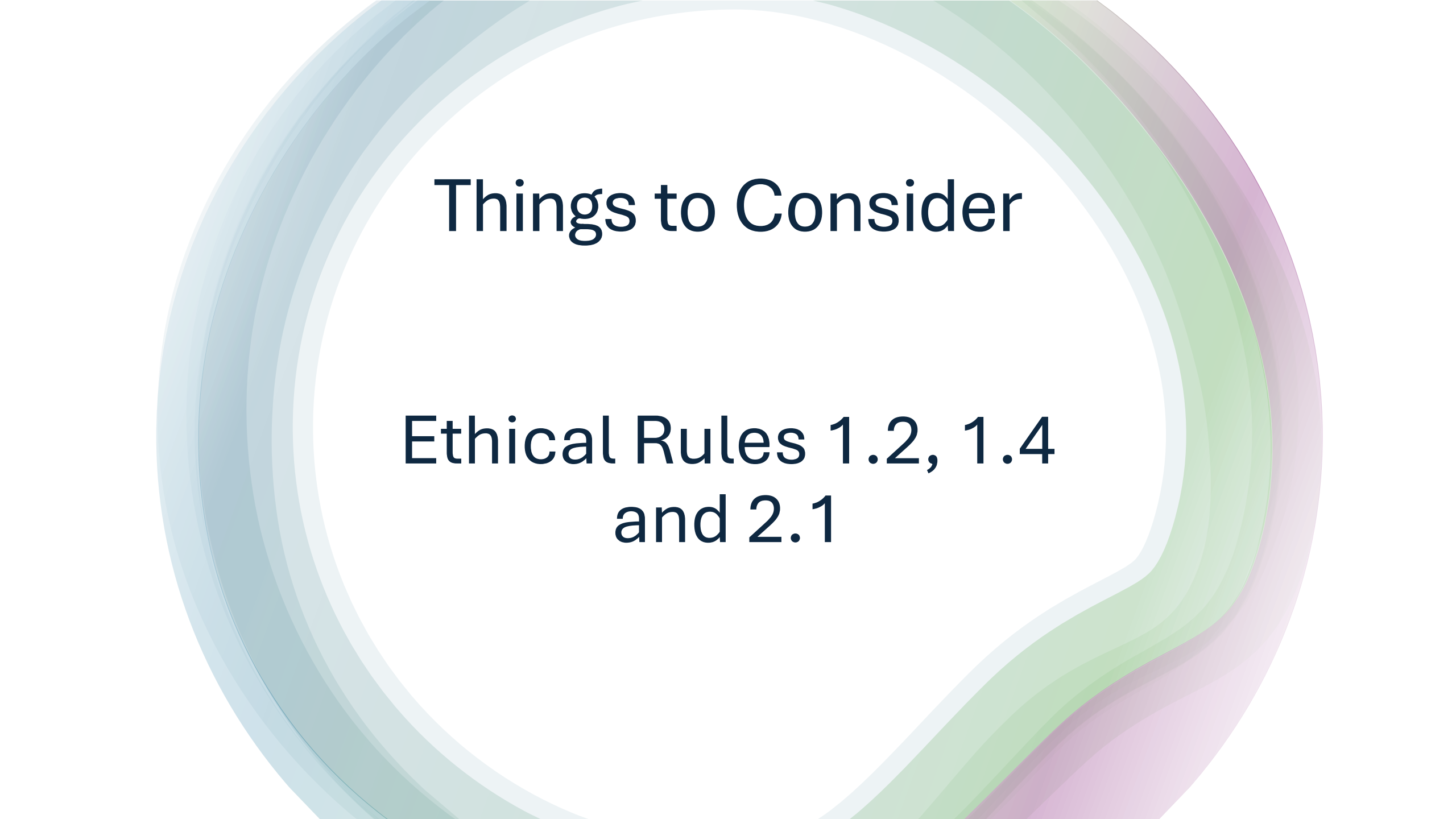
District of Oregon\*

\*Recent Change\*

# Experiences with Consent

Panel Members?

Other Civil Litigators in  
Attendance?



# Things to Consider

Ethical Rules 1.2, 1.4  
and 2.1

## **ER 1.2. Scope of Representation and Allocation of Authority between Client and Lawyer**

**(a)** Subject to paragraphs (b), (c), and (d), and (e), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by ER 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter pursuant to applicable law.

## **ER 1.4. Communication**

**(a)** A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in ER 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information;

\* \* \*

**(b)** A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

## **ER 2.1. Advisor**

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.



Things to Consider

Magistrate Judges'  
Experience . . . Bios

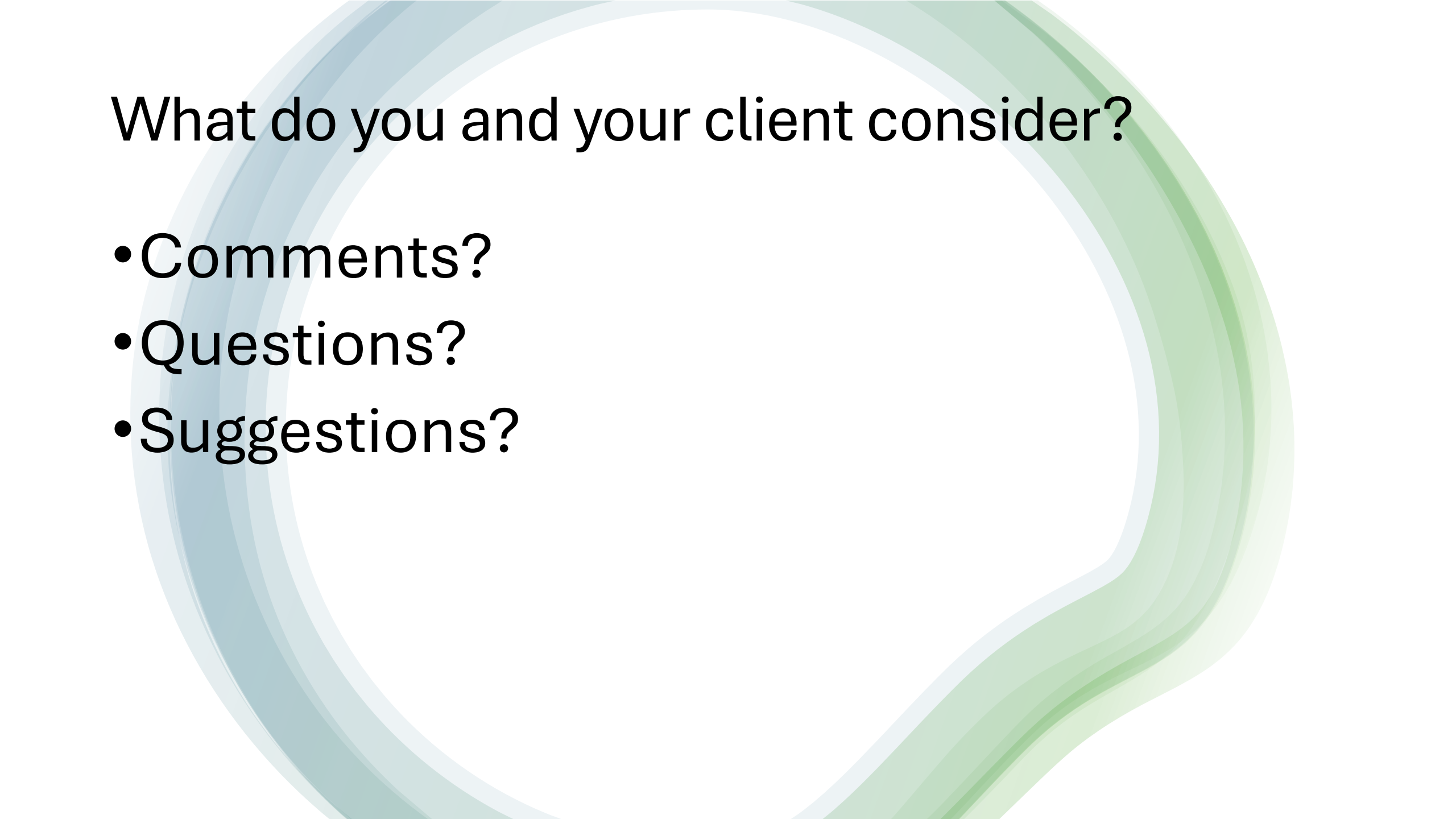
# Magistrate Judge Experience

- MJs were litigators and trial attorneys, both civil and criminal.
- Numerous jury trials and settlement conferences.
- Settlement conferences – Phoenix & Tucson – 2-4 per month.
- Many MJs have criminal and civil experience with trials, motion practice, discovery, and settlement conferences, both as attorneys and judges.
- MJs civil experience related to plaintiff and defense.



## Typical federal cases include:

- Products Liability
- Breach of Contract
- Employment Discrimination (Race, Sex)
- Title IX (Sex Discrimination in Education)
- Americans with Disabilities Act
- Prisoner Civil Rights
- Fair Housing Act
- Federal Odometer Act
- Federal Tort Claims Act (Negligence)
- Fair Credit Reporting Act; and
- Telephone Consumer Protection Act
- Fair Labor Standards Act
- Trademark and/or Trade Secrets



# What do you and your client consider?

- Comments?
- Questions?
- Suggestions?