

United States District Court Northern District of Mississippi

STANDING ORDER

The District Judges of the Northern District of Mississippi hereby establish the following procedures for practice before this court. The provisions of this Order are supplemental to the *Uniform Local Rules of the United States District Courts for the Northern and Southern Districts of Mississippi* and shall govern both civil and criminal cases, to the extent applicable, in this district. If any provision of this Order conflicts with any *Uniform Local Rule* or Federal Rule of Civil or Criminal Procedure, then the latter Rules govern. This Order shall be printed and distributed by the clerk of this court to the members of the bar. Attorneys practicing before this court are charged with the responsibility of knowing the provisions of this Order, and failure to comply may result in the imposition of appropriate sanctions.

I. CRIMINAL PROCEEDINGS

A. Regulation of Plea Agreement Procedures. The plea agreement in all cases must comply with the steps outlined below.¹

1. Written Plea Agreement and Memorandum. The attorney for the government and the attorney for the defendant (or the defendant when acting pro se) must first execute a memorandum setting out in full the terms of the proposed plea agreement in the form attached. In addition, the plea agreement must be read and signed by the defendant, certifying that he understands and approves its contents and expressly authorizing the United States Probation Service to conduct a presentence investigation prior to the time the plea is proposed to be offered in open court. The plea agreement must be filed by government counsel as a public record with the clerk of the court at the time the agreement is consummated. Provided, however, that the court, in its discretion, and after an *in camera* hearing, may find that such exceptional circumstances exist as to require that the plea agreement not be publicly disclosed until it is presented in open court.

¹ This court subscribes to the sentiments expressed by the United States Court of Appeals, Fifth Circuit, in *United States v. Herman*, 544 F.2d 791, 796 (5th Cir. 1977):

Plea bargaining is a practice many have criticized and few have enthusiastically endorsed.

Nevertheless, plea bargaining has become an accepted fact of life. . . .The legal battleground [as to whether or not plea bargaining is at all permissible] has thus shifted from the propriety of plea bargaining to how best to implement and oversee the process. Plea bargaining is a tool of conciliation. It must not be a chisel of deceit or a hammered purchase and sale. The end result must come as an open covenant, openly arrived at with judicial oversight. A legal plea bargain is made in the sunshine before the penal bars darken.

2. Presentence Investigation and Reports. The clerk of the court shall promptly advise the Probation Service of the proposed plea agreement and request it to commence presentence investigation without delay. The Probation Service shall in no way be influenced by the contents of any plea bargain but shall make its independent investigation and recommendations to the court. Upon completion of its presentence investigation, the Probation Service shall submit the presentence report to the sentencing judge and attach to it a copy of the proposed plea agreement as fully executed by all parties.

3. Notice of Hearing. Upon advice from the sentencing judge, the clerk of court shall notify the attorney for the government, attorney for the defendant (or the defendant if acting pro se), and the Probation Service as to the time and place for hearing of any plea based upon agreement.

4. Acceptance or Rejection of Plea. At the time the plea of guilty or *nolo contendere* is tendered in open court, the court may accept the plea, in which event sentence will ordinarily be imposed without delay, or the court may defer decision as to the acceptance or rejection of the plea to a date certain, or the court may at the hearing reject the plea agreement either at that time or subsequently. In the event the plea is rejected, the defendant shall be granted an opportunity to withdraw the plea.

B. Representation of Indigents.

1. Adequate Representation. Pursuant to the provisions of the CRIMINAL JUSTICE ACT OF 1964 (19 U.S.C.A. § 3006A) as amended, the judges of the United States District Court for the Northern District of Mississippi have adopted the following plan for the adequate representation of any person otherwise financially unable to obtain adequate representation:

(A) who is charged with a felony or misdemeanor (other than a petty offense as defined in 18 U.S.C. § 19), or with juvenile delinquency by the commission of an act which, if committed by an adult, would be such a felony or misdemeanor, or with a violation of probation, or

(B) who is under arrest when such representation is required by law, or

(C) who is subject to revocation of parole, in custody as a material witness, or seeking collateral relief, subject to the conditions of 18 U.S.C. § 3006A(g) as amended, or

(D) who is a person for whom the Sixth Amendment to the Constitution requires the appointment of counsel, or for whom, in a case in which he faces loss of liberty, any federal law requires the appointment of counsel. Representation shall include counsel and investigative, expert, and other services necessary for an adequate defense.

Services performed by attorneys pursuant to this plan are done primarily in their capacity as officers of the court, and the compensation provided by the CRIMINAL JUSTICE ACT OF 1964, as amended, does not diminish this professional responsibility.

2. Use of Private Attorneys; Creation of Panels. A separate panel of attorneys shall be established for each division of the district court and shall consist of attorneys who are qualified and competent to provide an adequate defense for indigent persons who are covered by this plan. Members of each panel shall be selected by the clerk, under the direction of the district judges, from the members of the bar who reside within the division for which the panel is chosen. The panels will be submitted to the district judges for their approval. The district judges may at any time make deletions from and additions thereto. The panels shall be reviewed and revised by the clerk at least annually, to the end that there shall be sufficient names on the lists to provide adequate representation to entitled defendants with fair distribution of the work among qualified members of the bar. Each such revised panel will be submitted to the district judges for their approval.

3. Determination of Need for Counsel

(A) When appearing before a magistrate judge or district judge in a criminal case. In every criminal case in which the party is charged with a felony or misdemeanor (other than a petty offense), or with juvenile delinquency by the commission of an act which, if committed by an adult, would be such a felony or misdemeanor, or with a violation of probation, and appears without counsel, the judicial officer² before whom the party first appears shall advise the party that he has the right to be represented by counsel throughout the case and that counsel will be appointed to represent him if he so desires and if he is financially unable to obtain counsel.

Whenever the party states that he is financially unable to obtain counsel and desires the appointment of counsel, it shall be the duty of the judicial officer before whom the matter is pending to inquire into and to make a finding as to whether the defendant is financially able to obtain counsel. The judicial officer shall appoint separate counsel for defendants having interests that cannot properly be represented by the same counsel, or when other good cause is shown. All statements made by a defendant in such an inquiry shall be either (a) by affidavit sworn to before a district judge, a magistrate judge, a court clerk, or his deputy, or a notary public, or (b) under oath in open court before a magistrate judge or a district judge.

(B) Selection of Attorney. At the time of a defendant's first appearance before a judicial officer, the presiding judicial officer shall determine whether the defendant requires appointment of counsel. If so, the judicial officer shall choose an attorney from the panel, giving due regard to the residence of the defendant, the need for immediate hearing under the BAIL REFORM ACT, and any other relevant factor which bears on adequate representation of the defendant.

(C) Counsel for Person Arrested When Representation is Required by Law. Where a person arrested has been represented by counsel before his presentation before a judicial officer under circumstances where such representation is required by law, his counsel may subsequently apply to the magistrate judge or district judge for approval of compensation. If the magistrate judge

²The term *judicial officer* includes district judges and or magistrate judges for purposes of this order.

or district judge finds such person has been and is then financially unable to obtain an adequate defense, and that such representation was required by law, compensation will be made retroactive to cover out-of-court time expended by the attorney during the arrest period, and in addition cover compensation for services rendered from the time of his initial presentation before a magistrate judge, or district judge, as the case may be. The magistrate judge or district judge may, only if he deems it proper in a particular case, make retroactive the appointment of counsel where such attorney continues to represent such party in criminal proceedings in this court. If the person represented is unavailable at the time counsel applies to the court for approval of compensation for services rendered during the arrest period, the attorney may nevertheless submit his claim to the district judge for approval based on the arrestee's financial condition and a showing that such representation was required by law.

(D) Other Appointments as of Right. The magistrate judge or district judge may proceed as under subparagraph (3) above to make an appointment of counsel for a person (1) for whom the Sixth Amendment to the Constitution requires the appointment of counsel, or (2) for whom, in a case in which he faces loss of liberty, any federal law requires the appointment of counsel.

(E) Discretionary Appointments. Any person subject to revocation of parole, in custody as a material witness, or seeking relief under 28 U.S.C. §§ 2241, 2254, or 2255, or 18 U.S.C. § 4245, may apply to the magistrate judge or district judge to be furnished representation based on a showing (1) that the interests of justice so require and (2) that such person is financially unable to obtain representation. Such application shall be verified and in such written form as is prescribed by the Judicial Conference of the United States. If the party applicant is not before the court, the magistrate judge or district judge may, without requiring the personal appearance of the party for such purpose, act on the basis of the form alone, or the form as supplemented by such information as may be made available by an officer or custodian or other responsible officer, provided that such information is also made available to the party. The magistrate judge or district judge may approve such representation on a determination that the interests of justice so require and that such person is financially unable to obtain representation.

4. Appointment of Counsel

(A) Appointment by a Judicial Officer. In every criminal case in which a party is charged with a felony or misdemeanor other than a petty offense, or with violation of probation, and appears without counsel before a judicial officer, it is the duty of the judicial officer not only to advise the party of his right to counsel before the judicial officer and throughout the case, but also promptly to appoint counsel to represent the party if the judicial officer finds that the party is financially unable to obtain an attorney, unless the party waives his right to be represented by counsel.

Counsel appointed by a judicial officer shall, unless excused by order of court, continue to act for the party throughout the proceedings in this court. In the event that a criminal defendant is convicted following trial, counsel appointed hereunder shall advise the defendant of his right of appeal and of his right to counsel on appeal. If requested to do so by the defendant in a criminal case, counsel shall file a timely Notice of Appeal, and he shall continue to represent the defendant

unless, or until, he is relieved by the district court or the court of appeals. If counsel appointed by a judicial officer in any proceeding wishes to be relieved, he shall communicate his wish to the judicial officer before whom the case is then pending.

The judicial officer before whom a case is pending may, in the interest of justice, substitute one appointed counsel for another at any stage of the proceedings before him.

If at any time after the appointment of counsel, the judicial officer finds that the party is financially able to obtain counsel or make partial payment for the representation, he may terminate the appointment of counsel or recommend to the court that any funds available to the party be ordered paid as provided in 18 U.S.C. § 3006A(f).

If at any stage of the trial proceedings, the judicial officer finds that the party is financially unable to pay counsel whom he had retained or to obtain other counsel, the judicial officer may make an original appointment of counsel in accordance with the general procedure set forth in subparagraph I.B.3., which counsel may claim compensation for services rendered after such appointment. Ordinarily the same attorney *shall not* be appointed.

A claim for compensation and reimbursement of expenses of counsel appointed in a case tried before the magistrate judge shall be made to the magistrate judge on the prescribed CJA form. The magistrate judge shall examine each claim, and make a recommendation to the district court as to the amount which the district court should fix in accordance with the statute and this Order, unless the matter is concluded before him, in which case the magistrate judge himself may approve the claim.

(B) Redetermination of Need. If a party having a right to counsel (*i.e.*, where the appointment is not a matter of discretion) is not represented by counsel before the judicial officer and waives his right to have appointed counsel, the judicial officer shall present to the party a written waiver of rights to have appointed counsel. If such party executes the written waiver, the judicial officer shall certify the fact in the record of the proceedings. If such party waives the right to have appointed counsel but refuses to sign the waiver form, the judicial officer shall certify that fact in the record of proceeding. If such party admits or the judicial officer finds that such party is financially able to obtain counsel but declines to do so, the judicial officer shall certify that fact in the record of proceedings.

No appointed counsel may request or accept any payment or promise of payment for assisting in the representation of a defendant unless such payment is first approved by order of the district court.

If at any time after his appointment counsel should have reason to believe that a party is financially able to obtain counsel or to make partial payment for counsel, he shall advise the district judge. The district judge will then take appropriate action, which may include permitting assigned counsel to continue to represent the party with part or all of the cost of representation defrayed by

such defendant. In such event, the amount so paid or payable by the party shall be considered by the district judge in determining the total compensation to be allowed to such attorney.

5. Compensation. Fees and expenses shall be determined in accordance with the provisions of the CRIMINAL JUSTICE ACT, 18 U.S.C. § 3006A.

6. Forms. The uniform appointment and voucher forms approved by the Administrative Office of the United States Courts, and such other forms as may be from time to time approved by the court, shall be used in the implementation of this plan.

C. Confidentiality of Presentence Reports. Presentence reports prepared for the judges and magistrate judges of this district are considered confidential court documents and remain the property of the court at all times. Copies of the presentence report will be disclosed, pursuant to FED. R. CRIM. P. 32, to the defendant, defense counsel of record, and the government prior to sentencing, but said reports must be returned to the probation officer immediately after disclosure. Reproduction or recording of the presentence report and its contents or any portion thereof by any method is prohibited.

The court will allow the probation office to release copies of the presentence report to the U.S. Bureau of Prisons for designation, classification, and treatment purposes and to the U.S. Parole Commission as provided in 18 U.S.C. § 4025(e). However, said reports are released to the Bureau and to the Commission in the form of a confidential bailment. Such reports released to the Bureau or the Commission will continue to be treated as confidential court documents, not to be reproduced by either agency, and to be considered by each agency as being on loan from the court. Such documents must be returned by the Bureau or the Commission after these documents have been used by these agencies to serve their statutory functions. The provisions of the Rule will be clearly stated on the face of each presentence report provided by the Bureau of Prisons or the Parole Commission.

II. PROCEEDINGS BEFORE MAGISTRATE JUDGES

A. Powers and Duties of Magistrate Judges. All United States Magistrate Judges serving within the territorial jurisdiction of the Northern District of Mississippi shall have within such territorial jurisdiction all the powers and duties granted them by the provisions of 28 U.S.C. § 636.

B. Matters Assigned to Magistrate Judges. The provisions of UNIFORM LOCAL RULE 73.1(D) do not apply to cases originally assigned to a Magistrate Judge for disposition. Consent orders in such cases shall be presented to the Chief Judge for his signature.

C. Matters Referred to Magistrate Judges. The full-time magistrate judges serving within the territorial jurisdiction of the Northern District of Mississippi are referred the following duties, and shall have all powers necessary to perform such additional duties:

1. Prisoner Petitions.

(A) Reviewing petitions of state prisoners seeking post conviction relief from state custody under 28 U.S.C. § 2254, and other petitions of state prisoners seeking to attack the fact or duration of their state confinement; issuing orders to show cause and other necessary orders or writs to obtain a complete record; conducting evidentiary and other hearings and oral arguments; performing all other duties authorized to be performed by a magistrate judge under the RULES GOVERNING SECTION 2254 CASES IN THE UNITED STATES DISTRICT COURTS; and preparing and submitting to the district judge to whom the case is assigned a report and recommendations as to the appropriate disposition of the petition.

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

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

(D) Conducting periodic reviews of proceedings to ensure compliance with previous orders of the court regarding conditions of confinement.

(E) Reviewing prisoner correspondence.

2. Civil Proceedings.

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

(B) Conducting preliminary and final pretrial conferences, and the formulation or preparation of pretrial orders.

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

(D) Examining judgment debtors under FED. R. CIV. P. 69.

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

(F) Reviewing default judgments and conducting inquests on damages in cases involving default judgments.

(G) Appointing persons to serve process pursuant to FED. R. CIV. P. 4(c), except that, as to *in rem* process, such appointments shall be made only when the United States Marshal, or his deputies, are not immediately available to execute such process and the individual appointed has been approved by the United States Marshal for such purpose.

3. Administrative Proceedings. Reviewing the record of administrative proceedings in suits for judicial review of final decisions of administrative agencies and submitting to the district judge to whom the case is assigned a report and recommendation.

4. Miscellaneous Duties.

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

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

(C) Exoneration of forfeiture of bonds and bail.

(D) Taking pleas and sentencing in all cases of minor offenses as defined in 18 U.S.C. § 3401, other than petty offenses, transferred to the Northern District of Mississippi under the provisions of FED. R. CRIM. P. 20.

III. PRISONER PETITIONS FOR RELIEF FROM CUSTODY

A. Scope of Order; Place of Filing. This order deals with all kinds of requests for relief from custody, regardless of the designation given the request by the prisoner, including, but not limited to, letters written to the court or to one of the district judges of the court or to a magistrate judge. Regardless of the nature of the request, the same is referred to herein as a *petition* and such designation shall be all inclusive.

Actions which involve federal convictions shall be filed at the Western Division, where the criminal files are maintained. Actions which attack a state conviction or procedure within the territorial jurisdiction of this court shall be filed at the division point wherein is situated the county in which the conviction or procedure occurred. All other actions shall be assigned to the division where the action accrued.

B. Processing of Petitions.

1. If the petition for relief from custody is accompanied by the required filing fee or an affidavit of poverty, the clerk shall forthwith file the same at the appropriate division point.

2. If the petition is not accompanied by a filing fee or an affidavit of poverty, the clerk shall notify the petitioner or his attorney by mail that the petition cannot be filed without the filing fee or a legally sufficient affidavit of poverty. The clerk shall enclose with the notice to the petitioner an

affidavit of poverty for the petitioner's use, should the petitioner be unable to pay the fee or give security therefor. If the petitioner remits the filing fee or an affidavit of poverty, the clerk shall file the petition.

C. Procedure After Filing and Assignment of Action. When the petition is filed, the clerk shall:

1. Draw a district judge for the action if one has not already been drawn, provided, however, where the subject matter of the action pertains to a case already tried by a district judge of this court, the action shall be assigned automatically to such district judge;

2. Assign the case to a full-time magistrate judge for review. Provided, however, that when a motion for relief under 28 U.S.C. § 2255 attacks a conviction and/or sentence resulting from a trial or other proceeding presided over by an active district judge or a senior district judge accepting such petitions, the clerk shall not assign the action to a full-time magistrate judge. After review of the motion the district judge to whom it is assigned may refer it to a full-time magistrate judge, who shall then proceed as provided for other cases governed by this rule.

D. Procedure After Assignment to a Full-Time Magistrate Judge. The full-time magistrate judge shall forthwith review the petition and other documents and papers pertinent to the case and take action as follows:

1. If the magistrate judge, after considering the petition and other papers in the files, determines that the petition does not present a question of which the court should take jurisdiction, or that, taking all facts properly pleaded in the petition and supporting papers as being true, the petitioner is not entitled to any relief at the hands of the court, the magistrate judge shall prepare and file his report and recommendations, accompanied by a proposed form or order dismissing the case.

2. If the magistrate judge shall find the petition legally sufficient, or if the district judge shall so order, the magistrate judge shall prepare and sign an appropriate order requiring the respondent to answer the petition, or to show cause why the petition should not be granted.

3. If the magistrate judge concludes that the petition may be subject to dismissal under the provision of Rule 9, RULES GOVERNING SECTION 2254 CASES IN THE UNITED STATES DISTRICT COURTS, or Rule 9, RULES GOVERNING SECTION 2255 CASES IN THE UNITED STATES DISTRICT COURTS, he may call upon the petitioner to show why the petition should not be dismissed and may fix the time within which the petitioner may make such showing.

4. After the respondent has complied with the order to answer or show cause and the file contains all the information necessary for consideration of the case, and such briefs or memoranda as have been required of the parties by the magistrate judge, the magistrate judge shall determine whether or not an evidentiary hearing is required.

(A) If the magistrate judge determines that an evidentiary hearing is not required, he shall prepare and file his report and recommendations, accompanied by a proposed form of order to be entered thereon.

(B) If the magistrate judge determines that an evidentiary hearing is required, he shall conduct such a hearing without the necessity of further reference. The magistrate judge shall give the parties such notice of the time and place of the hearing as the circumstances of the case require. After the evidentiary hearing has been concluded and after the submission of such post-hearing briefs or memoranda as the magistrate judge may require, the magistrate judge shall prepare and file his report and recommendations setting forth his proposed findings of fact and recommendations for disposition of the case.

5. In addition to the duties specifically imposed upon the magistrate judge by this rule, the magistrate judge shall, whenever necessary for the orderly processing of the case, perform any other duty which a magistrate judge is authorized to perform under the provisions of the RULES GOVERNING SECTION 2254 CASES IN THE UNITED STATES DISTRICT COURTS or the RULES GOVERNING SECTION 2255 CASES IN THE UNITED STATES DISTRICT COURTS, including issuance of writs of habeas corpus *ad testificandum*.

E. Appointment of Counsel.

1. Any district judge or full-time magistrate judge of the court, at any time, may furnish representation pursuant to subparagraph I.B.3.(E) for the appointment of counsel to represent indigent defendants in actions pending before the court, to any person seeking relief under 28 U.S.C. §§ 2241, 2254, or 2255.

2. If an evidentiary hearing is to be held and the petitioner is not represented by counsel, counsel shall be appointed for the petitioner if the petitioner is financially unable to employ counsel, unless the petitioner acknowledges in writing that he understands his right to appointment of counsel without cost to himself but nevertheless wishes to waive his right to counsel and to proceed pro se. A petitioner who has been granted leave to proceed *in forma pauperis* shall be presumed to be financially unable to employ counsel.

F. The Petition

1. Petitions Seeking Relief from State Custody.

(A) **Form of Petition.** The petition shall be in the form annexed to this rule as Form P-1 and shall otherwise conform with the requirements of the RULES GOVERNING SECTION 2254 CASES IN THE UNITED STATES DISTRICT COURTS. If the petitioner wishes to submit citations of authority, a separate memorandum of authorities may be filed. Blank petitions in the prescribed form shall be made available without charge by the Clerk of the Court to applicants upon request. The petition shall specify all the grounds for relief which are available to the petitioner and of which he has or by the exercise of reasonable diligence should have knowledge, and the petitioner shall be deemed to have waived all such grounds not specified. The petition shall set forth in summary form the facts supporting each of the grounds thus specified. It shall state the relief requested. The petition shall be typewritten or legibly handwritten and shall be signed and sworn to by the petitioner, and shall be signed by the petitioner's attorney if the petitioner is represented by counsel.

(B) **Petition to be Directed to Judgments of One Court Only.** A petition shall be limited to the assertion of a claim for relief against the judgment or judgments of a single state court, and it shall assert no other claims for relief against the respondent. If a petitioner desires to attack the validity of the judgments of two or more state courts, he shall do so by separate petitions.

(C) **Return of Insufficient Petition.** If a petition received by the Clerk of the Court does not comply with the requirements of this rule, it shall be returned by the clerk to the petitioner with a statement of the reason for its return, and the clerk shall under the same cover furnish the petitioner with four copies of Form P-1. The clerk shall retain one copy of any such insufficient petition returned to a petitioner.

2. Petitions or Motions Seeking Relief from Federal Custody under 28 U.S.C. § 2255.

(A) **Form of Motion.** The motion shall be in the form annexed to this rule as Form P-2, and shall otherwise conform with the requirements of the RULES GOVERNING SECTION 2255 CASES IN THE UNITED STATES DISTRICT COURTS. If the petitioner wishes to submit citations of authority, a separate memorandum of authorities may be filed. Blank petitions in the prescribed form shall be made available without charge by the Clerk of the Court to applicants upon request. The petition shall specify all the grounds for relief which are available to the petitioner and of which he has or by the exercise of reasonable diligence should have knowledge, and the petitioner shall be deemed to have waived all such grounds not specified. The motion shall set forth in summary form the facts supporting each of the grounds thus specified. It shall state the relief requested. The motion shall be typewritten or legibly handwritten and shall be signed and sworn to by the petitioner, and shall be signed by the petitioner's attorney if the petitioner is represented by counsel.

(B) **Motion to be Directed to One Judgment Only.** Any such motion shall be limited to the assertion of a claim for relief against only one judgment of this court. If a petitioner desires to attack the validity of the judgments of this court, he shall do so by separate motions.

(C) **Return of Insufficient Motion.** If a motion received by the Clerk of the Court does not comply with the requirements of this rule as to form, it shall be returned by the clerk to the petitioner with an order stating the reason for its return and requiring amendment, and the clerk shall under the same cover furnish the petitioner with four copies of Form P-2. The clerk shall retain one copy of any such insufficient motion returned to a petitioner.

G. Correction or Reduction of Sentence. Petitions or other requests for correction or reduction of sentence pursuant to FED. R. CRIM. P. 35 are not within the scope of this rule.

H. Applications for Bail *Pendente Lite*. A full-time magistrate judge shall hear and determine all applications for bail *pendente lite* in connection with petitions assigned or referred to him for review. The magistrate judge may require the parties to file briefs and/or supplemental pleadings dealing with the questions raised by any such application for bail, and shall hold all evidentiary hearings thereon. If, in the opinion of the magistrate judge, the application for bail is insufficient on its face the magistrate judge shall enter an order denying the application without evidentiary hearing.

IV. CIVIL ACTION CHALLENGING CONDITIONS OF CONFINEMENT

A. Initial Processing. Complaints of prisoners challenging conditions of confinement under 42 U.S.C. § 1983 and related statutes shall be processed initially as provided in this order, to the extent that such procedure is applicable to civil actions challenging conditions, as distinguished from the fact or duration, of confinement.

B. Procedure After Assignment to a Full-time Magistrate Judge. The full-time magistrate judge shall promptly review the complaint and other documents and papers pertinent to the case and take action as follows:

1. If the plaintiff has submitted the documents which satisfy the provisions of 28 U.S.C. § 1915(a), the magistrate judge shall enter an order granting leave to proceed *in forma pauperis* in accordance with the provisions of U.S.C. § 1915(b).

2. Thereafter, if the magistrate judge concludes that the case should be dismissed under the provisions of U.S.C. § 1915(e)(2), he shall prepare a report and recommendations recommending dismissal of the action as to one or more defendants.

3. If the complaint is not to be dismissed as to all defendants after the magistrate judge's initial review, the magistrate judge shall enter an order directing that process issue for the remaining defendants named in the complaint and directing that process be served upon them. The action shall thereafter stand referred to the magistrate judge for all purposes, including evidentiary hearings and trial, unless trial by jury is demanded. After trial before the magistrate judge, the magistrate judge shall prepare and file his proposed findings of fact and recommendations for disposition of the action.

4. If trial by jury is demanded, the action shall stand referred to the magistrate judge for all purposes other than trial on the merits. The magistrate judge shall enter a scheduling order and conduct all necessary hearings, including evidentiary hearings, and oral arguments on motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action, and shall file his reports and recommendations thereon as in other cases. The magistrate judge shall hear and determine all other motions and may conduct one or more pretrial conferences.

5. If at any stage of the proceedings the magistrate judge concludes that any pretrial motion or other matters, or the entire action, can be more efficiently or expeditiously disposed of by the district judge without the intervention of the magistrate judge, the magistrate judge shall so report to the district judge, either orally or in writing. The district judge may then, at his discretion, recall the reference to the magistrate judge in whole or in part.

6. The clerk shall inquire of the parties whether they will consent to trial of the action and entry of final judgment by the magistrate judge. If all parties consent thereto in writing, the magistrate

judge shall thereafter, notwithstanding any other provisions of this rule, proceed as contemplated by 28 U.S.C. § 636(c) and FED. R. CIV. P. 73.

C. The Complaint.

1. **Form of Complaint.** The complaint shall be in the form annexed to this order as Form P-3. Blank complaints in the prescribed form shall be made available without charge by the Clerk of the Court to applicants upon request. The complaint shall clearly and concisely set out the facts upon which the plaintiff bases his claims. It shall state the relief requested. The complaint shall be typewritten or legibly handwritten and shall be signed and sworn to by the plaintiff. It shall also be signed by the plaintiff's attorney, if the plaintiff is represented by counsel.

2. **Insufficient Complaints.** If a complaint does not comply with the requirements of this rule, the plaintiff shall be given an opportunity to remedy any defect. The court shall at the same time furnish the plaintiff with four copies of Form P-3.

D. Penitentiary Grievance Procedures. In all civil actions hereafter filed in this court by an inmate under 42 U.S.C. §§ 1981, 1982, 1983, 1985, 1986, 1988, or 1994, complaining of conditions of confinement or grievances occurring during the period of his incarceration, plaintiff-inmate shall clearly indicate on his complaint whether he has resorted to the PENITENTIARY ADMINISTRATIVE REMEDY PROGRAM [ARP] or other jail grievance procedure prior to filing his complaint. If so, he shall file with his complaint true copies of his *Request for Administrative Remedy*, including parts A—*Inmate Request*, B—*Response*, C—*Receipt*, as well as his *Appeal*, including parts A—*Reason for Appeal*, B—*Response*, and C—*Receipt*, and any other document relating to the grievance procedure.

Failure to exhaust the ARP or other available grievance procedure or to provide the documentation required by this rule shall be grounds for dismissal of the action without prejudice, in accordance with 42 U.S.C. § 1997(e). Defendant officials shall incorporate in their answer thereafter filed in such civil action the results of the administrative procedure, setting forth affirmatively what issues raised in the complaint have been resolved. When the plaintiff-inmate has exhausted the administrative procedures provided by the jail or penitentiary, but has failed to attach the required documentation to his complaint, he shall not be required to again resort to the ARP, or other administrative proceeding, but all of the other provisions of this subparagraph shall apply.

V. FORFEITURE OF COLLATERAL IN LIEU OF APPEARANCE

A person who is charged with a petty offense as defined in 18 U.S.C. § 19, other than one for which a mandatory appearance before a United States Magistrate Judge is required, may, in lieu of appearance, post collateral in the amount set for the offense in a separate collateral forfeiture schedule approved by order of this court, waive appearance before a United States Magistrate Judge, and consent to forfeiture of collateral. A person charged with an offense designated as *Mandatory Appearance* in the collateral forfeiture schedule must appear before United States Magistrate Judge. Nothing contained in this rule shall prohibit a law enforcement officer from arresting a person for

the commission of any offense, including an offense for which collateral may be posted and forfeited, and taking him promptly before a United States Magistrate Judge, or requiring a person charged with such an offense to appear before a United States Magistrate Judge.

VI. APPLICATION FOR APPOINTMENT OF COUNSEL AND LEAVE TO PROCEED WITHOUT PAYMENT OF FEES, COSTS, OR SECURITY UNDER TITLE VII, CIVIL RIGHTS ACT OF 1964

A. Every application for appointment of counsel and/or for leave to proceed without the payment of fees, costs, or security under the provisions of 42 U.S.C. § 2000e-5(f)(1) and 28 U.S.C. § 1915(a)(1)-(2) shall be referred by the clerk to a full-time magistrate judge of this court, to be dealt with as is provided herein.

B. The magistrate judge shall conduct all necessary proceedings in connection with the application. In his discretion, the magistrate judge may consider the application on the basis of affidavits and documents submitted by the applicant, or may receive oral testimony and other evidence.

SO ORDERED, this the 17th day of September 1998.

/s/ Neal B. Biggers Jr.
Neal B. Biggers Jr.
Chief United States District Judge

/s/ Glen H. Davidson
Glen H. Davidson
United States District Judge