

Seeking Review of Magistrate Judge Decisions in Civil Cases

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In 1968, Congress enacted the Federal Magistrates Act to institute a system of magistrate judges to replace the United States commissioner system, which had been in place in some form since the 1790s.¹ The purpose of the act was “to improve the quality of the judicial officers serving just below the level of federal judges, and to drastically enlarge the responsibilities of those officers so as to relieve the heavy burdens on the federal docket that in 1968 had reached critical mass.”²

Over the years, Congress has acted to increase the authority of magistrate judges to permit them to conduct evidentiary hearings and authorize them to enter final orders disposing of civil cases with consent of the parties.³ Presently, magistrate judges have the authority in civil cases to, among other things, conduct pretrial conferences, settlement conferences and evidentiary hearings, and rule on various non-dispositive motions.⁴ Furthermore, parties may consent to having the magistrate judge handle the entire case, including trial.⁵ Magistrate judges in the District of New Jersey are particularly active in overseeing civil cases, much more so than in many other judicial districts throughout the country. It is common here for lawyers not to see a district judge in a civil case except for case dispositive motions or on the eve of trial. Thus, throughout the duration of a federal civil case many issues will be decided by a magistrate judge, whether it be an order on a non-dispositive motion or a report and recommendation to the district judge on a motion for summary judgment.⁶ Deciding whether to appeal an order or object to a report is a strategic decision that must be carefully considered based on the nature of the issue decided and the circumstances of the case.

This article will provide an overview of the appellate process with respect to decisions made by United States magistrate judges in the District of New Jersey, including what

types of decisions can be appealed, the timeline for filing an appeal, the standard of review on appeal, and the consequences for failing to timely appeal. It is separated into two sections. The first addresses appeals from non-dispositive orders, such as orders on discovery motions, pursuant to Local Civil Rule 72.1(c)(1). The second section discusses objections to a magistrate judge’s proposed findings, recommendation or report on a dispositive motion, such as motions for injunctive relief or summary judgment, presented to the district judge pursuant to Local Civil Rule 72.1(c)(2).⁷

Appeals from Non-Dispositive Orders— Local Civil Rule 72.1(c)(1)

Procedure

Local Civil Rule 72.1(c)(1) provides that any party may appeal from a magistrate judge’s determination of a non-dispositive matter within 14 days after the party is served with a copy of the judge’s order, unless otherwise provided by the rules.⁸ The appealing party must file with the clerk and serve on all parties a written notice of appeal, “which shall specifically designate the order or part thereof appealed from and the basis for objection thereto.”⁹

The notice of appeal must be submitted in the form of a notice of motion pursuant to the requirements of Local Civil Rule 7.1.¹⁰ Additionally, the appealing party must provide the court with a transcript of the portion of the hearing before the magistrate judge where findings of fact were made, no later than 14 days before the return date of the motion.¹¹ “[M]erely raising a concern before a Magistrate Judge is not a sufficient predicate to trigger the availability of District Judge review. Instead, the Magistrate Judge must actually rule on the disputed issue.”¹² Non-dispositive orders that may be appealed under this rule include motions to compel or limit discovery, and

other pretrial discovery motions.¹³

Before filing an appeal from a non-dispositive order, a party may file a motion for reconsideration before the magistrate judge pursuant to Local Civil Rule 7.1(i). Not only does this toll the time to appeal, but it also affords the magistrate judge a second look at the order to tweak or correct any issues that may have been overlooked. On the other hand, most judges, including magistrate judges, do not relish re-treading ground they just covered, and the standard under Local Civil Rule 7.1(i) requires that the brief on a motion for reconsideration set forth “concisely the matter or controlling decisions which the party believes the...Magistrate Judge has overlooked.” Reconsideration is an extraordinary remedy that is granted “very sparingly.”¹⁴

Time to File

As noted, an appeal must be filed within 14 days after the party is served with a copy of the magistrate judge’s order. Opposition to the appeal is due 14 days before the motion date and reply briefs are due at least seven days before the motion date.¹⁵ An opposing party is entitled to file a cross-appeal “related to the subject of the original determination” with its opposition to the appeal, returnable on the same motion date.¹⁶ Accordingly, the respondent on an appeal, who may only want to appeal if the adversary appeals, can wait to see if the other side appeals; there is no need to file a ‘protective’ appeal. A brief in response to a cross-appeal is due seven days before the motion day. There is no provision in Local Civil Rule 72.1(c) for a reply brief on a cross appeal.

Any attorney practicing in federal court should also consult Federal Rule of Civil Procedure 6, which deals with the proper calculation of time periods. That rule provides that, when calculating the time to appeal, the date of the event is excluded; all days thereafter, including

weekdays and holidays are included; and the last day of the period is included unless it falls on a weekend or holiday, which would then run to the next non-holiday or weekend day.¹⁷

Remember, if the parties move for reconsideration under Local Civil Rule 7.1 of an order on a non-dispositive motion, the time for appeal from the order does not start to run until the parties are served with the magistrate judge’s order on reconsideration.¹⁸ These time periods may be altered in the discretion of the magistrate judge or district judge. For example, the district court has relaxed the time limits and considered an untimely appeal when there was confusion surrounding the issuance of the magistrate judge’s order¹⁹ and also considered an untimely cross-appeal when a magistrate judge permitted a party to file an ‘informal revised motion,’ which was not decided until after the time to file a cross appeal.²⁰ However, absent good reason, the 14-day time limit ordinarily will not be relaxed, and failure to timely file the appeal may result in its denial.²¹

Finally, like all other appeals from a magistrate judge’s rulings, “the filing of a notice of appeal generally does not automatically stay operation of the order from which the appeal is taken,” unless the appeal is from a magistrate judge’s order transferring venue to another federal district or denying a motion to seal pursuant to Local Civil Rule 5.3.²² Thus, a party seeking a stay must ordinarily make an application before the magistrate judge.²³

Standard of Review

On appeal from a non-dispositive order, the district judge will set aside any portion that is found to be “clearly erroneous or contrary to law.”²⁴ The appealing party bears the burden of demonstrating that the magistrate judge’s decision failed to meet that standard.²⁵ Though it is not immediately evident from the rule what is required

to meet this high burden, case law clarifies that a ruling is clearly erroneous “when although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed,” and is contrary to law when it has “misinterpreted or misapplied applicable law.”²⁶ For example, in *Spencer v. Cannon Equip. Co.* the court found the magistrate judge’s decision to deny the defendant’s unopposed motion for leave to file a third-party complaint that was made before the end of fact discovery and before any deadline had been set for motions to join new parties, and where no party claimed prejudice due to delay, was both clearly erroneous and contrary to law.²⁷

Nevertheless, litigants should recognize that there is a low probability of success and should strategically determine whether to appeal an order on a non-dispositive motion. As Magistrate Judge Jeffrey Cole from the Northern District of Illinois noted, “Indiscriminately appealing virtually every decision is imprudent and ultimately may affect your credibility with both the magistrate and district judges. It most assuredly undercuts the very purpose of, and the efficiencies sought to be achieved by, the magistrate judge system....In short, you must be selective in picking your fights.”²⁸ That comment applies equally to this district. Experience shows that district judges afford magistrate judges much discretion in their rulings on non-dispositive motions. Many magistrate and district judges have worked together for years and have developed a common understanding of how to best approach these matters; practitioners should not expect a district judge to readily second guess a magistrate judge.

Consequences for Failure to Timely Appeal

Generally, the failure to timely appeal from a non-dispositive order acts as a bar to raising the issues resolved by the

order later in the litigation.²⁹ Failure to appeal a magistrate judge's order will serve as a waiver of the right to later present the issues to the district judge.³⁰ Furthermore, absent "exceptional circumstances," where a party fails to appeal a magistrate judge's non-dispositive order to the district court, the issue will not be preserved for later review by the court of appeals.³¹ Thus, if a litigant believes the magistrate judge committed an error on a non-dispositive motion, he or she must appeal the order or run the substantial risk of waiving issues resolved by the order.

Objections to Magistrate Judge's Proposed Findings, Recommendation or Report Procedure

Unless the parties consent,³² a magistrate judge does not have statutory or constitutional authority to decide dispositive issues. Nonetheless, many dispositive issues can be referred to the magistrate judge by the district judge for a report of proposed findings of facts and recommendation for decision. Dispositive issues referred to magistrate judges include, for example, motions for injunctive relief, judgment on the pleadings, summary judgment, to dismiss or permit the maintenance of a class action, and for review of default judgments.³³ When a district judge refers a dispositive motion to a magistrate judge, the magistrate judge will provide a report and recommendation for the district judge's review.³⁴

The process for filing objections to the magistrate judge's proposed findings, recommendation or report, outlined in Local Civil Rule 72.1(c)(2), differs in some respects from the appeal process for a non-dispositive order. The rule provides that "[a]ny party may object to the Magistrate Judge's proposed findings, recommendations or report issued under this Rule within 14 days after being served with a copy thereof."³⁵

The objecting party must file with the clerk and serve upon all parties written objections that specifically identify the portions of the findings, recommendations or report as to which the objections are made and the grounds for the objections.³⁶ The objecting party must also file a transcript of the relevant portions of any evidentiary proceeding to which an objection is made.³⁷ As with non-dispositive motions, prior to filing an objection a party may file a motion for reconsideration of the proposed findings, recommendation or report before the magistrate judge pursuant to Local Civil Rule 7.1(i), which will toll the time to appeal the order to the district judge.

Time to Object

A party must file an objection to a magistrate judge's report and recommendation within 14 days after service.³⁸ Though this time frame is intended to be "strictly observed," failure to timely object is not considered a jurisdictional defect.³⁹ Moreover, this 14-day period to object can be relaxed or expedited if appropriate, given the circumstances of the case.⁴⁰ The non-objecting party must respond to the objections within 14 days after being served with a copy of the objections.⁴¹ The rules do not provide for an objecting party to file a reply to the non-objecting party's opposition; however, a litigant may request permission to file a reply from the district judge.

Standard of Review

Local Civil Rule 72.1(c)(2) expressly requires the district judge to review *de novo* the portions of the magistrate judge's report and recommendation to which a party has filed objections.⁴² The district judge will review the record developed before the magistrate judge, but "owes no deference to the Magistrate Judge's findings and conclusions."⁴³ The review will be on the

record, and the district judge generally will not conduct an evidentiary hearing. Although the district judge may also review *de novo* any portion of the magistrate judge's report that a party did not object to, the court is under no obligation to do so.⁴⁴ Unobjected to portions of the report considered by the district judge will ordinarily be reviewed under the stricter plain error or manifest injustice standard.⁴⁵

Consequences of Failure to Timely File an Objection

Generally, where a party fails to object there is no express requirement that the district court conduct a specific review of the magistrate judge's proposed findings, recommendation and report.⁴⁶ However, the Third Circuit has indicated that district judges should afford some level of review to dispositive legal issues contained in the report and recommendations.⁴⁷ Due to this presumption that the district judge has reviewed the magistrate judge's determinations on dispositive motions, failure to file objections to the report will not act as a waiver of a party's right to appeal any of the issues to the court of appeals.⁴⁸ This is in stark contrast to the dire consequences of a failure to appeal a magistrate judge's non-dispositive order.⁴⁹ Nonetheless, practitioners should not rely on this non-waiver in the court of appeals, but should timely file an objection to the district judge to get a review *de novo* of the magistrate judge's report and possibly a favorable result in the trial court that eliminates a need to visit the court of appeals.

Conclusion

Attorneys handling cases in the New Jersey District Court will inevitably be faced with choices of whether to seek review of magistrate judges' orders. This decision should be carefully made, taking into consideration the importance of the relief sought, the circumstances of

the case, the procedures and timelines for filing the appeal or objection and the legal standard under which the district judge will review the order or report. ☞

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ENDNOTES

1. See 28 U.S.C. §§ 631 *et seq.* (2012).
2. *Gov't of Virgin Islands v. Williams*, 892 F.2d 305, 307 (3d Cir. V.I. 1989), *cert. denied*, 110 S. Ct. 2211 (1990).
3. See 28 U.S.C. §§ 631-39.
4. 28 U.S.C. § 636.
5. See L.Civ.R. 73.1.
6. Magistrate judges have considerable supervision over criminal cases. See L.Crim.R. 5.1. This article's focus is on the civil side.
7. The authors of this article highly recommend to any attorney practicing in federal court in New Jersey, Allyn Lite's *New Jersey Federal Practice Rules* (2015 edition).
8. L.Civ.R. 72.1(c)(1).
9. *Id.*
10. *Id.*
11. *Id.*
12. *Costa v. Cnty. of Burlington*, 584 F. Supp. 2d 681, 686 (D.N.J. 2008).
13. See *Mruz v. Caring, Inc.* 166 F. Supp. 2d 61, 65-66 (D.N.J. 2001).
14. See Allyn Z. Lite, *New Jersey Federal Practice Rules*, Comment 6(d) to L.Civ.R. 7.1(i) (2015) and cases cited therein.
15. L.Civ.R. 72.1(c)(1).
16. *Id.*
17. See Fed. R. Civ. P. 6; the district court's website contains a convenient table setting out the date when papers are due, njdcourts.gov/motion-days-0.
18. See Lite, *supra*, Comment 3(a) to L.Civ.R. 72.1(c); *Jackson v. Chubb Corp.*, 2000 U.S. Dist. LEXIS 20348 (D.N.J. Dec. 5, 2000).
19. *Env'tl. Tectonics v. W.S. Kilpatrick & Co.*, 659 F. Supp. 1381, 1399 (D.N.J. 1987).
20. *Morris v. Verniero*, 2008 U.S. Dist. LEXIS 32085 (D.N.J. April 18, 2008).
21. *Video Serv. of Am. v. Maxell Corp.*, 2007 U.S. Dist. LEXIS 54107 (D.N.J. July 26, 2007).
22. See Lite, *supra*, Comment 3(d) to L.Civ.R. 72.1(c).
23. L.Civ.R. 72.1(c)(1).
24. *Id.*
25. *Exxon Corp. v. Halcon Shipping Co., Ltd.*, 156 F.R.D. 589, 591 (D.N.J. 1994).
26. *Cataldo v. Moses*, 361 F. Supp. 2d 420, 424 (D.N.J. 2004).
27. *Spencer v. Cannon Equip. Co.*, 2009 U.S. Dist. LEXIS 55370, at 1 (D.N.J. June 29, 2009).
28. Jeffrey Cole, Reversing the Magistrate Judge, *Litigation News*, American Bar Association (Winter 2010), available at http://apps.americanbar.org/litigation/litigationnews/trial_skills/100510-tips-magistrate-judge-reversal.html.
29. See Lite, *supra*, Comment 3(f) to L.Civ.R. 72.1(c).
30. *Weiss v. First Unum Life Ins. Co.*, 2008 U.S. Dist. LEXIS 99715 (D.N.J. Dec. 10, 2008).
31. *Cont'l Cas. Co. v. Dominick D'Andrea, Inc.*, 150 F.3d 245, 251 (3d Cir. 1998).
32. See L.Civ.R. 73.1.
33. See L.Civ.R. 72.1(a)(2).
34. See 28 U.S.C. §636(b)(1)(c); L.Civ.R. 72.1(a)(2).
35. L.Civ.R. 72.1(c)(2).
36. *Id.*
37. *Id.*
38. *Id.*
39. *Grandison v. Moore*, 786 F.2d 146, 148 (3d Cir. 1986).
40. See *Zelaskowski v. Johns-Manville Corp.*, 578 F. Supp. 11, 13 (D.N.J. 1983) (allowing plaintiff additional time to file an objection where plaintiff's counsel fell ill); *Hoeber v. Int'l Brotherhood of Elec. Workers*, 498 F. Supp. 122, 126 (D.N.J. 1980) (requiring parties to submit objections to a magistrate judge's report within five days to further expedite the matter).
41. See Fed. R. Civ. P. 72(b)(2).
42. See *Garceran v. Morris Cnty. Prosecutors Office*, 2015 U.S. Dist. LEXIS 23700, at 3-4 (D.N.J. Feb. 26, 2015).
43. *Taberer v. Armstrong World Indus., Inc.*, 954 F.2d 888, 904 (3d Cir. 1992).
44. See *Koger v. O'Donnell*, 2007 U.S. Dist. LEXIS 80551, at 6 (D.N.J. Oct. 31, 2007).
45. *Megaparts v. Highcom Sec.*, 2010 U.S. Dist. LEXIS 63497 (D.N.J. June 25, 2010).
46. See *Thomas v. Arn*, 474 U.S. 140 (1985); Lite, *supra*, Comment 4(d) to L.Civ.R. 72.1(c).
47. *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987), *cert. denied*, 484 U.S. 837 (1987).
48. *Id.*
49. See *Bellesfield, supra*, 675 F. Supp. at 959.