

**STATEMENT OF THE HONORABLE DAVID C. KEESLER
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OF NORTH CAROLINA
ON BEHALF OF THE FEDERAL MAGISTRATE JUDGES ASSOCIATION**

JUNE 23, 2016

Chairman Issa, Ranking Member Nadler, and members of the Subcommittee: I am David C. Keesler, United States Magistrate Judge for the Western District of North Carolina, and currently President of the Federal Magistrate Judges Association. I appreciate Chairman Goodlatte's invitation to testify on behalf of the Federal Magistrate Judges Association at the subcommittee's June 23, 2016 hearing addressing the topic, "The Judicial Branch and the Efficient Administration of Justice." After consulting with committee staff, I am pleased to offer the following written statement in lieu of appearing.

Federal Magistrate Judges Association

The Federal Magistrate Judges Association ("FMJA"), now in its 54th year, is a voluntary association of approximately 800 active and retired magistrate judges from across the country. I have had the privilege of serving as President of the FMJA during the 2015-2016 year. The FMJA is governed by an Executive Committee composed of a Secretary, a Treasurer, a Vice President, a President-Elect, a President, and an Immediate Past President. The Executive Committee serves with a Board

of Directors comprised of representatives from each judicial circuit, as well as at-large directors representing respectively retired/recalled magistrate judges and part-time magistrate judges. The FMJA is also served by an excellent part-time Executive Director, Ms. Shari Bedker of Armstrong & Associates; and it has a robust and active committee structure.

The FMJA serves the interests of federal magistrate judges nationwide and has as its purpose to promote the efficient administration of justice; to protect the integrity, dignity and independence of the federal judiciary; and to educate the public about the important role magistrate judges play in our federal court system. Magistrate judges across the country serve with pride in all 94 federal judicial districts. The FMJA aspires to support our colleagues in that wonderful work and to enhance their professional and personal experience as they serve.

This has been an active year at the FMJA, and here is a sampling of some of the Association's activity this year:

- The FMJA Security Committee is working cooperatively with the Federal Judges Association, the Administrative Office for US Courts ("AO"), and the U.S. Marshals Service to pursue a number of important security initiatives. A series of Security Tips have been provided to FMJA members and their families, with more planned. Several

magistrate judges are participating in the AO's ongoing work on cyber security issues. Also, in cooperation with the Federal Judicial Center ("FJC") and the U.S. Marshals Service, educational sessions are being developed on the issue of security for the spring and summer FJC seminars for magistrate judges.

- Our Diversity Committee continues to do more and more remarkable work each year, creating the conditions for a more diverse magistrate judge bench. The Diversity events at the spring and summer FJC seminars continue, better attended all the time, including most recently in Charleston, South Carolina. At its March meeting, the FMJA Board of Directors approved the committee's proposed creation of an FMJA Diversity Award to honor those who have made substantial contributions to promoting diversity and inclusion within the judiciary and the legal profession. That award will be given for the first time at this summer's FMJA annual membership meeting.

- Our Civic Education Committee is working with the AO, and others, to develop new ways for magistrate judges to more readily participate in civic education efforts in their home districts. The focus of the work is the creation of "off the rack" presentation materials that will make it very easy for magistrate judges to present to groups of

every type – from middle school students to the Rotary Club – about the court system.

- Our Rules Committee continues its remarkable and highly substantive work. On behalf of the FMJA, the Rules Committee prepared and submitted formal comments to the proposed revisions to the Federal Rules of Evidence. The Committee also submitted a proposed new detention order form to the AO Forms Working Group.
- There is much more: the International Committee is planning interesting travel and judicial exchange opportunities for 2017; the FMJA's Federal Courts Law Review continues publishing insightful articles and has found a new law school home at the University of Mississippi; and the very active Retired and Recalled Magistrate Judges Committee continues to grow and prosper.

This has been an exciting and productive year for the FMJA, and I am deeply grateful for the honor of serving as President of the Association this year.

Magistrate Judges In The Federal System

Historically, the United States Magistrate Judge system evolved from the United States commissioner system established in 1793. Congress conducted an exhaustive examination of the commissioner system in 1965,

during which witnesses overwhelmingly favored overhauling the system and enhancing the position. After hearings, Congress enacted legislation which replaced the position of “commissioner” with what is now that of “Magistrate Judge.” As a result of that legislation, Magistrate Judges became judicial officers entrusted with expanded jurisdiction that authorizes them to handle a wider range of proceedings in civil and criminal cases.

Since that time, Congress has passed additional amendments further expanding the authority and jurisdiction of magistrate judges. United States Magistrate Judges now have a broad range of responsibilities. The evolution of the role of magistrate judges is demonstrated by the fact that they handled over one million matters in the federal district courts in fiscal year 2015. District judges who have chaired the committee charged with administration of the magistrate judges system in the United States call magistrate judges “an indispensable resource” who are “fundamentally important” to the federal judicial system because they “perform critical duties to ensure the timely adjudication of both civil and criminal cases” filed in federal courts. While their duties may vary with the specific needs of each district court, magistrate judges handle a wide array of federal civil and criminal matters nationwide.

A sampling of the judicial functions currently performed by magistrate judges demonstrates the potential breadth of their authority:

- Presiding at civil jury trials by consent of the parties and entering judgments;
- Presiding at criminal misdemeanor trials and imposing sentences;
- Presiding at initial appearances, bond hearings, arraignments and other pretrial criminal proceedings in federal felony cases;
- Handling pretrial case management in complex civil cases;
- Conducting mediations and judicial settlement conferences;
- Hearing and determining pretrial motions;
- Handling summary judgment and other case-dispositive motions and administrative appeals, such as Social Security disability determinations;
- Reviewing prisoner suits collaterally attacking convictions or complaining of conditions of confinement; and
- Issuing arrest and search warrants.

Magistrate judges perform a particularly critical role in the federal criminal justice system. Frequently, magistrate judges are the first judicial officers involved in the investigation and prosecution of federal crimes –

when prosecutors and law enforcement officials seek search warrants, arrest warrants, and various investigative orders, such as orders for electronically stored information. Moreover, a magistrate judge is the first judicial officer with whom a criminal defendant has contact, who advises the defendant of his rights and the nature of the charges, who decides whether the defendant is entitled to court-appointed counsel, and who determines whether the defendant should be entitled to a bond or kept in custody pending resolution of the charges. Also, in many districts, the determination of whether the evidence seized by the government can be used against the defendant at trial is first considered by a magistrate judge.

Magistrate judges serve an eight-year term upon their selection for service, and may be re-appointed to successive terms up to the age of 70. The process governing the selection and re-appointment of magistrate judges is set by federal statute and Judicial Conference policy: it is a merit selection process that includes the screening of candidates by a merit selection committee appointed by the district court. The district judges of the district make the ultimate selection after the committee has screened the candidates and identified finalists.

Magistrate Judges In The Western District Of North Carolina

Magistrate judges are deployed differently in the 94 district courts in which they serve depending upon local needs. There is no one right way, although the AO encourages certain “best practices” for magistrate judge utilization. I use the Western District of North Carolina – my district – simply as an additional illustration of the types of work federal magistrate judges are regularly called upon to do.

In the Western District of North Carolina, in criminal cases, magistrate judges conduct nearly all of the pretrial criminal proceedings. These include initial appearances, detention (bond) hearings, preliminary hearings, arraignments, and in most cases, plea and rule 11 (guilty plea) hearings. Magistrate judges conduct what is known as “CVB” court, which addresses petty offenses on federal land. It is also the responsibility of magistrate judges to review applications for search warrants, criminal complaints, arrest warrants, and various types of investigative orders, including requests for stored electronic information. Magistrate judges also address whatever criminal motions are referred to them by the presiding district judge in criminal felony cases. In addition, magistrate judges conduct Grand Jury “return” proceedings in which the Grand Jury returns its bills of indictment.

In civil cases, magistrate judges may decide any motion, and may preside over a jury trial, in any case in which the parties have consented to magistrate judge jurisdiction. In cases in which the parties have not consented to magistrate judge jurisdiction, magistrate judges address those motions referred to them by the presiding district judge. In the case of non-dispositive motions, the magistrate judge generally issues an order deciding the motion; in the case of a dispositive motion like a motion to dismiss or a motion for summary judgment, the magistrate judge issues a Report and Recommendation (“R&R”) recommending a result to the district judge. Magistrate judges also have a role in case management – especially in the area of discovery disputes – and occasionally conduct judicial settlement conferences. Magistrate judges in our district are particularly critical to the resolution of social security disability cases.

In addition to these case-related duties, magistrate judges in the Western District of North Carolina also engage in other duties. Magistrate judges are involved in court governance; they attend monthly judges meetings with the district judges and serve on committees, including Local Rules, Courthouse Grounds, District Centennial, etc. Magistrate judges also conduct periodic Naturalization ceremonies and participate in hosting

international judicial visitors to our courthouse. Magistrate judges are fully engaged in the work and life of the court.

Conclusion

On behalf of the approximately 800 active and retired members of the FMJA nationwide, I believe I can say with great confidence that we are greatly honored to currently serve, or to have served, as United States Magistrate Judges. To a person, we believe deeply in the importance of this work in the Judicial Branch of government to our great country, and we feel deeply privileged to do it. Magistrate judges contribute greatly to the efficient administration of justice in our federal courts. I hope the subcommittee will continue to call on us if we can provide more information about the future of our courts, the role of magistrate judges in the federal court system, or the FMJA. Thank you for allowing us to participate in this important discussion.