



## ATTORNEY CONSENT PROCEDURES

### FILING CONSENT OR NON-CONSENT TO U.S. MAGISTRATE JUDGE SERVING AS TRIAL JUDGE

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At the time a new civil action is filed in the District of New Mexico, it is randomly assigned to either a district judge or a magistrate judge who will serve as the trial judge. If the case has been assigned to a trial magistrate judge, each party to the action will receive an NEF (“Notice of Electronic Filing”) stating, in part, that the case “has been randomly assigned to a U.S. Magistrate Judge to conduct dispositive proceedings in this matter, including motions and trial.” (If a party has not yet been added to the case, **it is the responsibility of the case filer to serve a copy of the notice upon all such parties with the summons and complaint.**) Proceeding before a U.S. Magistrate Judge is strictly voluntary, and a party is free to withhold consent without adverse consequences. A district judge or magistrate judge will be informed of a party’s response to the notice of judge assignment *only if all parties have consented to the referral.*

#### **Consenting to Proceed Before a U.S. Magistrate Judge**

Unless otherwise notified by the Clerk’s Office or the Court, notice of a party’s consent must be made no later than 21 days after the entry of the Order setting the Rule 16 Initial Scheduling Conference. Consent is by a text-only notice by a party’s attorney. To consent, the filer must go to the CM/ECF Civil menu page, select the category “Notices,” then select, “Consent to Proceed Before a U.S. Magistrate Judge.” The filer should then follow the prompts until the filing is complete. No document will be attached to the filing. An NEF with the following language will be generated and sent via email to all active parties/attorneys to the case (if a party/attorney does not have an email address, the NEF with the docket text must be printed and mailed by the filer to each such party/attorney):

CONSENT TO PROCEED BEFORE A U.S. MAGISTRATE JUDGE. Under 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73(b), [filing party] voluntarily consents to have U.S. Magistrate Judge [name] conduct dispositive proceedings in this case, including motions and trial, and order the entry of final judgment. THIS IS A TEXT ONLY ENTRY; NO DOCUMENT IS ATTACHED.

If consent by each party is not timely received, the matter will be reassigned to a district judge who will serve as the presiding judge.

### **Refusal to Consent to Proceed Before a U.S. Magistrate Judge**

As stated above, a district judge or magistrate judge will be informed of a party's response to the notice of judge assignment only if all parties have consented to the referral. If a party chooses not to consent before expiration of the consent deadline, the filer should go to the CM/ECF Civil menu page, select the category "Notices," then select, "Refusal to Consent to Proceed Before a U.S. Magistrate Judge." The filer should then follow the prompts until the filing is complete. No document will be attached to the filing. An NEF with the following language will be generated and sent via email to all parties to the case (if a party/attorney does not have an email address, the NEF with the docket text must be printed and mailed by the filer to each such party/attorney):

REFUSAL TO CONSENT to Proceed before a U.S. Magistrate Judge. THIS IS A TEXT ONLY ENTRY; NO DOCUMENT IS ATTACHED.

If a refusal to consent is filed, the matter will be reassigned to a district judge who will serve as the presiding judge. Notice of the reassignment will be by Minute Order. A magistrate judge will still hear and decide all non-dispositive pretrial and discovery matters.

### **Recusal by a Trial Magistrate Judge**

Upon recusal by an assigned trial magistrate judge, the Clerk will randomly reassign the case to another trial magistrate judge. Each party to the action will receive an NEF stating, in part, that the case "has been randomly reassigned to a U.S. Magistrate Judge to conduct dispositive proceedings in this matter, including motions and trial."

- a) If the recusal and reassignment occur before entry of the Order setting the Rule 16 Initial Scheduling Conference, notice of a party's consent to the newly assigned trial magistrate judge, must be made no later than **21 days after the entry of the Order setting the Rule 16 Initial Scheduling Conference**, unless otherwise notified by the Clerk's Office or the Court.
- b) If the recusal and reassignment occur after entry of the Order setting the Rule 16 Initial Scheduling Conference, notice of a party's consent or non-consent must be made **14 days from the date a new trial magistrate judge is randomly assigned**, unless otherwise notified by the Clerk's Office or the Court.

If consent or non-consent to the reassigned trial magistrate judge is not timely received by each party, the case will be reassigned to a district judge who will serve as the presiding judge. Notice of the reassignment will be by Minute Order. A magistrate judge will still hear and decide all non-dispositive pretrial and discovery matters.