

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

SUITE 173

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12/11/00

CHAMBERS OF
TOMMY E. MILLER
UNITED STATES MAGISTRATE JUDGE

MEMORANDUM

FACSIMILE NO
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TO THE HONORABLE W. EUGENE DAVIS
CHAIR, CRIMINAL RULES ADVISORY COMMITTEE

FROM TOMMY E. MILLER *Tommy E. Miller*

RE CRIMINAL RULES AMENDMENTS REQUIRED BY ENACTMENT OF THE
FEDERAL COURTS IMPROVEMENT BILL OF 2000

DATE DECEMBER 7, 2000

On November 13, 2000, the President signed the Federal Courts Improvement Act of 2000 (Public Law 106-518)(hereafter "Improvement Act") I have reviewed the bill in its entirety and believe that only modest changes to one of our restyled criminal rules are necessary to comply with the bill. For your convenience, I have attached to this memorandum Sections 202 and 203 of the Improvement Act (Attachment 1). I have also attached Criminal Rules 17(g), 20(d), 42 (Attachment 2), and the pertinent parts of Rule 58 (Attachment 3) for your convenience.

Contempt Provisions

Section 202 of the Improvement Act amends 28 U.S.C. §636(e) to provide for limited contempt authority for United States Magistrate Judges. I have compared the provisions of Section 202 with Rule 42, Criminal Contempt, and have determined that no changes are required to Rule 42 in order to comply with the new statute. It appears that all our hard work creating the definition of "court" in Rule 1(b)(2), "federal judge" in Rule 1(b)(3), and "judge" in Rule 1(b)(4) provides for magistrate judges exercising contempt authority as authorized by the Improvement Act without amending Rule 42.

New 28 U S C § 636(e)(2), Summary Criminal Contempt Authority, specifically references the Federal Rules of Criminal Procedure in setting forth the authority of the magistrate judge. Current Rule 42(a) and restyled Rule 42(b) are the provisions that a magistrate judge would use when exercising summary criminal contempt authority.

New 28 U S C § 636(e)(3), Additional Criminal Contempt Authority in Civil Consent and Misdemeanor Cases, also specifically references the Federal Rules of Criminal Procedure. This reference is to current Rule 42(b) and restyled criminal Rule 42(a), which set forth the procedure a magistrate judge would use when exercising contempt authority in civil consent cases and in misdemeanor cases.

Title 28 U S C § 636(e)(5) limits the penalties a magistrate judge may impose in a criminal contempt case to that of a Class C misdemeanor, 30 days' imprisonment and a fine of \$5,000 (and a special assessment of \$5 00). This limitation of penalties was specifically enacted to eliminate any constitutional concerns regarding a magistrate judge imprisoning a person for more than six months, as a district judge may do. This penalty provision does not affect the procedure that a magistrate judge must follow in order to impose criminal contempt either under the provisions of current or restyled Rule 42.

Fed. R. Crim. P. 17(g) provides for contempt sanction in the enforcement of subpoenas. I recommend no change to the restyled version of Rule 17(g) because the terms used in the rule cover a magistrate judge conducting a contempt hearing in either a civil or criminal case in which the magistrate judge is authorized to act by law. New 28 U S C. § 636(e)(3) provides for the appropriate authority for a magistrate judge to act in most cases where the magistrate judge is presiding over a case in which a contempt issue regarding subpoenas arises under Rule 17(g). If the magistrate judge has authority, the judge may then act. If it is a situation where the magistrate judge does not have the authority to act to enforce the subpoena by contempt sanctions, then the judge may certify the problem to a district judge under new 28 U S C § 636(e)(6).

My only concern with the new contempt provisions is in 28 U S C § 636(c)(7), Appeals of Magistrate Judge Contempt Orders. This section provides for a two-track avenue of appeal from a magistrate judge contempt order. Track one is a direct appeal to the Court of Appeals in cases proceeding under 28 U S C § 636(c) civil consent cases. The other track covers all other cases and requires an appeal to a district judge in both civil and criminal contempt cases. I invite comment from other members of the committee as to whether a subsection 42(c) should be added cross-referencing this statute so those who are convicted under Fed. R. Crim. P. 42(a) or (b) would know the proper avenue of appeal. Alternatively, Rule 58(g)(2) could be amended to set out the avenue of appeal from a magistrate judge's order finding criminal contempt. If we determine that a cross-referencing provision should be added identifying the appeal route from a magistrate judge's finding of criminal contempt, I suggest that it be placed at Rule 42(c) instead of Rule 58. The provisions of Rule 58 directly address the appeals in petty offenses and misdemeanor cases of the run-of-the-mill variety and not the specialized finding of contempt. If the contempt appeal cross-reference were placed in Rule 58, it would be lost, whereas, if it were placed in Rule 42, anyone found guilty of criminal contempt would know the appeal avenue.

Juveniles

Professor Schleuter suggested that I look at Rule 20(d) regarding transfer for plea and sentencing of juveniles to see if Section 203(b) of the Improvement Act required any changes to Rule 20(d). No changes are required. Rule 20(d) relates solely to the consent of a juvenile to have a case transferred from one district to another in order for the juvenile to face trial in the transferee jurisdiction. The amendments to 28 U S C § 636(a), as provided for in Section 203(b) of the Improvement Act, do not affect Rule 20(d) in any way. The new provisions give the power to a magistrate judge to enter a sentence of imprisonment for a petty offense involving juveniles and the power to try and sentence a juvenile in a Class A misdemeanor when the defendant consents. This section has nothing to do with the actual transfer of a

juvenile from one district to another so that the juvenile may enter a plea of guilty. If the juvenile enters a plea of guilty in the transferee jurisdiction to a misdemeanor or petty offense before a United States Magistrate Judge, then the magistrate judge is bound to follow all the procedures dealing with juveniles as if the juvenile had been originally charged in the transferee jurisdiction. I recommend no changes to Rule 20(d).

Petty Offenses

I recommend changes to Fed. R. Crim. P. 58. The changes are at three places and are identical. The change replaces the term "Class B misdemeanor motor vehicle offense, a Class C misdemeanor, or an infraction" with the term "petty offense." These changes are required at Rule 58(b)(2)(E)(i), Rule 58(b)(3)(A) and (B). I have attached the language in the restyled rules with the proposed changes in handwritten form (Attachment 3).

The changes in Rule 58 are required by Section 203(a) of the Improvement Act, which now permits a magistrate judge to try any petty offense case without consent of the defendant.

I have examined the rest of the Improvement Act and do not see the need for changes to any other rules. Since Roger Pauley has written memos on a number of these rules recently, I am also sending a copy of this memo to him for his information.

cc Professor David Schleuter
John Rabiej, Chief
Rules Committee Support Office
Roger Pauley, Esq.

...ing at the ... the following
“(7) In districts that are not part of a United States trustee region as defined in section 581 of this title, the Judicial Conference of the United States may require the debtor in a case under chapter 11 of title 11 to pay fees equal to those imposed by paragraph (6) of this subsection. Such fees shall be deposited as offsetting receipts to the fund established under section 1931 of this title and shall remain available until expended.”

TITLE II—JUDICIAL PROCESS IMPROVEMENTS

SEC. 201. EXTENSION OF STATUTORY AUTHORITY FOR MAGISTRATE JUDGE POSITIONS TO BE ESTABLISHED IN THE DISTRICT COURTS OF GUAM AND THE NORTHERN MARIANA ISLANDS.

Section 631 of title 28, United States Code, is amended—

(1) by striking the first two sentences of subsection (a) and inserting the following: “The judges of each United States district court and the district courts of the Virgin Islands, Guam, and the Northern Mariana Islands shall appoint United States magistrate judges in such numbers and to serve at such locations within the judicial districts as the Judicial Conference may determine under this chapter. In the case of a magistrate judge appointed by the district court of the Virgin Islands, Guam, or the Northern Mariana Islands, this chapter shall apply as though the court appointing such a magistrate judge were a United States district court.”; and

(2) by inserting in the first sentence of paragraph (c) of subsection (b) after “Commonwealth of Puerto Rico,” the following: “the Territory of Guam, the Commonwealth of the Northern Mariana Islands,”

SEC. 202. MAGISTRATE JUDGE CONTEMPT AUTHORITY.

Section 636(e) of title 28, United States Code, is amended to read as follows:

“(e) CONTEMPT AUTHORITY.—

“(1) IN GENERAL.—A United States magistrate judge serving under this chapter shall have within the territorial jurisdiction prescribed by the appointment of such magistrate judge the power to exercise contempt authority as set forth in this subsection.

“(2) SUMMARY CRIMINAL CONTEMPT AUTHORITY.—A magistrate judge shall have the power to punish summarily by fine or imprisonment such contempt of the authority of such magistrate judge constituting misbehavior of any person in the magistrate judge’s presence so as to obstruct the administration of justice. The order of contempt shall be issued under the Federal Rules of Criminal Procedure.

“(3) ADDITIONAL CRIMINAL CONTEMPT AUTHORITY IN CIVIL CONSENT AND MISDEMEANOR CASES.—In any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, and in any misdemeanor case proceeding before a magistrate judge under

Attachment 1

section 3401 of title 18, the magistrate judge shall have the power to punish, by fine or imprisonment, criminal contempt constituting disobedience or resistance to the magistrate judge's lawful writ, process, order, rule, decree, or command. Disposition of such contempt shall be conducted upon notice and hearing under the Federal Rules of Criminal Procedure.

"(4) CIVIL CONTEMPT AUTHORITY IN CIVIL CONSENT AND MISDEMEANOR CASES.—In any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, and in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, the magistrate judge may exercise the civil contempt authority of the district court. This paragraph shall not be construed to limit the authority of a magistrate judge to order sanctions under any other statute, the Federal Rules of Civil Procedure, or the Federal Rules of Criminal Procedure.

"(5) CRIMINAL CONTEMPT PENALTIES.—The sentence imposed by a magistrate judge for any criminal contempt provided for in paragraphs (2) and (3) shall not exceed the penalties for a Class C misdemeanor as set forth in sections 3581(b)(8) and 3571(b)(6) of title 18.

"(6) CERTIFICATION OF OTHER CONTEMPTS TO THE DISTRICT COURT.—Upon the commission of any such act—

"(A) in any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, or in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, that may, in the opinion of the magistrate judge, constitute a serious criminal contempt punishable by penalties exceeding those set forth in paragraph (5) of this subsection, or

"(B) in any other case or proceeding under subsection (a) or (b) of this section, or any other statute, where—

"(i) the act committed in the magistrate judge's presence may, in the opinion of the magistrate judge, constitute a serious criminal contempt punishable by penalties exceeding those set forth in paragraph (5) of this subsection,

"(ii) the act that constitutes a criminal contempt occurs outside the presence of the magistrate judge, or

"(iii) the act constitutes a civil contempt, the magistrate judge shall forthwith certify the facts to a district judge and may serve or cause to be served, upon any person whose behavior is brought into question under this paragraph, an order requiring such person to appear before a district judge upon a day certain to show cause why that person should not be adjudged in contempt by reason of the facts so certified. The district judge shall thereupon hear the evidence as to the act or conduct complained of and, if it is such as to warrant punishment, punish such person in the same manner and to the same extent as for a contempt committed before a district judge.

"(7) APPEALS OF MAGISTRATE JUDGE CONTEMPT ORDERS.—The appeal of an order of contempt under this subsection shall be made to the court of appeals in cases proceeding under subsection (c) of this section. The appeal of any other order

of contempt issued under this section shall be made to the district court.”.

SEC. 203. CONSENT TO MAGISTRATE JUDGE AUTHORITY IN PETTY OFFENSE CASES AND MAGISTRATE JUDGE AUTHORITY IN MISDEMEANOR CASES INVOLVING JUVENILE DEFENDANTS.

(a) AMENDMENTS TO TITLE 18 —

(1) PETTY OFFENSE CASES.—Section 3401(b) of title 18, United States Code, is amended by striking “that is a class B misdemeanor charging a motor vehicle offense, a class C misdemeanor, or an infraction,” after “petty offense”.

(2) CASES INVOLVING JUVENILES.—Section 3401(g) of title 18, United States Code, is amended—

(A) by striking the first sentence and inserting the following: “The magistrate judge may, in a petty offense case involving a juvenile, exercise all powers granted to the district court under chapter 403 of this title.”;

(B) in the second sentence by striking “any other class B or C misdemeanor case” and inserting “the case of any misdemeanor, other than a petty offense,”; and

(C) by striking the last sentence.

(b) AMENDMENTS TO TITLE 28.—Section 636(a) of title 28, United States Code, is amended by striking paragraphs (4) and (5) and inserting the following:

“(4) the power to enter a sentence for a petty offense; and

“(5) the power to enter a sentence for a class A misdemeanor in a case in which the parties have consented.”.

~~SECTION 604 OF TITLE 28, UNITED STATES CODE, IS AMENDED IN SUBSECTION (A) BY STRIKING THE SECOND PARAGRAPH DESIGNATED (24).~~

~~Section 604 of title 28, United States Code, is amended in subsection (a) by striking the second paragraph designated (24)~~

SEC. 205. MEMBERSHIP IN CIRCUIT JUDICIAL COUNCILS.

~~Section 332(a) of title 28, United States Code, is amended—~~

~~(1) by striking paragraph (3) and inserting the following:~~

~~“(3) Except for the chief judge of the circuit, either judges in regular active service or judges retired from regular active service under section 371(b) of this title may serve as members of the council. Service as a member of a judicial council by a judge retired from regular active service under section 371(b) may not be considered for meeting the requirements of section 371(f)(1) (A), (B), or (C).”; and~~

~~(2) in paragraph (5) by striking “retirement,” and inserting “retirement under section 371(a) or 372(a) of this title.”.~~

SEC. 206. SUNSET OF CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS.

~~Section 103(b)(2)(A) of the Civil Justice Reform Act of 1990 (Public Law 101-650; 104 Stat. 5096; 28 U.S.C. 471 note), as amended by Public Law 105-53 (111 Stat. 1173), is amended by inserting “471,” after “sections”.~~

SEC. 207. REPEAL OF COURT OF FEDERAL CLAIMS FILING FEE.

Section 2520 of title 28, United States Code, and the item relating to such section in the table of contents for chapter 165

Rule 17

<p>(d) Service. A subpoena may be served by the marshal, by a deputy marshal or by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and by tendering to that person the fee for 1 day's attendance and the mileage allowed by law. Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof.</p>	<p>(d) Service. A marshal, deputy marshal, or any nonparty who is at least 18 years old, may serve a subpoena. The server must deliver a copy of the subpoena to the witness and must tender to the witness one day's witness-attendance fee and the legal mileage allowance. The server need not tender the attendance fee or mileage allowance when the United States, a federal officer, or a federal agency has requested the subpoena.</p>
<p>(e) Place of Service.</p> <p>(1) In United States. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the United States.</p> <p>(2) Abroad. A subpoena directed to a witness in a foreign country shall issue under the circumstances and in the manner and be served as provided in Title 28, U.S.C., § 1783.</p>	<p>(e) Place of Service.</p> <p>(1) In the United States. A subpoena requiring a witness to attend a hearing or trial may be served at any place within the United States.</p> <p>(2) In a Foreign Country. If the witness is in a foreign country, 28 U.S.C. § 1783 governs the subpoena's service.</p>
<p>(f) For Taking Depositions; Place of Examination.</p> <p>(1) Issuance. An order to take a deposition authorizes the issuance by the clerk of the court for the district in which the deposition is to be taken of subpoenas for the persons named or described therein.</p> <p>(2) Place. The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the trial court, taking into account the convenience of the witness and the parties.</p>	<p>(f) Deposition Subpoena.</p> <p>(1) Issuance. A court order to take a deposition authorizes the clerk in the district where the deposition is to be taken to issue a subpoena for any witness named or described in the order.</p> <p>(2) Place. After considering the convenience of the witness and the parties, the court may order — and the subpoena may require — the witness to appear anywhere the court designates.</p>
<p>(g) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued or of the court for the district in which it issued if it was issued by a United States magistrate judge.</p>	<p>(g) Contempt. The court may hold in contempt a witness who, without adequate excuse, disobeys a subpoena issued by a federal court in that district.</p>
<p>(h) Information Not Subject to Subpoena. Statements made by witnesses or prospective witnesses may not be subpoenaed from the government or the defendant under this rule, but shall be subject to production only in accordance with the provisions of Rule 26.2.</p>	<p>(h) Information Not Subject to a Subpoena. No party may subpoena a statement of a witness or of a prospective witness under this rule. Rule 26.2 governs the production of the statements.</p>

Attachment 2

Rule 20

(d) **Juveniles.** A juvenile (as defined in 18 U S C § 5031) who is arrested, held, or present in a district other than that in which the juvenile is alleged to have committed an act in violation of a law of the United States not punishable by death or life imprisonment may, after having been advised by counsel and with the approval of the court and the United States attorney for each district, consent to be proceeded against as a juvenile delinquent in the district in which the juvenile is arrested, held, or present. The consent shall be given in writing before the court but only after the court has apprised the juvenile of the juvenile's rights, including the right to be returned to the district in which the juvenile is alleged to have committed the act, and of the consequences of such consent

(d) **Juveniles.**

- (1) **Consent to Transfer.** A juvenile, as defined in 18 U S C § 5031, may be proceeded against as a juvenile delinquent in the district where the juvenile is arrested, held, or present, if
- (A) the alleged offense that occurred in the other district is not punishable by death or life imprisonment,
 - (B) an attorney has advised the juvenile;
 - (C) the court has informed the juvenile of the juvenile's rights — including the right to be returned to the district where the offense allegedly occurred — and the consequences of waiving those rights;
 - (D) the juvenile, after receiving the court's information about rights, consents in writing to be proceeded against in the transferee district, and files the consent in the transferee district;
 - (E) the United States attorneys for both districts approve the transfer in writing; and
 - (F) the transferee court approves the transfer.
- (2) **Clerk's Duties.** After receiving the juvenile's written consent and the required approvals, the clerk where the indictment or information or complaint is pending or where the alleged offense occurred must send the file, or a certified copy, to the clerk in the transferee district.

COMMITTEE NOTE

The language of Rule 20 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only, except as noted below.

Rule 42. Criminal Contempt	Rule 42. Criminal Contempt
<p>(b) Disposition Upon Notice and Hearing. A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to a trial by jury in any case in which an act of Congress so provides. The defendant is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the court shall enter an order fixing the punishment.</p>	<p>(a) Disposition After Notice. Any person who commits criminal contempt may be punished for that contempt after prosecution on notice.</p> <p>(1) <i>Notice.</i> The court must give the person notice in open court, in an order to show cause, or in an arrest order. The notice must:</p> <ul style="list-style-type: none"> (A) state the time and place of the trial. (B) allow the defendant a reasonable time to prepare a defense, and (C) state the essential facts constituting the charged criminal contempt and describe it as such. <p>(2) <i>Appointing a Prosecutor.</i> The court must request that the contempt be prosecuted by an attorney for the government, unless the interest of justice requires appointment of another attorney. If the government declines the request, the court must appoint another attorney to prosecute the contempt.</p> <p>(3) <i>Trial and Disposition.</i> A person being prosecuted for criminal contempt is entitled to a jury trial in any case in which federal law so provides and must be released or detained as Rule 46 provides. If the criminal contempt involves disrespect toward or criticism of a judge, that judge is disqualified from presiding at the contempt trial or hearing unless the defendant consents. Upon a finding or verdict of guilty, the court must impose the punishment.</p>
<p>(a) Summary Disposition. A criminal contempt may be punished summarily if the judge certifies that the judge saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.</p>	<p>(b) Summary Disposition. Notwithstanding any other provision of these rules, the court may summarily punish a person who commits criminal contempt in its presence if the judge saw or heard the contemptuous conduct and so certifies. The contempt order must recite the facts, be signed by the judge, and be filed with the clerk.</p>

(2) **Initial Appearance.** At the defendant's initial appearance on a misdemeanor or other petty offense charge, the court shall inform the defendant of:

(A) the charge, and the maximum possible penalties provided by law, including payment of a special assessment under 18 U.S.C. § 3013, and restitution under 18 U.S.C. § 3663.

(B) the right to retain counsel;

(C) the right to request the appointment of counsel if the defendant is unable to retain counsel, unless the charge is a petty offense for which an appointment of counsel is not required;

(D) the right to remain silent and that any statement made by the defendant may be used against the defendant;

(E) the right to trial, judgment, and sentencing before a district judge, unless:

(i) the charge is a Class B misdemeanor motor-vehicle offense, a Class C misdemeanor, or an infraction, or

(ii) the defendant consents to trial, judgment, and sentencing before the magistrate judge,

(F) the right to trial by jury before either a United States magistrate judge or a district judge, unless the charge is a petty offense, and

(G) the right to a preliminary examination in accordance with 18 U.S.C. § 3060, and the general circumstances under which the defendant may secure pretrial release, if the defendant is held in custody and charged with a misdemeanor other than a petty offense.

(2) **Initial Appearance.** At the defendant's initial appearance on a petty offense or other misdemeanor charge, the magistrate judge must inform the defendant of the following:

(A) the charge, and the minimum and maximum penalties, including special assessment under 18 U.S.C. § 3013 and restitution under 18 U.S.C. § 3556;

(B) the right to retain counsel.

(C) the right to request the appointment of counsel if the defendant is unable to retain counsel — unless the charge is a petty offense for which the appointment of counsel is not required;

(D) the right to remain silent and that the prosecution may use against the defendant any statement that the defendant makes;

(E) the right to trial, judgment, and sentencing before a district judge — unless

(i) the charge is a ^{Petty offense} ~~Class B~~ ~~misdemeanor motor vehicle offense, a Class C misdemeanor, or an infraction~~; or

(ii) the defendant consents to trial, judgment, and sentencing before a magistrate judge,

(F) the right to a jury trial before either a magistrate judge or a district judge — unless the charge is a petty offense; and

(G) if the defendant is held in custody and charged with a misdemeanor other than a petty offense, the right to a preliminary hearing under Rule 5.1, and the general circumstances, if any, under which the defendant may secure pretrial release.

Attachment 3

(3) Consent and Arraignment.

(A) **Plea Before a United States Magistrate Judge.** A magistrate judge shall take the defendant's plea in a Class B misdemeanor charging a motor vehicle-offense, a class C misdemeanor, or an infraction. In every other misdemeanor case, a magistrate judge may take the plea only if the defendant consents either in writing or orally on the record to be tried before the magistrate judge and specifically waives trial before a district judge. The defendant may plead not guilty, guilty, or with the consent of the magistrate judge, nolo contendere

(B) **Failure to Consent.** In a misdemeanor case — other than a Class B misdemeanor charging a motor-vehicle offense, a Class C misdemeanor, or an infraction — magistrate judge shall order the defendant to appear before a district judge for further proceedings on notice, unless the defendant consents to the trial before the magistrate judge.

(3) *Arraignment.*

(A) *Plea Before a Magistrate Judge* A magistrate judge may take the defendant's plea in a ~~Class B misdemeanor charging a motor vehicle offense, a class C misdemeanor, or an infraction.~~ *Petty Offense* In every other misdemeanor case, a magistrate judge may take the plea only if the defendant consents either in writing or on the record to be tried before a magistrate judge and specifically waives trial before a district judge. The defendant may plead not guilty, guilty, or with the consent of the magistrate judge, nolo contendere.

(B) *Failure to Consent.* Except for a *Petty offense* ~~Class B misdemeanor charging a motor-vehicle offense, a Class C misdemeanor, or an infraction,~~ the magistrate judge must order a defendant who does not consent to trial before a magistrate judge to appear before a district judge for further proceedings