225 REINEKERS LANE
SUITE 700
RICHARDS MCGETTIGAN REILLY & WEST, P.C. ALEXANDRIA, VIRGINIA 22314
ATTORNEYS AT LAW PHONE: 703-549-5353
FAX: 703-683-2941
WWW.RMRWLAW.COM

CRAIG.REILLY@RMRWLAW.COM

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03-CV-E

VIA ELECTRONIC MAIL
Civil Rules Committee
c/o Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
Washington, D.C. 20544

Re: Proposals for revisions to Civil Rules

Dear Civil Rules Committee:

One of the first assignments I received as a new associate over twenty years ago was to find the rule that permitted reconsideration of an order granting summary judgment on one count of our three-count complaint. I failed to find any such rule then, but I found several cases on point (which did not cite to a rule), and we filed our motion based on that authority. Curious, though, I continued searching for such a rule on my own, later found it (the second sentence of Rule 54(b)), and even later wrote an article about it. *See* Craig C. Reilly, *Getting it Right the Second Time*, LITIGATION at 43 (ABA Winter 1996). To my chagrin, a reader contacted me and informed me that my article missed the "most obvious" rule on point -- Rule 59(e) -- which, of course, is not on point at all when it comes to interlocutory orders. Such missed opportunities and misconceptions, I believe, justify a clarification of Rule 54(b).

Moreover, United States Magistrate Judges now play an important role in deciding numerous nondispositive pretrial motions in civil actions. Obtaining relief from an erroneous interlocutory order rendered by a magistrate judge, however, is limited under Rule 72(a) to an "review" by the district judge under a "clearly erroneous or contrary to law standard." I submit that such orders rendered by a magistrate judge should be expressly subject to reconsideration under Rule 54(b). Moreover, I believe that such orders should be subject to review under an "abuse of discretion" standard when applicable (which is most of the time).

In light of my own experiences, I believe that clarification of these rules would be beneficial. I have proposed revised language for each rule (red-lined versions are attached), and I have explained by proposals below. I hope the Committee finds these proposals and comments helpful.

* * * * *

PROPOSED REVISIONS TO RULE 54(b)

Although "motions for reconsideration" of "interlocutory" orders are filed and ruled upon routinely in federal court, both the rule under which such relief is properly sought and the standard for granting or denying that relief are obscure. I respectfully recommend clarifying Rule 54(b) to define "interlocutory" orders and to state more clearly the authority for "reconsideration" of interlocutory orders. When explaining my reasoning for these proposals, I have drawn principally upon decisions from the district and circuit in which I practice (which, I believe, are typical of decisions nationwide).

The Obscurity of the "Reconsideration" Rule: To begin with, there is persistent confusion regarding the source of a district court's authority to reconsider an interlocutory order, which confusion is not limited to newly minted associates. For example: "Though there is no such motion mentioned in the Federal Rules of Civil Procedure, the motion [for reconsideration] is not uncommon in federal practice." *Above the Belt, Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983). Or this: "The Court has been unable to determine the basis upon which such a motion [for reconsideration] is to be considered. There appears to be no statutory authority for such a motion and it is not mentioned in the Federal Rules of Civil Procedure." *Shepherd v. Health Drinks of America*, 60 F.R.D. 607, 607 (E.D. Va. 1983). Still other decisions cite to Rule 59(e) when adjudicating a motion to reconsider an order that plainly is neither final nor a judgment. *See, e.g., Natural Resources Def. Council v. EPA*, 806 F. Supp. 1263, 1266 n. 3 (E.D. Va. 1992). Those decisions reflect the obscurity of Rule 54(b) as currently written.

There is, of course, a rule that permits reconsideration of orders that are not "final." An order that is neither "final" nor certified for an interlocutory appeal is "subject to revision at any time before entry of judgment." FED.R.CIV.P. 54(b). That provision, however, is buried as the second sentence in subsection (b), which otherwise is directed at the entry of partial "final judgments" as to some -- but not all -- claims or parties, to permit an immediate appeal on limited issues. Admittedly, many federal courts have recognized this provision of Rule 54(b), and correctly cited to it. *See generally Moses H. Cone Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 12 & n.14 (1983); *accord, e.g., High Country Arts & Craft v. Hartford*, 126 F.3d 629, 635 (4th Cir. 1997); *Fayetteville Investors v. Commercial Builders, Inc.*, 936 F.2d 1462, 1472-73 (4th Cir. 1991). But the hit-or-miss manner in which courts have cited to -- or failed to find -- this rule would justify some clarification.

Adding to this obscurity, the Advisory Committee Notes to Rule 54 discuss the provisions for partial judgments in the first sentence of section (b), but make no mention whatsoever of the second sentence. Ironically, the Advisory Committee Notes to Rule 60 provide more of an explanation of "reconsideration" of "interlocutory" orders than those explaining Rule 54: "[I]nterlocutory judgments are not brought within the restrictions of [Rule 60]; but rather are left subject to the complete power of the court rendering them to afford such relief from them as justice requires." ADV. COMM. NOTES, 5 F.R.D. 433, 479 (1946). While those notes make it clear that Rule 60 does not apply to "interlocutory" orders, they do not then cross-reference Rule 54(b) as the source of the "complete power" to provide relief from interlocutory orders.

Moreover, in one major treatise, the reconsideration and revision of interlocutory orders is not even discussed under the chapter and sections concerning Rule 54(b), but is found under the section discussing the common law doctrine of "law of the case." *See* 18B Wright, Miller & Cooper, FEDERAL PRACTICE AND PROCEDURE: JURISDICTION 2D § 4478.1 (2002). In the other major treatise, reconsideration is mentioned in connection with Rule 54(b) but only briefly explained. *See* 10 MOORE'S FEDERAL PRACTICE § 54.25[4] (Matthew Bender 3d ed. 2003). Given the importance and usefulness of this authority, I submit that a more explicit and clear reference to it in the Rules and Advisory notes is warranted.

Similarly, the rules and advisory notes repeatedly use the term "interlocutory" without defining it. *See, e.g.*, FED.R.CIV.P. 56(c) & 77(a); ADV. COMM. NOTES, 5 F.R.D. 433, 479 (1946). Stating a specific definition seems appropriate -- notwithstanding that law dictionaries provide an acceptable general definition. Those law dictionaries also define "judgment" -- but not precisely as that term is used in the Civil Rules. I submit that defining "interlocutory" orders requires the same sort of precision that is used when defining "judgment" under the Civil Rules.

The Civil Rules contemplate two types of "interlocutory" orders: (1) orders deciding some -- but not all -- dispositive or substantive issues, such as partial judgment under Rule 54(b), or a summary judgment finding liability under Rule 56(c)); and (2) orders deciding nondispositive and procedural matters, such as motions regarding venue transfer, amendment of pleadings, joinder of new parties, and discovery.

Proposals for Amendments: My first proposal is that Rule 54(b) simply be renamed and divided into three subsections. I do not suggest substantive changes;

instead, the Rule's words are largely preserved and the substance is unchanged. The rule is reorganized into three subsections merely for clarity and precision.

In subsection (1), I suggest defining "interlocutory" orders by using the same wording now found in Rule 54(b) to distinguish them from "final" orders, which are defined in Rule 54(a). To that existing wording, I suggest adding language describing other nondispositive orders that also are interlocutory, which concepts are consistent with the use of those terms in other rules. *Cf.* FED.R.CIV.P 56(c) (describing the entry of partial summary judgment as "interlocutory") & 72(a) (describing "nondispositive" orders). In subsection (2), I propose specifying the circumstances for entry of partial judgments, also using the existing standard and wording. Finally, in subsection (3), I recommend setting forth the provision for reconsideration and revision of "interlocutory" orders.

My second proposal is that the standard for reconsideration and revision be stated in the Rule and explained in the Advisory Committee Notes. As it is written now, the Rule states no standard for granting relief (although, as noted above, the notes to Rule 60 correctly suggests that an "as justice requires" standard applies). An "as justice requires" standard is a meaningful and appropriate standard, and something similar is used in Rule 15(a) regarding amendments ("when justice so requires"). Thus, I suggest that the Rule include an "as justice requires" standard.

As it is, federal courts usually require a showing of cause for reconsideration -- typically one of these grounds: (1) the discovery of new material evidence, (2) an intervening change in controlling law, or (3) the prevention of a manifest injustice. *See* 18B Wright, Miller & Cooper, FEDERAL PRACTICE AND PROCEDURE: JURISDICTION 2D §

4478.1 (2002). The advisory notes, I believe, should explain the "as justice requires" standard by reference to that treatise and the cases discussed therein.

This standard, moreover, is similar to that universally applied under Rule 59(e). Even though a precise standard is not stated in Rule 59(e), the courts agree that there are certain threshold showings required for relief: (1) a change in controlling law, (2) new evidence, or (3) to correct clear error or prevent manifest injustice. *See, e.g., Collison v. International Chem. Workers*, 34 F.3d 233, 236 (4th Cir. 1994) (stating grounds). The parallels between Rule 59(e) and Rule 54(b) are obvious, and the district court's discretion under both rules should be guided by similar principles.

It also may be appropriate to clarify that reconsideration and revision under Rule 54(b) is a rule-based power of the court, and that it is not merely derivative of the common law doctrine of "law of the case." The law of the case doctrine itself is the subject of some confusion -- particularly because it applies in different ways depending on the stage of the case. Distinguishing Rule 54(b) from the law of the case doctrine seems warranted.

I also believe that the Advisory Committee Notes should address the timing of motions of reconsideration. I think the Rule should continue to say that reconsideration and revision may be sought "at any time." A litigant, after all, cannot predict when new facts or a change in the controlling law will occur (both have happened very late in cases in which I was involved, which afforded me grounds for successful reconsideration motions). But justice and efficiency require some "finality" of interim rulings -- even prior to trial -- or a case may falter and stall. Thus, the advisory notes should make clear that reconsideration must be sought with due diligence promptly upon discovery of the

grounds for relief. *See John C. Simmons Co. v. Grier Bros. Co.*, 258 U.S. 82, 90-91 (1922) ("If an interlocutory decree be involved, a rehearing may be sought at any time before final decree, provided due diligence be employed and a revision be otherwise consonant with equity."). Therefore, an untimely motion for reconsideration may denied -- regardless of merit -- if "prejudice" would result, which is similar to the standard under Rule 15, which balances the timing of a motion to amend as well as its substantive merit. *See Foman v. Davis*, 371 U.S. 178, 182 (1962). The balancing of potentially competing interests thus segues to my third proposal -- the district court's discretion.

My third proposal is that the Rule expressly state that reconsideration and revision is discretionary, which then sets the standard for appeal. A discretionary standard is appropriate, I believe, because -- as noted above -- the district judge may need to balance the merit of the motion against the possible prejudice of revising an interlocutory order rendered earlier in the case. The district judge must have discretion to keep the case moving if need be, while at the same having the latitude to correct what has proven to be an unjust interlocutory order. Both speed and justice on the merits are mandated under Rule 1, and a discretionary standard should permit the district court to balance both goals. This is similar to the discretion the district judge would exercise when balancing competing interests involved in a motion to amend or a motion to alter a judgment.

PROPOSED REVISIONS TO RULE 72(a)

My next proposal involves the interplay between Rules 54(b) and 72(a). As district judges increasingly refer nondispositive motions to the magistrate judges, some allowance for reconsideration by the magistrate judge should be included, too.

Moreover, the standard of review by a district judge should include an abuse of discretion standard. Let me explain each point.

Seeking relief from a magistrate judge's ruling now is narrowly limited under Rule 72(a), which leads to unintended problems. Making it clear that an aggrieved party has the option of seeking reconsideration by the magistrate judge could solve some of these problems. For example, if a magistrate judge's ruling appears unassailably correct when rendered, the aggrieved party probably will not appeal to the district judge. If much later in the case, the legal or factual premise for the magistrate judge's ruling was found to have been mistaken, it would be too late to seek Rule 72(a) review.[1]/ Indeed, even if the mistake is immediately apparent, it still may be appropriate to allow correction by the magistrate judge, so that the district judge is not burdened with an issue that the magistrate judge could correct instead. A red-lined version of Rule 72(a) showing these proposed changes is enclosed.

Reconsideration in this context differs from review by the district judge of a magistrate judge's ruling under Rule 72(a) and 28 U.S.C. § 636(b)(1)(A), which are under a "clearly erroneous or contrary to law" standard. *See, e.g., Federal Election Comm'n v. The Christian Coalition*, 178 F.R.D. 456, 459-60, *aff'g in part, and modifying in part*, 178 F.R.D. 61 (E.D. Va. 1998). Such review by the district judge generally is limited to the

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[1]/ I note that one commentator has suggested that the 10-day period for seeking district court review might be subject to enlargement under Rule 6(b) for "cause shown." *See* 12 Wright, Miller & Marcus, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D § 3069 at 349 (1997). That suggestion implicitly recognizes that the 10-day time period may need to yield in favor of a just ruling on the merits. Rather than just relying on Rule 6(b) to enlarge the appeal time, however, I submit that specifically allowing for reconsideration by the magistrate judge, followed by review by the district judge, better addresses the practicalities of pretrial motions practice.

grounds asserted before the magistrate judge, and "new issues and arguments" cannot be raised. *Jesselson v. Outlet Associates, etc., L.P.*, 784 F. Supp. 1223, 1228-29 (E.D. Va. 1991). If "new issues" have arisen after the magistrate judge's ruling, but before the ten-day period has run to apply for review by the district judge, a party believing itself aggrieved of a magistrate judge's ruling should be permitted seek reconsideration from the magistrate judge. (Indeed, the magistrate judges in Virginia already have entertained such motions. *See, e.g., Wang Labs., Inc. v. America Online, Inc.*, 1998 U.S. Dist. LEXIS 6798 (E.D. Va. 1998); *accord Mansoor v. County of Albemarle*, 2001 U.S. Dist. LEXIS 8386 (W.D. Va. 2001).) Similarly, if the time for seeking review by the district judge has already run, a litigant with good grounds for relief should have a clear avenue for reconsideration and revision by the magistrate judge (but with his right of review by the district judge limited to those new grounds). Reconsideration and revision by the magistrate judge under both circumstances seems efficient, appropriate, and desirable.

These suggested changes to Rule 72(a) are intended to delineate the circumstances in which each type of relief may be obtained, as well as standards for obtaining each. "Review" by the district judge and "reconsideration" by the magistrate judge would be separately identified, and each would be permitted in different circumstances. I also suggest the use of the word "review" in Rule 72(a), as that term ordinarily is associated with an appeal, and would further serve to distinguish the request for *review* from a motion for *reconsideration.*

Finally, I propose that Rule 72(a) include "abuse of discretion" as one of the standards of review. Most nondispositive matters are addressed to the sound discretion of the court -- *e.g.*, orders concerning party discovery, non-party discovery subpoenas, and

the application of qualified privileges during discovery -- and are subject to an "abuse of discretion" standard of appellate review. *See, e.g., Tiedman v. American Pigment Corp.*, 253 F.2d 803, 807-09 (4th Cir. 1958) (party discovery); *Heat and Control, Inc. v. Hester Indus., Inc.*, 785 F.2d 1017, 1022 (Fed. Cir. 1986) (Rule 45 subpoena); *Church of Scientology Int'l v. Daniels*, 992 F.2d 1329, 1335(4th Cir. 1993) (qualified privilege). Moreover, even in discovery disputes, the standard may vary depending upon the issue, the manner in which it is raised, and the manner in which it is decided. *See Watson v. Lowcountry Red Cross*, 974 F.2d 482, 485 (4th Cir. 1992) (abuse of discretion, *de novo*, and clearly erroneous standards all might apply to protective order ruling). If magistrate judges will be making discretionary rulings on nondispositive motions, it seems obvious that the standard of review employed by the district judge should mirror that which would be used on appellate review -- including an "abuse of discretion."[2]/

When asked to review and modify a magistrate judge's discretionary ruling, the district judge should not apply a different standard than would the appellate court, nor should the district judge have to shoehorn the "right" result under the "wrong" standard of review. *But see* 12 Wright, Miller & Marcus, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D § 3069 at 350-51 & n.20 (1997) (collecting cases in which an abuse of discretion

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[2]/ I cannot imagine that the omission of the "abuse of discretion" standard was a purposeful limitation on the right to seek district court review, or that its omission means that a magistrate judge's discretionary rulings are immune from meaningful district court review. *But see United States v. Gioia*, 853 F. Supp. 21, 25-26 (D. Mass. 1994) (under applicable standard of review, district court is "precluded" from reviewing "any orders which involve the exercise of discretion" by the magistrate judge). Rule 72(a) would be largely emptied of meaning if district courts actually were precluded from reviewing and modifying a magistrate judge's discretionary rulings.

standard has been applied upon Rule 72(a) review).[3]/ Indeed, if the district court declines to modify a magistrate judge's discovery order under a "clearly erroneous" standard, the aggrieved party could appeal at the end of the case, but would seek appellate review under a different standard ("abuse of discretion"), which seems anomalous. Therefore, I submit that Rule 72(a) should include the "abuse of discretion" standard, as well as the others, and direct the district judge to use the applicable standard of review.

Having said that, I realize that the jurisdictional statute specifically states that the standard of review of a magistrate judge's order adjudicating a nondispositive pretrial matter shall be "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A). Therefore, Rule 82, coupled with the canon of statutory construction *expressio unius est exclusio alterius*, may preclude amending Rule 72(a) in a manner I suggest if that would be inconsistent with the jurisdictional statute. If so, I recommend that an amendment of

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[3]/ I do not believe that an "implicit" "abuse of discretion" standard can simply be read-into Rule 72(a) by judicial interpretation. *See, e.g., Geophysical Sys. Corp. v. Raytheon Co, Inc.*, 117 F.R.D. 646, 647 (C.D. Cal. 1987) (under Rule 72(a), there is a "clearly implicit standard of abuse of discretion"). Generally the "clearly erroneous" standard is directed at factual findings and the "contrary to law" standard is directed at the application or interpretation of legal precedent and statutes. *See* 12 Wright, Miller & Marcus, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D § 3069 at 350-51 & n.20 (1997). The "abuse of discretion" standard is different: It "denotes the absence of a hard and fast rule," and is directed at ensuring that the judicial officer has done "what is right and equitable under the circumstances and the law," as "directed by the reason and conscience of the judge to [attain] a just result." *Langnes v. Green*, 282 U.S. 531, 541 (1931). As such, it does not necessarily fit under the other two standards. In fact, just the reverse seems to be true: the "abuse of discretion" standard includes both "clearly erroneous" and "contrary to law" components. *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990). By contrast, no authoritative decision of which I am aware holds that either of those standards "implicitly" includes the "abuse of discretion" standard. Thus, I submit that the "abuse of discretion" standard must be expressly stated in the rule to be effective.

the Magistrates Act be sought to allow "abuse of discretion" as one of the standards of review under Rule 72(a).

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I hope my proposals and comments are helpful. If you would like any additional information from me or have any questions, please let me know.

Sincerely,

Craig C. Reilly

Craig C. Reilly

Enclosures

RULE 54. JUDGMENTS; INTERLOCUTORY ORDERS; COSTS --

(a) Definition; Form.

"Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) Interlocutory Orders; Judgment Upon Multiple Claims or Involving Multiple Parties; Reconsideration and Revision of Interlocutory Orders.

(1) Interlocutory Orders.

"Interlocutory order" as used in these rules includes any order or other form of decision, however designated, which adjudicates (A) fewer than all the claims, when more than one claim for relief is presented in an action (whether as a claim, counterclaim, cross-claim, or third-party claim), (B) fewer than all the issues of any claim or defense, (C) the rights and liabilities of fewer than all the parties, when multiple parties are involved, or (D) other pretrial matters not dispositive of a claim or defense of a party.

(2) Judgment Upon Multiple Claims or Involving Multiple Parties.

~~When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved,~~ An interlocutory order that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and shall not be appealable as a judgment; however, the court may ~~may~~ direct the entry of a final judgment as to one or more ~~but fewer than all~~ of the claims or parties ~~only~~ upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.

(3) Reconsideration and Revision of Interlocutory Orders.

~~In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision~~ As justice requires, and in the discretion of the court, an interlocutory order is subject to reconsideration and revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for Judgment.

A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

(d) Costs; Attorney's Fees.

(1) Costs Other than Attorneys' Fees.

Except when express provision therefor is made either in a statute of the United States or in these rules, costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Such costs may be taxed by the clerk on one day's notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court.

(2) Attorneys' Fees.

(A) Claims for attorneys' fees and related nontaxable expenses shall be made by motion unless the substantive law governing the action provides for the recovery of such fees as an element of damages to be proved at trial.

(B) Unless otherwise provided by statute or order of the court, the motion must be filed and served no later than 14 days after entry of judgment; must specify the judgment and the statute, rule, or other grounds entitling the moving party to the award; and must state the amount or provide a fair estimate of the amount sought. If directed by the court, the motion shall also disclose the terms of any agreement with respect to fees to be paid for the services for which claim is made.

(C) On request of a party or class member, the court shall afford an opportunity for adversary submissions with respect to the motion in accordance with Rule 43(e) or Rule 78 . The court may determine issues of liability for fees before receiving submissions bearing on issues of evaluation of services for which liability is imposed by the court. The court shall find the facts and state its conclusions of law as provided in Rule 52(a) , and a judgment shall be set forth in a separate document as provided in Rule 58 .

(D) By local rule the court may establish special procedures by which issues relating to such fees may be resolved without extensive evidentiary hearings. In addition, the court may refer issues relating to the value of services to a special master under Rule 53 without regard to the provisions of subdivision (b) thereof and may refer a motion for attorneys' fees to a magistrate judge under Rule 72(b) as if it were a dispositive pretrial matter.

(E) The provisions of subparagraphs (A) through (D) do not apply to claims for fees and expenses as sanctions for violations of these rules or under 28 U.S.C. § 1927

Rule 72. Magistrate Judges; Pretrial Orders --

(a) Nondispositive Matters; Review by District Judge; Reconsideration and Revision by Magistrate Judge.

(1) Magistrate Judge Orders and Review by District Judge.

A magistrate judge to whom a pretrial matter not dispositive of a claim or defense of a party is referred to hear and determine shall promptly conduct such proceedings as are required and when appropriate enter into the record a written order setting forth the disposition of the matter. Within 10 days after being served with a copy of the magistrate judge's order, a party may serve and file objections to the order and seek review by the district judge to whom the case is assigned; a party may not thereafter assign as error a defect in the magistrate judge's order to which objection was not timely made. The district judge ~~to whom the case is assigned~~ shall review the magistrate judge's order and consider such objections and shall modify or set aside any portion of the magistrate judge's order found to be an abuse of discretion, clearly erroneous, or contrary to law, under the applicable standard of review.

(2) Reconsideration and Revision by Magistrate Judge.

An order entered by a magistrate judge on a nondispositive pretrial matter may be reconsidered and revised by that magistrate judge pursuant to Rule 54(b)(3); however, if such reconsideration and review is sought later than the time within which to seek review, modification, or vacation by the district judge, then objections to the new order, as well as review, modification, or vacation thereof by the district judge, will be limited to the grounds for reconsideration and revision presented to the magistrate judge.

(b) Dispositive Motions and Prisoner Petitions.

A magistrate judge assigned without consent of the parties to hear a pretrial matter dispositive of a claim or defense of a party or a prisoner petition challenging the conditions of confinement shall promptly conduct such proceedings as are required. A record shall be made of all evidentiary proceedings before the magistrate judge, and a record may be made of such other proceedings as the magistrate judge deems necessary. The magistrate judge shall enter into the record a recommendation for disposition of the matter, including proposed findings of fact when appropriate. The clerk shall forthwith mail copies to all parties.

A party objecting to the recommended disposition of the matter shall promptly arrange for the transcription of the record, or portions of it as all parties may agree upon or the magistrate judge deems sufficient, unless the district judge otherwise directs. Within 10 days after being served with a copy of the recommended disposition, a party may serve and file specific, written objections to the proposed findings and recommendations. A party may respond to another party's objections within 10 days after being served with a copy thereof. The district judge to whom the case is assigned

shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.