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FILED FOR RECORD
SKAMANIA COUNTY, WASH
BY Skamania County
APR 7 2 43 PM '98
P Lowry
AUDITOR
GARY H. OLSON

Return Address:

Skamania County

Please Print or Type Information.

Document Title(s) or transactions contained therein:

1. Complaint (Civil No. 98-304 HA)
2.
3.
4.

GRANTOR(S) (Last name, first, then first name and initials)

1. Skamania County
2. Mc Kee, Al etal
3. Evans, Dean etal
4. Carlson-Price, Melissa

[ ] Additional Names on page _____ of document.

GRANTEE(S) (Last name, first, then first name and initials)

1. Russom-Hay, Teri
2.
3.
4.

[ ] Additional Names on page _____ of document.

LEGAL DESCRIPTION (Abbreviated: I.E., Lot, Block, Plat or Section, Township, Range, Quarter/Quarter)

N/A

[ ] Complete legal on page _____ of document.

REFERENCE NUMBER(S) Of Documents assigned or released:

N/A

[ ] Additional numbers on page _____ of document.

ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER

N/A

[ ] Property Tax Parcel ID is not yet assigned.
[ ] Additional parcel #'s on page _____ of document.

The Auditor/Recorder will rely on the information provided on the form. The Staff will not read the document to verify the accuracy or completeness of the indexing information.

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS
TERI RUSSON-HAY

DEFENDANTS
SKAMANIA COUNTY, WASHINGTON; Ale MCKEE; DEE EVANS; and MELISSA CARLSON-PRICE,

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Hood River
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NUMBER)
Eric J. Fjelstad
SMITH, FJELSTAD & AMATO
1550 NW Eastman Pkwy, Ste 180
Gresham, OR 97030

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only) (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Damages arising from Violation of Civil Rights under 42 U.S.C. § 1983; Wrongful Discharge

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury — Med Malpractice
- ☐ 365 Personal Injury — Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☒ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence
- Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt. Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS — Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes
- ☐ 890 Other Statutory Actions

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION ☐ UNDER F.R.C.P. 23

DEMAND $ $400,000 +

Check YES only if demanded in complaint
JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
March 6, 1998

SIGNATURE OF ATTORNEY OF RECORD
Eric J. Fjelstad

UNITED STATES DISTRICT COURT

RECORDER'S NOTE:
NOT AN ORIGINAL DOCUMENT

COPY

Eric J. Fjelstad, OSB No. 89238
SMITH, FJELSTAD & AMATO
Gresham Corporate Center
1550 NW Eastman Parkway, Suite 180
Gresham, Oregon 97030
(503) 669-2242

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

TERI RUSSOM-HAY,

Plaintiff,

v.

SKAMANIA COUNTY, WASHINGTON; AL MCKEE; DEAN EVANS; and MELISSA CARLSON-PRICE,

Defendants.

Civ. No. [illegible]

COMPLAINT

(Violation of Civil Rights under 42 U.S.C. § 1983; Wrongful Discharge)

JURY TRIAL DEMANDED

NATURE OF THE ACTION

1. This is an action for damages under 42 U.S.C. § 1983 and common law wrongful discharge to correct unlawful employment practices on the basis of free speech, right to travel and due process, to vindicate the rights of plaintiff to fair treatment and to make plaintiff whole. Defendants Skamania County, Washington and its Board of County Commissioners at the material times engaged in a pattern of adverse treatment against plaintiff after plaintiff brought certain illegal acts to their attention and terminated plaintiff after a second report of illegal activity by another county employee. Defendants also terminated plaintiff's employment at least

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NOT AN ORIGINAL DOCUMENT

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in part because plaintiff was not a citizen of Skamania County, nor the State of Washington and did not provide her the process due to a person in her position before or after terminating her employment.

2. This also is an action for common law wrongful discharge pursuant to the court's ancillary jurisdiction.

3. At all relevant times, defendants acted under the color of the statutes, customs, ordinances, rules, regulations and/or usage of Skamania County.

JURISDICTION AND VENUE

4. This court has diversity and subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337 and 1343.

5. This court has ancillary jurisdiction over plaintiff's state law claim pursuant to 28 U.S.C. § 1367(a), as both the federal and state law claims arise from a common nucleus of operative facts such that they ordinarily would be expected to be tried in one judicial proceeding.

6. The employment practices alleged by plaintiff were committed in the State of Washington; however, plaintiff at all relevant times was a resident of Oregon, residing in Hood River, Oregon.

PARTIES

7. Plaintiff Teri Russom-Hay is a citizen of the United States and the State of Oregon. Defendant Skamania County employed plaintiff at all material times until her termination on November 5, 1996.

8. Defendant Skamania County, Washington at all material times was a municipal government in the State of Washington. The Parks and Recreation Department is a department within Skamania County.

9. At all material times defendants McKee, Evans and Carlson-Price were members of the Skamania County Board of County Commissioners. Plaintiff sues McKee, Evans and Carlson-Price in both their official and individual capacities.

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STATEMENT OF FACTS

10. Defendant Skamania County hired plaintiff in 1991 as its Director of Parks and Recreation. Plaintiff maintained that position and performed her duties beyond a satisfactory level until her discharge.

11. In 1993, plaintiff complained to the County that a fellow County employee was engaging in activities that were contrary to County regulations, rules and/or governing statutes. Although plaintiff's allegations ultimately proved to be true, defendants began at that time to unduly criticize plaintiff and refuse to honor her rights as a County employee.

12. During her employment, plaintiff learned that citizens of Skamania County were complaining about her because she was not a citizen of the county, or even of the State of Washington. Although county rules and regulations did not require county citizenship of its employees, defendants accepted and ratified the complaints by treating plaintiff adversely.

13. In about August 1996, plaintiff again complained about perceived illegalities and/or wrongful conduct by another County employee.

14. Shortly after her second complaint about another county employee, defendants terminated plaintiff's employment.

FIRST CLAIM FOR RELIEF

(Violation of 42 U.S.C. § 1983 - First Amendment)

(Against All Defendants)

15. Plaintiff incorporates by reference the allegations of paragraphs 1 through 14.

16. Defendants at all material times were aware of plaintiff's complaints about other county employees. A motivating factor in defendants' decision to terminate plaintiff's employment was plaintiff's exercise of her free speech rights regarding the conduct of county employees. Plaintiff's complaints about these employees were true, and plaintiff complained in an effort to protect the county and its citizens from wrongful conduct.

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Copy

17. Plaintiff's termination because of her exercise of her free speech rights violated plaintiff's rights under the First Amendment of the United States Constitution. The decision to terminate plaintiff's employment was part of a custom, policy or practice of Skamania County.

18. As a result of defendant's conduct, plaintiff is entitled to an award of back pay, including lost wages, fringe benefits and prejudgment interest from November 6, 1996 through the date of trial.

19. As a further result of defendants' conduct, plaintiff has suffered non-economic damages of mental and emotional distress and damage to reputation in an amount to be determined at trial, which, for purposes of this complaint, is alleged to be $250,000.00. Plaintiff will continue to suffer such harm.

20. Plaintiff is entitled to be reinstated into employment with Skamania County or, in the alternative, to an award of front pay for lost future wages and fringe benefits in an amount to be determined at trial.

21. Defendants took all of these actions under color of statute, regulation, custom and usage in violation of 42 U.S.C. § 1983. Defendants' conduct was willful and/or reckless. Defendants' actions were willful, wanton and violated accepted societal norms. To deter such abusive conduct in the future, plaintiff seeks punitive damages against Skamania County in the sum of $100,000.00 and against the individual defendants in the amount of $50,000.00 each.

22. Plaintiff is entitled to recover her reasonable attorney fees and litigation costs pursuant to 42 U.S.C. § 1988.

SECOND CLAIM FOR RELIEF

(Violation of 42 U.S.C. § 1983 - Fourteenth Amendment Right to Travel)

(Against All Defendants)

23. Plaintiff incorporates by reference the allegations of paragraphs 1 through 14.

24. While employed by Skamania County, plaintiff learned that county citizens were lodging complaints about her based on the fact that she was a resident of neither the county nor

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the State of Washington

25. Defendants used these complaints to treat plaintiff adversely in terms of her employment. By doing so, defendants ratified the complaints.

26. A motivating factor in the decision to terminate plaintiff's employment were these complaints about plaintiff not living in Skamania County and/or the State of Washington. The decision to terminate plaintiff's employment because of her lack of county or state citizenship was part of a custom, policy or practice of Skamania County and violated plaintiff's right to travel under the Fourteenth Amendment to the United States Constitution.

27. As a result of defendants' conduct, plaintiff is entitled to recover the damages alleged in paragraphs 18-22 above.

THIRD CLAIM FOR RELIEF

(Violation of 42 U.S.C. § 1983 - Fourteenth Amendment Due Process)

(Against All Defendants)

28. Plaintiff incorporates by reference the allegations of paragraphs 1 through 14.

29. Despite five years of employment with Skamania County and an excellent performance record, defendants terminated plaintiff's employment without providing her with a pre- or post-termination hearing. Defendants also refused to provide plaintiff with reasons for her termination.

30. To the extent that state law or county rules, regulations or custom did not require that defendants provide plaintiff with due process prior to termination, such laws, rules, regulations or customs violate the Fourteenth Amendment to the United States Constitution.

31. The refusal to provide plaintiff with a pre- or post-termination hearing and to provide her with reasons for her dismissal were part of a custom, policy or practice of Skamania County and violated the Fourteenth Amendment to the United States Constitution.

32. Plaintiff is entitled to recover the damages alleged in paragraphs 18-22 above.

/////

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FOURTH CLAIM FOR RELIEF

(Common Law Wrongful Discharge)

(Against Skamania County)

33. Plaintiff incorporates by reference the allegations of paragraphs 1-22.

34. Defendant Skamania County, through its agents and employees, discharged plaintiff because she complained of wrongful acts by other county employees that could have subjected the County, and its citizens, to tort liability.

35. A public employee's right to complain of wrongful acts by other public employees that could subject the county and its citizens to tort liability and to continue employment free from violations of her free speech rights are of great importance to society and directly related to plaintiff's status as an employee of Skamania County.

36. As a result of Skamania County's conduct, plaintiff suffered the damages alleged in paragraphs 18-20 above.

37. Skamania County's conduct was willful, wanton and violated accepted societal norms. To deter such future abusive conduct, plaintiff seeks $150,000.00 in punitive damages.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Teri Russom-Hay asks the court to:

1. Assume jurisdiction over each of the causes of action set forth above.

2. On her First Claim for Relief, to award her economic damages in the form of back pay, including lost wages, fringe benefits and prejudgment interest, from November 6, 1996 through the date of trial, non-economic damages in an amount to be determined at trial and alleged to be $250,000.00, for reinstatement or front pay in an amount to be determined at trial, for punitive damages against Skamania County in the amount of $100,000.00, for punitive damages against the individual defendants in the amount of $50,000.00 each and for her attorney fees and litigation costs;

//////

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3. On her Second Claim for Relief, to award her economic damages in the form of back pay, including lost wages, fringe benefits and prejudgment interest from November 6, 1996 through the date of trial, non-economic damages in an amount to be determined at trial and alleged to be $250,000.00, for reinstatement or front pay in an amount to be determined at trial, punitive damages against Skamania County in the amount of $100,000.00, for punitive damages against the individual defendants in the amount of $50,000.00 each and for her attorney fees and litigation costs;

4. On her Third Claim for Relief, to award her economic damages in the form of back pay, including lost wages, fringe benefits and prejudgment interest, from November 6, 1996 through the date of trial, non-economic damages in an amount to be determined at trial and alleged to be $250,000.00, for reinstatement or front pay in an amount to be determined at trial, for punitive damages against Skamania County in the amount of $100,000.00, for punitive damages against the individual defendants in the amount of $50,000.00 each and for her attorney fees and litigation costs;

5. On her Fourth Claim for Relief, to award her economic damages in the form of back pay, including lost wages, fringe benefits and prejudgment interest, from November 6, 1996 through the date of trial, non-economic damages in an amount to be determined at trial and alleged to be $250,000.00, for reinstatement or front pay in an amount to be determined at trial, for punitive damages against Skamania County in the amount of $150,000.00;

6. Award plaintiff her litigation costs and his reasonable attorney fees, costs and expert witness fees pursuant to 42 U.S.C. § 1988;

7. Order defendant to pay prejudgment and postjudgment interest on all amounts due to plaintiff as a result of this action.

8. Order such further or alternative relief in favor of plaintiff as the court deems just, equitable and appropriate.

/////

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JURY TRIAL DEMAND

Plaintiff demands a jury trial on all questions of fact or combined questions of law and fact raised by this complaint.

Dated March 6, 1998.

By: _____
Eric J Fjelstad, OSB #89238
Of Attorneys for Plaintiff

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FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TERI RUSSOM-HAY,

Plaintiff(s),

v.

SKAMANIA COUNTY, et al,

Defendant(s).

Civil No. 98-304-HA

DISCOVERY ORDER
and
ORDER REQUIRING JOINT STATUS REPORT

In order to facilitate and expedite discovery in the instant action, the Court has ordered that:

(a) **Service of this Order:** Counsel for the plaintiff and counsel for the defendant in an action removed from state court shall serve this Order upon all other parties to the action.

(b) **Pretrial and Discovery Deadlines Imposed:** Not later than 120 days from the date of this Order, counsel for all parties shall:

(1) File all pleadings (Fed.R.Civ.P. 7[a] and 15)

(2) Join all claims, remedies and parties (Fed.R.Civ.P. 18 and 19)

(3) File all discovery motions

(4) Complete all discovery

(5) Disclose to other parties all experts and distribute the experts' written reports as described by Fed.R.Civ.P. 26[a][2][B].

(c) **Submission of a Joint Status Report:** All parties are directed to confer and file a Joint Status Report within 120 days from the date of this Order. Upon receipt of the report, the Court will issue an Order Establishing Trial and Pretrial Conference Dates and Procedures. The Joint Status Report shall set forth in separate paragraphs the following information:

(1) A concise statement summarizing the jurisdiction and nature of the case and any jurisdictional problems.

(2) The case number, title, and status of similar or successive cases or proceedings pending in this court or any other court or administrative agency.

(3) Whether the case is appropriate for referral to a mediator, arbitrator, or Special Master.

(4) The status of settlement efforts (do not disclose any offers or specific terms), and whether settlement assistance would be helpful.

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(5) Whether the case is to be tried by a jury, if previously demanded pursuant to Fed.R.Civ.P. 38(b).

(6) Date by which depositions of experts will be completed.

(7) A proposed schedule for filing and briefing dispositive motions.

(8) A proposed schedule for lodging the Pretrial Order, filing trial documents, and conducting a pretrial conference. The court will consider these proposals and set a final schedule after the Joint Status Report is filed.

(9) Date case will be ready for trial, estimated number of trial days, dates counsel will be unavailable for trial, and any complications to be considered in setting the trial date.

(10) Name, address and telephone number of actual trial counsel.

(11) Whether all parties will consent to trial and the entry of final judgment by a United States Magistrate Judge (SEE Fed.R.Civ.P. 73 and the attached consent form).[1]

(a) **Separate Status Reports Not Allowed:** If counsel cannot agree to any portion of the report, they shall respond in separate paragraphs in the Joint Status Report.

(b) **Non-appearing Parties:** Plaintiff shall explain the status of all previously served parties who have not filed a response prior to the due date of the Joint Status Report.

(c) **Sanctions:** Failure to comply with the terms of this Order may result in the imposition of sanctions by the Court.

DATED: March 6, 1998

DONALD M. CINNAMOND,
Clerk of Court

by _____
Dorothy Fisher, Deputy Clerk

---

[1] In accordance with Fed.R.Civ.P. 73(c), the normal appellate route from any final judgment entered by a United States Magistrate Judge shall lie directly to the United States Court of Appeals for the Ninth Circuit.

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UNITED STATES DISTRICT COURT
Office of the Clerk
District of Oregon

**NOTICE TO COUNSEL REGARDING
ASSIGNMENT OF PRESIDING JUDICIAL OFFICER**

CASE NO: Civ. 98-304-HA March 6, 1998

TITLE: TERI RUSSOM-HAY vs. SKAMANIA COUNTY, et al

(a) The above referenced case has been filed and docketed in this court and assigned to the presiding judicial officer shown below for disposition, to include the conduct of trial and/or entry of final judgment. The judicial officer's designated initials, as shown below, shall follow the case number on all future filings with the court.

Initials	Name of Assigned Judicial Officer
HA	Honorable Ancer L. Haggerty, U.S. District Judge

(b) Questions relating to the status or scheduling of this case should be directed to the judge's courtroom deputy:

Mary Anne DeLap (503) 326-8052

(c) Docket related questions should be directed to the following civil docket clerk:

Kathi Wright (503) 326-8016

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

TERI RUSSOM-HAY,

Plaintiff(s),

v.

Civil Case No: 98-304-HA

SKAMANIA COUNTY, et al,

Defendant(s).

CONSENT TO JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE AND DESIGNATION OF NORMAL APPEAL ROUTE

Pursuant to Fed.R.Civ.P. 73(b), the undersigned party or parties to the above-captioned civil matter hereby consent to have a United States Magistrate Judge conduct any and all proceedings in the case, including trial, and order the entry of final judgment.

In accordance with Fed.R.Civ.P. 73(c), the filing party also confirms that any appeal from a judgment or final order entered by a Magistrate Judge shall proceed directly to the appropriate U.S. Court of Appeals: 1) the U.S. Court of Appeals for the 9th Circuit; or 2) the U.S. Court of Appeals for the Federal Circuit.

DATED this _____ day of _____, 19_____.

(Signature) _____

(Typed Name) _____ Bar ID No: _____

(Representing) _____

(Firm Name) _____

(Mailing Address) _____

_____

(Telephone Number) _____

cc: Counsel of Record

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THE ROLE OF A UNITED STATES MAGISTRATE JUDGE IN THE ADMINISTRATION AND ADJUDICATION OF CIVIL CASES IN THE DISTRICT OF OREGON

During a recent gathering of the U.S. District Court's Ninth Circuit Lawyers Delegation, it became evident that some confusion still exists between the role of a magistrate judge as the *assigned judge*, the *dispositive authority* of a magistrate judge when all parties have filed written consents pursuant to Fed.R.Civ.P. 73(b), and the *normal appeal route* for appealing final orders and judgments entered by a magistrate judge in consent cases.

At the request of the delegation, I've been asked to write an article to help lawyers and their clients better understand:

- ☐ **The unique and indispensable role played by Oregon's magistrate judges[1] in the assignment, management and trial of civil cases.**
- ☐ **How magistrate judges in Oregon come to be the "assigned judge" in civil cases.**
- ☐ **The scope of the magistrate judge's initial authority as the "assigned judge".**
- ☐ **The jurisdictional authority provided by Fed.R.Civ.P. 73(a) which permits a magistrate judge to "conduct any or all proceedings, including a jury or non-jury trial" when parties have filed consents.**
- ☐ **The appeal route for appealing final orders and judgments in consent cases.**
- ☐ **The substantial monetary and time savings which accrue to litigants when they consent to a magistrate judge adjudicating their case.**

---

[1] *Section 321 of the Judicial Improvements Act of 1990, P.L. 101-650, effective December 1, 1990, recognized the expanded nation-wide role of United State magistrates in the management and trial of civil cases. In order to encourage broader acceptance of the United States magistrates at the national level, Congress amended the Federal statutes to rename United States magistrates to magistrate judges. In the District of Oregon, however, United States magistrates have always been referred to as "judges" and are accepted by the lawyers and litigants alike as trial judges of this highest caliber.*

RANDOM SELECTION OF THE "ASSIGNED JUDGE"

In the District of Oregon, the first event associated with the filing of a new civil action is the random selection of an *assigned judge*. Since 1984, resident district and magistrate judges in the Portland or Eugene divisions have been included in the pool of judicial officers available for random selection as the assigned judge.

SOLICITATION OF CONSENTS--Fed.R.Civ.P. 73

Once the assigned judge has been selected, the local rules require filing counsel to serve a copy of a "consent form" to each party served in the action. Via the consent form, each party is afforded an initial opportunity under Fed.R.Civ.P. 73(b) to consent to having a magistrate judge assume complete civil jurisdiction over the case.

In order to ensure the just, speedy and inexpensive determination of every action contemplated by Fed.R.Civ.P. 1, the Judicial Improvements Act of 1990 also modified Fed.R.Civ.P. 73(b) to permit assigned district and magistrate judges more opportunity throughout the course of litigation to encourage parties consent to a magistrate judge.

REASONS FOR ENCOURAGING CONSENTS TO MAGISTRATE JUDGES

Unlike many other district courts, consents in Oregon are encouraged for two distinctly different reasons:

- **Quality of the Magistrate Judges:** From the inception of the Federal magistrate system, Oregon has recruited state court judges and lawyers of the highest caliber. Because of their experience, Oregon magistrate judges are uniformly accepted by the practicing bar as "district judge equivalents". Oregon's selection of "trial judge quality" magistrate judges is unique in the Federal court system.

- **Statutory Priority Assigned to Criminal Cases:** Another more compelling reason for encouraging consents is the reality that pending criminal cases have relegated civil trials to "second position" in terms of the district judges' trial calendars. As a result of the ever increasing criminal caseload, Article III judges find themselves more frequently having to "double, triple or quadruple set" civil cases, while giving statutory priority to criminal cases on their trial calendars.

AUTHORITY OF THE MAGISTRATE JUDGE AS THE "ASSIGNED JUDGE"

If selected as the assigned judge in a particular case (regardless of whether consents have been filed or not), the magistrate judge will be responsible for all case management and scheduling activities and will hear and decide all non-dispositive pretrial and discovery matters and consider dispositive motions by findings and recommendation. (Fed.R.Civ.P. 72[b]).

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AUTHORITY OF THE MAGISTRATE JUDGE IN "CONSENT CASES"

If consents are filed pursuant to Fed.R.Civ.P. 73(b), the magistrate judge will have the same jurisdictional authority as a United States district judge, including authority to:

- Schedule, hear and decide all dispositive and non-dispositive matters.
- Schedule, hear and decide all interlocutory matters.
- Conduct jury or non-jury trials.
- Enter final orders and judgment.
- Decide all post-trial motions.

APPEAL ROUTE IN CONSENT CASES

28 U.S.C. § 636(c)(3) and Fed.R.Civ.P. 73(c) provide that the appeal route from any final order or judgment entered by a magistrate judge in "consent cases" lies directly to the United States Court of Appeals for the Ninth Circuit. This is exactly the same appeal route taken from a final order or judgment entered by a district judge.

Case law in this Circuit, and indeed throughout the Nation is clear on this point. . .if parties file a written consent to permit the magistrate judge to exercise full civil jurisdiction, then the magistrate judge can conduct any and all proceedings in that case. In turn, any subsequent appeal of a final order or judgment would lie directly to the United States Court of Appeals for the Ninth Circuit, rather than a *de novo* review by a district judge[3], with subsequent right of appeal to the circuit.

LIMITATIONS AND DELAYS ASSOCIATED WITH "NON-CONSENT CASES"

If consents are not filed in cases assigned to a magistrate judge, Fed.R.Civ.P. 72(b) prohibits the magistrate judge from finally deciding "dispositive matters and motions". By consenting to a magistrate judge, parties can avoid the delays and expense of the *de novo* review process, while preserving the right of appeal directly to the court of appeals.

Although not intended as a fiscal incentive to secure consents, the net effect of Fed.R.Civ.P. 72(b) is to cause all dispositive motions to first be considered by the magistrate judge, who in turn will issue a findings and recommendation to a district judge. Appeals or objections to the findings and recommendation must be filed within ten days and the entire matter will be referred to a district judge for *de novo* consideration. After decision by the district judge, the case will be returned to the assigned magistrate judge for further processing until another dispositive matter is presented (at which time the cycle is repeated), or until the case is ready for trial. After discovery has been completed and the case is ready for trial, the magistrate judge in

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[3] *Consents to permit appeals to a United States District Judge pursuant to 28 U.S.C. § 636(c)(4) [as an alternative to a direct appeal to the court of appeals pursuant to 28 U.S.C. § 636(c)(3)] are not accepted within the District of Oregon.*

"non-consent" cases will transfer the case to a district judge for calendaring on that district judge's already over-crowded calendar, with the almost certain result of having the case "double, triple or quadruple set" for a trial date. Obviously, the additional proceedings required in "non-consent" cases delay the speedy disposition of the case. More importantly, they have the potential to increase the overall cost of litigation.

JUDICIAL COMPETENCE OF OREGON'S MAGISTRATE JUDGES

Referred to as "judges" by district judges and lawyers alike, Oregon's magistrate judges bring a wealth of litigation and trial court experience to the full range of civil cases including contract, real property, personal injury, diversity, admiralty and maritime claims, complex patent and trademark actions, anti-trust cases and labor disputes.

Given the press of criminal trial settings on district judges' calendars, magistrate judges provide an expeditious and cost effective alternative to awaiting a trial or final decision from an Article III district judge. From the lawyers' and litigants' standpoint, however, the question still remains--"will the quality of a magistrate judge's decision be of equal caliber to that of an Article III district judge?" Within the District of Oregon, the answer to that question is a resounding yes!

Acceptance of magistrate judges by lawyers and litigants alike is evidenced by the fact that during the 12 month period ending June 30, 1990, Oregon magistrate judges adjudicated 487 "consent cases" and scheduled and conducted numerous jury and non-jury trials in the full range of cases pending before the court.

CONCLUSION

It should be clear by now that within the District of Oregon, magistrate judges are integral and indispensable members of the judicial complement of this Court and, by virtue of their availability, may often times be in the best and most consistent position to assure litigants with a speedy, just, and inexpensive adjudication of each civil case, while still preserving the right of direct appeal to the court of appeals.

DONALD M. CINNAMOND
Clerk of Court

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