

fy the time period within which an election must be made.

The last paragraph of subdivision (b) reiterates the provision in 28 U.S.C. §636(c)(6) for vacating a reference to the magistrate.

Subdivision (c). Under 28 U.S.C. §636(c)(3), the normal route of appeal from the judgment of a magistrate—the only route that will be available unless the parties otherwise agree in advance—is an appeal by the aggrieved party “directly to the appropriate United States court of appeals from the judgment of the magistrate in the same manner as an appeal from any other judgment of a district court.” The quoted statutory language indicates Congress’ intent that the same procedures and standards of appealability that govern appeals from district court judgments govern appeals from magistrates’ judgments.

Subdivision (d). 28 U.S.C. §636(c)(4) offers parties who consent to the exercise of civil jurisdiction by a magistrate an alternative appeal route to that provided in subdivision (c) of this rule. This optional appellate route was provided by Congress in recognition of the fact that not all civil cases warrant the same appellate treatment. In cases where the amount in controversy is not great and there are no difficult questions of law to be resolved, the parties may desire to avoid the expense and delay of appeal to the court of appeals by electing an appeal to the district judge. See McCabe, *The Federal Magistrate Act of 1979*, 16 Harv. J. Legis. 343, 388 (1979). This subdivision provides that the parties may elect the optional appeal route at the time of reference to a magistrate. To this end, the notice by the clerk under subdivision (b) of this rule shall explain the appeal option and the corollary restriction on review by the court of appeals. This approach will avoid later claims of lack of consent to the avenue of appeal. The choice of the alternative appeal route to the judge of the district court should be made by the parties in their forms of consent. Special appellate rules to govern appeals from a magistrate to a district judge appear in new Rules 74 through 76.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

The amendment is technical. No substantive change is intended.

NOTES OF ADVISORY COMMITTEE ON RULES—1993
AMENDMENT

This revision is made to conform the rule to changes made by the Judicial Improvements Act of 1990. The Act requires that, when being reminded of the availability of a magistrate judge, the parties be advised that withholding of consent will have no “adverse substantive consequences.” They may, however, be advised if the withholding of consent will have the adverse procedural consequence of a potential delay in trial.

NOTES OF ADVISORY COMMITTEE ON RULES—1997
AMENDMENT

The Federal Courts Improvement Act of 1996 repealed the former provisions of 28 U.S.C. §636(c)(4) and (5) that enabled parties that had agreed to trial before a magistrate judge to agree also that appeal should be taken to the district court. Rule 73 is amended to conform to this change. Rules 74, 75, and 76 are abrogated for the same reason. The portions of Form 33 and Form 34 that referred to appeals to the district court also are deleted.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 73 has been amended as part of the general restyling of the Civil 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.

Rule 74. [Abrogated (Apr. 11, 1997, eff. Dec. 1, 1997).]

NOTES OF ADVISORY COMMITTEE ON RULES—1997
AMENDMENT

Rule 74 is abrogated for the reasons described in the Note to Rule 73.

COMMITTEE NOTES ON RULES—2007

Rule 74 was abrogated in 1997 to reflect repeal of the statute providing for appeal from a magistrate judge’s judgment to the district court. The rule number is reserved for possible future use.

Rule 75. [Abrogated (Apr. 11, 1997, eff. Dec. 1, 1997).]

NOTES OF ADVISORY COMMITTEE ON RULES—1997
AMENDMENT

Rule 75 is abrogated for the reasons described in the Note to Rule 73.

COMMITTEE NOTES ON RULES—2007

Rule 75 was abrogated in 1997 to reflect repeal of the statute providing for appeal from a magistrate judge’s judgment to the district court. The rule number is reserved for possible future use.

Rule 76. [Abrogated (Apr. 11, 1997, eff. Dec. 1, 1997).]

NOTES OF ADVISORY COMMITTEE ON RULES—1997
AMENDMENT

Rule 76 is abrogated for the reasons described in the Note to Rule 73.

COMMITTEE NOTES ON RULES—2007

Rule 76 was abrogated in 1997 to reflect repeal of the statute providing for appeal from a magistrate judge’s judgment to the district court. The rule number is reserved for possible future use.

**TITLE X. DISTRICT COURTS AND CLERKS:
CONDUCTING BUSINESS; ISSUING ORDERS**

**Rule 77. Conducting Business; Clerk’s Authority;
Notice of an Order or Judgment**

(a) **WHEN COURT IS OPEN.** Every district court is considered always open for filing any paper, issuing and returning process, making a motion, or entering an order.

(b) **PLACE FOR TRIAL AND OTHER PROCEEDINGS.** Every trial on the merits must be conducted in open court and, so far as convenient, in a regular courtroom. Any other act or proceeding may be done or conducted by a judge in chambers, without the attendance of the clerk or other court official, and anywhere inside or outside the district. But no hearing—other than one ex parte—may be conducted outside the district unless all the affected parties consent.

(c) **CLERK’S OFFICE HOURS; CLERK’S ORDERS.**

(1) *Hours.* The clerk’s office—with a clerk or deputy on duty—must be open during business hours every day except Saturdays, Sundays, and legal holidays. But a court may, by local rule or order, require that the office be open for specified hours on Saturday or a particular legal holiday other than one listed in Rule 6(a)(4)(A).

(2) *Orders.* Subject to the court’s power to suspend, alter, or rescind the clerk’s action for good cause, the clerk may:

(A) issue process;