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[Authority To Order Withdrawals of Moneys] 62 COMP.GEN. 404

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B-200108, MAY 24, 1983, 62 COMP.GEN. 404

COURTS - MAGISTRATES - AUTHORITY - WITHDRAWAL FROM COURT REGISTRY FUNDS UPON CONSENT OF ALL THE PARTIES, A MAGISTRATE MAY BE SPECIALLY DESIGNATED TO MAKE FINAL DETERMINATIONS OF THE DISTRICT COURT IN ALL CIVIL MATTERS. 28 U.S.C. 636(C), AS AMENDED IN 1979. THEREFORE, IN THOSE CASES A MAGISTRATE MAY ALSO BE LEGALLY AUTHORIZED TO ORDER WITHDRAWAL OF MONEY FROM THE COURT REGISTRY.

MATTER OF: MAGISTRATES' AUTHORITY TO ORDER WITHDRAWALS FROM COURT REGISTRY FUNDS, MAY 24, 1983:

THE GENERAL COUNSEL OF THE ADMINISTRATIVE OFFICE OF THE COURTS HAS ASKED WHETHER A UNITED STATES DISTRICT COURT JUDGE MAY DELEGATE TO U.S. MAGISTRATES THE AUTHORITY TO ORDER WITHDRAWALS OF MONEYS DEPOSITED INTO THE COURT REGISTRY.

PURSUANT TO 28 U.S.C. 2042 (1976), AN ORDER OF THE COURT IS REQUIRED BEFORE WITHDRAWAL OF MONEY FROM THE COURT REGISTRY. MR. CARL IMLAY, THE GENERAL COUNSEL, FOR BOTH LEGAL AND POLICY REASONS, IS OF THE OPINION THAT THE MAGISTRATE CANNOT BE DELEGATED THE AUTHORITY TO MAKE WITHDRAWALS FROM THE COURT REGISTRY. AT LEAST IN ONE PARTICULAR CLASS OF CASES, WE DISAGREE WITH THE QUESTION OF THE LEGAL AUTHORITY.

THE STATUTE REFERRED TO ABOVE REQUIRED UNTIL 1948 THAT A JUDGE ORDER WITHDRAWAL OF THE MONEY. IN THAT YEAR THE STATUTE WAS REVISED, OMITTING ANY REFERENCE TO JUDGES WITH REGARD TO THE WITHDRAWAL OF REGISTRY FUNDS. THE SUBSTITUTE LANGUAGE, CONTAINED IN 28 U.S.C. 2042, STATES IN RELEVANT PART, "NO MONEY DEPOSITED SHALL BE WITHDRAWN EXCEPT BY ORDER OF THE COURT." THE LEGISLATIVE HISTORY OF THIS CHANGE DOES NOT INDICATE AN INTENTION TO ALTER THE SUBSTANTIVE REQUIREMENTS OF THIS LONGSTANDING PROVISION. FOR THIS AND OTHER REASONS, THE GENERAL COUNSEL CONCLUDES THAT A JUDGE STILL HAS TO ORDER A WITHDRAWAL.

THE GENERAL COUNSEL ADVISES THAT MAGISTRATES ARE APPOINTED FOR LIMITED TERMS UNDER THE FEDERAL MAGISTRATES ACT, 28 U.S.C. 631 ET SEQ. (1976 AND SUPP. V). HE DESCRIBES THEIR JURISDICTION AS LIMITED IN NATURE AND INCLUDING:

THE CONDUCT OF INITIAL PROCEEDINGS IN CRIMINAL CASES, THE TRIAL OF FEDERAL MISDEMEANOR CASES BY CONSENT OF THE DEFENDANT, THE HANDLING OF CERTAIN PRETRIAL MATTERS BY REFERENCE FROM THE COURT, AND THE CONDUCT OF CIVIL JURY TRIALS BY CONSENT OF ALL PARTIES.

WE AGREE THAT WHEN THE MAGISTRATES WERE CREATED TO REPLACE THE SYSTEM OF U.S. COMMISSIONERS, CONGRESS INTENDED TO RESTRICT SEVERELY THEIR JURISDICTION. HOWEVER, IN THE ACT OF OCTOBER 10, 1979, PUB. L. NO. 96-82, 93 STAT. 643, SEC.

2(2), WHICH AMONG OTHER THINGS ADDED SUBSECTION 636(C) TO TITLE 28, CONGRESS EXPRESSLY EXPANDED THE MAGISTRATES' JURISDICTION TO PERMIT, WITH THE CONSENT OF THE PARTIES, MAGISTRATES TO TRY ANY CIVIL CASE AND TO HAVE THAT CASE BROUGHT DIRECTLY ON APPEAL TO A UNITED STATES COURT OF APPEALS. THE RELEVANT SENATE REPORT ON THE BILL READS IN PERTINENT PART:

THE BILL WOULD PERMIT MAGISTRATES, WHERE SPECIALLY DESIGNATED BY THEIR DISTRICT COURTS, TO TRY ANY CIVIL CASE UPON THE CONSENT OF THE PARTIES. * * MAGISTRATES PRESENTLY HAVE NO EXPLICIT AUTHORIZATION TO FINALLY DECIDE CIVIL CASES. THE BILL WOULD EXPLICITLY PERMIT SUCH JURISDICTION AND THUS CODIFY AND REPLACE THE EXPERIMENTAL PRACTICE NOW BEING CARRIED ON IN A NUMBER OF DISTRICTS UNDER 28 U.S.C. 636(B)(2) AND (B)(3). * * * UNDER THE BILL, AN APPEAL OF RIGHT LIES FROM THE FINAL JUDGMENT OF A MAGISTRATE TO THE COURT OF APPEALS FOR THE CIRCUIT IN WHICH THE MAGISTRATE SITS. * * * THE MAGISTRATE IS EMPOWERED TO DIRECT THE ENTRY OF A FINAL JUDGMENT OF THE DISTRICT COURT AND THE APPEAL WILL BE HANDLED IN THE SAME MANNER AND PRIORITY AS IF THE DISTRICT COURT HAD ENTERED THE FINAL JUDGMENT DIRECTLY. * * * THE BILL ALSO PROVIDES AN ALTERNATIVE METHOD FOR TAKING APPEALS IF THE PARTIES CONSENT TO THE ALTERNATIVE METHOD AT THE TIME THE REFERENCE TO THE MAGISTRATE IS MADE. IN SUCH CASES, THE APPEAL OF RIGHT FROM THE MAGISTRATE'S DECISION WILL LIE TO THE DISTRICT COURT, IN THE SAME MANNER THAT AN APPEAL IS TAKEN FROM A JUDGMENT OF THE DISTRICT JUDGE OR IN SUCH OTHER MANNER AS THE PARTIES MAY STIPULATE. SENATE REPORT NO. 74, 96TH CONG., 1ST SESS. 4-5 (1979).

MOREOVER, IT DOES NOT SEEM TO BE CONSISTENT WITH THE ROLE OF UNITED STATES MAGISTRATES, SET FORTH IN THE STATUTE QUOTED ABOVE, TO REQUIRE A DISTRICT JUDGE TO SIGN ALL ORDERS REQUIRING A RETURN OF COLLATERAL IN A TRAFFIC CASE HEARD BY A MAGISTRATE AND DISMISSED, OR THE RETURN OF A CASH BOND IN A MISDEMEANOR TRIAL WHEN THE MAGISTRATE FOUND THE DEFENDANT NOT GUILTY. INSTEAD OF RELIEVING THE DISTRICT JUDGE OF SOME OF HIS BURDEN OF LITIGATION BY PERMITTING HIM TO DELEGATE CERTAIN CASES TO A MAGISTRATE, THE DISTRICT JUDGE WOULD BE FORCED TO REVIEW THE MAGISTRATE'S DISPOSITION OF THE CASE IN ORDER TO SUPPORT HIS ORDER TO WITHDRAW FUNDS FROM THE REGISTRY TO RETURN THEM TO THE DEPOSITOR.

NOWHERE IN SUBSECTION (C) DOES THE CONGRESS DIRECTLY ADDRESS THE ISSUE OF THE MAGISTRATES' LEGAL AUTHORITY TO ORDER WITHDRAWALS FROM THE COURT REGISTRY. HOWEVER, IT SEEMS CLEAR THAT MAGISTRATES, IN THIS LIMITED CLASS OF CASES, ARE INTENDED TO HAVE THE POWER TO MAKE A FINAL DISPOSITION OF THESE CASES IN LIEU OF THE DISTRICT COURT JUDGE. FOR EXAMPLE, AS ONE MAGISTRATE POINTED OUT IN A LETTER TO THE ADMINISTRATIVE OFFICE OF THE COURTS:

IT WOULD APPEAR TO US THAT THE POWER TO ORDER EXONERATION OR FORFEITURE OF BONDS IN CRIMINAL CASES IS CLEARLY AND NECESSARILY BROAD ENOUGH TO ENCOMPASS THE ORDERING OF THE RETURN OF FUNDS A BONDSMAN HAS PAID INTO THE REGISTRY OF THE COURT ON A FORFEITURE OF BOND.

WE THINK, THEREFORE, THAT MAGISTRATES DO HAVE THE LEGAL AUTHORITY TO ORDER WITHDRAWALS FROM THE REGISTRY IN CASES THEY HAVE DECIDED FOR THE DISTRICT COURT. THIS IS BUTTRESSED, ALTHOUGH INDIRECTLY, BY SECTION 636(B) WHICH PROVIDES: "A MAGISTRATE MAY BE ASSIGNED SUCH ADDITIONAL DUTIES AS ARE NOT INCONSISTENT WITH THE CONSTITUTION AND THE LAWS OF THE UNITED STATES."

ACCORDINGLY, IT WOULD APPEAR THAT MAGISTRATES HAVE THE LEGAL AUTHORITY TO ORDER WITHDRAWALS OF FUNDS FROM THE COURT REGISTRY, AT LEAST IN CASES FOR WHICH, BY CONSENT OF THE PARTIES, THEY HAVE THE AUTHORITY TO ENTER THE JUDGMENT OF THE DISTRICT COURT.

THE GENERAL COUNSEL OF THE ADMINISTRATIVE OFFICE ALSO EXPRESSES POLICY REASONS FOR DENYING THIS AUTHORITY TO MAGISTRATES. FOR EXAMPLE, HE STATES THAT "POTENTIALLY SERIOUS PRACTICAL PROBLEMS * * * COULD ARISE FROM A PROLIFERATION" OF THOSE WHO CAN ORDER WITHDRAWALS. THOSE PROBLEMS ARE NOT SPECIFICALLY IDENTIFIED, BUT IN ANY EVENT, THEY ARE PRIMARILY FOR THE ADMINISTRATIVE TO RESOLVE.

ALLOWING THE MAGISTRATES TO ORDER WITHDRAWALS DOES NOT VIOLATE, AS THE GENERAL COUNSEL INDICATES IT MIGHT, ANY OF OUR DECISIONS. OUR DECISIONS WHICH THE GENERAL COUNSEL CITES ARE INTENDED TO PRECLUDE ACCOUNTABLE OFFICERS WITH ACTUAL PHYSICAL CUSTODY OF MONEY FROM HAVING TO COMPROMISE THE SECURITY OF THE FUNDS ENTRUSTED TO THEIR CARE BY SHARING THE FACILITIES GIVEN TO THE EMPLOYEE TO SAFEGUARD THE MONEY. THEY ARE THEREFORE NOT APPLICABLE TO MAGISTRATES WHO DO NOT HAVE PHYSICAL CUSTODY OF ANY FUNDS.

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