



## **ANNOUNCEMENT**

The Court congratulates Judge Stark for his appointment to and recent Senate confirmation for a position on the United States Court of Appeals for the Federal Circuit. Judge Stark will be sorely missed by this Court. He has been a model District and Magistrate Judge and a warm and generous colleague. He demonstrated exemplary leadership as the Court's Chief Judge. In that capacity, he was able to secure for the Court a slate of Visiting Judges and shared law clerk positions to help with the Court's overwhelming caseload, and he safely navigated the Court through an unprecedented pandemic. The Court hopes to thank Judge Stark for his service in a more fulsome way at a public function at an appropriate time.

Because Judge Stark's elevation to the Federal Circuit is expected to occur soon, the Court will no longer assign him new cases. The Court will also be modifying certain of its case assignment practices, effective immediately, to address the future handling of the cases currently assigned to Judge Stark and the judicial vacancy that Judge Stark's departure will create. It is the Court's hope that these procedures will help accomplish something the Court has long sought as partial relief for its burdensome caseload—namely, consents to the handling of cases by the Court's talented Magistrate Judges. The changes in procedures are summarized below:

### **Criminal Cases**

Until the filling of the judicial vacancy created by Judge Stark's elevation to the Federal Circuit, all new criminal matters will be assigned to Chief Judge Connolly (CFC), Judge Andrews (RGA), or Judge Noreika (MN).

### **Creation of the Vacant Judgeship**

Until the filling of the judicial vacancy, the Court will create a new docket, referred to as the “Vacant Judgeship” or “VAC.” All new civil matters will be assigned to CFC, RGA, MN, or VAC.

Docketing in all VAC matters will be handled by Neil, (302) 573-6003, and Elizabeth, (302) 573-4538.

### **Changes in Court-Sponsored Alternative Dispute Resolution**

Because the new procedures will result in significant burdens on our Magistrate Judges, during the vacancy, cases will not be automatically referred to a Magistrate Judge for alternative dispute resolution. Other than in a few, exceptional cases that are currently pending before the Court, Magistrate Judges will not engage in mediations in patent and securities cases. (The Court will notify the parties in such exceptional cases to inform them that a Magistrate Judge will continue to mediate the case.)

If requested by the parties in a case that is neither a patent nor a securities case, a Magistrate Judge may at the Court’s discretion mediate the case.

Other than mediations in bankruptcy appeals or unless specifically directed otherwise by the Court, all referrals to Magistrate Judges for alternative dispute resolution will be vacated, and all currently scheduled mediations will be canceled.

### **New Cases Assigned to the Vacant Judgeship**

#### **Required Notification of Consent or Absence of Consent**

For new cases assigned to VAC, within 60 days of service of the Complaint on at least one defendant, the parties shall notify the Court that they either (1) have reached an agreement to consent to the handling of the case by a Magistrate Judge to be selected by the Court, (2) have reached an agreement to consent to the handling of the case by a Magistrate Judge of the parties’ choosing, or (3) have been unable to agree to consent to the handling of the case by a

Magistrate Judge. In no instance should any party attempt to inform the Court which party or parties declined to consent; the Court needs to know only whether the parties have unanimously agreed to option (1) or (2) above or not (option (3) above).

### **Procedures for New Cases**

#### **Assigned to VAC in Absence of Consent**

For new cases assigned to VAC where the parties have not consented to having a Magistrate Judge handle the case (option (3) above), the Court will endeavor to assign the case to a Visiting Judge. Such assignment may occur at any time between the inception of the case and trial and may be made to any Article III judge, whether or not that judge has previously served or been announced as a Visiting Judge.

Until the case is assigned to a Visiting Judge or the judicial vacancy is filled, the following procedures shall govern the case:

- The case will be referred to a Magistrate Judge **solely** to (1) adjudicate discovery (including fact and expert discovery) and protective order disputes; (2) issue or modify a scheduling order; (3) review stipulated orders and pro hac vice motions; and (4) review requests for mediation by a Magistrate Judge in cases other than patent and securities cases.
- The parties shall cooperate in good faith to move the case forward. To that end, within seven days of filing the notice that the parties would not consent to a Magistrate Judge, the parties shall hold a Rule 26(f) conference and commence discovery.
- The parties shall file a proposed scheduling order within 30 days of the Rule 26(f) conference.
- Disputes arising from the Rule 26(f) conference and disputes concerning the scheduling order shall not prevent the case, including discovery, from progressing.

Resolution of such disputes is within the scope of the referral to the assigned Magistrate Judge.

- Disputes regarding the terms of a protective order shall not prevent the case, including discovery, from progressing. (See Local Rule 26.1.) Resolution of such disputes is within the scope of the referral to the assigned Magistrate Judge.
- The filing of a motion shall not be grounds to prevent the case, including discovery, from progressing. Absent any specific provision in the case's scheduling order, briefing shall proceed according to the Local Rules.
- The Magistrate Judge who conducts the Rule 16 conference will set and the parties will comply with deadlines for the completion of discovery and the filing and briefing of motions and, in patent cases, claim construction. Dates for motion and claim construction hearings and argument, the pretrial conference, and trial will **not** be set until a Visiting Judge is assigned to the case or the vacancy is filled. **The scheduling of (i) any motions hearing at which argument would be heard on a motion other than a motion relating to discovery or to a protective order, (ii) a claim construction hearing, (iii) a pretrial conference, or (iv) trial is not within the scope of the referral to the assigned Magistrate Judge. Thus, the scheduling order shall include dates for filing briefing for such proceedings but shall not include dates for such proceedings.**

### **Civil Cases Currently Assigned to Judge Stark**

Civil cases currently assigned to Judge Stark (LPS) will be reassigned in short order to (i) in rare instances, CFC, RGA, or MN; (ii) in somewhat more instances, a Visiting Judge; or (iii) in all remaining instances, the VAC.

## **LPS Cases Assigned to the Vacant Judgeship**

### **Required Notification of Consent or Absence of Consent**

In LPS cases that are assigned to VAC, the parties shall, within 14 days of the assignment to VAC, notify the Court that they (1) have reached an agreement to consent to the handling of the case by a Magistrate Judge to be selected by the Court, (2) have reached an agreement to consent to the handling of the case by a Magistrate Judge of the parties' choosing, or (3) have been unable to agree to consent to the handling of the case by a Magistrate Judge. In no instance should any party attempt to inform the Court which party or parties declined to consent; the Court needs to know only whether the parties have unanimously agreed to option (1) or (2) above or not (option (3) above).

### **Procedures for LPS Cases**

#### **Assigned to VAC in Absence of Consent**

For LPS cases assigned to VAC where the parties have not consented to having a Magistrate Judge handle the case (option (3) above), the Court will endeavor to assign the case to a Visiting Judge. Such assignment may occur at any time before trial and may be made to any Article III judge, whether or not that judge has previously served or been announced as a Visiting Judge.

Until the case is assigned to a Visiting Judge or the judicial vacancy is filled, the following procedures shall govern the case:

- The case will be referred to a Magistrate Judge **solely** to (1) adjudicate discovery (including fact and expert discovery) and protective order disputes; (2) issue or modify a scheduling order; (3) review stipulated orders and pro hac vice motions; and (4) review requests for mediation by a Magistrate Judge in cases other than patent and securities cases.
- The parties shall cooperate in good faith to move the case forward. To that end, if a Rule 26(f) conference has yet to

occur, then within seven days of filing the notice that the parties would not consent to a Magistrate Judge, the parties shall hold a Rule 26(f) conference and commence discovery.

- If no scheduling order is in place, the parties shall file a proposed scheduling order within 30 days of the Rule 26(f) conference. The assigned Magistrate Judge will enter a schedule in the same fashion the Magistrate Judge would do in a newly filed VAC case, as explained above. In such instances, dates for motion and claim construction hearings, the pretrial conference, and trial will **not** be set until a Visiting Judge is assigned to the case or the vacancy is filled.
- If a scheduling order is in place, the scheduling order will be amended to vacate (i) the dates for any motions hearing, (ii) the dates of any claim construction hearing, and, as noted above, (iii) the referral of the case to a Magistrate Judge for the purposes of alternative dispute resolution. All other dates and deadlines—including deadlines for the filing of a pretrial order, case dispositive motions, Daubert motions, and claim construction briefing, as well as the date of the pretrial conference and trial—and limitations on discovery (e.g., deposition hours, start of expert discovery) will remain in effect.
- Disputes arising from the Rule 26(f) conference and disputes concerning the scheduling order shall not prevent the case, including discovery, from progressing. Resolution of such disputes is within the scope of the referral to the assigned Magistrate Judge.
- Disputes regarding the terms of a protective order shall not prevent the case, including discovery, from progressing. (See Local Rule 26.1.) Resolution of such disputes is within the scope of the referral to the assigned Magistrate Judge.

- The filing of a motion shall not be grounds to prevent the case, including discovery, from progressing. Absent any specific provision in the case's scheduling order, briefing shall proceed according to the Local Rules.
- If the case or part of the case had been referred to a Magistrate Judge, that referral will be vacated and replaced with a referral equivalent to the referral in newly filed VAC cases (as explained above), unless a specific order to the contrary is entered in the case.

### **Emergency Motions in VAC Cases**

Emergency motions in VAC cases will be reviewed by the District Judge who is acting as the Court's duty judge on the date the motion is filed or the date a party contends the motion has become an emergency. The duty judge has discretion to treat the motion as an emergency and assign the case to an Article III judge (i.e., CFC, RGA, MN, or a Visiting Judge) or to treat the motion as a nonemergency and allow the case to remain pending in the VAC docket.

### **Implementing Orders**

The Court will issue no later than March 11 standing orders to implement these new procedures. Case-specific orders in cases affected by these procedures will be entered in due course.