

Public Request for Information

Name Gene Kemmeter / Portage County Gazette Date: 2/13/07
Address 2800 Church St.
Phone 343-8045

PLEASE NOTE: Requests for access to, inspection of, and/or copies of records from the City Clerk's office and certain other offices may incur costs. Please see reverse side for details.

Request: Copy of ANR Pipeline against Stevens
Point that was the topic of the Finance Committee
executive session, on Monday, Feb. 12, 2007

Office Use Only

Response Date _____

Cost _____

Type of Information _____

RECORDS - CLERK'S OFFICE

Requests for access to, inspection of, and/or copies of records from the City Clerk's office and certain other offices, or information about such records, may be obtained as follows:

By mail address to: City Clerk's Office
1515 Strongs Avenue
Stevens Point, WI 54481

In person: City Clerk's Office
1515 Strongs Avenue
Stevens Point, WI 54481

Office hours: Monday - Friday
7:30 A.M. to 4:00 P.M.

Costs:	Photocopies	\$.25 per page
	Video tapes	* 10.00 per tape
	Audio tapes	* 2.00 per tape
	Mail response	.39 one ounce or less
		.24 each additional ounce
	Search fee	** 10.00 per hour minimum
		30.00 per hour maximum

Cost of election information varies depending upon request. Electronic voter information placed on diskette or CD has a minimum cost of \$25.00.

All other miscellaneous records such as zoning maps, etc. will be based on actual reproduction costs which may vary from time to time.

You are further notified that the following are public officials as far as open records are concerned.

* Charge for public records, e.g. city meetings does not include entertainment/performance copies.

** Actual amount based on salary/wages of person required to do search, when such search cost is over \$50.00.

Legal custodian: John Moe, City Clerk

PAYMENT FOR STEVENS POINT WATER BILLS ACCEPTED BY CHECK FOR EXACT AMOUNT. NO RECEIPTS OR CHANGE GIVEN.

Receipt No: 1.017869

Feb 14, 2007

PORTAGE COUNTY GAZETTE

CITY CLERK-(T) CLERK REVENUE	3.56
100.46.12110.51 (T)CLERK'S GENERAL REVEN	
CITY CLERK-SALES TAX COLLECTED	.19
100.24213 WISC SALES TAX PAYABLE	

Total:	<u>3.75</u>
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CASH	5.00
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Payor: PORTAGE COUNTY GAZETTE

Total Applied:	<u>3.75</u>
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Change Tendered:	<u>1.25</u>
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02/14/07 10:46am

CITY OF STEVENS POINT
1515 STRONGS AVENUE
STEVENS POINT, WI 54481

715-346-1557

Served by: Shunda D. Wolfe
2-6-07, 3:10 pm
on: John Moe, City Clerk.
City of Stevens Point

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ANR PIPELINE COMPANY,
a foreign corporation,
1001 Louisiana Street
Houston, Texas 77002,

SUMMONS IN A CIVIL CASE

Plaintiff,

v.

Case No. 07 C 0065 S

CITY OF STEVENS POINT,
a municipal corporation,
1525 Church Street
Stevens Point, Wisconsin 54481,

CAROL N. KUEHN REVOCABLE TRUST
3701 Lorraine Street
Stevens Point, Wisconsin 54481,

DEAN AND JESSICA JOHNSON
4717 Partridge Way
Stevens Point, Wisconsin 54481,

KEVIN AND NICOLE SCHLICE
4817 Beaver Dam Road
Stevens Point, Wisconsin 54481, and

HARLAN MROCHINSKI
9436 Konkol Lane
Amherst Junction, Wisconsin 54407,

Defendants.

TO: CITY OF STEVENS POINT,
a municipal corporation,
1525 Church Street
Stevens Point, Wisconsin 54481,

DEAN AND JESSICA JOHNSON
4717 Partridge Way
Stevens Point, Wisconsin 54481,

CAROL N. KUEHN REVOCABLE TRUST
3701 Lorraine Street
Stevens Point, Wisconsin 54481,

KEVIN AND NICOLE SCHLICE
4817 Beaver Dam Road
Stevens Point, Wisconsin 54481, and

Received
2-6-07
BT

HARLAN MROCHINSKI
9436 Konkol Lane
Amherst Junction, Wisconsin 54407

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY
(name and address)

Cynthia L. Buchko
Whyte Hirschboeck Dudek S.C.
One E. Main Street, Suite 300
Madison, WI 53701

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

THERESA M. OWENS

CLERK

MARLENE OLSON

DATE

FEB 5 2007

(By) DEPUTY CLERK

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DOC NO
REC'D/FILED
2007 FEB -5 PM 1:19

ANR PIPELINE COMPANY,
a foreign corporation,
1001 Louisiana Street
Houston, Texas 77002,

THERESA H. OWENS
CLERK US DIST COURT
WD OF WI

Plaintiff,

07 8 0065 S
CASE NO.

v.

CITY OF STEVENS POINT,
a municipal corporation,
1525 Church Street
Stevens Point, Wisconsin 54481,

CAROL. N. KUEHN REVOCABLE TRUST
3701 Lorraine Street
Stevens Point, Wisconsin 54481,

DEAN AND JESSICA JOHNSON
4717 Partridge Way
Stevens Point, Wisconsin 54481,

KEVIN AND NICOLE SCHLICE
4817 Beaver Dam Road
Stevens Point, Wisconsin 54481, and

HARLAN MROCHINSKI
9436 Konkol Lane
Amherst Junction, Wisconsin, 54407,

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT AND PERMANENT INJUNCTION

Plaintiff, ANR Pipeline Company, by its attorneys, Thomas M. Pyper and Cynthia L. Buchko of Whyte Hirschboeck Dudek S.C., for its Complaint against the Defendants seeks a declaratory judgment and permanent injunction and alleges as follows:

PARTIES

1. Plaintiff ANR Pipeline Company ("ANR") is a Delaware corporation with its principal place of business at 1001 Louisiana Street, Houston, Texas 77002. ANR is a citizen of the State of Texas. ANR is not a citizen of the State of Wisconsin.

2. Defendant City of Stevens Point (the "City") is a Wisconsin municipal corporation with its principal place of business located at 1515 Strongs Avenue, Stevens Point, Wisconsin, 54481. The City is the owner of Lots 3, 4, 12, 22, 26 and 43 of the Whitetail Trail Subdivision in Stevens Point, Wisconsin. The Whitetail Trail Subdivision is located in the Southwest Quarter of the Southeast Quarter and the Southeast Quarter of the Southeast Quarter of Section 15, Township 24 North, Range 8 East, City Of Stevens Point, Portage County, Wisconsin.

3. Defendant Carol N. Kuehn Revocable Trust ("Kuehn Trust") is the owner of the property located at 4701 Partridge Way, Lot 42 of the Whitetail Trail Subdivision, Stevens Point, Wisconsin, 54481. Carol N. Kuehn is the trustee of the Kuehn Trust, and, on information and belief, resides at 4701 Partridge Way, Lot 42 of the Whitetail Trail Subdivision, Stevens Point, Wisconsin, 54481. The Kuehn Trust is a citizen of the State of Wisconsin.

4. Defendants Dean and Jessica Johnson (the "Johnsons") are the owners of, and reside at, 4717 Partridge Way, Lot 41 of the Whitetail Trail Subdivision, Stevens Point, Wisconsin, 54481. The Johnsons are citizens of the State of Wisconsin.

5. Defendants Kevin and Nicole Schlice (the "Schlices") are the owners of, and reside at, 4817 Beaver Dam Road, Lot 21 of the Whitetail Trail Subdivision, Stevens Point, Wisconsin, 54481. The Schlices are citizens of the State of Wisconsin.

6. Defendant Harlan Mrochinski ("Mr. Mrochinski") resides at 9436 Konkol Lane, Amherst Junction, Wisconsin, 54407. Amherst Junction, Wisconsin is located in Portage County, Wisconsin. Mr. Mrochinski is the owner of Lot 13 of the Whitetail Trail Subdivision, Stevens Point, Wisconsin, 54481. Mr. Mrochinski is a citizen of the State of Wisconsin.

7. Collectively, the properties in Whitetail Trail Subdivision owned by the Defendants will be referred to as "Defendants' Properties" or the "Properties."

JURISDICTION AND VENUE

8. ANR is an interstate natural gas transportation company that, among other things, transports natural gas through underground pipelines within Wisconsin, including within Portage County. ANR is federally regulated by the Federal Energy Regulatory Commission ("FERC") and the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety ("OPS").

9. Pursuant to a Certificate of Public Convenience and Necessity ("CPCN") issued by the Federal Power Commission, predecessor agency to FERC, ANR, and its predecessors in interest, are federally authorized to construct, operate and maintain a 6-inch natural gas pipeline located in Portage County, Wisconsin (hereinafter the "6" Pipeline"). In approximately 1960, the 6" Pipeline was constructed pursuant to the CPCN and has been operated and maintained continuously since its initial construction.

10. ANR is required to operate, inspect, survey and maintain the 6" Pipeline in accordance with OPS regulations.

11. ANR is the owner of a Right of Way Grant, a copy of which is attached hereto as Exhibit A, that grants to ANR the right to "survey, construct, operate, maintain, inspect, alter, replace, move and remove" one or more pipelines in a 50-foot-wide strip traversing the South

Half of the Southeast Quarter or Section Fifteen, Township Twenty-Four North, Range Eight East, Portage County, Wisconsin. The 6" Pipeline was constructed and is surveyed, operated, maintained, inspected, *etc.* within the Easement area. The Easement encumbers, among other properties, the Defendants' Properties.

12. This Court has jurisdiction, pursuant to 28 U.S.C. § 1331, because, as described in more detail in paragraph nos. 17-30, *infra*, Defendants' refusal to permit ANR to clear trees from the Easement impedes and interferes with ANR's ability to comply with OPS regulations for the safe operation and maintenance of the 6" Pipeline.

13. ANR is a citizen of the State of Texas, and the Defendants are all citizens of the State of Wisconsin, *see* paragraph nos. 2-6, *supra*.

14. The amount in controversy exceeds \$75,000 based, either cumulatively or individually, on the following:

- a. the value of the Easement to ANR;
- b. the value of the use of the Easement to ANR free from interference by the Defendants;
- c. the cost to ANR to re-acquire, through the exercise of its federal condemnation authority, 15 U.S.C. 717f(h), new easement on Defendants' Properties in the event the Easement does not afford it the right to clear trees from the Easement area;
- d. the harm to ANR if the 6" Pipeline is not operated in compliance with OPS regulations, which harm may include regulatory enforcement against it by OPS; and
- e. the value of the public interest in the safe operation of the 6" Pipeline.

15. As set forth in paragraph nos. 13-14, *supra*, the Court also has jurisdiction, pursuant to 28 U.S.C. § 1332.

16. Pursuant to 28 U.S.C § 1391, venue is proper because all Defendants reside in, and Defendants' Properties are located in, the Western District.

FACTUAL ALLEGATIONS

17. Pursuant to the Easement, ANR has the right to "survey, construct, operate, maintain, inspect, alter, replace, move and remove a pipeline or pipelines and appurtenances" within a 50-foot-wide area on the Defendants' Properties. *See* Exhibit A.

18. The Easement prohibits Defendants from doing anything that "interfere[s] with the use" of the Easement by ANR. *See* Exhibit A.

19. The Easement requires ANR to pay for timber, *i.e.*, trees having timber value, removed from the Easement area through ANR's exercise of its Easement rights. *See* Exhibit A.

20. ANR, and its predecessor, routinely cleared the Easement of trees on Defendants' Properties. In the late 1990's, ANR cleared all but a few large trees from the 50-foot-wide Easement area on Defendants' Properties. On an annual basis, ANR clears a 5-10 foot wide path over the top of the 6" Pipeline so that its maintenance, inspection and survey and other crews may walk the Easement.

21. Pursuant to 49 C.F.R. § 192.613, ANR must continually survey the 6" Pipeline.

22. Pursuant to 49 C.F.R. § 192.705, ANR must patrol "to observe surface conditions on and adjacent to" the Easement, and patrols may be made by walking, driving or flying.

23. Pursuant to 49 C.F.R. §§ 192.614(a) and 192.935, ANR must protect the 6" Pipelines from damage, including having a plan in place to protect against damage, and ANR

must take all necessary measures to ensure the integrity of the 6" Pipeline, including locating and alleviating threats from outside forces.

24. Trees growing in ANR's Easement are a safety hazard to the 6" Pipeline. Tree roots can damage the integrity of the outer pipe wall; tree cover impairs the ability of ANR to inspect the Easement area from the ground and from the air; and tree cover impairs ANR's ability to access the Pipeline in the event of an emergency.

25. ANR cleared the easement in the late 1990's. There has been considerable tree growth in the Easement area.

26. As a prudent operator, and consistent with industry safety practices and to ensure compliance with OPS regulations, including but not limited to those set forth in paragraph nos. 21-23, *supra*, ANR must alleviate the threat to its ability to safely maintain and operate the 6" Pipeline.

27. To continue to safely and efficiently operate, survey, inspect and maintain the 6" Pipeline, ANR must clear the entire 50-foot-wide Easement area on Defendants' Properties of trees.

28. ANR contacted the Defendants on one or more occasions advising them of its need and intent to clear the Easement of trees on their respective Properties.

29. The Defendants have refused ANR access to their Properties for purposes of clearing the 50-foot-wide Easement of trees.

30. The Defendants have asserted that ANR does not need to clear trees from the entire Easement area on their Properties for the operation, surveillance, inspection and maintenance of the 6" Pipeline.

COUNT I--DECLARATORY JUDGMENT

31. ANR realleges and incorporates herein fully by reference the allegations set forth in paragraph nos. 1 through 30 above.

32. Pursuant to the Easement, ANR has the right to clear trees from the Easement area on Defendants' Properties.

33. ANR must clear trees from the Easement area on Defendants' Properties to safely operate, inspect, survey and maintain the 6" Pipeline.

34. Defendants have refused ANR access to the Easement on their Properties to clear trees.

35. A declaration of ANR's Easement rights is necessary to resolve the dispute regarding ANR's right to clear the Easement of trees.

COUNT II--PERMANENT INJUNCTION

36. ANR realleges and incorporates herein fully by reference the allegations set forth in paragraph nos. 1 through 35 above.

37. Because the Easement authorizes ANR to clear the entire 50-foot-wide Easement area of trees, the Defendants were without the authority to refuse ANR access to the Easement on their Properties for purposes of tree clearing.

38. The Defendants must be permanently enjoined from interfering with ANR's Easement rights.

WHEREFORE, ANR respectfully requests that this Court:

39. Declare that the Easement authorizes ANR to clear the entire 50-foot-wide Easement area on Defendants' Properties of all trees;

40. Issue a permanent injunction enjoining the Defendants from interfering with ANR's use of the Easement; and

41. Grant such other legal and equitable relief as the Court deems just and proper.

Dated this 5th day of February, 2007.

Whyte Hirschboeck Dudek S.C.

By: 
Thomas M. Pyper
State Bar I.D. No. 1019380
Cynthia L. Buchko
State Bar I.D. No. 1036102

Address:
One East Main Street
Suite 300
Madison, WI 53703
(608) 255-4440
WHD\2732695.3

RIGHT OF WAY GRANT

519971

FOR AND IN CONSIDERATION OF One-hundred and Sixteen00/100 Dollars (\$ 116.00) receipt of which hereby is acknowledgedJulius Yulga and Mildred Yulga his wife

(hereinafter called Grantor) for themselves, their heirs, executors, administrators, successors and assigns hereby grant to MICHIGAN WISCONSIN PIPE LINE COMPANY, a Delaware corporation, 500 Griswold St., Detroit 26, Michigan, its successors and assigns, (hereinafter called Grantee) the right to survey, construct, operate, maintain, inspect, alter, replace, move and remove a pipe line or pipe lines and appurtenances for the transportation of gas, oil or other substances which can be transported through a pipe line, over

through, upon, under and across the following real estate situated in Portage County, State of Wisconsin, to-wit:

The Fractional South Half (Frac.S $\frac{1}{2}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section Fifteen (15), Township Twenty-four (24) North, Range Eight (8) East.

The pipeline to be constructed where presently surveyed and staked along a 50' right-of-way.

together with the right of entrance and exit at convenient points for such purposes.

The said Grantor shall have the right to use and enjoy the surface of said premises, but shall not interfere with the use of the same by Grantee for any of the purposes hereinabove granted. Grantee covenants and agrees that it will bury the pipe lines constructed hereunder below ordinary plow depth. Grantee shall replace in a good and workmanlike manner all tile cut in the construction of its lines hereunder.

Grantee agrees to pay to the owner of said land and to any tenant or lessee thereof, as their respective interests may appear, any damages to fences, growing crops and timber which may be caused by the exercise of the rights hereinunder authorized; said damages, if not mutually agreed upon, to be ascertained and determined by three disinterested persons, one thereof to be appointed by the said Grantor, one by the said Grantee, and the third by the two so appointed as aforesaid, and the award of any two such persons shall be final and conclusive and no action shall be brought or maintained for damages until the amount thereof shall have been determined as above provided.

Should more than one pipe line be laid under this grant at any time, by Grantee, an additional consideration equal to the consideration hereinbefore recited, shall be paid for each line so laid after the first line.

To have and to hold said Right of Way unto said Grantee, its successors and assigns until a pipe line be constructed upon the above described real estate and so long thereafter as a pipe line be maintained thereon.

The rights herein granted may be assigned in whole or in part.

It is understood that the person securing this grant is without authority to make any agreement in respect of the subject matter hereof not herein expressed.

Signed and delivered this 12 day of August, 19 60.

Witnesses:

C.O. DunnC.O. DunnT. F. SwietlikT. F. SwietlikJulius YulgaJulius YulgaMildred YulgaMildred Yulga

(Seal)

(Seal)

(Seal)

(Seal)

In consideration of \$1.00 and other valuable consideration, I, the undersigned, hereby adopt and join in the execution of the above and foregoing grant and consent to the enjoyment by the Grantee therein of the rights granted by the foregoing right of way grant.

Dated this _____ day of _____, 19 ____.

Witnesses:

ED. D. HAKA

REGISTER OF DEEDS, PORTAGE COUNTY
STEVENS POINT, WIS.

Tenant

(Seal)

EXHIBIT

A

tabbles

ACKNOWLEDGMENT

STATE OF WISCONSIN }
COUNTY OF Milwaukee } ss.

On this 12 day of August, 1960, before me

a permanent notary officer, the undersigned officer, personally appeared
Julius Yulga and Mildred Yulga

to me known to be (or satisfactorily proven to be) the person s whose names subscribed to the
within instrument and acknowledged that they executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

My Commission Expires:

Permanent Notary

T.F. Swietlik
T.F. Swietlik
Notary Public Milwaukee County
Wisconsin

ACKNOWLEDGMENT

STATE OF WISCONSIN }
COUNTY OF _____ } ss.

On this _____ day of _____, 19____, before me

_____, the undersigned officer, personally appeared

to me known to be (or satisfactorily proven to be) the person _____ whose name _____ subscribed to the
within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

My Commission Expires:

Notary Public _____ County
Wisconsin

CORPORATE ACKNOWLEDGMENT

STATE OF WISCONSIN }
COUNTY OF _____ } ss.

ED. D. HAKA
REGISTER OF DEEDS, PORTAGE COUNTY
STEVENS POINT, WIS.

On this _____ day of _____, 19____, before me

_____, the undersigned officer, personally appeared

_____, who acknowledged himself to be the

_____ of _____, a Corporation,

and that he, as such _____, being authorized so to do, executed the foregoing
instrument for the purposes therein contained, by signing the name of the Corporation by himself as

In witness whereof I hereunto set my hand and official seal

My Commission Expires:

Rieser & StaffordAttorneys,
Madison, Wisconsin,

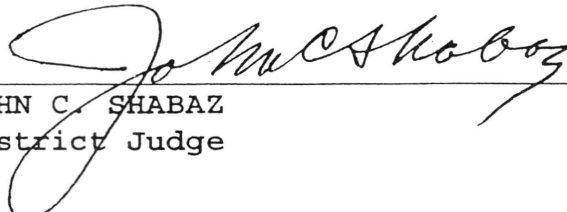
Office of Register of Deeds
Portage County, Wis.
Received for record this 8th day of
September A.D., 1960 at 10:00
o'clock A.M., and recorded in Vol. (223)
Deeds
Notary Public _____ County
Wisconsin
Ed. D. Haka
Register of Deeds

ORDER

Any dispositive motion filed by any of the parties prior to the preliminary pretrial conference to be scheduled in this matter shall be accompanied by appropriate memorandum of law; opposing party has 20 days to respond; and the moving party 10 days to reply.

This will be the only briefing schedule issued prior to the preliminary pretrial conference, and only those motions filed with appropriate memoranda will be recognized.

BY THE COURT:



JOHN C. SHABAZ
District Judge

NOTICE TO COUNSEL:

To enable judges of the court to evaluate possible disqualification or recusal, a nongovernmental corporate party shall file with its first appearance, pleading, petition, motion response, or other request this disclosure statement. Promptly file a supplemental statement upon any change in the information.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

v.

)
)
)
)
)
)
)

Case No. _____

DISCLOSURE STATEMENT

_____ makes the following disclosure in compliance with Federal Rule of Civil Procedure 7.1:

1. Does the named party have a parent corporation?

YES _____

NO _____

If the answer is YES, identify below the parent corporation:

2. Is 10% or more of the named party's stock owned by a publicly owned corporation?

YES _____

NO _____

If the answer is YES, identify below the owners:

(Signature of Counsel)

(Date)

UNITED STATES DISTRICT COURT

District of _____

Plaintiff
V.

NOTICE, CONSENT, AND ORDER OF REFERENCE —
EXERCISE OF JURISDICTION BY A UNITED STATES
MAGISTRATE JUDGE

Case Number: _____

Defendant

NOTICE OF AVAILABILITY OF A UNITED STATES MAGISTRATE JUDGE TO EXERCISE JURISDICTION

In accordance with the provisions of 28 U.S.C. §636(c), and Fed.R.Civ.P. 73, you are notified that a United States magistrate judge of this district court is available to conduct any or all proceedings in this case including a jury or nonjury trial, and to order the entry of a final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

An appeal from a judgment entered by a magistrate judge shall be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of this district court.

CONSENT TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE

In accordance with provisions of 28 U.S.C. §636(c) and Fed.R.Civ.P. 73, the parties in this case consent to have a United States magistrate judge conduct any and all proceedings in this case, including the trial, order the entry of a final judgment, and conduct all post-judgment proceedings.

Party Represented	Signatures	Date
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

ORDER OF REFERENCE

IT IS ORDERED that this case be referred to _____
United States Magistrate Judge, to conduct all proceedings and order the entry of judgment in accordance with 28 U.S.C. §636(c) and Fed.R.Civ.P. 73.

Date

United States District Judge

NOTE: RETURN THIS FORM TO THE CLERK OF THE COURT ONLY IF ALL PARTIES HAVE CONSENTED
ON THIS FORM TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE.