

AMENDMENTS TO UNIFORM SUPERIOR COURT RULES

It is ordered that effective June 4, 2009, Rule 46 of the Uniform Superior Court Rules involving Special Masters be added as follows:

Rule 46. Special Masters.

(A) Appointment, Removal and Substitution.

(1) Unless a statute provides otherwise, upon the motion of any party or upon the court's own motion, the court of record may appoint a master:

(a) to perform duties consented to by the parties;

(b) to address pretrial and post-trial matters that the court cannot efficiently, effectively or promptly address;

(c) to provide guidance, advice and information to the court on complex or specialized subjects, including, but not limited to, technology issues related to the discovery process;

(d) to monitor implementation of and compliance with orders of the court or, in appropriate cases, monitoring implementation of settlement agreements;

(e) to investigate and report to the court on matters identified by the court;

(f) to conduct an accounting as instructed by the court and to report upon the results of the same;

(g) upon a showing of good cause, to attend and supervise depositions conducted outside of the jurisdiction; and

(h) to hold trial proceedings and make or recommend findings of fact on issues to be decided by the court without a jury if appointment is warranted by (i) some exceptional condition, or (ii) the need to perform an accounting, to resolve a difficult computation of damages or if the matter involves issues for which a special substantive competence would be beneficial.

(2) A master must not have a relationship to the parties, counsel, action, or court that would require disqualification of a judge under applicable standards, unless the parties consent with the court's approval to appointment of a particular person after disclosure of all potential grounds for disqualification.

(3) In appointing a master, the court should consider the fairness of imposing the likely expenses on the parties and should protect against unreasonable expense and delay, taking into account the burdens and the benefits such an appointment would produce. The appointment of a special master shall not deprive any party of access to the courts or the civil justice system.

(4) A special master may be removed or substituted by order of the court, upon motion of a party or sua sponte.

(B) Order Appointing Master.

(1) Notice. The court must give the parties notice and an

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opportunity to be heard before appointing a master.

(2) Contents. The order appointing a master must direct the master to proceed with all reasonable diligence and must state:

(a) the master's duties, including any investigative or enforcement duties, and any specific limits on the master's authority;

(b) the circumstances, if any, in which the master may communicate *ex parte* with the court or a party;

(c) the nature of the materials to be preserved and filed as the record of the master's activities;

(d) the time limits, method of filing the record, other procedures, and standards for reviewing the master's orders, findings, and recommendations; and

(e) the basis, terms, and procedure for fixing the master's compensation pursuant to subparagraph (H) hereof.

(3) Entry of Order of Appointment. The court may enter the order appointing a master only after the master has filed an affidavit: (i) disclosing whether there is any ground for disqualification and, if a ground for disqualification is disclosed, after the parties have consented with the court's approval to waive the disqualification; and (ii) certifying that the master shall discharge the master's duties as required by law and pursuant to the court's instructions without favor to, or prejudice against, any party.

(4) Amendment. The order appointing a master may be amended at any time after notice to the parties and an opportunity to be heard.

(C) Master's Authority. Unless the appointing order expressly directs otherwise, a master has authority to regulate all proceedings and take all appropriate measures to perform fairly and efficiently all assigned duties. Unless otherwise indicated in the court's order of appointment, the master shall have the power to take evidence, to hear motions and to pass on questions of law and fact within the scope of the referral order. The master may by order impose upon a party any noncontempt sanction provided by OCGA §§ 9-11-37 and 9-11-45, and may recommend to the court a contempt sanction against a party and any sanction against a nonparty.

(D) Evidentiary Hearings. Unless the appointing order expressly directs otherwise, a master conducting an evidentiary hearing may exercise the power of the appointing court to compel, take, and record evidence.

(E) Master's Orders. A master who makes an order must promptly serve a copy on each party.

(F) Master's Reports. Unless otherwise indicated in the appointment order, a master must report to the court:

(1) all motions submitted by the parties;

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(2) all rulings made on all issues presented and all conclusions of law and findings of fact;

(3) all evidence offered by the parties and all rulings as to the admissibility of such evidence; and

(4) such other matters as the master may deem appropriate.

The master must file the report and promptly serve a copy of the report on each party, unless the court directs otherwise.

(G) Action on Master's Order, Report, or Recommendations.

(1) Action. In acting on a master's order, report, or recommendations, the court must afford the parties an opportunity to be heard and to object to any portion thereof. The court may receive evidence, and may adopt or affirm, modify, reject or reverse in whole or in part, or resubmit all or some issues to the master with instructions.

(2) Time To Object or Move. A party may file a motion to reject or to modify the master's order, report, or recommendations within twenty (20) days from the date on which the master's order, report, or recommendations are served, unless the court sets a different time. The master's order, report, or recommendations shall be deemed received three days after mailing by United States mail or on the same day if transmitted electronically or by hand-delivery. In the absence of a motion to reject or modify an order, report or recommendations within the time provided, the order, report or recommendations shall have the force and effect of an order of the court.

(3) Fact Findings. The court must decide de novo all objections to findings of fact made or recommended by a master, unless the parties stipulate with the court's consent that:

(a) the master's findings will be reviewed for clear error, or

(b) the findings of a master appointed under subsections (A) (1) (a) or (e) will be final.

(4) Legal Conclusions. The court must decide de novo all objections to conclusions of law made or recommended by a master.

(5) Procedural Matters. Unless the order of appointment establishes a different standard of review, the court may set aside a master's ruling on a procedural matter only for an abuse of discretion.

(H) Compensation.

(1) Fixing Compensation. The court shall fix the master's compensation on the basis and terms stated in the order of appointment, but the court may set a new basis and terms after notice and an opportunity to be heard.

(2) Payment. The compensation fixed must be paid either:

(a) by a party or parties; or

(b) from a fund or subject matter of the action within the court's control.

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(3) Allocation. The court must allocate payment of the master's compensation among the parties after considering the nature and amount of the controversy, the means of the parties, and the extent to which any party is more responsible than other parties for the reference to a master. An interim allocation may be amended to reflect a decision on the merits.