

## **Rule 53. Masters**

### **(a) APPOINTMENT.**

(1) *Definition.* The term "master" also refers to the Auditor-Master as established by D.C. Code § 11-1724 (2012 Repl.) unless otherwise noted.

(2) *Scope.* Unless a statute provides otherwise, a court may appoint a master only to:

(A) perform duties consented to by the parties;

(B) hold trial proceedings and make or recommend findings of fact on issues to be decided without a jury if appointment is warranted by:

(i) some exceptional condition; or

(ii) the need to perform an accounting or resolve a difficult computation of damages; or

(C) address pretrial and posttrial matters that cannot be effectively and timely addressed by an available judge or magistrate judge.

(3) *Disqualification.* A master must not have a relationship to the parties, attorneys, action, or court that would require disqualification of a judge under Rule 63-I, unless the parties, with the court's approval, consent to the appointment after the master discloses any potential grounds for disqualification.

(4) *Possible Expense or Delay.* In appointing a master, the court must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay.

### **(b) ORDER APPOINTING A MASTER.**

(1) *Notice.* Before appointing a master, the court must give the parties notice and an opportunity to be heard. Any party may suggest candidates for appointment.

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

(A) the master's duties, including any investigation or enforcement duties, and any limits on the master's authority under Rule 53(c);

(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 under Rule 53(g).

(3) *Issuing.* The court may issue the order only after:

(A) the master files an affidavit disclosing whether there is any ground for disqualification under Rule 63-I; and

(B) if a ground is disclosed, the parties, with the court's approval, waive the disqualification.

(4) *Amending.* The order may be amended at any time after notice to the parties and an opportunity to be heard.

### **(c) MASTER'S AUTHORITY.**

(1) *In General.* Unless the appointing order directs otherwise, a master may:

(A) regulate all proceedings;

(B) take all appropriate measures to perform the assigned duties fairly and

efficiently; and

(C) if conducting an evidentiary hearing, exercise the appointing court's power to compel, take, and record evidence.

(2) *Sanctions*. The master may by order impose on a party any noncontempt sanction provided by Rule 37 or 45, and may recommend a contempt sanction against a party and sanctions against a nonparty.

(d) **MASTER'S ORDERS**. A master who issues an order must file it and promptly serve a copy on each party. The clerk must enter the order on the docket.

(e) **MASTER'S REPORTS**. A master must report to the court as required by the appointing order. The master must file the report and promptly serve a copy on each party, unless the court orders otherwise.

(f) **ACTION ON THE MASTER'S ORDER, REPORT, OR RECOMMENDATIONS**.

(1) *Opportunity for a Hearing; Action in General*. In acting on a master's order, report, or recommendations, the court must give the parties notice and an opportunity to be heard; may receive evidence; and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions.

(2) *Time to Object or Move to Adopt or Modify*. A party may file objections to—or a motion to adopt or modify—the master's order, report, or recommendations no later than 21 days after a copy is served, unless the court sets a different time.

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

(A) the findings will be reviewed for clear error; or

(B) the findings of a master appointed under Rule 53(a)(2)(A) or (C) will be final.

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

(5) *Reviewing Procedural Matters*. Unless the appointing order 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.

(g) **COMPENSATION**.

(1) *Fixing Compensation*. Before or after judgment, the court must fix the master's compensation on the basis and terms stated in the appointing order, but the court may set a new basis and terms after giving notice and an opportunity to be heard.

(2) *Auditor-Master Costs*. The Auditor-Master may not be compensated, but is entitled to recover costs.

(3) *Payment*. The compensation 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.

(4) *Allocating Payment*. The court must allocate payment among the parties after considering the nature and amount of the controversy, the parties' means, 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.

(h) **APPOINTING A MAGISTRATE JUDGE**. A magistrate judge is subject to this rule only when the order referring a matter to the magistrate judge states that the reference is made under this rule.

## COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 53*, as amended in 2007 and 2009, but maintains the following local distinctions: 1) section (a) indicates that the rule is applicable to the Auditor-Master; 2) subsection (g)(2) allows the Auditor-Master to recover costs; and 3) references to 28 U.S.C. § 455 are replaced by references to Rule 63-I.

## COMMENT

Rule 53 identical to Fed. Rule of Civil Procedure 53 except that section (a) has been modified to recognize the existence of the office of Auditor-Master and to allow the court to fix fees for the work performed by the Auditor-Master as well as compensation for services rendered by special masters. For the statutory description of the appointment and duties of the Auditor-Master see D.C.Code (1967 Edition, Supplement IV) §§ 11-1724 and 11-1725.

A master may also recommend the institution of contempt proceedings by the Court against a nonparty under SCR Civ. 53(c). The service requirement in SCR Civ. 53(e) refers to orders issued out of the presence of the parties.