

RULE 1.490 | MAGISTRATES

(a) General Magistrates. Judges of the circuit court may appoint as many general magistrates from among the members of the Bar in the circuit as the judges find necessary, and the general magistrates shall continue in office until removed by the court. The order making an appointment shall be recorded. Every person appointed as a general magistrate shall take the oath required of officers by the Constitution and the oath shall be recorded before the magistrate discharges any duties of that office.

(b) Special Magistrates. The court may appoint members of The Florida Bar as special magistrates for any particular service required by the court, and they shall be governed by all the provisions of law and rules relating to magistrates except they shall not be required to make oath or give bond unless specifically required by the order appointing them. Upon a showing that the appointment is advisable, a person other than a member of the Bar may be appointed.

(c) Reference. No reference shall be to a magistrate, either general or special, without the consent of the parties. When a reference is made to a magistrate, either party may set the action for hearing before the magistrate.

(d) General Powers and Duties. Every magistrate shall perform all of the duties that pertain to the office according to the practice in chancery and under the direction of the court. Process issued by a magistrate shall be directed as provided by law. Hearings before any magistrate, examiner, or commissioner shall be held in the county where the action is pending, but hearings may be held at any place by order of the court within or without the state to meet the convenience of the witnesses or the parties. All grounds of disqualification of a judge shall apply to magistrates. Magistrates shall not practice law of the same case type in the court or circuit the magistrate is appointed to serve.

(e) Bond. When not otherwise provided by law, the court may require magistrates who are appointed to dispose of real or personal property to give bond and surety conditioned for the proper payment of all moneys that may come into their hands and for the due performance of their duties as the court may direct. The bond shall be made payable to the State of Florida



and shall be for the benefit of all persons aggrieved by any act of the magistrate.

(f) Notice of Hearings. The magistrate shall assign a time and place for proceedings as soon as reasonably possible after the reference is made and give notice to each of the parties. The notice or order setting a matter for hearing before the magistrate must state if electronic recording or a court reporter will be used to create a record of the proceedings. If electronic recording is to be used, the notice must state that any party may have a court reporter transcribe the record of the proceedings at that party's expense. If any party fails to appear, the magistrate may proceed ex parte or may adjourn the proceeding to a future day, giving notice to the absent party of the adjournment.

(g) Hearings. The magistrate shall proceed with reasonable diligence in every reference and with the least practicable delay. Any party may apply to the court for an order to the magistrate to speed the proceedings and to make the report and to certify to the court the reason for any delay. The evidence shall be taken by the magistrate or by some other person under the magistrate's authority in the magistrate's presence and shall be filed with the magistrate's report. The magistrate shall have authority to examine on oath the parties and all witnesses produced by the parties on all matters contained in the reference and to require production of all books, papers, writings, vouchers, and other documents applicable to the referenced matters. The magistrate shall admit evidence by deposition or that is otherwise admissible in court. The magistrate may take all actions concerning evidence that can be taken by the court and in the same manner. All parties accounting before a magistrate shall bring in their accounts in the form of accounts payable and receivable, and any other parties who are not satisfied with the account may examine the accounting party orally or by interrogatories or deposition as the magistrate directs. All depositions and documents that have been taken or used previously in the action may be used before the magistrate.

(h) Magistrate's Report. The magistrate must file the report on the referenced matters and served copies on all parties, and include the name and address of any court reporter who transcribed the proceedings. The magistrate's report must contain the following language in bold type:



IF YOU WISH TO SEEK REVIEW OF THE REPORT AND RECOMMENDATIONS MADE BY THE MAGISTRATE, YOU MUST FILE EXCEPTIONS IN ACCORDANCE WITH FLORIDA RULE OF CIVIL PROCEDURE 1.490(i). YOU WILL BE REQUIRED TO PROVIDE THE COURT WITH A RECORD SUFFICIENT TO SUPPORT YOUR EXCEPTIONS OR YOUR EXCEPTIONS WILL BE DENIED. A RECORD ORDINARILY INCLUDES A WRITTEN TRANSCRIPT OF ALL RELEVANT PROCEEDINGS. THE PERSON SEEKING REVIEW MUST HAVE THE TRANSCRIPT PREPARED IF NECESSARY FOR THE COURT'S REVIEW.

(i) Filing Report; Notice; Exceptions. The parties may file exceptions to the report within 10 days after it is served. Any party may file cross-exceptions within 5 days from the service of the exceptions. If no exceptions are timely filed the court shall take appropriate action on the report. If exceptions are filed, the court shall resolve the exceptions at a hearing on reasonable notice. The filing of cross-exceptions shall not delay a hearing on the exceptions and cross-exceptions unless good cause is shown.

(j) Record. A party filing exceptions to the magistrate's report must provide the court in advance of the hearing a record sufficient to support that party's exceptions.

(1) The record shall include the court file, designated portions of the transcript of proceedings before the magistrate, and all depositions and evidence presented to the magistrate. The designated transcript portions must be delivered to the court and all other parties at least 48 hours before the hearing.

(2) If the party filing exceptions has the court reporter prepare less than a full transcript of proceedings before the magistrate, that party must promptly file a notice designating the portions of the transcript that have been ordered. The other parties must be given reasonable time after service of the notice to arrange for the preparation and designation of other portions of the transcript for the court to consider at the hearing.



Committee Notes

1971 Amendment. The entire rule has been revised. Obsolete language has been omitted and changes made to meet objections shown by the use of local rules in many circuits. Subdivisions (a) and (b) are not substantially changed. Subdivision (c) is shortened and eliminates the useless priority for setting the matter for hearing to permit either party to go forward. Subdivision (d) eliminates the right of the parties to stipulate to the place of hearing. Subdivision (e) is not substantially changed. Subdivisions (f), (g), (h), and (i) are combined. The right to use affidavits is eliminated because of the unavailability of cross-examination and possible constitutional questions. The vague general authority of the magistrate under subdivision (g) is made specific by limiting it to actions that the court could take. Subdivision (j) is repealed because it is covered in the new subdivision (f). Subdivision (g) is the same as former subdivision (k) after eliminating the reference to affidavits. Subdivision (h) is the same as former subdivision (l).

1980 Amendment. Subdivision (d) is amended to delete the specific reference to the direction of process so that process issued by the master will be governed by the law applicable to process generally.

Court Commentary

1984 Amendment. The consent of all parties is required for any reference to a special master. Special masters may be used as provided by statute even with the rule change. See *Slatcoff v. Dezen*, 74 So. 2d 59 (Fla. 1954).

