



Supreme Court

STATE OF ARIZONA

402 ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET
PHOENIX, ARIZONA 85007-3231

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NOËL K. DESSAINT
CLERK OF THE COURT

KATHLEEN E. KEMPLEY
CHIEF DEPUTY CLERK

September 27, 2005

RE: RULE 53, ARIZONA RULES OF CIVIL PROCEDURE
Arizona Supreme Court No. R-05-0001

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on September 22, 2005, in regard to the above-referenced cause:

ORDERED: Petition to Amend Rule 53, Arizona Rules of Civil Procedure = ADOPTED as modified, effective January 1, 2006.

Noel K Dessaint, Clerk

TO:

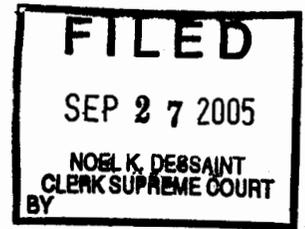
Robert B Van Wyck, Chief Counsel, State Bar of Arizona

George A Schade Jr

jr

IN THE SUPREME COURT OF THE STATE OF ARIZONA

Supreme Court No. R-05-0001



**ORDER AMENDING
RULE 53, ARIZONA RULES OF CIVIL PROCEDURE**

IT IS ORDERED that Rule 53, Arizona Rules of Civil Procedure, be amended in accordance with the attachment hereto,* effective as of January 1, 2006.

DATED in the City of Phoenix, Arizona at the Arizona Courts Building, this 27th day of September, 2005.

For the Court:



RUTH V. MCGREGOR
Chief Justice

* Changes or additions in text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

ARIZONA RULES OF CIVIL PROCEDURE

Rule 53. Masters

Rule 53(a). Appointment and compensation

~~The court in any action to be tried without a jury may appoint a special master therein. As used in these Rules the word "master" includes a referee, an auditor, and an examiner. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct. The master shall not retain the master's report as security for the master's compensation, but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.~~

(1) 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 and conclusions of law 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 or resolve a difficult computation of damages; or

(C) address pretrial and post-trial matters that cannot be addressed effectively and timely by an available superior court judge in the county in which the court sits.

(2) A master shall not have a relationship to the parties, counsel, action, or court that would require disqualification of a judge under Rule 81 of the Rules of the Supreme Court of Arizona unless the parties consent with the court's approval to appointment of a particular person after disclosure of any potential grounds for disqualification.

(3) In appointing a master, the court shall consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay.

Rule 53(b). Reference-Order appointing master

~~A reference to a master shall be the exception and not the rule. Save in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it.~~

(1) Notice. The court shall give the parties notice and an opportunity to be heard before appointing a master. A party may suggest candidates for appointment.

(2) Contents. The order appointing a master shall 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(i).

(3) Entry of Order. The court may enter the order appointing a master only after the prospective appointee has filed an affidavit disclosing whether there is any ground for disqualification under Rule 81 of the Rules of the Supreme Court of Arizona and, if a ground for disqualification is disclosed, after the parties have consented with the court's approval to waive the grounds of disqualification.

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

Rule 53(c). Powers-Master's authority

~~The order of reference to the master may specify or limit the master's powers and may direct the master to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before the master and to do all acts and take all measures~~

~~necessary or proper for the efficient performance of the master's duties under the order. The master may require the production of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. The master may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has authority to put witnesses on oath and may examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Rule 43(h) for a court sitting without a jury.~~

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 the assigned duties. The master may by order impose upon a party any noncontempt sanction provided by Rules 37 or 45, and may recommend a contempt sanction against a party and sanctions (including contempt) against a nonparty.

Rule 53(d). Meetings and evidentiary hearings

~~(1) *Meetings.* When a master is appointed reference is made, the clerk shall forthwith furnish the master with a copy of the appointing order of reference. Upon receipt thereof, unless the appointing order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys, to be held within twenty days after the date of the appointing order, of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and, if applicable, make the report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in the master's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.~~

(2) *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.

Rule 53(e). Witnesses-Master's orders

~~The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Rule 45. If without adequate excuse a witness fails to appear or give evidence, the witness may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45.~~

A master who makes an order shall file the order and promptly serve a copy on each party. The clerk shall enter the order on the docket.

Rule 53 (f). Statement of accounts-Draft reports

~~When matters of accounting are in issue before the master, the master may prescribe the form in which the accounts shall be submitted and in a proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as the master directs.~~

Before filing a report, a master may submit a draft of the report to the parties for the purpose of receiving comments.

Rule 53(g). Report; contents and filing-Master's reports

~~The master shall prepare a report upon the matters submitted to the master by the order of reference and, if required to make findings of fact and conclusions of law, the master shall set them forth in the report. The master shall file the report with the clerk of the court and unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and original exhibits. The clerk shall forthwith mail to all parties notice of the filing.~~

A master shall report to the court as required by the order of appointment. The master shall file the report and promptly serve a copy of the report on each party, unless the court directs otherwise.

Rule 53(h). Report of master-Action on master's order, report, or recommendations

~~The court shall accept the master's findings of fact unless clearly erroneous. Within ten days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6(e). The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.~~

(1) Time to object or move. A party may file objections to – or a motion to adopt or modify – the master's final order, report, or recommendations no later than 10 days from the time the master's final order, report, or recommendations are served, unless the court sets a different time.

(2) Fact findings. The court shall decide all objections to findings of fact made or recommended by a master under the clearly erroneous standard, unless the parties

stipulate with the court's consent that:

(A) the master's findings will be reviewed de novo, or

(B) the findings of a master will be final.

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

(4) 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.

(5) Action. In acting on a master's final order, report, or recommendations, the court shall consider and rule upon any objections and motions filed by the parties, and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions.

Rule 53(i). ~~Stipulation as to findings~~ Compensation

~~The effect of a master's report is the same whether or not the parties have consented to the reference, but when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.~~

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

(2) Payment. The compensation fixed under Rule 53(i)(1) 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.

(3) Allocation. If a master's compensation is to be paid by a party or the parties, the court shall allocate payment of the master's compensation among the parties and may consider the nature and amount of the controversy, the means of the parties, the extent to which any party is more responsible than other parties for the reference to or use of a master, and any other factor the court deems relevant. An interim allocation may be amended by the court after providing notice to the parties and an opportunity to be heard.

Rule 53(j). Draft report

Before filing the master's report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

Rule 53(k). Family Court Conference Officers

Notwithstanding any of the above provisions of this rule, the presiding judge of the superior court may adopt, in the manner provided in Rule 83, a local rule that provides for appointment of a type of master termed a conference officer. A conference officer may be employed full time by the clerk of court, in coordination with the court, to conduct conferences with the parties to expedite family court cases involving the establishment of paternity; establishment, modification and enforcement of child support orders; and enforcement of parenting time and custody orders. The conference officer may proceed, as provided in local rule, to provide a recommendation to the judge or commissioner assigned to each case.

Comment

2005 Amendment

Rule 53 was extensively revised to incorporate most, but not all, of the December 2003 amendments to Rule 53 of the Federal Rules of Civil Procedure. Where the provisions of this rule are similar to those found in Federal Rule 53, a court may look to federal precedent and the advisory committee notes to Federal Rule 53 for guidance in interpreting this Rule.

The subdivision (d) provisions for evidentiary hearings are reduced from the extensive provisions previously set forth in Rule 53. This simplification of the rule is not intended to diminish the authority that may be delegated to a master. Reliance is placed on the broad and general terms of the master's authority set forth in amended Rule 53(c).

The amendments to the rule require in several places that a court must give the parties "an opportunity to be heard" before taking a specified action. This requirement can be satisfied by giving the parties an opportunity to make written submissions to the court and does not require the court to hold a hearing before taking action.