

Rule 53. Masters**53.01 Appointment**

(a) Authority for Appointment. Unless a statute provides otherwise, a court may appoint a master only to:

(1) perform duties consented to by the parties;

(2) 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

(A) some exceptional condition, or

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

(3) address pretrial and post-trial matters that cannot be addressed effectively and timely by an available district judge.

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

(c) Expense. 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.

(Amended effective January 1, 2006.)

53.02 Order Appointing Master

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

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

(1) the master's duties, including any investigation or enforcement duties, and any limits on the master's authority under Rule 53.03;

(2) the circumstances - if any - in which the master may communicate ex parte with the court or a party;

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

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

(5) the basis, terms, and procedure for fixing the master's compensation under Rule 53.08;
and

(6) the extent to which, if at all, the parties and the master must use the court's E-Filing System in the proceedings before the master.

(c) Entry of Order. The court may enter the order appointing a master only after the master has filed an affidavit 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.

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

(Amended effective January 1, 2006; amended effective July 1, 2015.)

53.03 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 the assigned duties. The master may by order impose upon 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.

(Amended effective January 1, 2006.)

53.04 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.

(Amended effective January 1, 2006.)

53.05 Master's Orders

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

(Amended effective January 1, 2006.)

53.06 Master's Reports

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

(Added effective January 1, 2006.)

53.07 Action on Master's Order, Report, or Recommendations

(a) Action. In acting on a master's order, report, or recommendations, the court must afford an opportunity to be heard and may receive evidence, and may: adopt or affirm; modify; wholly or partly reject or reverse; or resubmit to the master with instructions.

(b) Time to Object or Move. A party may file objections to - or a motion to adopt or modify - the master's order, report, or recommendations no later than 20 days from the time the master's order, report, or recommendations are served, unless the court sets a different time.

(c) 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:

- (1) the master's findings will be reviewed for clear error, or
- (2) the findings of a master appointed under Rule 53.01(a)(1) or (3) will be final.

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

(e) 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.

(Added effective January 1, 2006.)

53.08 Compensation

(a) Fixing Compensation. The court must 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 notice and an opportunity to be heard.

(b) Payment. The compensation fixed under Rule 53.08(a) must be paid either:

(1) by a party or parties; or

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

(c) 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.

(Added effective January 1, 2006.)

53.09 Appointment of Statutory Referee

A statutory referee employed in the judicial branch is subject to this rule only when the order referring a matter to the statutory referee expressly provides that the reference is made under this rule.

(Added effective January 1, 2006.)

Advisory Committee Comment - 2006 Amendment

Rule 53 is replaced by a new rule derived nearly verbatim from its federal counterpart, Fed. R. Civ. P. 53. The federal rule was extensively revised by amendment in 2003. That amendment was taken up by the federal advisory committee after it had received empirical research on the use of masters in federal court. See THOMAS E. WILLGING ET AL., SPECIAL MASTERS' INCIDENCE AND ACTIVITY (Fed. Jud. Ctr. 2000).

The federal rule provides significantly more detailed guidance to courts and litigants on the proper use of masters than either its predecessor or the current Minnesota rule. The committee believes that the changes to the federal rule are thoughtful and are valuable to litigants, and therefore appropriate for adoption in Minnesota.

The rule is not intended to expand the use of masters, but is designed to make the use of masters more readily accomplished in the minority of cases where their use is warranted.

Rule 53.01 includes specific guidance on the circumstances justifying or permitting the appointment of a master. Most significantly, the rule clarifies that in the absence of consent a master cannot be assigned to try issues on which the parties are entitled to a jury trial; mere press of other business would not trump the jury trial right. Although the court has greater latitude under the rule for issues triable to the court, either consent or some truly exceptional circumstances must be present. Short of trying issues, however, there are many roles that masters may play in civil cases, particularly in complex cases where the parties consent to the appointment. See generally Lynn

Jokela & David F. Herr, Special Masters in State Court Complex Litigation: An Available and Underused Case Management Tool, 31 WM. MITCHELL L. REV. 1299 (2005).

Rule 53.02 establishes specific requirements for the order appointing a master. These subjects reflect a form of "best practices" for the use of masters, and they define procedures to be followed upon referral to a master. The rule intentionally makes these provisions mandatory because they are matters prone to dispute if not resolved at the time of appointment.

Rule 53.03 clarifies the extent of a master's authority and defines those powers expansively within the confines of the duties assigned to the master. The rule explicitly authorizes the imposition of discovery sanctions other than contempt by a master, and allows a master to recommend imposition of contempt sanctions.

The procedures established under Rule 53.07 are intended to clarify the role of master and ensure that all parties, including the appointing judge and appointed master, understand the master's role. The standards of review of a master's decisions are particularly important to the parties and the court, and are set forth with special detail.

Compensation of masters under this rule should be established in the order of appointment. See Rule 53.02(b)(5). In the majority of cases, compensation will be ordered to be paid by the parties pursuant to Rule 53.08(b)(1). The provision of Rule 53.08(b)(2) provides for payment from a fund created by the litigation, as where fees are awarded under the "common fund" doctrine, or by a fund that is the subject matter of the litigation. The federal rule advisory committee has recognized that it may be appropriate to revise the allocation ordered on an interim basis once the action is concluded. See Fed. R. Civ. P. 53(h), Advis. Comm. Notes - 2003 Amend., reprinted in FED. CIV. JUD. PROC. & RULES 237 (West 2005 ed.).

Rule 53.09 distinguishes between masters under this rule, and regular court employees authorized as "referees" by statute. "Statutory referees" as used in the rule refers to court employees, whether full- or part-time, who serve regularly in multiple cases or calendars. See, e.g., Minnesota Statutes, sections 260.031 (juvenile court referees authorized); 484.013, subdivision 3 (referees authorized for housing calendar consolidation program); 484.70 (referees generally in district court); 491A.03, subdivision 1, (2004) (referees in conciliation court in second and fourth districts). In certain situations, a "referee" appointed pursuant to statute for a single case should be viewed as a master under Rule 53. See, e.g., Minnesota Statutes, sections 116B.05 (referee in particular environmental action); 558.04 (2004) (referees for partition of real estate). The procedures governing statutory referees are generally found in the statutes authorizing their use.

Advisory Committee Comments - 2015 Amendments

Rule 53.02(b) is amended to add a new subdivision (6) that expressly required the court's appointment order to address the extent to which the parties and an appointed master must use the court's E-Filing System. This provision recognizes that a particular master may not otherwise be a registered user of the court's E-Filing System, and it may be appropriate either to direct that the parties and the master use the system for all service and filing or in the rare case, to excuse the master and parties from doing so.