

1 **Rule 53. Masters.**

2 (a) **Appointment and compensation.** Any or all of the issues in an action may be
3 referred by the court to a master upon the written consent of the parties, or the court
4 may appoint a master in an action, in accordance with the provisions of Subdivision (b)
5 of this rule. As used in these rules the word "master" includes a referee, an auditor, and
6 an examiner. The compensation to be allowed to a master shall be fixed by the court,
7 and shall be charged upon such of the parties or paid out of any fund or subject matter
8 of the action, which is in the custody and control of the court as the court may direct.
9 The master shall not retain his report as security for his compensation; but when the
10 party ordered to pay the compensation allowed by the court does not pay it after notice
11 and within the time prescribed by the court, the master is entitled to a writ of execution
12 against the delinquent party.

13 (b) **Reference.** A reference to a master shall be the exception and not the rule. In
14 actions to be tried by a jury, a reference shall be made only when the issues are
15 complicated; in actions to be tried without a jury, save in matters of account, a reference
16 shall, in the absence of the written consent of the parties, be made only upon a showing
17 that some exceptional condition requires it.

18 (c) **Powers.** The order of reference to the master may specify or limit his powers and
19 may direct him to report only upon particular issues or to do or perform particular acts or
20 to receive and report evidence only and may fix the time and place for beginning and
21 closing the hearings and for the filing of the master's report. Subject to the specifications
22 and limitations stated in the order, the master has and shall exercise the power to
23 regulate all proceedings in every hearing before him and to do all acts and take all
24 measures necessary or proper for the efficient performance of his duties under the
25 order. He may require the production before him of evidence upon all matters embraced
26 in the reference, including the production of all books, papers, vouchers, documents,
27 and writings applicable thereto. He may rule upon the admissibility of evidence unless
28 otherwise directed by the order of reference and has the authority to put witnesses on
29 oath and may himself examine them and may call the parties to the action and examine
30 them upon oath. When a party so requests, the master shall make a record of the

31 evidence offered and excluded in the same manner and subject to the same limitations
32 as provided in the Utah Rules of Evidence for a court sitting without a jury.

33 (d) **Proceedings.**

34 (d)(1) **Meetings.** When a reference is made, the clerk shall forthwith furnish the
35 master with a copy of the order of reference. Upon receipt thereof unless the order
36 of reference otherwise provides, the master shall forthwith set a time and place for
37 the first meeting of the parties or their attorneys to be held within ~~20~~21 days after
38 the date of the order of reference and shall notify the parties or their attorneys. It is
39 the duty of the master to proceed with all reasonable diligence. Either party, on
40 notice to the parties and master, may apply to the court for an order requiring the
41 master to speed the proceedings and to make his report. If a party fails to appear at
42 the time and place appointed, the master may proceed ex parte or, in his discretion,
43 adjourn the proceedings to a future day, giving notice to the absent party of the
44 adjournment.

45 (d)(2) **Witnesses.** The parties may procure the attendance of witnesses before
46 the master by the issuance and service of subpoenas as provided in Rule 45. If
47 without adequate excuse a witness fails to appear or give evidence, he may be
48 punished as for a contempt and be subjected to the consequences, penalties, and
49 remedies provided in Rules 37 and 45.

50 (d)(3) **Statement of accounts.** When matters of accounting are in issue before
51 the master, he may prescribe the form in which the accounts shall be submitted and
52 in any proper case may require or receive in evidence a statement by a certified
53 public accountant who is called as a witness. Upon objection of a party to any of the
54 items thus submitted or upon a showing that the form of statement is insufficient, the
55 master may require a different form of statement to be furnished, or the accounts or
56 specific items thereof to be proved by oral examination of the accounting parties or
57 upon written interrogatories or in such other manner as he directs.

58 (e) **Report.**

59 (e)(1) **Contents and filing.** The master shall prepare a report upon the matters
60 submitted to him by the order of reference and, if required to make findings of fact

61 and conclusions of law, he shall set them forth in the report. He shall file the report
62 with the clerk of the court and in an action to be tried without a jury, unless otherwise
63 directed by the order of reference, shall file with it a transcript of the proceedings and
64 of the evidence and the original exhibits. The clerk shall forthwith mail to all parties
65 notice of the filing.

66 (e)(2) **In non-jury actions.** In an action to be tried without a jury the court shall
67 accept the master's findings of fact unless clearly erroneous. Within ~~40~~14 days after
68 being served with notice of the filing of the report any party may serve written
69 objections thereto upon the other parties. Application to the court for action upon the
70 report and upon objections thereto shall be by motion and upon notice as prescribed
71 in Rule 6(d). The court after hearing may adopt the report or may modify it or may
72 reject it in whole or in part or may receive further evidence or may recommit it with
73 instructions.

74 (e)(3) **In jury actions.** In an action to be tried by a jury the master shall not be
75 directed to report the evidence. His findings upon the issues submitted to him are
76 admissible as evidence of the matters found and may be read to the jury, subject to
77 the ruling of the court upon any objections in point of law which may be made to the
78 report.

79 (e)(4) **Stipulation as to findings.** The effect of a master's report is the same
80 whether or not the parties have consented to the reference; but, when the parties
81 stipulate that a master's findings of fact shall be final, only questions of law arising
82 upon the report shall thereafter be considered.

83 (e)(5) **Draft report.** Before filing his report a master may submit a draft thereof to
84 counsel for all parties for the purpose of receiving their suggestions.

85 (f) **Objections to appointment of master.** A party may object to the appointment of
86 any person as a master on the same grounds as a party may challenge for cause any
87 prospective trial juror in the trial of a civil action. Such objections must be heard and
88 disposed of by the court in the same manner as a motion.

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