

Supreme Court of Kentucky

ORDER

2003-5

**In Re: Amendments to the Rules of Administrative Procedure
AP Part IV. Commissioners of the Circuit Court**

IT IS HEREBY ORDERED that Part IV. of the Rules of Administrative Procedure are hereby deleted in their entirety and shall be replaced by the following:

PART IV. COMMISSIONERS OF THE CIRCUIT COURT

Section 1. Appointment of Master Commissioner and Deputies;

Qualifications

(1) A master commissioner may be appointed for each county within a judicial circuit.

(a) In a single-judge circuit the appointment shall be made by the Circuit Judge.

(b) In judicial circuits with more than one (1) judge the master commissioner shall be chosen by a majority of the judges. In the event of a tie the chief circuit judge shall choose from those receiving the tie vote. The chief circuit judge shall enter an order appointing the master commissioner for the term of office and shall file a copy of the order of appointment with the Clerk of the Supreme Court.

(2) The master commissioner shall serve at the pleasure of the judge(s) of the circuit court, but in no case shall his or her term exceed four (4) years without reappointment. In a judicial circuit with more than one (1) judge the master commissioner may be removed at any time by a majority of the judges. In the event of a tie vote of removal by the judges, the final decision shall be made by the chief circuit judge.

- (3) The master commissioner shall be compensated by fees as provided in Sections 6 and 7 herein. The circuit court may allow the commissioner a reasonable fee for acting as receiver of the court, for executing documents pursuant to court order, for performing such other functions as ordered by the court, and for performing judicial type functions in actions where the master commissioner does not execute a judicial sale.
- (4) The master commissioner shall maintain his or her office at such locations and during such hours as the chief circuit judge shall direct.
- (5) The master commissioner shall perform such functions, including those of a receiver, as may be directed by an appropriate order of the court.
- (6) Upon the express authority of the Chief Justice, the master commissioner may have such deputies and assistants as approved by written order of the chief circuit judge as are necessary to perform the functions of his or her office.
- (7) A master commissioner or deputy commissioner shall hold no other public office of the Court of Justice except that of domestic relations commissioner or trial commissioner.
- (8) Master commissioners appointed after January 1, 1989, shall be qualified as attorneys. After January 1, 2004, no master commissioner shall serve who is not licensed as an attorney in the Commonwealth, regardless of the date of initial appointment.
- (9) The Administrative Office of the Courts shall have the authority to audit and oversee the financial accounts of master commissioners. A copy of the audit shall be submitted by the Administrative Office of the Courts to the chief judge of the circuit. In the event that the audit reveals an accounting or other irregularity, a copy shall also be submitted to the Chief Justice. An administrative fee of \$100 shall be added to all cases involving judicial sales by the master commissioner. This administrative fee shall be remitted by the master commissioner through the circuit court clerk to the Administrative Office of the Courts to be placed in a special account to cover the cost of bonding master commissioners and hiring staff to conduct audits of the master commissioner's office. To the extent fees collected do not fully fund the cost of these services, costs may be deducted from

the excess fees submitted by master commissioners to the Administrative Office of the Courts with their annual accounting report.

Section 2. Powers of the Master Commissioner

An order of reference to the master commissioner or local rules of court may specify or limit powers, and may direct a report only upon particular issues, or to perform particular acts, or to receive and report evidence only. The order of reference may fix the time and place for beginning and closing the acts or issues referenced, and for the filing of the master commissioner's report. The master commissioner shall exercise the power to regulate all proceedings and to take all measures necessary for the efficient performance of his or her duties, subject to the specifications and limitations stated in the order or local rules of court. The master commissioner may require the production of evidence upon matters included in the order of reference, such as the production of all books, papers, vouchers, documents, and writings. The master commissioner may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses and parties under oath and examine same. The master commissioner shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in CR 43.10 for a court sitting without a jury.

Section 3. Judicial sales; Settlements; Receiverships

(1) Pursuant to the circuit court's order and in conformity with AP Part IV, Section 2, judicial sales may be executed, and accounts of estates may be settled, by a master commissioner. The terms and conditions of the judicial sale or estate settlement shall be established by the circuit court either in its order or rule, and in conformity with the Kentucky Revised Statutes.

(2) A master commissioner shall draft and execute documents necessary to complete any responsibility, including a report of any settlement, sale or receivership. Further, an order of referral shall be entered by the circuit court referring the case to the master commissioner. Such documents shall be filed

with the circuit court clerk of the county, which shall be entered into the case management system of the circuit court.

(3) The judgment and order of sale directing the master commissioner to sell property shall be served upon every party who is not in default for failure to appear. The order should contain the date, time, terms and place of sale.

(4) Civil matters pertaining to the discovery of assets of judgment debtors may be referred to a master commissioner.

Section 4. Special Proceedings of the Master Commissioner

(1) References.

References to master commissioners for special proceedings shall be warranted only in special cases and in cases where such reference is mandated by statute or rule of court. Cases may be regarded as special due to complexity of issues, damages which are difficult to calculate, a multiplicity of claims the priority of which must be established, matters of accounting involving complex or numerous transactions, or similar exceptional circumstances.

(2) Meetings.

When an order of reference is made the clerk shall forthwith furnish the master commissioner with a copy of the order of reference and to all parties not in default. Upon receipt, the master commissioner shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall provide notice. It is the duty of the commissioner to proceed with reasonable diligence. Either party, on notice to the parties and master commissioner, may apply to the court for an order requiring the commissioner to speed the proceedings and to make his or her report. If a party fails to appear at the time and place appointed, the master commissioner may proceed ex parte or adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(3) Witnesses.

In special proceedings, the parties may procure the attendance of witnesses before the master commissioner by the issuance and service of subpoenas as provided in CR 45. If, without good cause shown, a witness fails to appear or give evidence, he or she may be held in contempt and be subject to the provisions of CR 37 and CR 45.

(4) Statement of accounts.

When matters of accounting are in issue before the master commissioner, he or she may prescribe the form in which the accounts shall be submitted. Upon objection of a party to any accounting, the master commissioner may require a different form of statement to be furnished, or take testimony, or receive written interrogatories.

Section 5. Master Commissioner's Report in Special Proceedings

(1) Contents and filing of report in special proceedings or other mandated referrals.

The master commissioner shall prepare a report to the court upon the matters submitted by the order of reference or local rules of court and shall file the report and sufficient copies for all parties with the clerk of the court. The clerk shall forthwith serve the report and notice of the filing upon all parties. A transcript of reported proceedings may be ordered by any party at that party's expense. If special proceedings or other mandated referrals are recorded on videotape, the untranscribed videotape shall constitute the official record.

(2) Action on report in special proceedings.

In special proceedings, within 10 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 CR 6.04. The court after hearing may adopt the report, modify it, reject it in whole or in part, receive further evidence, or recommit it with instructions.

(3) Stipulation as to findings in special proceedings.

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

(4) Draft report of special proceedings.

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

(5) Report as security in special proceedings.

The master commissioner shall not retain the report as security for compensation. If the party ordered to pay the compensation does not pay it after notice and within the time prescribed by the court, the master commissioner is entitled to a writ of execution.

Section 6. Compensation of Master Commissioners, Deputies and Assistants

(1) Master commissioners shall be compensated by fee charged upon the parties or paid out of any fund of an action in the circuit court. Deputies and other assistants of master commissioners shall be compensated and office expenses shall be paid from the fees of the office.

(2) The master commissioner shall receive as a fee for each judicial sale 5% of the first \$5,000 of the final bid, or in the case of several lots sold at the same time under the same judgment, 5% of the first \$5,000 of the aggregate of the final bids, and for the next \$20,000 of the final bid or bids, he or she shall receive 2% and for the next \$175,000 of the final bid or bids, he or she shall receive 1 1/2% and for the excess over \$200,000 of the final bid or bids, he or she shall receive 1/2%. In no case shall the master commissioner's fee be more than \$5,000. If the property is withdrawn the master commissioner shall receive a fee allowed by the circuit court of \$100 or not more than 50% of the sale fee based upon the appraisal value of the property. If the sale is not confirmed through no fault of the

master commissioner he or she shall receive a fee allowed by the circuit court of no more than the sale fee. In addition to the fee, the master commissioner may also recover necessary direct disbursements incurred in the sale including the cost of advertising, appraisers, the care of the property in his possession, and shall recover the administrative fee prescribed in Section 1(9). Upon good cause shown, the circuit court may require a deposit sufficient in amount to pay the direct cost of sale.

(3) For preparing reports and recommendations on tendered foreclosure judgments in uncontested cases for enforcement of a mortgage or other lien, the master commissioner shall receive a fee of \$50. The master commissioner shall receive a fee of \$50 for drafting necessary deed or title and executing same.

(4) For receiving and paying out money under court order, except as otherwise provided in Subsection 2, and for settling the accounts of estates the master commissioner shall receive 3% of the first \$2,000, and for the next \$3,000 he or she shall receive 2 1/2%, and for the excess over \$5,000 he or she shall receive 1 1/2%. For settlement of accounts of insolvent estates this computation shall exclude any amounts exempt from creditors. In no case shall the master commissioner's fee be more than \$5,000. In addition to the fee the master commissioner may also recover necessary direct disbursements incurred in the sale including the cost of advertising, auctioneers, appraisers, the care of the property in the master commissioner's possession, and shall recover the administrative fee prescribed in Section 1(9).

(5) For any hearing in which there is no sale, settlement or receivership, the master commissioner shall receive a fee of \$60 per hour, assessed at a rate of \$15.00 for each quarter hour or part thereof. Such fees shall be paid through the office of circuit court clerk to the master commissioner and shall be due on the fifth working day following the conclusion of the hearing. No more than \$600 shall be assessed in any case regardless of the number and length of hearings unless recommended by the circuit judge and approved by the Chief Justice for extraordinary circumstances shown. If a case is reopened additional fees totaling not more than \$200 may be assessed.

Section 7. Limit on Compensation of Master Commissioners, Deputies and Assistants

(1) All master commissioners shall be limited in their total personal compensation derived from fees to not more than \$48,000 per annum, unless otherwise approved by written order of the Chief Justice. Where the master commissioner also serves as the domestic relations commissioner the total personal compensation shall not exceed \$72,000 per annum unless an increased amount is approved by written order of the Chief Justice.

(2) Each deputy master commissioner, other assistants and support staff shall be limited in their total personal compensation derived from fees to not more than \$38,400 per annum unless otherwise approved by written order of the Chief Justice. In no event shall a deputy master commissioner, other assistants or support staff receive compensation from fees in an amount greater than 80% of the master commissioner's compensation from fees.

(3) A copy of any written order of the Chief Justice increasing the master commissioner's, deputy master commissioner's, assistant's or support staffer's personal compensation derived from fees shall be forwarded to the Administrative Office of the Courts, Department of Court Services, Division of Cash Management. Additionally, a copy of the order shall be attached to the annual accounting report submitted by the master commissioner to the Administrative Office of the Courts.

(4) Fees in excess of the personal compensation of the master commissioner, less allowable expenses, shall be remitted as provided in Section 8(4) of these Rules, however, anticipated three (3) months expenses may be retained. Computation of anticipated three (3) months expenses shall be supported by adequate records and documentary evidence which shall also be submitted with the annual accounting report tendered to the Administrative Office of the Courts, Department of Court Services, Division of Cash Management.

Section 8. Accounting of Master Commissioners

(1) Individual Case Report. Each master commissioner shall account to the circuit judge under whose direction he or she is acting for all amounts received and distributed, for all proceeds of sales disbursed, for all fees collected, and for all expenses deducted. These accounts shall be in the manner directed by the circuit judge who shall approve the accounts by his or her signature. The master commissioner shall file the approved accounts with the circuit clerk who shall record the approved accounts in the case management system and file in the applicable case. Each master commissioner shall maintain a current account, kept in the office of the circuit clerk, or in the office of the master commissioner if the chief circuit judge so directs, of each case in which a fee has been received.

(2) Annual Accounting Report. Each master commissioner shall provide, on or before March 1st of each year, a complete accounting of the prior calendar year, for all amounts received and distributed, for all proceeds of sales disbursed, for all fees collected, and for all expenses deducted to the Administrative Office of the Courts. The accounting shall be reported on a form prescribed by the Administrative Office of the Courts. The report shall contain, at a minimum, the following information:

- (a) Name (printed);
- (b) Address;
- (c) County and Circuit;
- (d) Total income received (fees, commissions and other income including interest);
- (e) Fees retained from previous year for three (3) months estimated expense;
- (f) Expenses as provided in Subsection 3 herein below;
- (g) Salary cap (if amount exceeds \$48,000, attach copy of order of the Chief Justice authorizing same);
- (h) Notarized signature of master commissioner
- (i) Signature of approving circuit judge.

(3) Expenses.

- (a) Adequate records and documentary evidence shall be maintained to support each element of an expense. See IRS Publication 463 and 535 Sections 62, 162 and 274 of the Internal Revenue Code for additional information.
- (b) Only salaries and bonding expenses for employees which are directly related to the office of master commissioner may be deducted from any fees in excess of the personal compensation of the master commissioner. Salaries are to be itemized per employee.
- (c) Notwithstanding any provision to the contrary herein, full-time master commissioners who are not engaged in any private business enterprise in their office may deduct ordinary business expenses allowable by the Internal Revenue Service in addition to the expenses listed herein.

(4) Excess fees referred to in Section 7 shall be remitted with the annual accounting report to the Administrative Office of the Courts, Department of Court Services, Division of Cash Management, for distribution to the Finance and Administration Cabinet in accordance with Section 1(9).

Section 9. Escrow Accounts of Master Commissioners

Master commissioners shall maintain one or more separate escrow accounts for all proceeds received and disbursed and shall maintain an itemized accounting of same. Proceeds relating to the office of the master commission shall not be commingled with any other accounts or funds held by the master commissioner in his personal or other professional capacity. Interest earned on the account shall be remitted to the Administrative Office of the Courts with the annual accounting report for distribution to the Finance and Administration Cabinet in accordance with Section 1(9). The account shall be subject to periodic audits, but no less than annual audits, by the Administrative Office of the Courts.

Section 10. Transfer of Office; Use of Proof and Performance of Duties of Predecessor.

(1) Upon the death, termination or removal of a master commissioner, all books, papers, account information, case files and other documents related to the office of master commissioner shall be immediately transferred to the circuit judge for whom the master commissioner serves. If termination is due to the death of the circuit judge, said documents shall be transferred pursuant to the order of the chief regional circuit judge.

(2) The master commissioner or receiver may use any proof reduced to writing and signed by his or her predecessor, and may execute any order or judgment which it was the duty of the predecessor to have executed, and which remains unexecuted.

Section 11. Disqualification of Master Commissioner; Special Commissioners.

(1) For the purposes of this section the following words or phrases shall have the meaning indicated:

(a) "Fiduciary" includes such relationships as executor, administrator, conservator, trustee, and guardian;

(b) "Financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

1. Ownership in a mutual or common investment fund that holds securities, or a proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, or ownership of government securities is a "financial interest" only if the outcome of the proceeding could substantially affect the value of the interest;

2. An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization.

(2) When performing judicial functions, any master commissioner shall disqualify

him/herself in any case:

- (a) Where he or she has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the case or has expressed an opinion concerning the merits of same;
 - (b) Where in private practice or government service he or she served as a lawyer or rendered a legal opinion in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter in controversy, or the master commissioner or such lawyer has been a material witness concerning the matter in controversy;
 - (c) Where he or she knows, individually or as a fiduciary, or a spouse or minor child residing in his household, has a pecuniary or proprietary interest in the subject matter in controversy or in a party to the proceeding;
 - (d) Where the master commissioner or the spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
 - 1. Is a party to the proceeding, or an officer, director, or trustee of a party;
 - 2. Is acting as a lawyer in the proceeding and the disqualification is not waived by stipulation of counsel in the proceeding filed therein;
 - 3. Is known by the master commissioner to have an interest that could be substantially affected by the outcome of the proceeding;
 - 4. Is to the knowledge of the master commissioner likely to be a material witness in the proceeding.
 - (e) Where he or she has knowledge of any other circumstances in which his or her impartiality might reasonably be questioned.
- (3) Any master commissioner disqualified under the provisions of this section or unable to discharge the duties of his or her office for any other reason shall be replaced by a special commissioner who shall be appointed by the judge of the court before whom the action is pending. The special commissioner shall meet the same qualifications as a master commissioner and shall take an oath, execute a bond in an amount to be set by the chief circuit judge based upon the estimated sum to be derived from the proceedings, and be subject to the same rules as the regular commissioner.

Section 12. Bond; Special Bond of Master Commissioners

(1) On or before April 1, 2004, the Administrative Office of the Courts shall execute a blanket bond on behalf of master commissioners.

(2) The master commissioner shall execute a special bond when circumstances warrant as required by the court and no action shall be maintained on the blanket bond for matters covered by a special bond. A special bond shall be recorded in the office of the circuit court clerk and a copy shall be submitted to the Administrative Office of the Courts, Department of Court Services, Division of Cash Management, with the annual accounting report.

(3) The master commissioner shall procure a surety bond on any employee who has access to the funds received and disbursed by the master commissioner. The surety bond shall be recorded in the office of the circuit court clerk and a copy shall be submitted to the Administrative Office of the Courts, Department of Court Services, Division of Cash Management, with the annual accounting report.

Section 13. Oath

The master commissioner shall take an oath that he or she will faithfully and honestly discharge the duties of the office. The oath shall be administered by the circuit judge and a copy shall be filed in the office of the circuit court clerk.

Section 14. Receivers; Persons Not to be Appointed Receivers

(1) Receivers, except as provided in subsection (2) of this section, may be appointed under the same terms and conditions as a master commissioner except that the receiver need not be an attorney.

(2) Except for personal representatives, guardians, curators and committees for persons of unsound mind, neither a party to an action, nor his attorney, nor any person interested therein, shall be appointed as a receiver unless by agreement of the parties.

Section 15. Fees for Domestic Relations Commissioners or Other Commissioners of the Circuit Court

For any hearing, the domestic relations commissioner or other commissioners of the circuit court shall receive a fee of \$60 per hour, assessed at a rate of \$15.00 for each quarter hour or part thereof. Such fees shall be paid through the office of circuit court clerk to the commissioner and shall be due on the fifth working day following the conclusion of the hearing. No more than \$600 shall be assessed in any case regardless of the number and length of hearings unless recommended by the circuit judge and approved by the Chief Justice for extraordinary circumstances shown. If a case is reopened additional fees totaling not more than \$200 may be assessed. No more than \$15 shall be assessed in any uncontested divorce.

This Order shall be effective January 1, 2004, and until further order.

Entered this the 19th day of December, 2003.



CHIEF JUSTICE