

Supreme Court of Kentucky

ORDER

2011-08

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

IT IS HEREBY ORDERED that, effective January 1, 2012, Part IV of the Rules of Administrative Procedures is hereby amended as follows:

PART IV. MASTER 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 judge the master commissioner shall be chosen by a majority of the circuit 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 years without reappointment.

(a) In a single-judge circuit the term of the master commissioner shall automatically terminate following the death, resignation, or permanent replacement of the circuit judge who appointed the master commissioner.

(b) In a judicial circuit with more than one judge the master commissioner may be removed at any time by a majority of the circuit judges. In the event of a tie, 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 master 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 written authority of the Administrative Office of the Courts on behalf of the Chief Justice, the master commissioner may have such deputies and clerical staff as are necessary to perform the functions of his or her office.

(7) A master commissioner or deputy master commissioner shall hold no other public office of the Court of Justice except that of trial commissioner for the district court pursuant to SCR 5.010, or domestic relations commissioner as approved by the Chief Justice.

(8) Master commissioners and deputy master commissioners shall be qualified as attorneys licensed in the Commonwealth.

(9) The Administrative Office of the Courts shall have the authority to establish audit and accounting standards, prescribe bookkeeping and accounting practices and procedures, and otherwise perform audits and oversee the financial accounts of master commissioners. A copy of any 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.

(10) A non-refundable judicial sale administrative fee of \$200 shall be added to all cases referred to the master commissioner for judicial sale. The circuit court clerk shall collect the administrative fee at the time the referral is made, prior to processing the motion for judgment and distributing the order of sale. The fee shall be collected prior to the master commissioner undertaking the order of sale. The circuit court clerk shall promptly remit all fee monies collected to the Administrative Office of the Courts. Judicial sale administrative fee money is to be placed in a special account designated to cover the administrative costs of the master commissioner program. These costs include, but are not limited to, all necessary bonding of master commissioners and the employment of sufficient staff to conduct audits of master commissioner offices statewide. To whatever extent total judicial sale administrative fees collected do not fully cover these expenses, funds may be deducted from the excess fees master commissioners submit to the Administrative Office of the Courts with their mandatory 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 may be provided in applicable Rules of Civil Procedure and/or Rules of Evidence 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.

(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 and all parties not in default with a copy of the order of reference. 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 reporting 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 the 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 comments.

(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 Clerical Staff

(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, clerical staff and office expenses, as authorized in AP Part IV, Section 8, shall be paid from the excess fees of the office. Salaries of clerical staff shall be set in accordance with the pay schedule established by the judicial personnel system.

(2) The fee for each judicial sale shall be calculated as follows:

(a) 5% of the first \$5,000 of the final bid, or if the sale involves multiple indivisible lots sold at the same time under the same judgment, 5% of the first \$5,000 of the aggregate of the final bids; 2% of the next \$20,000 of the final bid or bids; 1½% of the next \$175,000 of the final bid or bids; and ½% of the excess over \$200,000 of the final bid or bids. The fee based on the foregoing calculation shall be no less than \$400 and shall not exceed \$5,000.

(b) If the sale involves more than one property, parcel, or judgment, a fee of \$650 per additional property, parcel, or judgment (e.g., the second, third, and subsequent) shall be allowed in addition to the fee calculated under subsection (2)(a) of this section.

(c) If the sale is withdrawn, a fee of not more than 50% of what the sale fee would have been as calculated under subsections (2)(a) and (b) of this section based upon the appraisal value of the property, or \$400, whichever is greater, shall be allowed by the circuit court.

(d) If the sale is not confirmed through no fault of the master commissioner, a fee of no more than the sale fee as calculated under subsections (2)(a) and (b) of this section shall be allowed by the circuit court.

(3) In addition to the fee authorized in subsection (2), above, the master commissioner may also recover necessary direct expenses attributable to the case referred for judicial sale including the cost of postage, copies, faxes, long distance telephone, advertising, appraisers, and the cost of the care of the property in his or her possession, and shall recover the administrative fee prescribed in Section 1 (9). Upon good cause shown, agreement of the parties, and the approval of the judge, a qualified auctioneer may be authorized to conduct the sale at a fee to be set by the court. Upon good cause shown, the circuit court may require a deposit sufficient in amount to pay the direct cost of sale.

(4) A fee of \$50 shall be charged for each report and recommendation(s) prepared on tendered foreclosure judgments in uncontested cases for enforcement of a mortgage or other lien. Additionally, a fee of \$50 shall be charged for drafting any necessary deed or title and executing same.

(5) For receiving and paying out money under court order, except as otherwise provided in subsection (2), and for settling the accounts of estates the fee shall be 3% of the first \$2,000; 2½% for the next \$3,000; and, 1½% for the excess over \$5,000. For settlement of accounts of insolvent estates this computation shall exclude any amounts exempt from creditors. In no case shall the fee exceed \$5,000.

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

(1) The office of master commissioner shall be limited in total personal compensation derived from fees to not more than \$48,000 per annum, unless otherwise approved by written order of the Chief Justice. Said limitation on compensation shall be prorated on a monthly basis where the master commissioner serves less than the entire year. Where a master commissioner also acts as a domestic relations commissioner, the fees generated by the office of master commissioner shall not be co-mingled with the fees generated by the office of domestic relations commissioner.

(2) Each deputy master commissioner shall be limited in his or her total personal compensation derived from fees to not more than \$38,400 per annum. Said limitation on compensation shall be prorated on a monthly basis where the deputy commissioner serves less than the entire year. Salaries of clerical staff shall be set in accordance with the pay schedule established by the judicial personnel system. Any increase in personal compensation for clerical staff shall be in accordance with the allowed Court of Justice annual increment.

(3) Fees in excess of the personal compensation of the master commissioner, less authorized expenses, shall be remitted as provided in Section 8(4) of these Rules; however, anticipated three months expenses, excluding the master commissioner salary, may be retained. Computation of anticipated three 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, Division of Auditing Services.

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 to the Administrative Office of the Courts, on or before March 1st of each year, a complete accounting of the prior calendar year for all fees collected and for all expenses deducted. 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 months estimated expense;
- (f) Expenses as provided in Subsection (3) herein below;
- (g) Master commissioner salary cap;
- (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, bonding expenses, and other expenses authorized for employees in accordance with Section 1(9) which are directly related to the office of master commissioner, check printing charges, and the cost incurred for the purchase of accounting/bookkeeping software mandated by the Administrative Office of the Courts auditing standards 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, a master commissioner authorized by the Chief Justice to operate a full-time master commissioner's office and who does not engage in any private business enterprise in the master commissioner's office may deduct business expenses directly related and necessary to the operation of the master commissioner's office as established by the Administrative Office of the Courts auditing standards.

(4) Excess fees referred to in Section 7 shall be remitted with the annual accounting report to the Administrative Office of the Courts, Division of Auditing Services in accordance with Section 1(9).

Section 9. Escrow Accounts of Master Commissioners

Master commissioners shall maintain one or more separate interest bearing escrow accounts for all proceeds received and disbursed and shall maintain an itemized accounting of same. Proceeds relating to the office of the master commissioner shall not be co-mingled 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 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 served and immediate notice shall be given to the Administrative Office of the Courts, Division of Auditing

Services. In a single-judge circuit, if termination is due to the death, resignation, or permanent replacement of the circuit judge who appointed the master commissioner, 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, advisor, 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 fiduciary, or a spouse or minor child residing in his or her 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) 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 formatters 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, Division of Auditing Services, 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, Division of Auditing Services, with the annual accounting report.

Section 13. Compensation of Special Master Commissioners

Fees earned by a master commissioner for service as a Special Master Commissioner in another county(ies) shall be treated as follows:

(1) The first \$5,000 earned annually from service as a Special Master Commissioner shall not count toward the master commissioner's salary cap, and should not be reported on the Annual Report of Master Commissioner.

(2) Any fees in excess of \$5,000 earned annually from service as a Special Master Commissioner shall count toward the master commissioner's salary cap, and shall be reported on the Annual Report of Master Commissioner.

Section 14. 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 15. 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 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.

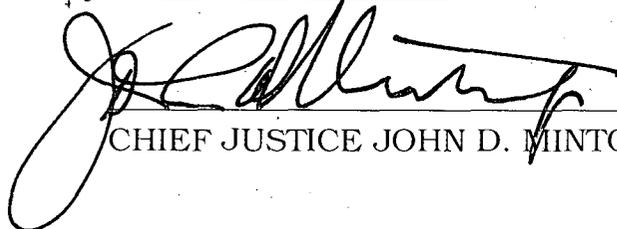
Section 16. Hearing Fees

For any hearing, the master commissioner shall receive a fee of \$60 per hour, assessed at a rate of \$15 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.

This Order shall be effective the 1st day of January 2012, and until further Order.

Entered this the 19th day of October, 2011.



CHIEF JUSTICE JOHN D. MINTON, JR.