

WHAT IS SO SPECIAL ABOUT A SPECIAL MASTER?

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The appointment of a special master is governed by Rule 53. Although courts appointed special masters pursuant to equitable powers before then, in 1938, a rule authorizing special masters was adopted as part of the Federal Rules of Civil Procedure (“FRCP”). Nevada added a similar rule to the Nevada Rules of Civil Procedure (“NRCP”) in 1953.²

This article discusses the growing trend of appointing special masters to perform complex functions that would otherwise overburden our very busy judicial system. This trend is driven by far-reaching changes to the FRCP and NRCP. Understanding how a special master could assist your complex litigation may save time and money.

I. LEGAL AUTHORITY TO APPOINT SPECIAL MASTER

A. The Court’s Inherent Powers

The United States Supreme Court recognized over 100 years ago that courts have the inherent power to engage outside parties, such as special masters, to assist them in performing their judicial duties.³ Courts must balance that power, however, with their duty “to determine by [their] own judgment the controversy presented.”⁴

B. Defining the Term “Special Master”

In Nevada’s federal and state courts, a special master is an appointed officer who assists as an adjunct to the court. A special master is an appointed officer who helps courts handle complicated cases more effectively.⁵ “Special Masters serve as ‘quasi-judges’ who have specifically defined duties that relieve the court of some of its functions beyond its core responsibilities.”⁶ “Masters are appointed ‘to aid judges in the performance of specific judicial duties, as they may arise in the progress of a cause....’”⁷

The U.S. Supreme Court held in 1928 that a special master is a judge who assumes “the duties and obligations of a judicial officer.”⁸ The ABA Code of Judicial Conduct agrees, defining the term “judge” to encompass roles in which an individual performs judicial functions,⁹ including “[a]nyone, whether or not a lawyer, who is an officer of a judicial system and who

² FRCP Rule 53 and NRCP Rule 53 are included as Appendix A and Appendix B, respectively.

³ *In re Peterson*, 253 U.S. 300, 312-13 (1920).

⁴ *Stauble v. Warrob, Inc.*, 977 F.2d 690, 695 (1st Cir. 1992) (cleaned up).

⁵ *Appointment of Special Master*, O’Connor’s Federal Rules, Civil Trials Ch. 5-B § 4 (2024 ed.) (citing *Academy of Court-Appointed Neutrals, Using Court-Appointed Neutrals: A Benchbook for Judges & Lawyers*, at Section I, 9–12 (2023), www.courtappointedneutrals.org/benchbook/appointing-neutrals-handbook/; Willging et al., *Special Masters’ Incidence & Activity: Report to the Judicial Conference’s Advisory Committee on Civil Rules & Its Subcommittee on Special Masters*, at 40 (2000), Federal Judicial Center, www.fjc.gov. Although the principal source of authority for appointing special masters is FRCP 53, some statutes permit appointment as well. See FRCP 53(a)(1); Wright and Miller et al., *Federal Practice and Procedure*, Civil § 2607 (3d ed.) (n. 13); see, e.g., 42 U.S.C.A. § 300aa-12(c) (appointment of special masters under National Vaccine Injury Compensation Program)).

⁶ Gail A. Andler and Daniel B. Garrie, *When to use a Discovery Special Master*, Los Angeles & San Francisco Daily Journal, July 14, 2023.

⁷ *Russell v. Thompson*, 96 Nev. 830, 834, 619 P.2d 537, 540 (1980) (quoting *Ex parte Peterson*, 253 U.S. 300 (1920)); see also *La Buy v. Howes Leather Co.*, 352 U.S. 249, 256 (1957)).

⁸ *In re Gilbert*, 276 U.S. 6, 9 (1928).

⁹ David Cleveland and Jason Masimore, *The Ermine and Woolsack: Disciplinary Proceedings Involving Judges, Attorney-Magistrates, and Other Judicial Figures*, 14 Geo. J. Legal Ethics 1037, 1057 (2001).

performs judicial functions, *including an officer* such as a magistrate, court commissioner, *special master or referee, is a judge within the meaning of this Code.*”¹⁰

Nevada’s Revised Code of Judicial Conduct suggests “[a] judge, within the meaning of this Code, is anyone who is authorized to perform judicial functions, *including an officer such as a* magistrate, court commissioner, *special master*, or referee.”¹¹ Nevada Revised Statute (“NRS”) 1.428 defines “judge” as “[a]ny other officer [besides those specifically enumerated] of the Judicial Branch of this State...including...a...special master or referee.”¹²

In Nevada’s state courts, the term “‘master’ includes a master, referee, auditor, examiner, and assessor.”¹³ Other courts call masters alternative names including “auditors, assessors, appraisers, commissioners, examiners, monitors, referees, and trustees.”¹⁴

The ABA Guidelines for the Appointment and Use of Court-Appointed Neutrals in Federal and State Court Litigation (“ABA Guidelines”) suggests special masters may serve in many different roles, including adjudication, facilitative, advisory, inforamatory, and liaison roles.¹⁵ In fact, the ABA Guidelines submit special masters “are more like a Swiss Army Knife: a multipurpose tool that could be used for quasi-adjudicative work, but could also be used for facilitative, investigative, intermediary, inforamatory, administrative, monitoring, implementing or many other purposes.”¹⁶

C. Changes to Rule 53 Expand the Role of Special Masters in Nevada’s Federal and State Courts

FRCP 53 and NRCP 53 govern the appointment and oversight of special masters in Nevada’s courts. Prior to the 2003 FRCP amendments and the 2019 NRCP amendments, Rule 53 “focused primarily on special masters who perform trial functions.”¹⁷ Pre-amendment caselaw necessarily centered on the narrow circumstances under which a court could turn its fact-finding functions over to a master. The amendments “revised [the rule] extensively to reflect changing practices.”¹⁸ The 2019 NRCP 53 mostly parallels the current FRCP Rule 53. Under both sets of the amended rules, judges retain “primary responsibility for the work of their courts. A master should be appointed only in limited circumstances.”¹⁹

Recognizing that courts increasingly used masters in both pretrial and post-trial roles, the 2003 FRCP amendments recognized trial masters as well as “the appointment and function of

¹⁰ *ABA Model Code of Judicial Conduct*, Application I(B) (February 2007). Emphasis added.

¹¹ Nevada Revised Code of Judicial Conduct, Application I(B). Emphasis added.

¹² See also Eighth Jud. Dist. Ct. Rules (“EDCR”) 5.102; see also *Henry v. Nevada Comm’n on Jud. Discipline*, 135 Nev. 34, 35, 435 P.3d 659, 660 (2019).

¹³ NRCP 53(a)(1); EDCR 1.12(i).

¹⁴ Thomas E. Willging et al., *Special Masters’ Incidence and Activity*, Fed. Jud. Center 1 (2000).

¹⁵ *ABA Guidelines for the Appointment and Use of Court-Appointed Neutrals in Federal and State Court Litigation*, at 3-4 (2019).

¹⁶ *Id.* at 4.

¹⁷ FRCP 53 Advisory Committee Notes, 2003 Amendments.

¹⁸ *Id.*

¹⁹ FRCP 53(a)(1) Advisory Committee Notes, 2003 Amendments.

masters for *all purposes*.”²⁰ The court may now appoint a trial master in a matter to be tried by a jury only “if the parties consent.”²¹

The 2003 FRCP amendments introduced standards for the appointment of: 1) consent masters; 2) trial masters; and 3) pretrial and post-trial masters.²² “This revised Rule 53 recognizes that in appropriate circumstances masters may properly be appointed to perform these functions and regulates such appointments.”²³

Prior to the 2019 amendments to NRCP 53, Nevada’s law regarding the appointment of masters aligned with the strict requirements of the pre-2003 FRCP Rule 53. In other words, the rule only provided for a trial master under very restrictive appointment guidelines. Prior to the 2019 NRCP amendments, Nevada judges appointed non-trial masters using their equitable powers.²⁴

Because the 2003 FRCP and the 2019 NRCP amendments to Rule 53 implemented sweeping changes, extreme caution should be used when referring to or relying on pre-amendment caselaw interpreting Rule 53. This is especially true of caselaw that is critical regarding the use of masters for functions other than as a trial master or applying the stricter standard to non-trial master positions.

The 2019 NRCP amendments added the provision for pretrial and post-trial masters not found in the prior versions of the Rule. Further, the amendment made clear that trial masters are permitted to decide “actions or . . . issues to be decided without a jury.”²⁵ Finally, NRCP 53 mirrors FRCP 53 but adds that a trial master may recommend *conclusions of law and judgment* in addition to recommendations regarding factual findings. By adopting almost the entirety of the federal rule, Nevada also borrowed the reasonings of the 2003 FRCP advisory committee’s notes. The following table illustrates the powers given to a master by FRCP 53 and NRCP 53, respectively.

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²⁰ *Id.* (Emphasis added).

²¹ *Id.*

²² FRCP 53(a)(1) Advisory Committee Notes, 2003 Amendments.

²³ FRCP 53 Advisory Committee Notes, 2003 Amendments.

²⁴ And by analogous reference to the 2003 FRCP 53 amendments.

²⁵ NRCP 53(a)(2)(C).

Comparison of Powers Granted to Masters By FRCP 53 and NRCP 53	
FRCP and NRCP Allow	Only NRCP Allows
Perform any function allowed by statute. FRCP 53(a)(1); NRCP 53(a)(2).	
Perform any duties consented to by the parties. FRCP 53(a)(1)(A); NRCP 53(a)(2)(A).	
Address pretrial and post-trial matters that cannot be effectively and timely addressed by an available judge. FRCP 53(a)(1)(C); NRCP 53(a)(2)(B).	
Hold trial proceedings, make findings, or recommend finding of fact on any matter that is not to be decided by a jury. FRCP 53(a)(1)(B); ²⁶ NRCP 53(a)(2)(C).	In actions or on issues to be decided without a jury, recommend conclusions of law and judgment. NRCP 53(a)(2)(C).

II. IN WHAT TYPES OF CASES ARE SPECIAL MASTERS APPOINTED?

Courts have discretion to appoint a special master and to decide the extent of the master’s duties.²⁷ The Advisory Committee notes to Rule 53 instruct that a pretrial special master “should be appointed only when the need is clear.”²⁸ Appointment of a special master must be “the exception and not the rule,” and should occur only upon a showing of clear need.²⁹ Special masters are probably most often appointed to oversee discovery and discovery disputes. As mentioned above, masters are appointed in other types of matters as well and “may extend to . . . ways that are quite unlike the traditional role of judicial officers in an adversary system.”³⁰

A. Nevada Federal Court

Nevada Federal courts have approved or referenced approval of the appointment of masters to perform the following functions:

- Adjudicate and provide continued supervision of federal water rights;³¹
- Determine an entire patent infringement case;³²

²⁶ Appointment may only be made where warranted by some exceptional condition or by a need to perform an accounting or to make a difficult damages calculation.

²⁷ *Sukumar v. Direct Focus, Inc.*, 349 F. App’x 163, 165 (9th Cir. 2009) (citing *Jaros v. E.I. DuPont (In re Hanford Nuclear Reservation Litig.)*, 292 F.3d 1124, 1138 (9th Cir. 2002)).

²⁸ FRCP 53 Advisory Committee Notes, 2003 Amendments; *see also Ross v. Johnson*, No. 222CV00259CDSVCF, 2023 WL 5333256, at *1 (D. Nev. Aug. 18, 2023).

²⁹ *Barnum v. Equifax Info. Servs., LLC*, No. 216CV02866RFBNJK, 2018 WL 1245492, at *3 (D. Nev. Mar. 9, 2018) (citing *Burlington Northern R. Co. v. Dept. of Revenue of State of Wash.*, 934 F.2d 1064, 1071 (9th Cir. 1991)).

³⁰ FRCP 53(a)(1)(C) Advisory Committee Notes, 2003 Amendments.

³¹ *United States v. Walker River Irr. Dist.*, No. 3:73-CV-00127-RCJ, 2015 WL 3439106, at *1 (D. Nev. May 28, 2015), rev’d and remanded sub nom. *United States v. Walker River Irrigation Dist.*, 890 F.3d 1161 (9th Cir. 2018).

³² *IGT v. All. Gaming Corp.*, No. 2:04-CV-1676-RCJ-RJJ, 2008 WL 11450935, at *4 (D. Nev. Oct. 21, 2008) (cleaned up).

- Determine “complex computation of the appropriate setoff” to which a litigant was entitled;³³
- Discovery matters,³⁴ including:
 - Determine discovery disputes between the parties that the court cannot timely address;³⁵
 - Determine discovery issues concerning consolidated cases;³⁶
 - Determine “extensive, complicated[,] and contentious” discovery disputes;³⁷
 - Determine the appropriateness of assertions of privilege as to discovery disclosures;³⁸
 - Determine whether Electronically Stored Information (“ESI”) was spoliated³⁹
 - “[M]anage, supervise, and resolve issues related to or arising out of discovery disputes”;⁴⁰
 - Oversee the collection and production of ESI; and⁴¹
 - Review voluminous email communications between corporate employees where the parties argue over the propriety of privilege claims.⁴²
- Pretrial and post-trial matters that cannot be effectively and timely addressed by an available district judge or magistrate judge of the district;⁴³
- Post-judgment proceeding to determine compliance with court orders; and⁴⁴
- Trial master.⁴⁵

³³ *Red Rock Commc’ns, Inc. v. Am. Telecasting, Inc.*, No. CVS010611PMPLRL, 2006 WL 2524195, at *1 (D. Nev. Aug. 30, 2006).

³⁴ *In re Endoscopy Ctr. & Associated Buss.*, No. 53676, 2010 WL 5550541 (Nev. Dec. 22, 2010); *S. Nev. Health Dist. v. Eighth Judicial Dist. Court*, No. 57056, 2010 WL 5276811 (Nev. Dec. 14, 2010).

³⁵ *Interior Elec. Inc. Nevada v. T.W.C. Constr., Inc.*, No. 218CV01118JADVCF, 2020 WL 32545, at *1 (D. Nev. Jan. 2, 2020).

³⁶ *Brown v. Greater Las Vegas Dialysis, LLC*, No. 208CV00429HDMRL, 2008 WL 11450543, at *1 (D. Nev. July 23, 2008).

³⁷ *Ross v. Johnson*, No. 222CV00259CDSVCF, 2023 WL 5333256, at *1 (D. Nev. Aug. 18, 2023) (citing *Sec’y of Labor Tom Perez v. Sw. Fuel Mgmt., Inc.*, 2017 WL 10574066, *1 (C.D. Cal. 2017)); *Interior Elec. Inc. Nevada v. T.W.C. Constr., Inc.*, No. 218CV01118JADVCF, 2020 WL 32545, at *1 (D. Nev. Jan. 2, 2020).

³⁸ *Fosbre v. Las Vegas Sands Corp.*, No. 210CV00765APGGWF, 2016 WL 183476, at *11 (D. Nev. Jan. 14, 2016); *Small v. Univ. Med. Ctr. of S. Nevada*, No. 2:13-CV-00298-APG, 2014 WL 3703914, at *3 (D. Nev. Mar. 14, 2014).

³⁹ *Small v. Univ. Med. Ctr. of S. Nevada*, No. 2:13-CV-00298-APG, 2015 WL 1281549, at *4 (D. Nev. Mar. 20, 2015).

⁴⁰ *Interior Elec. Inc. Nevada v. T.W.C. Constr., Inc.*, No. 218CV01118JADVCF, 2020 WL 32545, at *1 (D. Nev. Jan. 2, 2020); *Am. Heavy Moving & Rigging Co. v. Robb Techs., L.L.C.*, No. 2:04CV00933-JCM(GWF), 2006 WL 2085407, at *2 (D. Nev. July 25, 2006).

⁴¹ *Id.*

⁴² *Fosbre v. Las Vegas Sands Corp.*, No. 210CV00765APGGWF, 2016 WL 183476, at *11 (D. Nev. Jan. 14, 2016) (“The larger the volume of documents reviewed in camera, the greater the potential harm to the privilege and the greater the burden on the court. These kinds of burdens consume finite judicial resources, resources that judges could otherwise be committing to other pressing obligations”).

⁴³ *Walsh v. Unforgettable Coatings, Inc.*, No. 220CV00510KJDDJA, 2022 WL 3647920, at *6 (D. Nev. Aug. 23, 2022) (quoting FRCP 53(a)(1)(C)).

⁴⁴ *Aref v. Dana*, 972 F.2d 1336 (9th Cir. 1992).

⁴⁵ FRCP 53 Advisory Committee Notes, 2003 Amendments.

B. Nevada State Court

Nevada state courts have approved or referenced approval of the appointment of masters to perform the following functions:

- Accounting and performing difficult computation of damages;⁴⁶
- Calculate of damages and amount owed to lien claimants;⁴⁷
- Conduct a forensic accounting;⁴⁸
- Create of a judicially-generated election redistricting plan;⁴⁹
- Discovery matters, including:
 - Coordinate discovery;⁵⁰
 - Determine discovery disputes;⁵¹
 - Determine discovery disputes including disclosure of insurance policies;⁵²
 - Determine disputes regarding privilege logs;⁵³
 - Determine the proper scope and breadth of allowable discovery;⁵⁴
 - Oversee all discovery and case management; and⁵⁵
 - Oversee the collection and production of ESI.⁵⁶
- Determine all factual and legal issues in the case;⁵⁷
- Determine award of alimony in divorce action;⁵⁸
- Determine award of attorney fees and costs;⁵⁹
- Determine award of child support in divorce action;⁶⁰
- Determine calculation of damages;⁶¹

⁴⁶ NRCP 53(a)(2)(C)(ii); *Venetian Casino Resort, LLC v. Eighth Jud. Dist. Ct.*, 118 Nev. 124, 128, 41 P.3d 327, 329 (2002); *CSA Serv. Ctr., LLC v. Air Design Sys., LLC*, 129 Nev. 1108 (2013); *Russell v. Thompson*, 96 Nev. 830, 834, 619 P.2d 537, 540 (1980) (Where matters of account are involved, referral to a special master is only warranted if the matters are “beyond the competence of a court”); *Bond v. Stardust, Inc.*, 82 Nev. 47, 49, 410 P.2d 472, 473 (1966).

⁴⁷ NRCP 53(a)(2)(C)(ii); *Phillips v. Adams*, 85 Nev. 675, 676, 462 P.2d 35, 35 (1969).

⁴⁸ *Desert Aire Wellness, LLC v. Newman*, 136 Nev. 800, 456 P.3d 258 (2020).

⁴⁹ *Miller v. First Jud. Dist. Ct.*, 127 Nev. 1160, 373 P.3d 943 (2011); *Nevadans for Nevada v. Beers*, 122 Nev. 930, 945, 142 P.3d 339, 348 (2006).

⁵⁰ *APCO Constr., Inc. v. Zitting Bros. Constr., Inc.*, 136 Nev. 569, 571, 473 P.3d 1021, 1025 n.1 (2020).

⁵¹ *S. Nev. Health Dist. v. Eighth Jud. Dist. Ct.*, 126 Nev. 757, 367 P.3d 821 (2010) (denying writ challenging appointment of master).

⁵² *Vanguard Piping v. Eighth Jud. Dist. Ct.*, 129 Nev. 602, 309 P.3d 1017 (2013).

⁵³ *In re Endoscopy Ctr. & Associated Businesses & Coordinated Cases*, 126 Nev. 724, 367 P.3d 783 (2010).

⁵⁴ *S. Nev. Health Dist. v. Eighth Jud. Dist. Ct.*, 126 Nev. 758, 367 P.3d 821 (2010).

⁵⁵ *Lennar Reno, LLC v. Macedo*, 131 Nev. 1312 (2015).

⁵⁶ *Las Vegas Rev.-J., Inc. v. State*, 536 P.3d 914 (Nev. 2023); see also *Small v. Univ. Med. Ctr. of S. Nevada*, No. 2:13-CV-00298-APG, 2014 WL 3703914, at *3 (D. Nev. Mar. 14, 2014).

⁵⁷ *In re Ray's Est.*, 79 Nev. 304, 305, 383 P.2d 372, 373 (1963).

⁵⁸ *Russell v. Thompson*, 96 Nev. 830, 833, 619 P.2d 537, 539 (1980) (vacating appointment of master on these grounds).

⁵⁹ *Franchise Tax Bd. of Cal. v. Hyatt*, 130 Nev. 662, 674, 335 P.3d 125, 134 (2014), vacated and remanded sub nom. *Franchise Tax Bd. of California v. Hyatt*, 578 U.S. 171, 136 S. Ct. 1277, 194 L. Ed. 2d 431 (2016); *Young v. Bd. of Cnty. Comm'rs of Pershing Cnty.*, 91 Nev. 52, 57, 530 P.2d 1203, 1206 (1975).

⁶⁰ *Foley v. Foley*, 134 Nev. 938, 432 P.3d 736 (2018); *Fishbein v. Fishbein*, 132 Nev. 968 (Nev. App. 2016).

⁶¹ *State Drywall, Inc. v. Rhodes Design & Dev.*, 122 Nev. 111, 114, 127 P.3d 1082, 1084 (2006); *Cheqer, Inc. v. Painters & Decorators Joint Comm., Inc.*, 98 Nev. 609, 611, 655 P.2d 996, 997 (1982); *Phillips v. Adams*, 85 Nev. 675, 462 P.2d 35 (1969).

- Determine division of property in divorce action;⁶²
- Determine questions of fraud regarding Pandemic Unemployment Assistance, and the sufficiency of DETR’s system for automated claims;⁶³
- Determine litigant’s financial status;⁶⁴
- Determine the balance due on a contract dispute;⁶⁵
- Determine the respective interests of heirs to an estate;⁶⁶
- Determine the accuracy of an accounting report;⁶⁷
- Determine the fair market value of improved real property that was designated in a writ of attachment;⁶⁸
- Determine the quantity of water rights reserved to a Native American Indian tribe;⁶⁹
- Determine the value of a restaurant;⁷⁰
- Determine the value of stocks attached against a judgment;⁷¹
- Determine whether appointment of a post-judgment receiver was feasible;⁷²
- Determine whether children were in need of protection, establish a reunification, guardianship, and possible adoption plan;⁷³
- Examine corporate records in suit alleging mismanagement of corporation;⁷⁴
- Gather “information regarding the possibility of requiring further security deposits during the pendency of appeal from underlying judgment”;⁷⁵
- “[H]ear and resolve factual disputes”;⁷⁶
- Hear, determine, and report upon mechanics’ lien foreclosure actions as authorized by NRS 108.239(5);⁷⁷
- Investigate the sources of breaches of a court’s confidentiality order;⁷⁸
- Make findings of fact, conclusions of law, and decisions regarding alleged cloud on title;⁷⁹

⁶² *Giudici v. Giudici*, 134 Nev. 942 (Nev. App. 2018); *Russell v. Thompson*, 96 Nev. 830, 833, 619 P.2d 537, 539 (1980) (vacating appointment of master on these grounds); *Schulman v. Schulman*, 92 Nev. 707, 709, 558 P.2d 525, 527 (1976).

⁶³ *Payne v. Dep’t of Emp., Training & Rehab.*, 137 Nev. 949, 494 P.3d 901 (2021).

⁶⁴ *Barry v. Lindner*, 119 Nev. 661, 664, 81 P.3d 537, 539 (2003).

⁶⁵ *State Drywall, Inc. v. Rhodes Design & Dev.*, 122 Nev. 111, 114, 127 P.3d 1082, 1084 (2006).

⁶⁶ *In re Ray’s Est.*, 79 Nev. 304, 305, 383 P.2d 372, 373 (1963).

⁶⁷ *Id.*

⁶⁸ *United Pac. Ins. Co. v. Chism Homes, Inc.*, 102 Nev. 494, 495, 728 P.2d 809, 810 (1986).

⁶⁹ *Min. Cnty. v. State, Dep’t of Conservation & Nat. Res.*, 117 Nev. 235, 240, 20 P.3d 800, 803 (2001).

⁷⁰ *Fox v. Fox*, 84 Nev. 368, 369, 441 P.2d 678, 678 (1968).

⁷¹ *W. Indus., Inc. v. Gen. Ins. Co.*, 91 Nev. 222, 224–25, 533 P.2d 473, 474–75 (1975).

⁷² *Murray v. A Cab Taxi Serv. LLC*, 503 P.3d 1126 (Nev. 2022).

⁷³ *Shawnee M. v. First Jud. Dist. Ct.*, 131 Nev. 1346 (2015).

⁷⁴ *Foster v. Dingwall*, 126 Nev. 56, 61, 227 P.3d 1042, 1045 (2010).

⁷⁵ *Murray v. A Cab Taxi Serv. LLC*, 136 Nev. 852, 475 P.3d 60 (2020).

⁷⁶ *Young v. Bd. of Cnty. Comm’rs of Pershing Cnty.*, 91 Nev. 52, 53, 530 P.2d 1203, 1204 (1975).

⁷⁷ *CSA Serv. Ctr., LLC v. Air Design Sys., LLC*, 129 Nev. 1108 (2013) (master appointed to determine amount and priority of mechanics’ liens); *Venetian Casino Resort, LLC v. Eighth Jud. Dist. Ct.*, 118 Nev. 124, 128, 41 P.3d 327, 329 (2002).

⁷⁸ *Del Papa v. Steffen*, 112 Nev. 369, 915 P.2d 245 (1996) (writ granted directing cessation of special master’s investigation).

⁷⁹ *State v. Bunkowski*, 88 Nev. 623, 503 P.2d 1231 (1972).

- Make findings of fact and conclusions of law as to charges for labor and materials on a construction project;⁸⁰
- Make findings of fact and recommendations based on evidentiary findings;⁸¹
- Make findings of fact and conclusions of law as to the value of work performed and materials used in construction of a home;⁸²
- Preside over all matters associated with an estate;⁸³
- Provide forensic accounting services; and⁸⁴
- “[T]ake and hear the evidence offered by the respective parties, to ascertain and report upon the subject liens and the amounts, if any, justly due thereon, and to make findings of fact on all issues set forth in the pleadings.”⁸⁵

C. Other Federal and State Courts

Other federal and state courts have approved or referenced approval of the appointment of masters to perform the following functions:

- Aid the court in the enforcement of its decree;⁸⁶
- Assist the court in handling complex decrees;⁸⁷
- Audit financial records of a party;⁸⁸
- Determine an award of attorney fees;⁸⁹

⁸⁰ *Bond v. Stardust, Inc.*, 82 Nev. 47, 49, 410 P.2d 472, 473 (1966).

⁸¹ *A Cab, LLC v. Murray*, 137 Nev. 805, 807, 501 P.3d 961, 967 (2021); *Garden Park Townhouse Ass’n v. Homewood Builders, Inc.*, 97 Nev. 630, 631, 637 P.2d 1214, 1214 (1981); *In re Ray’s Est.*, 79 Nev. 304, 305, 383 P.2d 372, 373 (1963).

⁸² *Phillips v. Adams*, 85 Nev. 675, 462 P.2d 35 (1969).

⁸³ *Lear v. Second Jud. Dist. Ct.*, 124 Nev. 1487, 238 P.3d 832 (2008) (order vacating appointment of master).

⁸⁴ *Bertsch v. Eighth Jud. Dist. Ct.*, 133 Nev. 240, 241, 396 P.3d 769, 770 (2017).

⁸⁵ *S. Tr. Mortg. Co. v. K & B Door Co.*, 104 Nev. 564, 567, 763 P.2d 353, 355 (1988) (reversing order of appointment of virtually the entire case to a lay master).

⁸⁶ *United States v. Suquamish Indian Tribe*, 901 F.2d 772, 774–75 (9th Cir. 1990) (citing *Organization for Reform of Marijuana Laws v. Mullen*, 828 F.2d 536, 543 (9th Cir. 1987)).

⁸⁷ *Appointment of Special Master* (citing 2003 Notes to FRCP 53 at ¶ 18, Appendix IV).

⁸⁸ *In re Peterson*, 253 U.S. 300 (1920); *Arthur Murray, Inc. v. Oliver*, 364 F.2d 28 (8th Cir. 1966); *HRR Ark., Inc. v. River City Contractors, Inc.*, 87 S.W.3d 232 (Ark. 2002) (make an accounting of company’s books); *Shaner v. System Integrators, Inc.*, 63 S.W.3d 674 (Mo. Ct. App. 2001).

⁸⁹ *La Buy v. Howes Leather Co.*, 352 U.S. 249 (1957) (trial of issues in antitrust case); *In re Peterson*, 253 U.S. 300 (1920); *Kimberly v. Arms*, 129 U.S. 512 (1889); *Heckers v. Fowler*, 69 U.S. 123 (1864); *In re Kensington Int’l Ltd.*, 353 F.3d 211 (3^d Cir. 2003) (preside over bankruptcy proceedings in mass tort asbestos litigation); *In re Prudential Ins. Co. of Am. Sales Practice Litig. Agent Actions*, 278 F.3d 175, 184 (3^d Cir. 2002); *Shafer v. Army & Air Force Exch. Serv.*, 277 F.3d 788 (5th Cir. 2002); *Charter Oak Fire Ins. Co. v. Hedeem & Cos.*, 280 F.3d 730 (7th Cir. 2002) (review attorney fees application); *Schaefer Fan Co. v. J & D Mfg., Inc.*, 265 F.3d 1282 (Fed. Cir. 2001) (master appointed to resolve disputes regarding compliance with settlement agreement; interpreted terms of the agreement); *Sierra Club v. Clifford*, 257 F.3d 444 (5th Cir. 2001); *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877 (9th Cir. 2000) (attorney fees motion); *United States v. Microsoft Corp.*, 147 F.3d 935 (D.C. Cir. 1998) (post-trial context); *Reiter v. Honeywell, Inc.*, 104 F.3d 1071 (8th Cir. 1997) (appointment of master to preside over trial of employment dispute was improper where the only reason given for the appointment was that the case had been on the docket more than one year); *Hilao v. Estate of Marcos*, 103 F.3d 767 (9th Cir. 1996) (master appointed as trial master and court-appointed expert witness; supervised taking depositions, reviewed claim forms, and recommended compensatory damages for alleged victims of human rights violations); *In re Joint Eastern & Southern Dist. Asbestos Litig.*, 14 F.3d 726 (2^d Cir. 1993) (hold hearing to determine extent of defendant’s financial assets and impact of potential claims for damages); *Griffin v. Michigan Dep’t of Corr.*, 5 F.3d 186 (6th Cir. 1993) (hold hearing and recommend appropriate remedy for victim of gender discrimination in employment); *Stauble v. Warrob, Inc.*,

- Determine calculation of damages;⁹⁰
- Determine compliance with court orders;⁹¹
- Determine complex issues of law, such as interpreting patent claims or making determinations of foreign law;⁹²
- Determine dispositive or other motions, including motions to exclude experts⁹³
- Determine the facts in a mortgage foreclosure action;⁹⁴
- Determine insurance coverage;⁹⁵
- Determine matters (pretrial or post-trial) that cannot be effectively and timely addressed by the court;⁹⁶
- Determine the true boundary between the States of California and Nevada⁹⁷
- Discovery matters,⁹⁸ including:
 - Conduct *in camera* document inspection;⁹⁹
 - Oversee and determine discovery and discovery disputes;¹⁰⁰

977 F.2d 690 (1st Cir. 1992) (appointment of master to make recommendation as to liability deemed improper); *Burlington N. R.R. Co. v. Department of Revenue of Washington*, 934 F.2d 1064 (9th Cir. 1991); *In re United States Dep't of Defense*, 848 F.2d 232 (D.C. Cir. 1988) (review allegedly classified documents in FOIA case); *In re Armco Inc.*, 770 F.2d 103, 105 (8th Cir. 1985) (error to refer trial on merits to master, but proper to refer all pretrial matters, as well as power to hear and make recommendations on dispositive motions); *Baker Indus., Inc. v. Cerebrus, Ltd.*, 764 F.2d 204 (3^d Cir. 1985) (where trial issues were referred to a referee for final decision, party that challenged referee's order had to pay the other side's attorney fees incurred in defending against the challenge); *Am. Presents, Ltd. v. Hopkins*, 330 F. Supp. 2d 1217, 1234 (D. Colo. 2004); *America Presents, Ltd. v. Hopkins*, 330 F. Supp. 2d 1217 (D. Colo. 2004) (review attorney fees request); *Dixon v. Secretary of Dep't of Health & Human Serv.*, 61 Fed. Cl. 1 (2004) (conduct evidentiary hearing); *Larios v. Cox*, 306 F. Supp. 2d 1214 (N.D. Ga. 2004) (formulate reapportionment plans in a redistricting case); *United States v. Hardage*, 750 F. Supp. 1460 (W.D. Okla. 1990) (master played multiple roles in CERCLA case), *aff'd*, 982 F.2d 1436 (10th Cir. 1992); *Monmouth County Corr. Inst. Inmates v. Lanzaro*, 695 F. Supp. 759 (D. N.J. 1988); *Hart v. Community Sch. Bd. of Brooklyn*, 383 F. Supp. 699 (E.D. N.Y. 1974) (crafting remedy in school desegregation case); *Morgan v. Kerrigan*, 401 F. Supp. 216 (D. Mass. 1975) (panel of non-attorney masters appointed in school desegregation case), *aff'd*, 530 F.2d 401 (1st Cir. 1976); *United States v. Conservation Chem. Co.*, 106 F.R.D. 210 (W.D. Mo. 1985); *United States v. Moss-American*, 78 F.R.D. 214 (E.D. Wis. 1978) (master appointed to supervise the taking of samples of defendant's soil in pollution case).

⁹⁰ *Swoboda v. Pala Min., Inc.*, 844 F.2d 654, 655 (9th Cir. 1988).

⁹¹ *Cordoza v. Pac. States Steel Corp.*, 320 F.3d 989, 995 (9th Cir. 2003) (citing *New York State Ass'n for Retarded Children v. Carey*, 706 F.2d 956, 962–65 (2^d Cir. 1983)); *Aref v. Dana*, 972 F.2d 1336 (9th Cir. 1992); *United States v. Suquamish Indian Tribe*, 901 F.2d 772, 774–75 (9th Cir. 1990) (citing *Organization for Reform of Marijuana Laws v. Mullen*, 828 F.2d 536, 543 (9th Cir. 1987)).

⁹² *Appointment of Special Master* (citing 2003 Notes to FRCP 53 at ¶ 17, Appendix IV).

⁹³ *Id.* (citing *Jack Walters & Sons Corp. v. Morton Bldg., Inc.*, 737 F.2d 698, 712–13 (7th Cir. 1984)).

⁹⁴ *United Cos. Lending Corp. v. Candela*, 740 N.Y.S.2d 543, 545 (N.Y. App. Div. 2002).

⁹⁵ *Buller v. Minn. Lawyers Mut.*, 648 N.W.2d 704, 707 (Minn. Ct. App. 2002).

⁹⁶ *Appointment of Special Master* (citing FRCP 53(a)(1)(C); 2003 Notes to FRCP 53 at ¶ 12, Appendix IV).

⁹⁷ *California v. Nevada*, 447 U.S. 125, 126, 100 S. Ct. 2064, 2065, 65 L. Ed. 2d 1 (1980).

⁹⁸ *United States v. Montrose Chem. Corp. of Cal.*, 50 F.3d 741 (9th Cir. 1995); *U-Haul Co. of Nev. v. Gregory J. Kamer, Ltd.*, No. 2:06-cv-618-R CJ-PAL, 2011 U.S. Dist. LEXIS 121820 (D. Nev. Oct. 20, 2011).

⁹⁹ *In re Omeprazole Patent Litig.*, 2004 WL 842024, at *1 (S.D. N.Y. 2004); *Gaton v. Health Coalition, Inc.*, 774 So. 2d 59, 60 (Fla. Dist. Ct. App. 2000).

¹⁰⁰ *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 593-594 (1993); *Good Stewardship Christian Ctr., Inc. v. Empire Bank*, 341 F.3d 794 (8th Cir. 2003); *Aird v. Ford Motor Co.*, 86 F.3d 216 (D.C. Cir. 1996) (oversight of discovery and “other procedural matters”); *United States v. Montrose Chem. Corp. of California*, 50 F.3d 741 (9th Cir. 1995); *Stauble v. Warrob, Inc.*, 977 F.2d 690 (1st Cir. 1992); *United States v. Hardage*, 750 F. Supp. 1460 (W.D. Okla. 1990) (master played multiple roles in CERCLA case), *aff'd*, 982 F.2d 1436 (10th Cir. 1992); *In re Armco*

- Oversee case management, including supervision of discovery, develop data collection system, hire experts, and design computer programs to evaluate claims for settlement purposes;¹⁰¹
- Review documents for possible redaction of privileged communications;¹⁰²
- Rule on motion to exclude experts;¹⁰³
- Serve as an Electronic Discovery Master;¹⁰⁴
- Supervise discovery and promote joint stipulations regarding undisputed scientific facts or techniques; and¹⁰⁵
- Supervise the taking of depositions of randomly-selected class members to determine the distribution of compensatory damages award.¹⁰⁶
- Formulate remedial orders and supervise compliance with court orders;¹⁰⁷

Inc., 770 F.2d 103 (8th Cir. 1985) (error to refer trial on merits to master, but proper to refer all pretrial matters, including discovery, production, arrangement of exhibits, and stipulations of fact); *Eggleston v. Chicago Journeymen Plumbers' Local Union No. 130, U.A.*, 657 F.2d 890 (7th Cir. 1981) (appellate court recommended that trial court appoint a master to oversee discovery where counsel engaged in obstructionist tactics); *In re Murphy*, 560 F.2d 326 (8th Cir. 1977) (three-person panel appointed to review documents and supervise discovery in patent suit); *First Iowa Hydro Elec. Coop. v. Iowa-Illinois Gas & Elec. Co.*, 245 F.2d 613 (8th Cir. 1957); *In re Omeprazole Patent Litig.*, 2004 WL 842024 (S.D. N.Y. 2004) (in camera document review); *Lipco Elec. Corp. v. ASG Consulting Corp.*, No. 8775/01, slip op. 50967U, 2004 WL 1949062 (N.Y. Sup. Ct. Aug. 18, 2004) (appointing a referee to supervise, monitor, and schedule discovery including document protection orders, and any other discovery issue that might arise); *Diversified Group, Inc. v. Daugerdas*, 304 F. Supp. 2d 507 (S.D. N.Y. 2003) (review documents for possible redaction); *Schwimmer v. United States*, 232 F.2d 855 (8th Cir. 1956); *National Ass'n of Radiation Survivors v. Turnage*, 115 F.R.D. 543 (N.D. Cal. 1987) (supervise discovery after document destruction); *In re Agent Orange Prod. Liab. Litig.*, 94 F.R.D. 173, 174 (E.D. N.Y. 1982); *United States v. AT&T Co.*, 461 F. Supp. 1314 (D. D.C. 1978) (two masters appointed in antitrust suit to review 500 documents and make recommendations on privilege and relevance); *Omnium Lyonnais D'Etancheite et Revetement Asphalte v. Dow Chem. Co.*, 73 F.R.D. 114 (C.D. Cal. 1977) (supervise discovery in complex action); *Int'l. Business Machines Corp.*, 76 F.R.D. 97 (D. N.Y. 1977); see also *Appointment of Special Master* (citing *In re Wilson*, 451 F.3d 161, 164 (3^d Cir. 2006); Ron Kilgard, *Discovery Masters When They Help—and When They Don't*, 40 Ariz. Att'y 30 (Apr. 2004); Wayne D. Brazil, *Authority to Refer Discovery Tasks to Special Masters: Limitations on Existing Sources and the Need for a New Federal Rule*, in Wayne D. Brazil, Geoffrey Hazard, Jr. and Paul R. Rice, *Managing Complex Litigation: A Practical Guide to the Use of Special Masters*, 305 (1983).

¹⁰¹ *The Role of Special Masters in Federal Litigation*, C842 ALI-ABA 931 (citing *Ohio Asbestos Litigation Case Management Plan and Case Evaluation and Apportionment Process Order No.*, 6 (Dec. 16, 1983); see also *Jenkins v. Raymark, Indust., Inc.*, 109 F.R.D. 269, 288 (E.D. Tex. 1985); *In re Department of Defense*, 848 F.2d 232 (D.C. Cir. 1988); Francis McGovern, *Resolving Mature Mass Tort Litigation*, 69 B.U.L. Rev. 659 (1989)).

¹⁰² *Diversified Group, Inc. v. Daugerdas*, 304 F. Supp. 2d 507, 510 (S.D. N.Y. 2003).

¹⁰³ *Appointment of Special Master* (citing *Jack Walters & Sons Corp. v. Morton Bldg., Inc.*, 737 F.2d 698, 712–13 (7th Cir. 1984)).

¹⁰⁴ *Appointing Special Masters and Other Judicial Adjuncts: A Benchbook for Judges and Lawyers*, at 4, Academy of Court Appointed Masters (Jan 2013).

¹⁰⁵ *The Role of Special Masters in Federal Litigation* (citing *United States v. Michigan*, 471 F. Supp. 192 (W.D. Mich. 1979), remanded 623 F.2d 448 (6th Cir. 1980), modified 653 F.2d 277 (6th Cir.), cert. denied 454 U.S. 1124 (1981); Wayne D. Brazil, *Special Masters in Complex Case: Extending the Judiciary or Reshaping Adjudication?* 53 U. Chi. L. Rev. 394, 410 (1986)).

¹⁰⁶ *Cordoza v. Pac. States Steel Corp.*, 320 F.3d 989, 995 (9th Cir. 2003) (citing *Hilao v. Estate of Marcos*, 103 F.3d 767, 782 (9th Cir. 1996)).

¹⁰⁷ *Appointment of Special Master* (citing *Apex Fountain Sales, Inc. v. Kleinfeld*, 818 F.2d 1089, 1097 (3^d Cir. 1987) (appointment of master appropriate when implementing court's order would be complex and involve monitoring and detailed enforcement mechanisms); 2003 Notes to FRCP 53 at ¶¶ 18, 19, Appendix IV (same); Brazil, *Special Masters in Complex Cases: Extending the Judiciary or Reshaping Adjudication?*, 53 U. Chi. L. Rev. 394, 414 (1986)

- Hear and determine vaccine-related complaints under Title 42;¹⁰⁸
- Hear and make recommendations with regard to motions to dismiss and for summary judgment;¹⁰⁹
- Make findings of fact and recommendations regarding property disputes;¹¹⁰
- Mediate settlements in complex litigation (sometimes called a “settlement master”);¹¹¹
- Oversee complex litigation or mass tort cases;¹¹²
- Oversee Post-judgment proceeding to determine compliance with court orders;¹¹³
- Oversee the winding up of a general partnership;¹¹⁴
- Preside over an evidentiary hearing on the merits of the claims or defenses in the case;¹¹⁵

(master given power to investigate, conduct hearings, find facts, analyze solutions, and draft proposed remedies in form of injunctions)).

¹⁰⁸ *Shalala v. Whitecotton*, 514 U.S. 268, 270, 115 S. Ct. 1477, 1478, 131 L. Ed. 2d 374 (1995).

¹⁰⁹ *Cordoza v. Pac. States Steel Corp.*, 320 F.3d 989, 995 (9th Cir. 2003) (citing *Burlington N. R.R. Co. v. Dep’t of Revenue*, 934 F.2d 1064, 1073 (9th Cir. 1991) (discussing *In re Armco, Inc.*, 770 F.2d 103, 105 (8th Cir.1985)); 9 James Wm. Moore et al., *Moore’s Federal Practice* § 53.40–49 (3^d ed. 2002) (listing specific types of cases)).

¹¹⁰ *Watkins v. Hartwell R.R. Co.*, 597 S.E.2d 377, 378 (Ga. 2004) (appointing a special master to resolve a right-of-way dispute between a railroad and a property owner making improvements to the disputed property); *Libby v. Vachon*, No. CV-02-651, 2004 WL 1433690, at *1 (Me. Super. Ct. Apr. 22, 2004) (appointing a referee to preside over a dispute where one party constructed a culvert diverting water to neighbor’s property and neighbor subsequently blocked the culvert); *Young v. Hayward*, No. RE-01-35, 2003 WL 21957120, at *3 (Me. Super. Ct. July 31, 2003) (appointing a referee to decide a case involving contaminated well water where the parties could not agree on the cause or the settlement terms); *Fisher v. Cranberry Township Hearing Bd.*, 819 A.2d 181, 183 (Pa. Commw. Ct. 2003) (appointing a referee to conduct hearings, review evidence, and make findings of fact regarding property rezoning); *Houston v. Mounger*, No. E2002-00779-COA-R3-CV, 2003 WL 22415363, at *1 (Tenn. Ct. App. Oct. 23, 2003); *Gilbert v. Nicholson*, 845 So. 2d 785, 787 (Ala. 2002) (appointing a special master to inspect and oversee roadway construction).

¹¹¹ *McLendon v. Continental Group, Inc.*, 749 F. Supp. 582, 612 (D. N.J. 1989); see also *Appointment of Special Master* (citing Wright and Miller et al., *Federal Practice and Procedure*, Civil § 2602 (3^d ed.) (footnote 14); *Active Prods. Corp. v. A.H. Choitz & Co.*, 163 F.R.D. 274 (N.D. Ind. 1995); *In re Austrian & German Bank Holocaust Litig.*, 317 F.3d 91 (2^d Cir. 2003); *Cook v. Niedert*, 142 F.3d 1004 (7th Cir. 1998) (ERISA case); *Goodrich Corp. v. Town of Middlesbury*, 311 F.3d 154 (2^d Cir. 2002) (master to mediate, and if that failed, to hold hearings and file report), *cert. denied*, 539 U.S. 937 (2003); *Hemelt v. United States*, 122 F.3d 204 (4th Cir. 1997) (ERISA case); *In re Propulsid Prod. Liab. Litig.*, MDL No. 1355, 2004 WL 1541922 (E.D. La. June 25, 2004); *In re Propulsid Prod. Liab. Litig.*, MDL No. 1355, 2002 WL 32156066 (E.D. La. Aug. 28, 2002); *United States v. Charles George Trucking, Inc.*, 34 F.3d 1081 (1st Cir. 1994) (CERCLA case); *United States v. Hardage*, 750 F. Supp. 1460 (W.D. Okla. 1990) (master played multiple roles in CERCLA case), *aff’d*, 982 F.2d 1436 (10th Cir. 1992); *United States v. Montrose Chem. Corp. of California*, 50 F.3d 741 (9th Cir. 1995); *Whitehouse v. LaRoche*, 277 F.3d 568 (1st Cir. 2002) (master to oversee establishment and use of settlement fund for new sewage treatment facility); see *Feinberg, Creative Use of ADR: The Court-Appointed Special Settlement Master*, 59 Alb.L.Rev. 881, 881 (1996); see also 2003 Notes to FRCP 53 at ¶ 12, Appendix IV (settlement negotiations not suitable for judge)); *The Role of Special Masters in Federal Litigation* (citing *In re Joint Eastern and Southern Districts Asbestos Litigation*, NYAL CV 87-1383, CV-87-2273 (E. & S. D. N. Y. 1991); *In re DES Cases*, CV 91-3784., Misc. 91-456 (E.D. N.Y. 1992); see generally D. Marie Provine, *Settlement Strategies for Federal District Judges*, (Federal Judicial Center 1986)).

¹¹² *In re Kensington Int’l Ltd.*, 353 F.3d 211, 215 (3^d Cir. 2003).

¹¹³ *Aref v. Dana*, 972 F.2d 1336 (9th Cir. 1992).

¹¹⁴ *Seminatore v. Climaco, Climaco, Seminatore, Lefkowitz & Garofoli, Gen. P’ship*, 774 N.E.2d 1233, 1235 (Ohio Ct. App. 2002).

¹¹⁵ *Appointment of Special Master* (citing 2003 Notes to FRCP 53 at ¶ 9, Appendix IV).

- Profile the characteristics of the claims of 1,000 member class for the jury in asbestos litigation;¹¹⁶
- Serve as an expert master;¹¹⁷
- Serve as claims administrator;¹¹⁸
- Serve as class action manager;¹¹⁹
- Serve as receiver;¹²⁰
- Serve as settlement master; and¹²¹
- Supervise class notice process.¹²²

III. HOW IS A SPECIAL MASTER APPOINTED?

A federal court must give the parties notice and an opportunity to be heard on the subject of the appointment of a master before making an appointment.¹²³ A Nevada state court may appoint a master by stipulation¹²⁴ or motion.¹²⁵ Any party may suggest candidates for appointment.¹²⁶ When appointing a special master, “the court must consider the fairness of

¹¹⁶ *Jenkins v. Raymark Indus., Inc.*, 109 F.R.D. 269, 288 (E.D. Tex. 1985).

¹¹⁷ *Appointing Special Masters and Other Judicial Adjuncts: A Benchbook for Judges and Lawyers*, at 5, Academy of Court Appointed Masters (Jan 2013).

¹¹⁸ *Stern v. Marshall*, 131 S.Ct. 2594 (2011) (holding that a bankruptcy referee may exercise jurisdiction over a trustee’s voidable preference claim against a creditor only where there was no question that the referee was required to decide whether there has been a voidable preference in determining whether and to what extent to allow the creditor’s claim); *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139 (E.D. N.Y. 2000) (oversee allocation and distribution of proceeds in case alleging that Swiss banks profited from Holocaust).

¹¹⁹ *Cobell v. Norton*, 392 F.3d 461 (D.C. Cir. 2004); *Cobell v. Norton*, 334 F.3d 1128 (D.C. Cir. 2003); *In re Prudential Ins. Co. America Sales Practice Litig. Agent Actions*, 278 F.3d 175 (3rd Cir. 2002); *Mayberry v. United States*, 151 F.3d 855 (8th Cir. 1998) (assistance in settlement of damages); *Edwards v. Long Beach Mortgage Co.*, No. CT 02-16446, 2004 WL 2137824 (Minn. Dist. Ct. July 22, 2004); *Beth V. v. Carroll*, 155 F.R.D. 529 (E.D. Pa. 1994) (review consent decrees and class certification); *McLendon v. Continental Group, Inc.*, 749 F. Supp. 582 (D. N.J. 1989) (master to aid in post-liability settlement of damages for 5,000 claimants in ERISA case), *aff’d on other grounds*, 908 F.2d 1171 (3rd Cir. 1990); *Jenkins v. Raymark Indus., Inc.*, 109 F.R.D. 269 (E.D. Tex. 1985) (profile claims of 1,000 member class for jury and compare claims of representatives with claims of class members), *aff’d on other grounds*, 782 F.2d 468 (5th Cir. 1986); *In re Agent Orange Prod. Liab. Litig.*, 94 F.R.D. 173 (E.D. N.Y. 1982); *Kyriazi v. Western Elec. Co.*, 465 F. Supp. 1141 (D. N.J. 1979) (three-person panel appointed to evaluate damage claims in class action sex discrimination suit with more than 10,000 potential claims), *aff’d on other grounds*, 647 F.2d 388 (3rd Cir. 1981).

¹²⁰ *Hinckley v. Gilman, Clinton & Springfield R.R. Co.*, 94 U.S. 467 (1876); *United States v. Yonkers Bd. of Educ.*, 29 F.3d 40 (2^d Cir. 1994); *Levin v. Garfinkle*, 514 F. Supp. 1160 (E.D. Pa. 1981) (bankruptcy receiver); *United States v. City of Detroit*, 476 F. Supp. 512 (E.D. Mich. 1979) (appointing mayor as receiver for city agency to facilitate compliance with EPA orders and consent decrees); *Morgan v. McDonough*, 540 F.2d 527 (1st Cir. 1976) (receiver appointed as part of remedy in school desegregation case); *Perez v. Boston Hous. Auth.*, 400 N.E.2d 1231 (Mass. 1980) (receiver appointed to take over housing authority); *Turner v. Goolsby*, 255 F. Supp. 724 (S.D. Ga. 1966) (receiver for school district appointed in school desegregation case); *Gross v. Missouri & Arkansas Ry. Co.*, 74 F. Supp. 242 (W.D. Ark. 1947) (receiver appointed to control subject of dispute pending resolution of the case).

¹²¹ *Appointing Special Masters and Other Judicial Adjuncts: A Benchbook for Judges and Lawyers*, at 4, Academy of Court Appointed Masters (Jan 2013).

¹²² *Edwards v. Long Beach Mortgage Co.*, No. CT 02-16446, 2004 WL 2137824, at *7 (Minn. Dist. Ct. July 22, 2004).

¹²³ FRCP 53(b)(1); *Walsh v. Unforgettable Coatings, Inc.*, No. 220CV00510KJDDJA, 2022 WL 3647920, at *6 (D. Nev. Aug. 23, 2022).

¹²⁴ NRCPC 53(b)(1).

¹²⁵ NRCPC 53(b)(2).

¹²⁶ FRCP 53(b)(1); NRCPC 53(b)(2).

imposing the likely expenses on the parties and must protect against unreasonable expense or delay.”¹²⁷

The master must not have a relationship with the parties, attorneys, action, or court that would require disqualification of a judge under 28 U.S.C. § 455 (federal court) or under Rule 2.11 of the Revised Nevada Code of Judicial Conduct (Nevada state court).¹²⁸ The master must file an affidavit disclosing any grounds for disqualification.¹²⁹ The affidavit should substantively state:

I have thoroughly familiarized myself with the issues involved in this case. As a result of my knowledge of the case, I can attest and affirm that I know of no non-disclosed grounds for disqualification under [28 U.S.C. § 455 or Rule 2.11 of the Revised Nevada Code of Judicial Conduct] that would prevent me from serving as the special master in the captioned matter.¹³⁰

If a ground is disclosed, the master must be disqualified unless the parties, with the court’s approval, waive the master’s disqualification.¹³¹

A. By Consent of the Parties

Under Rule 53, courts are not required but may obtain the parties’ consent before referring pretrial and post-trial matters or the trial of any damages question implicating “complex quantitative issues” to a special master.¹³² The court is only required to obtain the parties’ consent when appointing a trial master or where a master is asked to make or recommend findings of fact, absent “some exceptional condition[.]”¹³³

Courts may appoint a master to “perform duties consented to by the parties.”¹³⁴ Party consent does not require the court to make the appointment and the court retains unfettered discretion to refuse appointment.¹³⁵ Because “[u]se of masters for the core functions of trial have been progressively limited,” the Rule, as revised, reflects that “[t]he use of a trial master without party consent is abolished as to matters to be decided by a jury unless a statute provides for this practice.”¹³⁶

B. Sua Sponte or Upon Application for Appointment by a Party

Under Rule 53, the court may appoint a master *sua sponte*, including in situations where there is a need to “address pretrial and post-trial matters that cannot be effectively and timely

¹²⁷ FRCP 53(a)(3); NRCPC 53(a)(3).

¹²⁸ FRCP 53(a)(2).

¹²⁹ FRCP (b)(3)(A); NRCPC 53(b)(4)(A).

¹³⁰ *Appointing Special Masters and Other Judicial Adjuncts: A Benchbook for Judges and Lawyers*, at 4, Academy of Court Appointed Masters (Jan 2013).

¹³¹ FRCP (b)(3)(B); NRCPC 53(b)(4)(B).

¹³² *Stauble*, 977 F.2d at 694.

¹³³ FRCP 53(a)(1)(B)(i); *cf. Constant*, 848 F.2d at 1566 (“[T]he court has the power to appoint masters without the consent of the parties.”).

¹³⁴ FRCP 53(a)(1)(A); NRCPC 53(a)(2)(A).

¹³⁵ FRCP 53(a)(1)(A) Advisory Committee Notes, 2003 Amendments.

¹³⁶ *Bridgeport Guardians, Inc. v. Delmonte*, No. 5:78CV175 JBA, 2010 WL 9546052, at *3 (D. Conn. Sept. 27, 2010) (citing FRCP 53(a)(1) Advisory Committee Note, 2003 Amendments).

addressed by an available” judge.¹³⁷ The court may also appoint a master upon the application of one or more parties.

Rule 53 contains a presumption against the appointment of special masters,¹³⁸ allowing the appointment “only when the need is clear.”¹³⁹ The court has authority to appoint a special master to “perform duties consented to by the parties,” or “address pretrial and post-trial matters that cannot be effectively and timely addressed by an available district judge or magistrate judge of the district.”¹⁴⁰ “Beyond the provisions of [Rule 53] for appointing and making references to Masters, court has ‘the inherent power to supply itself with this instrument for the administration of justice when deemed by it essential.’”¹⁴¹

C. Types of Masters Recognized by Rule 53

1. The Consent Master

Both FRCP 53(a)(1)(A) and NRCRP 53(a)(2)(A) allow the court to appoint a master to “perform duties consented to by the parties.” The 2003 FRCP and 2019 NCRP amendments make clear that “[p]arty consent does not require that the court make the appointment; the court retains unfettered discretion to refuse appointment.”¹⁴² There is no longer a requirement that the master be appointed in *exceptional conditions* if the parties consent to the appointment.¹⁴³ “Abolition of the direct power to appoint a trial master as to issues to be decided by a jury leaves the way free to appoint a trial master with the consent of all parties.”¹⁴⁴

Although the parties may stipulate to a master performing a particular function, the court may reject the appointment for any or all purposes proposed by the parties. A district court has discretion to set the extent of any duties assigned to a special master.¹⁴⁵ Further, courts have generally been reluctant to allow the withdrawal of consent once given by the parties absent a justification rooted in changed circumstances.¹⁴⁶

¹³⁷ FRCP 53(a)(1)(C); NRCRP 53(a)(2)(C).

¹³⁸ See FRCP 53 Advisory Committee Notes, 2003 Amendments (“A pretrial master should be appointed only when the need is clear.”)

¹³⁹ *Stribling v. Washington*, No. 20-12990, 2022 WL 994654, at *4 (E.D. Mich. Apr. 1, 2022).

¹⁴⁰ FRCP 53(a)(1)(A),(C); NRCRP 53(a)(2)(A)-(B).

¹⁴¹ *Appointing Special Masters and Other Judicial Adjuncts: A Benchbook for Judges and Lawyers*, at 18, Academy of Court Appointed Masters (Jan 2013) (citing *Schwimmer v. United States*, 232 F.2d 855, 865 (8th Cir. 1956) (quoting *In re Peterson*, 253 U.S. 300, 312 (1920)); see *Ruiz v. Estelle*, 679 F.2d 1115, 116 n.240 (5th Cir. 1982) (same), amended in part, vacated in part, 688 F.2d 266 (5th Cir. 1982), cert. denied, 460 U.S. 1042 (1983) (same); *Reed v. Cleveland Bd. of Educ.*, 607 F.2d 737, 746 (6th Cir. 1979) (noting that the authority to appoint “expert advisors or consultants” derives from either Rule 53 or the court’s inherent power)).

¹⁴² FRCP 53(a)(1)(A) Advisory Committee Notes, 2003 Amendments.

¹⁴³ FRCP 53(a)(1)(B)(ii) Advisory Committee Notes, 2003 Amendments.

¹⁴⁴ FRCP 53(a)(1)(B)(ii) Advisory Committee Notes, 2003 Amendments.

¹⁴⁵ *Ross v. Johnson*, No. 222CV00259CDSVCF, 2023 WL 5333256, at *1 (D. Nev. Aug. 18, 2023) (citing *In re Hanford Nuclear Rsr. Litig.*, 292 F.3d 1124, 1138 (9th Cir. 2002)).

¹⁴⁶ *United States v. Michigan*, 234 F.R.D. 636, 640 (E.D. Mich. 2006) (citing *People Who Care v. Rockford Bd. of Educ. Sch. Dist. No. 205*, 171 F.3d 1083, 1088 (7th Cir.1999); *Cobell v. Norton*, 237 F.Supp.2d 71, 80 (D. D.C.2003) (noting objectors had contemplated the Special Master activity to which they now objected)).

2. The Pretrial and Post-trial Master

The rise in the use of masters in Nevada’s federal and state courts relates to the allowance in the 2003 FRCP amendments and the 2019 NRCPC amendments to use masters for functions other than serving as a trial master. The need for these changes to allow pretrial masters was explained by the advisory committee:

The appointment of masters to participate in pretrial proceedings has developed extensively over the last two decades as some district courts have felt the need for additional help in managing complex litigation. This practice is not well regulated by present Rule 53, which focuses on masters as trial participants. Rule 53 is amended to confirm the authority to appoint—and to regulate the use of—pretrial masters.¹⁴⁷

The Advisory Committee notes instruct that a pretrial special master “should be appointed only when the need is clear.”¹⁴⁸ “A pretrial master might well conduct an evidentiary hearing on a discovery dispute, and a post-trial master might conduct evidentiary hearings on questions of compliance.”¹⁴⁹ Explaining this new role, the Advisory Committee suggest a “master’s pretrial or post-trial duties may include matters that could be addressed by a judge, such as reviewing discovery documents for privilege, or duties that might not be suitable for a judge. Some forms of settlement negotiations, investigations, or administration of an organization are familiar examples of duties that a judge might not feel free to undertake.”¹⁵⁰ “A pretrial master might well conduct an evidentiary hearing on a discovery dispute, and a post-trial master might conduct evidentiary hearings on questions of compliance.”¹⁵¹

Appointment of a pretrial or post-trial master is “limited to matters that cannot be addressed effectively and in a timely fashion by an available” judge and “where the need is clear.”¹⁵² The U.S. Supreme Court recognized the use of masters for framing and enforcing complex decrees or judgments, “particularly when a party has proved resistant or intransigent” since 1986.¹⁵³ “The master’s role in enforcement may extend to investigation in ways that are quite unlike the traditional role of judicial officers in an adversary system.”¹⁵⁴ Again, the advisory committee explained the growing need for post-trial masters:

Post-Trial Masters. Courts have come to rely on masters to assist in framing and enforcing complex decrees. Present Rule 53 does not directly address this practice. Amended Rule 53 authorizes appointment of post-trial masters for these and similar purposes. The constraint of subdivision (a)(1)(C) limits this practice

¹⁴⁷ FRCP 53(a)(1)(C) Advisory Committee Notes, 2003 Amendments.

¹⁴⁸ *Id.* (citing FRCP 53 Advisory Committee Notes, 2003 Amendments; *La Buy v. Howes Leather Co.*, 352 U.S. 249, 259, reh’g denied, 352 U.S. 1019 (1957) (noting that special masters are to be used sparingly and only when the use of the court’s time is not justified)).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² FRCP 53(a)(1)(C) Advisory Committee Notes, 2003 Amendments.

¹⁵³ *Id.* (citing *Local 28, Sheet Metal Workers’ Int’l. Assn. v. EEOC*, 478 U.S. 421, 481-482 (1986)).

¹⁵⁴ *Id.*

to cases in which the master’s duties cannot be performed effectively and in a timely fashion by an available district judge or magistrate judge of the district.¹⁵⁵

3. The Trial Master

“The use of a trial master without party consent is abolished as to matters to be decided by a jury unless a statute provides for this practice.”¹⁵⁶ The court may appoint a trial master for non-jury matters with or without party consent. Additionally, the former requirement that appointment of a master “shall be the exception and not the rule” was removed by the 2003 FRCP and 2019 NRCRP amendments; the rule now allows the appointment of *trial masters* in “exceptional conditions.”¹⁵⁷ The “exceptional condition” language does not apply to the appointment of the consent master, pre-trial master, post-trial master,¹⁵⁸ or to “matters of account and of difficult computation of damages.”¹⁵⁹

“The central function of a trial master is to preside over an evidentiary hearing on the merits of the claims or defenses in the action. . . . If any master is to be used for such matters as a preliminary injunction hearing or a determination of complex damages issues, for example, the master should be a trial master.”¹⁶⁰ In most cases, a trial master will report the evidence to the judge with recommendations that the court may adopt or reject.¹⁶¹ Special masters in Nevada state court have the authority to issue a judgment if allowed in the appointing order.¹⁶²

D. Order Appointing Special Master

Rule 53 provides a list of both provisions that must be included in every order appointing a special master, as well as optional provisions. Best practices also suggest that drafting counsel give consideration to including other provisions in the order. The table below illustrates matters that should be considered in an appointing order, as well as those that must be included.

Checklist of Items to Include in Order Appointing Special Master¹⁶³

✓	Provision for Appointment Order	Rule 53 Provision	Mandatory to Include in Order? FRCP/NRCRP
<input type="checkbox"/>	Direct master to “proceed with all reasonable diligence”	FRCP 53(b)(2) NCRP 53(d)(2)(A)	Y/N
<input type="checkbox"/>	Identify the scope of master’s authority, duties, and discretion	FRCP 53(b)(2)(A) NCRP 53(c)(1)(A) NRCRP 53(d)(2)(A)	Y/Y
<input type="checkbox"/>	Identify when/if <i>ex parte</i> communication may occur	FRCP 53(b)(2)(B) NCRP 53(c)(1)(B)	Y/Y

¹⁵⁵ FRCP 53(a)(1)(C) Advisory Committee Notes, 2003 Amendments.

¹⁵⁶ FRCP 53(a)(1)(B)(ii) Advisory Committee Notes, 2003 Amendments.

¹⁵⁷ FRCP 53(a)(1)(B) Advisory Committee Notes, 2003 Amendments.

¹⁵⁸ FRCP 53(a)(1)(B)(ii) Advisory Committee Notes, 2003 Amendments.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² NRCRP 53(a)(2)(C).

¹⁶³ See generally *Appointing Special Masters and Other Judicial Adjuncts: A Benchbook for Judges and Lawyers*, at 8-10, Academy of Court Appointed Masters (Jan 2013) as altered here.

<input checked="" type="checkbox"/>	Provision for Appointment Order	Rule 53 Provision	Mandatory to Include in Order? FRCP/NRCP
<input type="checkbox"/>	Identify what records the master must maintain and file	FRCP 53(b)(2)(C) NCRP 53(c)(1)(C)	Y/Y
<input type="checkbox"/>	Describe how the master's rulings will be received and reviewed (time limits, method of filing, criteria for findings and recommendations)	FRCP 53(b)(2)(D) NCRP 53(c)(1)(D) NCRP 53(b)(1) NCRP 53(f)(2)	Y/Y
<input type="checkbox"/>	Describe clearly how the master will be compensated	FRCP 53(b)(2)(E) FRCP 53(g) NCRP 53(c)(1)(E) NCRP 53(g)	Y/Y
<input type="checkbox"/>	Statement that appointment of a master is appropriate	FRCP 53(a)(1)	N/N
<input type="checkbox"/>	Include any stipulations agreed to by parties and approved by court relating to the special master	FRCP 53(a)(1)(A) NCRP 53(a)(2)(A)	N/N
<input type="checkbox"/>	Identify source of authority for appointment (Rule 53, or other source)		N/N
<input type="checkbox"/>	Direct master to report only upon particular issues or to perform particular acts	NCRP 53(c)(2)(A)	N/N
<input type="checkbox"/>	Direct the master to receive and report evidence only	NCRP 53(c)(2)(B)	N/N
<input type="checkbox"/>	Specify the time and place for beginning and closing the hearings	NCRP 53(c)(2)(C)	N/N
<input type="checkbox"/>	Specify the time in which the master must file his or her report and recommendations	NCRP 53(c)(2)(D)	N/N
<input type="checkbox"/>	Clarify master's authority to impose sanctions for failure to cooperate	FRCP 53(c) NCRP 53(e)(2)	N/N
<input type="checkbox"/>	Include disclosure affidavit	FRCP 53(b)(3) NCRP 53(b)(4)	N/N
<input type="checkbox"/>	List hearing procedures and location	NCRP 53(d)(2)(B)	N/N
<input type="checkbox"/>	Order the moving party to serve the appointment order on the master	NCRP 53(c)(3)	N/N
<input type="checkbox"/>	Require master to set a time and place for the first meeting of the parties or their attorneys to be held within 21 days after the date of the order appointing the master and must notify the parties or their attorneys	NCRP 53(d)(2)(B)	N/Y
<input type="checkbox"/>	Describe how documents submitted by parties/lawyers may be provided to master		N/N

IV. OBJECTING TO THE APPOINTMENT OF A MASTER

There is no specific provision in FRCP 53 for objecting to the appointment of a master. A party may object to the appointment of a master under NRCP 53(b)(3) on one or more of the following grounds:

- (A) a want of any of the qualifications prescribed by statute to render a person competent as a juror;
- (B) consanguinity or affinity within the third degree to any party;
- (C) standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent to any party, or being a member of the family of any party, or a partner in business with any party, or being security on any bond or obligation for any party;
- (D) having served as a juror or been a witness on any trial between the same parties for the same cause of action, or being then a witness in the cause;
- (E) interest on the part of such person in the event of the action or in the main question involved in the action;
- (F) having formed or expressed an unqualified opinion or belief as to the merits of the actions; or
- (G) the existence of a state of mind in such person evincing enmity against or bias to any party.

Regardless of the language in the rule, caselaw clearly illustrates that a party may object to the appointment of a master. Failure to make a timely objection is tantamount to consent.¹⁶⁴ A party wishing “to object to the appointment of a special master must do so at the time of appointment, or within a reasonable time thereafter, or else its objection is waived”¹⁶⁵ “[A]n objection to the appointment of a special master must be made at the time of the appointment or within a reasonable time thereafter or the party’s objection is waived.”¹⁶⁶

One treatise opined:¹⁶⁷

A party objecting to a reference should do so prior to or at the time of the reference, and if that is infeasible, the objection should be presented to the judge

¹⁶⁴ *Fajardo Shopping Ctr., S.E. v. Sun All. Ins. Co. of Puerto Rico*, 167 F.3d 1, 6 (1st Cir. 1999).

¹⁶⁵ *Venetian Casino Resort, LLC v. Eighth Judicial Dist. Court*, 118 Nev. 124, 130, 41 P.3d 327, 330 (2002); *Fajardo Shopping Ctr., S.E. v. Sun All. Ins. Co. of Puerto Rico*, 167 F.3d 1, 6 (1st Cir. 1999) (quoting *Adriana Int’l Corp. v. Thoren*, 913 F.2d 1406, 1410 (9th Cir. 1990)); see also *Harrison v. Harrison*, 132 Nev. 564, 573–74, 376 P.3d 173, 179 (2016); *Wagoner v. Tillinghost*, 102 Nev. 305, 724 P.2d 197 (1986).

¹⁶⁶ *Burlington N. R. Co. v. Dep’t of Revenue of State of Wash.*, 934 F.2d 1064, 1069 (9th Cir. 1991) (quoting *Adriana Int’l Corp. v. Thoren*, 913 F.2d 1406, 1410 (9th Cir. 1990), cert. denied, 498 U.S. 1109, 111 S.Ct. 1019, 112 L.Ed.2d 1100 (1991)); *Kobrin v. Univ. of Minnesota*, 121 F.3d 408, 413 (8th Cir. 1997) (citing *First Iowa Hydro Elec. Coop. v. Iowa–Illinois Gas and Elec. Co.*, 245 F.2d 613, 628 (8th Cir. 1957) (“Failure to make [a] timely objection to the appointment of a [special m]aster either at the time of the order [appointing the special master] or promptly thereafter constitutes a waiver of error and objections....”)).

¹⁶⁷ § 33:12. *Disqualification; objections; revocation of reference or removal of master*, 10 Cyc. of Federal Proc. § 33:12 (3^d ed.) (footnotes in original).

as soon afterward as possible.¹⁶⁸ Objections to a reference that are made at a hearing before the special master are insufficient—the objections must be timely made before the referring judge.¹⁶⁹ Failure to object in a timely fashion constitutes a waiver.¹⁷⁰ Parties who have failed to object to a reference until after the issuance of the special master’s report have been found to have waived the objection.¹⁷¹ The nature of an objection to the appointment of a special master should be specifically stated,¹⁷² and a party has no right to rely on the objection of another.¹⁷³ Objections not to the reference itself but to the appointment of a particular person as master should be raised promptly after the basis for the objection becomes known.¹⁷⁴ For example, where the facts surrounding a special master’s possible conflicts of interest are or should be known by the parties in a case before that master, disqualification based on the appearance of partiality may be waived by failure to timely object, even though the master makes no attempt to disclose the potential conflict.¹⁷⁵

¹⁶⁸ *Cruz v. Hauck*, 515 F.2d 322, 20 Fed. R. Serv. 2d 912 (5th Cir. 1975); *Spaulding v. University of Washington*, 740 F.2d 686, 19 Ed. Law Rep. 92 (9th Cir. 1984) (overruled on other grounds by, *Atonio v. Wards Cove Packing Co., Inc.*, 810 F.2d 1477 (9th Cir. 1987)).

¹⁶⁹ *Hayes v. Foodmaker, Inc.*, 634 F.2d 802, 30 Fed. R. Serv. 2d 1359 (5th Cir. 1981).

¹⁷⁰ *Id.*; *Hill v. Duriron Co., Inc.*, 656 F.2d 1208 (6th Cir. 1981); *Kobrin v. University of Minnesota*, 121 F.3d 408, 120 Ed. Law Rep. 428 (8th Cir. 1997); *Jenkins v. Sterlacci*, 849 F.2d 627 (D.C. Cir. 1988); *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560 (Fed. Cir. 1988).

¹⁷¹ *See, e.g., Kobrin v. University of Minnesota*, 121 F.3d 408, 120 Ed. Law Rep. 428 (8th Cir. 1997); *Jenkins v. Sterlacci*, 849 F.2d 627 (D.C. Cir. 1988). A party cannot wait to see whether a master’s findings are favorable before challenging the use of a master. *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560 (Fed. Cir. 1988). The plaintiff waived its right to object to the appointment of a special master by failing to object to the suitability of that person until after the special master’s report was issued some two years after the special master’s name was first suggested for the appointment. *Martin Oil Service, Inc. v. Koch Refining Co.*, 718 F. Supp. 1334 (N.D. Ill. 1989).

¹⁷² *McGraw-Edison Co. v. Central Transformer Corp.*, 308 F.2d 70, 6 Fed. R. Serv. 2d 959 (8th Cir. 1962); *U.S. v. Conservation Chemical Co.*, 106 F.R.D. 210, 2 Fed. R. Serv. 3d 1039 (W.D. Mo. 1985) (rejected on other grounds by, *In re U.S.*, 816 F.2d 1083, 7 Fed. R. Serv. 3d 659 (6th Cir. 1987)).

¹⁷³ *McGraw-Edison Co. v. Central Transformer Corp.*, 308 F.2d 70, 6 Fed. R. Serv. 2d 959 (8th Cir. 1962).

¹⁷⁴ *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560 (Fed. Cir. 1988) (It was within the discretion of the district court to refuse to allow parties to attack the qualifications of the master during special hearings held on the merits of the master’s recommendations).

¹⁷⁵ *Jenkins v. Sterlacci*, 849 F.2d 627 (D.C. Cir. 1988).

Courts have generally been reluctant to allow the withdrawal of consent once given by the parties absent a justification rooted in changed circumstances.¹⁷⁶ A court's appointment of a special master is reviewed for an abuse of discretion.¹⁷⁷

V. DUTIES OWED BY SPECIAL MASTER

A special master owes the court a duty to conduct the matter consistent with the scope of authority granted to the master by the appointing order, including the power to sanction.¹⁷⁸ The master may perform any additional duties consented to by the parties and court pursuant to FRCP 53(a)(1)(A).¹⁷⁹ As the Advisory Committee Notes observe, this rule “is intended to provide the broad and flexible authority necessary to discharge the master's responsibilities. The most important delineation of a master's authority and duties is provided by the Rule 53(b) appointing order.”¹⁸⁰

Further, the “master must proceed with all reasonable diligence.”¹⁸¹ Unless the appointing order directs otherwise, a master may regulate all proceedings,¹⁸² take all appropriate measures to perform the assigned duties fairly and efficiently,¹⁸³ and if conducting an evidentiary hearing, exercise the appointing court's power to compel, take, and record evidence,¹⁸⁴ including the issuance of subpoenas as provided for in NRCP 45.¹⁸⁵

¹⁷⁶ *Kobrin v. Univ. of Minnesota*, 121 F.3d 408, 413 (8th Cir. 1997) (citing *See Burlington Northern*, 934 F.2d at 1069. “[W]here a litigant waits to object to the appointment of a special master until after that special master has filed an unfavorable report, any objections to the appointment of that special master are particularly unpersuasive.”); *In re: Deepwater Horizon*, 824 F.3d 571, 579 (5th Cir. 2016) (a party “waived his right to object to Freeh's appointment because he raised no objection until after Freeh's adverse report was issued.” *See Adriana Int'l Corp. v. Thoeren*, 913 F.2d 1406, 1410 (9th Cir. 1990) (“[A]n objection to the appointment of a special master must be made at the time of the appointment or within a reasonable time thereafter or the party's objection is waived.”); *cf. McLeod, Alexander, Powel & Appfel, P.C. v. Quarles*, 925 F.2d 853, 857 (5th Cir. 1991) (“A party waives his objection when he participates in a proceeding before a magistrate and fails to make known his lack of consent or fails to object to any other procedural defect in the order referring the matter to the magistrate until after the magistrate has issued her report and recommendations.”); *Phillips v. Amoco Oil Co.*, 799 F.2d 1464, 1472 (11th Cir. 1986) (“Counsel, knowing the facts claimed to support a § 455(a) recusal for appearance of partiality may not lie in wait, raising the recusal issue only after learning the court's ruling on the merits.”); *United States v. Michigan*, 234 F.R.D. 636, 640 (E.D. Mich. 2006) (citing *People Who Care v. Rockford Bd. of Educ. Sch. Dist. No. 205*, 171 F.3d 1083, 1088 (7th Cir. 1999); *Cobell v. Norton*, 237 F.Supp.2d 71, 80 (D. D.C.2003) (noting objectors had contemplated the Special Master activity to which they now objected)).

¹⁷⁷ *Burlington N. R. Co. v. Dep't of Revenue of State of Wash.*, 934 F.2d 1064, 1071 (9th Cir. 1991) (citing *United States v. Suquamish Indian Tribe*, 901 F.2d 772, 774 (9th Cir. 1990)); *CSA Serv. Ctr., LLC v. Air Design Sys., LLC*, 129 Nev. 1108 (2013) (citing *Russell v. Thompson*, 96 Nev. 830, 835, 619 P.2d 537, 540 (1980)).

¹⁷⁸ FRCP 53(c)(2); *Interior Elec. Inc. Nevada v. T.W.C. Constr., Inc.*, No. 218CV01118JADVCF, 2020 WL 32545, at *1 (D. Nev. Jan. 2, 2020).

¹⁷⁹ *Interior Elec. Inc. Nevada*, 2020 WL 32545, at *1.

¹⁸⁰ *Enough for Everyone, Inc. v. Provo Craft & Novelty, Inc.*, 567 F. App'x 533, 534 (9th Cir. 2014) (quoting FRCP 53 Advisory Committee Notes, 2003 Amendments).

¹⁸¹ FRCP 53(b)(2); NRCP 53(d)(2).

¹⁸² FRCP 53(c)(1)(A); NRCP 53(d)(1)(A)(i).

¹⁸³ FRCP 53(c)(1)(B); NRCP 53(d)(1)(A)(ii).

¹⁸⁴ FRCP 53(c)(1)(C); NRCP 53(d)(1)(A)(iii).

¹⁸⁵ NRCP 53(d)(1)(A)(iii). The federal rule provides no explicitly equivalent authority.

A special master in a federal matter is subject to the Code of Conduct for United States Judges (“CCUSJ”)¹⁸⁶ and 28 U.S.C. § 455.¹⁸⁷ A special master in a Nevada state court is subject to the Revised Nevada Code of Judicial Conduct (“RNCJC”).¹⁸⁸ Thus, a master owes the same duties as any other judge, including to:

1. Uphold the integrity, independence, and impartiality of the judiciary;¹⁸⁹
2. Comply with the law;¹⁹⁰
3. Promote confidence in the judiciary;¹⁹¹
4. Avoid impropriety and the appearance of impropriety in all activities;¹⁹²
5. Conduct matters with impartiality and fairness;¹⁹³
6. Perform duties without bias, prejudice, and harassment;¹⁹⁴
7. Not be swayed by external influences on judicial conduct;¹⁹⁵
8. Perform the duties of the office fairly, impartially and diligently;¹⁹⁶
9. Perform the duties with neutrality/absence of conflict or appearance of conflict;¹⁹⁷
10. Perform the duties with competence, diligence, and cooperation;¹⁹⁸
11. Ensure the right to be heard;¹⁹⁹
12. Hear and decide assigned matters;²⁰⁰
13. Require proper decorum and demeanor;²⁰¹
14. Adhere to the rule regarding the acceptance and reporting of gifts, loans, bequests, benefits, or other things of value;²⁰² and
15. Disclose any grounds for disqualification.²⁰³

VI. COURT ACTION ON A MASTER’S ORDER, REPORT, OR RECOMMENDATION

A. Action When No Party Files an Objection

In federal court, “the court must give the parties notice and an opportunity to be heard; may receive evidence; and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions.”²⁰⁴ If no party files an objection or a motion to adopt or

¹⁸⁶ FRCP 53(a)(2) and (3) Advisory Committee Notes, 2003 Amendments.

¹⁸⁷ FRCP 53(a)(2); FRCP 53(b)(3)(A).

¹⁸⁸ NRCJ 53(b)(4)(A).

¹⁸⁹ CCUSJ, Canon 1; RNCJC, Canon 1.

¹⁹⁰ RNCJC, Canon 1, Rule 1.1.

¹⁹¹ RNCJC, Canon 1, Rule 1.2.

¹⁹² CCUSJ, Canon 1; RNCJC, Canon 1, Rule 1.3.

¹⁹³ CCUSJ, Canon 1, 2A, 3; RNCJC, Canon 2, Rule 2.2.

¹⁹⁴ CCUSJ, Canon 3; RNCJC, Canon 2, Rule 2.3.

¹⁹⁵ CCUSJ, Canon 2; RNCJC, Canon 2, Rule 2.4.

¹⁹⁶ CCUSJ, Canon 3; RNCJC, Canon 2.

¹⁹⁷ FRCP 53(a)(2) and (b)(3); CCUSJ, Canon 3C; RNCJC, Canon 3.

¹⁹⁸ FRCP 53(b)(2); NRCJ 53(d)(2); CCUSJ, Canon 3A(1); RNCJC, Canon 2, Rule 2.5.

¹⁹⁹ CCUSJ, Canon 3A(5); RNCJC, Canon 2, Rule 2.6.

²⁰⁰ CCUSJ, Canon 3A(2); RNCJC, Canon 2, Rule 2.7.

²⁰¹ CCUSJ, Canon 3A(2); RNCJC, Canon 2, Rule 2.8.

²⁰² CCUSJ, Canon 4D(4); RNCJC, Canon 3, Rule 3.13.

²⁰³ FRCP 53(a)(2); FRCP 53(b)(3)(A); NRCJ 53(b)(4)(A); 28 U.S.C. § 455; CCUSJ, Canon 3.C; RNCJC, Canon 2.11.

²⁰⁴ FRCP 53(f)(1).

modify a master’s report or recommendation in Nevada state court, the court may: 1) adopt the master’s report and recommendations without a hearing; 2) set the matter for a hearing; or 3) remand the matter to the master for reconsideration or further action.²⁰⁵

B. Action When One Party Files an Objection

Parties may object or move to adopt or modify a master’s order, report, or recommendation.²⁰⁶ A party may file an objection or a motion to adopt or modify a federal “master’s order, report, or recommendations no later than 21 days after a copy is served, unless the court sets a different time.”²⁰⁷ In Nevada state court, the filing is due “no later than 14 days after the report is served.”²⁰⁸

The court decides all objections of a master’s factual findings on a *de novo* standard²⁰⁹ unless the parties stipulate that findings are reviewed for clear error²¹⁰ or the parties stipulate that the findings will be final.²¹¹ The court decides all objections to conclusions of law on a *de novo* standard²¹² and reviews ruling on procedural matters for an abuse of discretion.²¹³ Where “rulings and recommendations are inextricably intertwined with conclusions of fact and law[, they] are reviewed *de novo*.”²¹⁴ Under the *de novo* standard, a court decides “the matter anew,” as if no prior decision had been rendered.²¹⁵

VII. HOW IS A SPECIAL MASTER PAID?

The order of appointment must fix the terms of the master’s compensation.²¹⁶ The court may designate that a single party or multiple parties pay the master’s compensation.²¹⁷ Alternatively, the court may require payment from “a fund or subject matter of the action within the court’s control.”²¹⁸

Moreover, when allocating payment among the parties, the court may consider: 1) the nature and amount of the controversy; 2) the parties’ means; and 3) the extent to which any party

²⁰⁵ NRCF 53(f)(2)(A)(i)-(iii).

²⁰⁶ FRCP 53(f)(2); NRCF 53(f).

²⁰⁷ FRCP 53(f)(2).

²⁰⁸ NRCF 53(f)(1)(A).

²⁰⁹ FRCP 53(f)(3) *but see Venetian Casino Resort, LLC v. Eighth Jud. Dist. Ct.*, 118 Nev. 124, 132, 41 P.3d 327, 331–32 (2002) (applying pre-2019 rule, “the clearly erroneous standard applies to the district court’s review of a special master’s findings of fact”).

²¹⁰ FRCP 53(f); NRCF 53(f)(2)(B).

²¹¹ FRCP 53(f)(3).

²¹² FRCP 53(f)(4).

²¹³ FRCP 53(f)(5); *Giudici v. Giudici*, 134 Nev. 942 (Nev. App. 2018) (citing *Farmers Ins. Exc. v. Neal*, 119 Nev. 62, 64, 64 P.3d 472, 473 (2003) (noting we review questions of law *de novo*); *Venetian*, 118 Nev. at 132, 41 P.3d at 331–32 (noting the district court reviews the special master’s conclusions of law *de novo*)).

²¹⁴ *Las Vegas Sun, Inc. v. Adelson*, No. 219CV01667GMNVCF, 2022 WL 292976, at *2 (D. Nev. Feb. 1, 2022), *objections overruled*, No. 219CV01667ARTVCF, 2022 WL 16960589 (D. Nev. Nov. 16, 2022).

²¹⁵ *Las Vegas Sun v. Adelson*, 2022 WL 292976, at *2 (citing *Hernandez v. Lynch*, 2019 WL 6998774, at 2 (C.D. Cal. Jun. 18, 2019) (collecting cases)).

²¹⁶ FRCP 53(b)(2)(E); FRCP 53(g); NRCF 53(c)(1)(E); NRCF 53(g)(1).

²¹⁷ FRCP 53(g)(2)(A); NRCF 53(g)(1)(A).

²¹⁸ FRCP 53(g)(2)(B); NRCF 53(g)(1)(B).

is more responsible than other parties for the reference to a master.²¹⁹ An interim allocation may be amended to reflect a decision on the merits.²²⁰

The Nevada Supreme Court held under NRCP 53(g)(2) that requiring an employer to pay for a special master to analyze pay records and trip sheets that it provided to employees, and which did not conform to statutory requirements, was warranted in class action brought by employees alleging that employer failed to pay minimum wage as required by Nevada's Minimum Wage Act. The court found "it would not have been equitable nor justified to require Plaintiffs to pay for work performed by the special master when it was Defendant['s] failure to comply with" Nevada's Minimum Wage Act, NRS 608.115 "that led to the need to hire a special master in the first place."²²¹

In Nevada state courts, a master may not "retain the master's report as security for the master's compensation" but is entitled to a writ of execution against any party failing to pay as ordered.²²²

²¹⁹ FRCP 53(g)(3); NRCP 53(g)(2).

²²⁰ FRCP 53(g)(3); NRCP 53(g)(2).

²²¹ *A Cab, LLC v. Murray*, 137 Nev. 805, 501 P.3d 961 (2021).

²²² NRCP 53(g)(4) (a delinquent party must be provided notice and the court must prescribe the time by which the payment must be made before issuing a writ).

APPENDIX A

FEDERAL RULE OF CIVIL PROCEDURE

RULE 53

Rule 53. Masters

(a) APPOINTMENT.

(1) **Scope.** 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 on issues to be decided 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 effectively and timely addressed by an available district judge or magistrate judge of the district.

(2) **Disqualification.** A master must not have a relationship to the parties, attorneys, action, or court that would require disqualification of a judge under 28 U.S.C. § 455, unless the parties, with the court's approval, consent to the appointment after the master discloses any potential grounds for disqualification.

(3) **Possible Expense or Delay.** 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.

(b) ORDER APPOINTING A MASTER.

(1) **Notice.** Before appointing a master, the court must give the parties notice and an opportunity to be heard. Any party may suggest candidates for appointment.

(2) **Contents.** The appointing order must 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(g).

(3) **Issuing.** The court may issue the order only after:

(A) the master files an affidavit disclosing whether there is any ground for disqualification under 28 U.S.C. § 455; and

(B) if a ground is disclosed, the parties, with the court's approval, waive the disqualification.

(4) **Amending.** The order may be amended at any time after notice to the parties and an opportunity to be heard.

(c) **MASTER'S AUTHORITY.**

(1) **In General.** Unless the appointing order directs otherwise, a master may:

(A) regulate all proceedings;

(B) take all appropriate measures to perform the assigned duties fairly and efficiently; and

(C) if conducting an evidentiary hearing, exercise the appointing court's power to compel, take, and record evidence.

(2) **Sanctions.** The master may by order impose on 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.

(d) **MASTER'S ORDERS.** A master who issues an order must file it and promptly serve a copy on each party. The clerk must enter the order on the docket.

(e) **MASTER'S REPORTS.** A master must report to the court as required by the appointing order. The master must file the report and promptly serve a copy on each party, unless the court orders otherwise.

(f) **ACTION ON THE MASTER'S ORDER, REPORT, OR RECOMMENDATIONS.**

(1) **Opportunity for a Hearing; Action in General.** In acting on a master's order, report, or recommendations, the court must give the parties notice and an opportunity to be heard; may receive evidence; and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions.

(2) **Time to Object or Move to Adopt or Modify.** A party may file objections to—or a motion to adopt or modify—the master's order, report, or recommendations no later than 21 days after a copy is served, unless the court sets a different time.

(3) **Reviewing Factual Findings.** The court must decide de novo all objections to findings of fact made or recommended by a master, unless the parties, with the court's approval, stipulate that:

(A) the findings will be reviewed for clear error; or

(B) the findings of a master appointed under Rule 53(a)(1)(A) or (C) will be final.

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

(5) **Reviewing Procedural Matters.** Unless the appointing order 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.

(g) **COMPENSATION.**

(1) **Fixing Compensation.** Before or after judgment, the court must fix the master's compensation on the basis and terms stated in the appointing order, but the court may set a new basis and terms after giving notice and an opportunity to be heard.

(2) **Payment.** The compensation 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) **Allocating Payment.** The court must allocate payment among the parties after considering the nature and amount of the controversy, the parties' means, 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.

Notes

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 28, 1983, eff. Aug. 1, 1983; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

Notes of Advisory Committee on Rules—1937

Note to Subdivision (a). This is a modification of [former] Equity Rule 68 (Appointment and Compensation of Masters).

Note to Subdivision (b). This is substantially the first sentence of [former] Equity Rule 59 (Reference to Master—Exceptional, Not Usual) extended to actions formerly legal. See *Ex parte Peterson* 253 U.S. 300, 40 S.Ct. 543, 64 L.Ed. 919 (1920).

Note to Subdivision (c). This is [former] Equity Rules 62 (Powers of Master) and 65 (Claimants Before Master Examinable by Him) with slight modifications. Compare [former] Equity Rules 49 (Evidence Taken Before Examiners, Etc.) and 51 (Evidence Taken Before Examiners, Etc.).

Note to Subdivision (d). (1) This is substantially a combination of the second sentence of [former] Equity Rule 59 (Reference to Master—Exceptional, Not Usual) and [former] Equity Rule 60 (Proceedings Before Master). Compare [former] Equity Rule 53 (Notice of Taking Testimony Before Examiner, Etc.).

(2) This is substantially [former] Equity Rule 52 (Attendance of Witnesses Before Commissioner, Master, or Examiner).

(3) This is substantially [former] Equity Rule 63 (Form of Accounts Before Master).

Note to Subdivision (e). This contains the substance of [former] Equity Rules 61 (Master’s Report—Documents Identified but not Set Forth), 611/2 (Master’s Report—Presumption as to Correctness—Review), and 66 (Return of Master’s Report—Exceptions—Hearing), with modifications as to the form and effect of the report and for inclusion of reports by auditors, referees, and examiners, and references in actions formerly legal. Compare [former] Equity Rules 49 (Evidence Taken Before Examiners, Etc.) and 67 (Costs on Exceptions to Master’s Report). See *Camden v. Stuart*, 144 U.S. 104, 12 S.Ct. 585, 36 L.Ed. 363 (1892); *Ex parte Peterson*, 253 U.S. 300, 40 S.Ct. 543, 64 L.Ed. 919 (1920).

Notes of Advisory Committee on Rules—1966 Amendment

These changes are designed to preserve the admiralty practice whereby difficult computations are referred to a commissioner or assessor, especially after an interlocutory judgment determining liability. As to separation of issues for trial see Rule 42(b).

Notes of Advisory Committee on Rules—1983 Amendment

Subdivision (a). The creation of full-time magistrates, who serve at government expense and have no nonjudicial duties competing for their time, eliminates the need to appoint standing masters. Thus the prior provision in Rule 53(a) authorizing the appointment of standing masters is deleted. Additionally, the definition of “master” in subdivision (a) now eliminates the superseded office of commissioner.

The term “special master” is retained in Rule 53 in order to maintain conformity with 28 U.S.C. §636(b)(2), authorizing a judge to designate a magistrate “to serve as a special master pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure for the United States District Courts.” Obviously, when a magistrate serves as a special master, the provisions for compensation of masters are inapplicable, and the amendment to subdivision (a) so provides.

Although the existence of magistrates may make the appointment of outside masters unnecessary in many instances, *see, e.g., Gautreaux v. Chicago Housing Authority*, 384 F.Supp. 37 (N.D.Ill. 1974), mandamus denied sub nom., *Chicago Housing Authority v. Austin*, 511 F.2d 82 (7th Cir. 1975); *Avco Corp. v. American Tel. & Tel. Co.*, 68 F.R.D. 532 (S.D. Ohio 1975), such masters may prove useful when some special expertise is desired or when a magistrate is unavailable for lengthy and detailed supervision of a case.

Subdivision (b). The provisions of 28 U.S.C. §636(b)(2) not only permit magistrates to serve as masters under Rule 53(b) but also eliminate the exceptional condition requirement of Rule 53(b) when the reference is made with the consent of the parties. The amendment to subdivision (b) brings Rule 53 into harmony with the statute by exempting magistrates, appointed with the consent of the parties, from the general requirement that some exceptional condition requires the reference. It should be noted that subdivision (b) does not address the question, raised in recent

decisional law and commentary, as to whether the exceptional condition requirement is applicable when private masters who are not magistrates are appointed with the consent of the parties. See Silberman, *Masters and Magistrates Part II: The American Analogue*, 50 N.Y.U. L.Rev. 1297, 1354 (1975).

Subdivision (c). The amendment recognizes the abrogation of Federal Rule 43(c) by the Federal Rules of Evidence.

Subdivision (f). The new subdivision responds to confusion flowing from the dual authority for references of pretrial matters to magistrates. Such references can be made, with or without the consent of the parties, pursuant to Rule 53 or under 28 U.S.C. §636(b)(1)(A) and (b)(1)(B). There are a number of distinctions between references made under the statute and under the rule. For example, under the statute nondispositive pretrial matters may be referred to a magistrate, without consent, for final determination with reconsideration by the district judge if the magistrate's order is clearly erroneous or contrary to law. Under the rule, however, the appointment of a master, without consent of the parties, to supervise discovery would require some exceptional condition (Rule 53(b)) and would subject the proceedings to the report procedures of Rule 53(e). If an order of reference does not clearly articulate the source of the court's authority the resulting proceedings could be subject to attack on grounds of the magistrate's noncompliance with the provisions of Rule 53. This subdivision therefore establishes a presumption that the limitations of Rule 53 are not applicable unless the reference is specifically made subject to Rule 53.

A magistrate serving as a special master under 28 U.S.C. §636(b)(2) is governed by the provisions of Rule 53, with the exceptional condition requirement lifted in the case of a consensual reference.

Notes of Advisory Committee on Rules—1987 Amendment

The amendments are technical. No substantive change is intended.

Notes of Advisory Committee on Rules—1991 Amendment

The purpose of the revision is to expedite proceedings before a master. The former rule required only a filing of the master's report, with the clerk then notifying the parties of the filing. To receive a copy, a party would then be required to secure it from the clerk. By transmitting directly to the parties, the master can save some efforts of counsel. Some local rules have previously required such action by the master.

Notes of Advisory Committee on Rules—1993 Amendment

This revision is made to conform the rule to changes made by the Judicial Improvements Act of 1990.

Committee Notes on Rules—2003 Amendment

Rule 53 is revised extensively to reflect changing practices in using masters. From the beginning in 1938, Rule 53 focused primarily on special masters who perform trial functions. Since then, however, courts have gained experience with masters appointed to perform a variety of pretrial and post-trial functions. *See Willging, Hooper, Leary, Miletich, Reagan, & Shapard, Special Masters' Incidence and Activity* (Federal Judicial Center 2000). This revised Rule 53 recognizes that in appropriate circumstances masters may properly be appointed to perform these functions and regulates such appointments. Rule 53 continues to address trial masters as well, but permits appointment of a trial master in an action to be tried to a jury only if the parties consent. The new rule clarifies the provisions that govern the appointment and function of masters for all purposes. Rule 53(g) also changes the standard of review for findings of fact made or recommended by a master. The core of the original Rule 53 remains, including its prescription that appointment of a master must be the exception and not the rule.

Special masters are appointed in many circumstances outside the Civil Rules. Rule 53 applies only to proceedings that Rule 1 brings within its reach.

Subdivision (a)(1). District judges bear primary responsibility for the work of their courts. A master should be appointed only in limited circumstances. Subdivision (a)(1) describes three different standards, relating to appointments by consent of the parties, appointments for trial duties, and appointments for pretrial or post-trial duties.

Consent Masters. Subparagraph (a)(1)(A) authorizes appointment of a master with the parties' consent. Party consent does not require that the court make the appointment; the court retains unfettered discretion to refuse appointment.

Trial Masters. Use of masters for the core functions of trial has been progressively limited. These limits are reflected in the provisions of subparagraph (a)(1)(B) that restrict appointments to exercise trial functions. The Supreme Court gave clear direction to this trend in *La Buy v. Howes Leather Co.*, 352 U.S. 249 (1957); earlier roots are sketched in *Los Angeles Brush Mfg. Corp. v. James*, 272 U.S. 701 (1927). As to nonjury trials, this trend has developed through elaboration of the "exceptional condition" requirement in present Rule 53(b). This phrase is retained, and will continue to have the same force as it has developed. Although the provision that a reference "shall be the exception and not the rule" is deleted, its meaning is embraced for this setting by the exceptional condition requirement.

Subparagraph (a)(1)(B)(ii) carries forward the approach of present Rule 53(b), which exempts from the "exceptional condition" requirement "matters of account and of difficult computation of damages." This approach is justified only as to essentially ministerial determinations that require mastery of much detailed information but that do not require extensive determinations of credibility. Evaluations of witness credibility should only be assigned to a trial master when justified by an exceptional condition.

The use of a trial master without party consent is abolished as to matters to be decided by a jury unless a statute provides for this practice.

Abolition of the direct power to appoint a trial master as to issues to be decided by a jury leaves the way free to appoint a trial master with the consent of all parties. A trial master should be appointed in a jury case, with consent of the parties and concurrence of the court, only if the

parties waive jury trial with respect to the issues submitted to the master or if the master's findings are to be submitted to the jury as evidence in the manner provided by former Rule 53(e)(3). In no circumstance may a master be appointed to preside at a jury trial.

The central function of a trial master is to preside over an evidentiary hearing on the merits of the claims or defenses in the action. This function distinguishes the trial master from most functions of pretrial and post-trial masters. If any master is to be used for such matters as a preliminary injunction hearing or a determination of complex damages issues, for example, the master should be a trial master. The line, however, is not distinct. A pretrial master might well conduct an evidentiary hearing on a discovery dispute, and a post-trial master might conduct evidentiary hearings on questions of compliance.

Rule 53 has long provided authority to report the evidence without recommendations in nonjury trials. This authority is omitted from Rule 53(a)(1)(B). In some circumstances a master may be appointed under Rule 53(a)(1)(A) or (C) to take evidence and report without recommendations.

For nonjury cases, a master also may be appointed to assist the court in discharging trial duties other than conducting an evidentiary hearing.

Pretrial and Post-Trial Masters. Subparagraph (a)(1)(C) authorizes appointment of a master to address pretrial or post-trial matters. Appointment is limited to matters that cannot be addressed effectively and in a timely fashion by an available district judge or magistrate judge of the district. A master's pretrial or post-trial duties may include matters that could be addressed by a judge, such as reviewing discovery documents for privilege, or duties that might not be suitable for a judge. Some forms of settlement negotiations, investigations, or administration of an organization are familiar examples of duties that a judge might not feel free to undertake.

Magistrate Judges. Particular attention should be paid to the prospect that a magistrate judge may be available for special assignments. United States magistrate judges are authorized by statute to perform many pretrial functions in civil actions. 28 U.S.C. §636(b)(1). Ordinarily a district judge who delegates these functions should refer them to a magistrate judge acting as magistrate judge.

There is statutory authority to appoint a magistrate judge as special master. 28 U.S.C. §636(b)(2). In special circumstances, or when expressly authorized by a statute other than §636(b)(2), it may be appropriate to appoint a magistrate judge as a master when needed to perform functions outside those listed in §636(b)(1). There is no apparent reason to appoint a magistrate judge to perform as master duties that could be performed in the role of magistrate judge. Party consent is required for trial before a magistrate judge, moreover, and this requirement should not be undercut by resort to Rule 53 unless specifically authorized by statute; see 42 U.S.C. §2000e – 5(f)(5).

Pretrial Masters. The appointment of masters to participate in pretrial proceedings has developed extensively over the last two decades as some district courts have felt the need for additional help in managing complex litigation. This practice is not well regulated by present Rule 53, which focuses on masters as trial participants. Rule 53 is amended to confirm the authority to appoint—and to regulate the use of—pretrial masters.

A pretrial master should be appointed only when the need is clear. Direct judicial performance of judicial functions may be particularly important in cases that involve important public issues or

many parties. At the extreme, a broad delegation of pretrial responsibility as well as a delegation of trial responsibilities can run afoul of Article III.

A master also may be appointed to address matters that blur the divide between pretrial and trial functions. The court's responsibility to interpret patent claims as a matter of law, for example, may be greatly assisted by appointing a master who has expert knowledge of the field in which the patent operates. Review of the master's findings will be de novo under Rule 53(g)(4), but the advantages of initial determination by a master may make the process more effective and timely than disposition by the judge acting alone. Determination of foreign law may present comparable difficulties. The decision whether to appoint a master to address such matters is governed by subdivision (a)(1)(C), not the trial-master provisions of subdivision (a)(1)(B).

Post-Trial Masters. Courts have come to rely on masters to assist in framing and enforcing complex decrees. Present Rule 53 does not directly address this practice. Amended Rule 53 authorizes appointment of post-trial masters for these and similar purposes. The constraint of subdivision (a)(1)(C) limits this practice to cases in which the master's duties cannot be performed effectively and in a timely fashion by an available district judge or magistrate judge of the district.

Reliance on a master is appropriate when a complex decree requires complex policing, particularly when a party has proved resistant or intransigent. This practice has been recognized by the Supreme Court, *see Local 28, Sheet Metal Workers' Internat. Assn. v. EEOC*, 478 U.S. 421, 481–482 (1986). The master's role in enforcement may extend to investigation in ways that are quite unlike the traditional role of judicial officers in an adversary system.

Expert Witness Overlap. This rule does not address the difficulties that arise when a single person is appointed to perform overlapping roles as master and as court-appointed expert witness under Evidence Rule 706. Whatever combination of functions is involved, the Rule 53(a)(1)(B) limit that confines trial masters to issues to be decided by the court does not apply to a person who also is appointed as an expert witness under Evidence Rule 706.

Subdivision (a)(2) and (3). Masters are subject to the Code of Conduct for United States Judges, with exceptions spelled out in the Code. Special care must be taken to ensure that there is no actual or apparent conflict of interest involving a master. The standard of disqualification is established by 28 U.S.C. §455. The affidavit required by Rule 53(b)(3) provides an important source of information about possible grounds for disqualification, but careful inquiry should be made at the time of making the initial appointment. The disqualification standards established by §455 are strict. Because a master is not a public judicial officer, it may be appropriate to permit the parties to consent to appointment of a particular person as master in circumstances that would require disqualification of a judge. The judge must be careful to ensure that no party feels any pressure to consent, but with such assurances—and with the judge's own determination that there is no troubling conflict of interests or disquieting appearance of impropriety—consent may justify an otherwise barred appointment.

One potential disqualification issue is peculiar to the master's role. It may happen that a master who is an attorney represents a client whose litigation is assigned to the judge who appointed the attorney as master. Other parties to the litigation may fear that the attorney-master will gain special respect from the judge. A flat prohibition on appearance before the appointing judge during the time of service as master, however, might in some circumstances unduly limit the

opportunity to make a desirable appointment. These matters may be regulated to some extent by state rules of professional responsibility. The question of present conflicts, and the possibility of future conflicts, can be considered at the time of appointment. Depending on the circumstances, the judge may consider it appropriate to impose a non-appearance condition on the lawyer-master, and perhaps on the master's firm as well.

Subdivision (b). The order appointing a pretrial master is vitally important in informing the master and the parties about the nature and extent of the master's duties and authority. Care must be taken to make the order as precise as possible. The parties must be given notice and opportunity to be heard on the question whether a master should be appointed and on the terms of the appointment. To the extent possible, the notice should describe the master's proposed duties, time to complete the duties, standards of review, and compensation. Often it will be useful to engage the parties in the process of identifying the master, inviting nominations, and reviewing potential candidates. Party involvement may be particularly useful if a pretrial master is expected to promote settlement.

The hearing requirement of Rule 53(b)(1) can be satisfied by an opportunity to make written submissions unless the circumstances require live testimony.

Rule 53(b)(2) requires precise designation of the master's duties and authority. Clear identification of any investigating or enforcement duties is particularly important. Clear delineation of topics for any reports or recommendations is also an important part of this process. And it is important to protect against delay by establishing a time schedule for performing the assigned duties. Early designation of the procedure for fixing the master's compensation also may provide useful guidance to the parties.

Ex parte communications between a master and the court present troubling questions. Ordinarily the order should prohibit such communications, assuring that the parties know where authority is lodged at each step of the proceedings. Prohibiting ex parte communications between master and court also can enhance the role of a settlement master by assuring the parties that settlement can be fostered by confidential revelations that will not be shared with the court. Yet there may be circumstances in which the master's role is enhanced by the opportunity for ex parte communications with the court. A master assigned to help coordinate multiple proceedings, for example, may benefit from off-the-record exchanges with the court about logistical matters. The rule does not directly regulate these matters. It requires only that the court exercise its discretion and address the topic in the order of appointment.

Similarly difficult questions surround ex parte communications between a master and the parties. Ex parte communications may be essential in seeking to advance settlement. Ex parte communications also may prove useful in other settings, as with in camera review of documents to resolve privilege questions. In most settings, however, ex parte communications with the parties should be discouraged or prohibited. The rule requires that the court address the topic in the order of appointment.

Subdivision (b)(2)(C) provides that the appointment order must state the nature of the materials to be preserved and filed as the record of the master's activities, and (b)(2)(D) requires that the order state the method of filing the record. It is not feasible to prescribe the nature of the record without regard to the nature of the master's duties. The records appropriate to discovery duties may be different from those appropriate to encouraging settlement, investigating possible

violations of a complex decree, or making recommendations for trial findings. A basic requirement, however, is that the master must make and file a complete record of the evidence considered in making or recommending findings of fact on the basis of evidence. The order of appointment should routinely include this requirement unless the nature of the appointment precludes any prospect that the master will make or recommend evidence-based findings of fact. In some circumstances it may be appropriate for a party to file materials directly with the court as provided by Rule 5(e), but in many circumstances filing with the court may be inappropriate. Confidentiality is important with respect to many materials that may properly be considered by a master. Materials in the record can be transmitted to the court, and filed, in connection with review of a master's order, report, or recommendations under subdivisions (f) and (g). Independently of review proceedings, the court may direct filing of any materials that it wishes to make part of the public record.

The provision in subdivision (b)(2)(D) that the order must state the standards for reviewing the master's orders, findings, or recommendations is a reminder of the provisions of subdivision (g)(3) that recognize stipulations for review less searching than the presumptive requirement of de novo decision by the court. Subdivision (b)(2)(D) does not authorize the court to supersede the limits of subdivision (g)(3).

In setting the procedure for fixing the master's compensation, it is useful at the outset to establish specific guidelines to control total expense. The court has power under subdivision (h) to change the basis and terms for determining compensation after notice to the parties.

Subdivision (b)(3) permits entry of the order appointing a master only after the master has filed an affidavit disclosing whether there is any ground for disqualification under 28 U.S.C. §455. If the affidavit discloses a possible ground for disqualification, the order can enter only if the court determines that there is no ground for disqualification or if the parties, knowing of the ground for disqualification, consent with the court's approval to waive the disqualification.

The provision in Rule 53(b)(4) for amending the order of appointment is as important as the provisions for the initial order. Anything that could be done in the initial order can be done by amendment. The hearing requirement can be satisfied by an opportunity to make written submissions unless the circumstances require live testimony.

Subdivision (c). Subdivision (c) is a simplification of the provisions scattered throughout present Rule 53. It is intended to provide the broad and flexible authority necessary to discharge the master's responsibilities. The most important delineation of a master's authority and duties is provided by the Rule 53(b) appointing order.

Subdivision (d). The subdivision (d) provisions for evidentiary hearings are reduced from the extensive provisions in current 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 subdivision (c).

Subdivision (e). Subdivision (e) provides that a master's order must be filed and entered on the docket. It must be promptly served on the parties, a task ordinarily accomplished by mailing or other means as permitted by Rule 5(b). In some circumstances it may be appropriate to have the clerk's office assist the master in mailing the order to the parties.

Subdivision (f). Subdivision (f) restates some of the provisions of present Rule 53(e)(1). The report is the master’s primary means of communication with the court. The materials to be provided to support review of the report will depend on the nature of the report. The master should provide all portions of the record preserved under Rule 53(b)(2)(C) that the master deems relevant to the report. The parties may designate additional materials from the record, and may seek permission to supplement the record with evidence. The court may direct that additional materials from the record be provided and filed. Given the wide array of tasks that may be assigned to a pretrial master, there may be circumstances that justify sealing a report or review record against public access—a report on continuing or failed settlement efforts is the most likely example. A post-trial master may be assigned duties in formulating a decree that deserve similar protection. Such circumstances may even justify denying access to the report or review materials by the parties, although this step should be taken only for the most compelling reasons. Sealing is much less likely to be appropriate with respect to a trial master’s report.

Before formally making an order, report, or recommendations, a master may find it helpful to circulate a draft to the parties for review and comment. The usefulness of this practice depends on the nature of the master’s proposed action.

Subdivision (g). The provisions of subdivision (g)(1), describing the court’s powers to afford a hearing, take evidence, and act on a master’s order, report, or recommendations are drawn from present Rule 53(e)(2), but are not limited, as present Rule 53(e)(2) is limited, to the report of a trial master in a nonjury action. The requirement that the court must afford an opportunity to be heard can be satisfied by taking written submissions when the court acts on the report without taking live testimony.

The subdivision (g)(2) time limits for objecting to—or seeking adoption or modification of—a master’s order, report, or recommendations, are important. They are not jurisdictional. Although a court may properly refuse to entertain untimely review proceedings, the court may excuse the failure to seek timely review. The basic time period is lengthened to 20 days because the present 10-day period may be too short to permit thorough study and response to a complex report dealing with complex litigation. If no party asks the court to act on a master’s report, the court is free to adopt the master’s action or to disregard it at any relevant point in the proceedings.

Subdivision (g)(3) establishes the standards of review for a master’s findings of fact or recommended findings of fact. The court must decide *de novo* all objections to findings of fact made or recommended by the master unless the parties stipulate, with the court’s consent, that the findings will be reviewed for clear error or—with respect to a master appointed on the parties’ consent or appointed to address pretrial or post-trial matters—that the findings will be final. Clear-error review is more likely to be appropriate with respect to findings that do not go to the merits of the underlying claims or defenses, such as findings of fact bearing on a privilege objection to a discovery request. Even if no objection is made, the court is free to decide the facts *de novo*; to review for clear error if an earlier approved stipulation provided clear-error review; or to withdraw its consent to a stipulation for clear-error review or finality, and then to decide *de novo*. If the court withdraws its consent to a stipulation for finality or clear-error review, it may reopen the opportunity to object.

Under Rule 53(g)(4), the court must decide *de novo* all objections to conclusions of law made or recommended by a master. As with findings of fact, the court also may decide conclusions of law *de novo* when no objection is made.

Apart from factual and legal questions, masters often make determinations that, when made by a trial court, would be treated as matters of procedural discretion. The court may set a standard for review of such matters in the order of appointment, and may amend the order to establish the standard. If no standard is set by the original or amended order appointing the master, review of procedural matters is for abuse of discretion. The subordinate role of the master means that the trial court's review for abuse of discretion may be more searching than the review that an appellate court makes of a trial court.

If a master makes a recommendation on any matter that does not fall within Rule 53(g)(3), (4), or (5), the court may act on the recommendation under Rule 53(g)(1).

Subdivision (h). The need to pay compensation is a substantial reason for care in appointing private persons as masters.

Payment of the master's fees must be allocated among the parties and any property or subject-matter within the court's control. The amount in controversy and the means of the parties may provide some guidance in making the allocation. The nature of the dispute also may be important—parties pursuing matters of public interest, for example, may deserve special protection. A party whose unreasonable behavior has occasioned the need to appoint a master, on the other hand, may properly be charged all or a major portion of the master's fees. It may be proper to revise an interim allocation after decision on the merits. The revision need not await a decision that is final for purposes of appeal, but may be made to reflect disposition of a substantial portion of the case.

The basis and terms for fixing compensation should be stated in the order of appointment. The court retains power to alter the initial basis and terms, after notice and an opportunity to be heard, but should protect the parties against unfair surprise.

The provision of former Rule 53(a) that the “provision for compensation shall not apply when a United States Magistrate Judge is designated to serve as a master” is deleted as unnecessary. Other provisions of law preclude compensation.

Subdivision (i). Rule 53(i) carries forward unchanged former Rule 53(f).

Changes Made After Publication and Comment. Subdivision (a)(3), barring appearance by a master as attorney before the appointing judge during the period of the appointment, is deleted. Subdivision (a)(4) is renumbered as (a)(3).

Subdivision (b)(2) is amended by adding new material to the subparagraph (A), (B), (C), and (D) specifications of issues that must be addressed in the order appointing a master. (A) now requires a statement of any investigation or enforcement duties. (B) now establishes a presumption that ex parte communications between master and court are limited to administrative matters; the court may, in its discretion, permit ex parte communications on other matters. (C) directs that the order address not only preservation but also filing of the record. (D) requires that the order state the method of filing the record.

Subdivision (b)(3) is changed by requiring an opportunity to be heard on an order amending an appointment order. It also is renumbered as (b)(4).

Subdivision (b)(4), renumbered as (b)(3), is redrafted to express the original meaning more clearly.

Subdivision (c) has a minor style change.

Subdivision (g)(1) is amended to state that in acting on a master's recommendations the court "must" afford an opportunity to be heard.

Subdivision (g)(3) is changed to narrow still further the opportunities to depart from de novo determination of objections to a master's findings or recommendations for findings of fact.

Subdivision (g)(4) is changed by deleting the opportunity of the parties to stipulate that a master's conclusions of law will be final.

Committee Notes on Rules—2007 Amendment

The language of Rule 53 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Committee Notes on Rules—2009 Amendment

The time set in the former rule at 20 days has been revised to 21 days. See the Note to Rule 6.

APPENDIX B

NEVADA RULES OF CIVIL PROCEDURE

Rule 53

Rule 53. Masters

(a) In General.

(1) **Nomenclature.** As used in these rules, the word “master” includes a master, referee, auditor, examiner, and assessor.

(2) **Scope.** Unless a statute provides otherwise, a court may appoint a master only to:

(A) perform duties consented to by the parties;

(B) address pretrial or post-trial matters that cannot be effectively and timely addressed by an available judge; or

(C) in actions or on issues to be decided without a jury, hold trial proceedings and recommend findings of fact, conclusions of law, and a judgment, if appointment is warranted by:

(i) some exceptional condition; or

(ii) the need to perform an accounting or resolve a difficult computation of damages.

(3) **Possible Expense or Delay.** 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.

(b) Appointing a Master.

(1) **Stipulation.** By stipulation approved by the court, the parties may agree to have a master appointed. The stipulation may specify how the master’s findings of fact will be reviewed or whether the findings will be final and not reviewable.

(2) **Motion.** Any party may move to have a master appointed, or the court may issue an order to show cause.

(3) **Objections.** Any party may object to a master’s appointment on one or more of the following grounds:

(A) a want of any of the qualifications prescribed by statute to render a person competent as a juror;

(B) consanguinity or affinity within the third degree to any party;

(C) standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent to any party, or being a member of the family of any party, or a partner in business with any party, or being security on any bond or obligation for any party;

(D) having served as a juror or been a witness on any trial between the same parties for the same cause of action, or being then a witness in the cause;

(E) interest on the part of such person in the event of the action or in the main question involved in the action;

(F) having formed or expressed an unqualified opinion or belief as to the merits of the actions; or

(G) the existence of a state of mind in such person evincing enmity against or bias to any party.

(4) Disqualification.

(A) A master must file with the court an affidavit disclosing whether there is any ground for his or her disqualification under Rule 2.11 of the Revised Nevada Code of Judicial Conduct.

(B) If a ground is disclosed, the master must be disqualified unless the parties, with the court's approval, waive the master's disqualification.

(c) Order Appointing a Master.

(1) Mandatory Provisions. The appointing order must state:

(A) the master's duties, including any investigation or enforcement duties, and any limits on the master's authority under Rule 53(d);

(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 any criteria for the master's findings and recommendations; and

(E) the basis, terms, and procedure for fixing the master's compensation under Rule 53(g).

(2) Optional Provisions. The appointing order may:

(A) direct the master to report only upon particular issues or to perform particular acts;

(B) direct the master to receive and report evidence only;

(C) specify the time and place for beginning and closing the hearings; and

(D) specify the time in which the master must file his or her report and recommendations.

(3) Service on the Master. Unless otherwise ordered by the court, the moving party must serve the appointment order on the master.

(4) **Amending.** The order may be amended at any time after notice to the parties and an opportunity to be heard.

(d) **Master's Authority.**

(1) **In General.**

(A) Unless the appointing order directs otherwise, a master may:

- (i) regulate all proceedings;
- (ii) take all appropriate measures to perform the assigned duties fairly and efficiently; and
- (iii) exercise the appointing court's power to compel, take, and record evidence, including the issuance of subpoenas as provided in Rule 45.

(B) When a party requests, a master must make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Rule 43(c) and statutes for a court sitting without a jury.

(2) **Diligence.**

(A) The master must proceed with all reasonable diligence.

(B) The master must set a time and place for the first meeting of the parties or their attorneys to be held within 21 days after the date of the order appointing the master and must notify the parties or their attorneys.

(C) If a party fails to appear at the appointed time and place, the master may proceed ex parte or adjourn the proceedings to a future day, giving notice to the absent party.

(D) Any party, on notice to the other parties and the master, may apply to the court for an order requiring the master to speed the proceedings and to make a report.

(3) **Statement of Accounts.**

(A) When matters of accounting are before a master, the master may:

- (i) prescribe the form in which the accounts must be submitted; or
- (ii) require or receive in evidence a statement by a certified public accountant who is called as a witness.

(B) Upon objection to the items submitted or a showing that the form is insufficient, the master may:

- (i) require a different form of statement to be furnished;
- (ii) hold an evidentiary hearing and receive evidence concerning the accounts;
- (iii) require written interrogatories; or
- (iv) receive evidence concerning the accounts in any other manner that the master directs.

(e) Master’s Report and Recommendations.

(1) In General. Unless ordered otherwise, a master must:

(A) prepare a report and recommendations upon the matters submitted to the master in accordance with the appointing order;

(B) if required to make findings of fact and conclusions of law, set them forth in the report and recommendations;

(C) promptly file the report and recommendations;

(D) file with the report and recommendations the original exhibits and a transcript of the proceedings and evidence; and

(E) serve a copy of the report and recommendations on each party.

(2) Sanctions. The master’s report and recommendations may recommend sanctions for a party or a nonparty under the applicable rules.

(3) Draft Report. Before filing a report and recommendations, a master may submit a draft to counsel for all parties to obtain their suggestions.

(f) Action on the Master’s Order, Report, or Recommendations.

(1) Time to Object or Move to Adopt or Modify.

(A) A party may file and serve objections to—or a motion to adopt or modify—the master’s report and recommendations no later than 14 days after the report is served.

(B) If objections are filed, any other party may file and serve a response within 7 days after being served with the objections.

(C) If no party files objections or a motion, the court may adopt the master’s report and recommendations without a hearing.

(D) The court may set different times to move, object, or respond.

(2) Court Review.

(A) Unless the parties have otherwise stipulated under Rule 53(b)(1), upon receipt of a master’s report and any motions, objections, and replies, the court may:

(i) adopt, reverse, or modify the master’s ruling without a hearing;

(ii) set the matter for a hearing; or

(iii) remand the matter to the master for reconsideration or further action.

(B) If the parties have stipulated how a master’s findings of fact should be reviewed or that the findings should be final, the court must apply the parties’ stipulation to the findings of fact.

(g) Compensation.

(1) **Basis and Terms of Compensation.** The basis and terms of a master's compensation must be fixed by the court in the appointing order and 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.

(2) **Allocating Costs.** The court must allocate payment among the parties after considering the nature and amount of the controversy, the parties' means, 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.

(3) **Amending Compensation.** The court may change the basis and terms of the master's compensation upon motion or by issuing an order to show cause.

(4) **Enforcing Payment.** The master may not retain the master's report as security for the master's compensation. If a 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.

(h) Standing Masters.

(1) By local rule authorized by the Nevada Supreme Court or as authorized by the Nevada Revised Statutes, a judicial district may appoint a master to whom multiple matters may be referred.

(2) Unless otherwise specified by rule or statute, the master has the powers of a master under Rule 53(d). The master must issue a report and recommendations under Rule 53(e) that may be reviewed under Rule 53(f).

(3) The master's compensation must be fixed by the judicial district and paid out of appropriations made for the expenses of the judicial district.

[Amended; effective March 1, 2019.]

Advisory Committee Note—2019 Amendment

The amendments retain much of the former NRCP 53 and incorporate provisions from FRCP 53. Rule 53(h) clarifies the procedure for establishing standing masters.

APPENDIX C

Form Order Appointing Special Master (Federal Court)

FIRM NAME
Your Name, Esq., Bar No.
Address
City, State Zip
Phone
yourname@yourname.com
Attorneys for

UNITED STATES DISTRICT COURT

DISTRICT OF [DISTRICT]

PLAINTIFF, an individual,

Plaintiff,

vs.

DEFENDANT LLC, a Nevada Limited Liability
Company; DOES I through X, inclusive, and
ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No:
Dept. No.:

[STIPULATED] ORDER APPOINTING SPECIAL MASTER

This matter was submitted to the court upon [the joint request of the parties][the consent of the parties][the [name of motion] brought by _____] [the Court's Order to Show Cause Why a Special Master Should Not be Appointed]. The Court, having considered the factors set forth in Fed. R. Civ. P. 53(a)(1), the parties' representations concerning the action, and having given the parties notice and an opportunity to be heard by the Court, the Court finds pursuant to Fed. R. Civ. P. 53(a)(1)(C) that current and anticipated disputes between the parties have arisen that cannot be effectively and timely addressed by the Court, making the appointment of a Special Master appropriate. The Court hereby appoints [name and address] as Special Master in this action.

A. AUTHORITY FOR AND SCOPE OF APPOINTMENT

This appointment is made pursuant to Fed. R. Civ. P. 53 and the inherent authority of the Court. The Special Master is directed to proceed with all reasonable diligence, as further directed herein, and to undertake the appointment with a view to resolve disputes as quickly and

inexpensively as possible. The Special Master shall regulate the proceedings necessary to perform the assigned duties and shall take all appropriate measures to perform the same fairly and efficiently. The Special Master is granted the authority in Fed. R. Civ. P. 53(c), including the power to sanction as set forth in Fed. R. Civ. P. 53(c)(2). The Special Master may exercise the court's power to compel, take, and record evidence where appropriate.

B. THE SPECIAL MASTER'S DUTIES

The Special Master will perform all duties assigned to [him/her] herein, any function allowed by statute, as well as any ancillary acts required to fully carry out those duties. Fed. R. Civ. P. 53(a)(1).

[Alternative paragraph if appointed by consent of the parties] Fed. R. Civ. P. 53(a)(1)(A) allows the appointment of a Special Master to “perform duties consented to by the parties.” The parties have consented and the Court finds good cause for the appointment of the Special Master, who shall: [list consented to duties]. The Special Master may perform any additional duties consented to by the parties and approved by the Court pursuant to Fed. R. Civ. P. 53(a)(1)(A).

[Alternative paragraph if appointed by *sua sponte* order of the court or pursuant to the request of a party by motion] Pursuant to Fed. R. Civ. P. 53(a)(1)(C), the Court finds that these matters cannot be effectively and timely addressed by the Court because [state the cause]. Therefore, pursuant to Fed. R. Civ. P. 53(b)(2)(A), the Special Master shall:

[List duties]

[Alternative paragraph if the court is appointing a Trial Master] The Special Master shall hold trial proceedings, make findings, or recommend finding of fact on any matter that is not to be decided by a jury. Fed. R. Civ. P. 53(a)(1)(B). Therefore, the Special Master shall:

[List duties]

C. COMMUNICATIONS WITH THE COURT AND THE PARTIES

Fed. R. Civ. P. 53(b)(2)(B) directs the Court to set forth “the circumstances, if any, in which the master may communicate *ex parte* with the court or a party.” The Special Master may have *ex parte* communications with the Court at the Special Master's discretion, without providing notice to the parties, regarding: 1) whether a particular dispute or motion is subject to the scope of the Special Master's duties; 2) procedural matters, such as consulting with the Court regarding logistics, the nature of the Special Master's activities, and management of the litigation; (3) any matter upon which the parties or their counsel have consented; 4) the application of Fed. R. Civ. P. 53; and 5) any matter, the subject of which is initiated by the Court.

[Alternative paragraph 1] The Special Master must not communicate *ex parte* with any party or its counsel at any time during the litigation about matters related to the above-captioned matter.

[Alternative paragraph 2] The Special Master may have *ex parte* communications with any party or its counsel regarding: 1) purely procedural or scheduling matters; 2) resolution of privilege or similar questions, in connection with in camera inspections, and with notice to the other parties; and 3) any matter upon which the parties or their counsel have consented.

[Alternative paragraph 3] The Special Master may have *ex parte* communications with any party or its counsel regarding attempts to resolve disputes as allowed by the Court.

[Alternative paragraph 4] The Special Master may engage in *ex parte* communications with any party or its counsel regarding the merits of the particular dispute, for the purpose of mediating or negotiating a resolution of that dispute, only with the prior permission of those opposing counsel who are parties to the particular dispute.

D. MATERIAL TO BE PRESERVED AND FILED BY SPECIAL MASTER

Fed. R. Civ. P. 53(b)(2)(C) requires the Court to define “the nature of the materials to be preserved and filed as a record of the master’s activities.” All orders of the Special Master shall be filed with the Court unless the parties or their counsel have agreed otherwise. It shall be the duty of the parties and their counsel, not the Special Master, to provide for any record of proceedings with the Special Master. The Special Master shall not be responsible for maintaining any records of the Special Master’s activities other than billing records. In the event of any hearing where evidence is taken, it shall be the duty of the parties and counsel to preserve any exhibits tendered or rejected at the hearing and to provide the Special Master with a copy of all transcripts.

The Special Master shall maintain normal billing records of [his/her] time spent on this matter, with reasonably detailed descriptions of [his/her] activities and matters worked upon. The Special Master [need not/must] preserve for the record any documents created by the Special Master that are docketed in this or any other court, [nor/including] any documents received by the Special Master from counsel or parties in this case. The Court may later amend the requirements for the Special Master’s record if the role of the Special Master changes.

E. REVIEW OF SPECIAL MASTER’S RECOMMENDATIONS AND ORDERS

Fed. R. Civ. P. 53(b)(2)(D) directs the Court to state “the time limits, method of filing the record, other procedures, and standards for reviewing the master’s orders, findings, and recommendations.” The Special Master shall either reduce any formal order, finding, report, or recommendation to writing and file it with the Court.

Subject to the provisions of Fed. R. Civ. P. 53(f), any Special Master report, recommendation, or order is effective upon its issuance. Any objection to the same shall be made in writing by the objecting party and filed with the Court within 21 days of the date of the report, recommendation, or order to which the party is objecting. Failure to meet this deadline results in permanent waiver of any objection to the Special Master’s orders, findings, reports, or recommendations. Review of the Special Master's report, recommendation, or order shall be governed by Fed. R. Civ. P. 53(f)(1)-(2).

The Court shall decide *de novo* all objections to findings of fact made or recommended by a master, unless the parties, with the court's approval, stipulate that the findings will be reviewed for clear error or that the findings of a master appointed under Fed. R. Civ. P. 53(a)(1)(A) or (C) will be final. Fed. R. Civ. P. 53(f)(3). The court shall decide all objections to conclusions of law on a *de novo* standard and review rulings on procedural matters for an abuse of discretion. Fed. R. Civ. P. 53(f)(4)-(5). Where rulings and recommendations are inextricably intertwined with conclusions of fact and law, they shall be reviewed *de novo*.

F. SPECIAL MASTER'S COMPENSATION

Fed. R. Civ. P. 53(b)(2)(E) requires the Court to set forth “the basis, terms, and procedure for fixing the master’s compensation under Rule 53(g).” The Court has “consider[ed] the fairness of imposing the likely expenses on the parties and [has taken steps to] protect against unreasonable expense or delay.” Fed. R. Civ. P. 53(a)(3).

[Alternative paragraph 1] The Special Master shall be paid \$[amount] per hour for work done pursuant to this Order, and shall be reimbursed for all reasonable expenses incurred in the performance of [his/her] duties. The Special Master shall bill the parties on a monthly basis for fees and disbursements, and those bills shall be promptly paid, **[50% by the plaintiffs and 50% by the defendants]**. As to any particular portion of the proceedings necessitated by the conduct of one party or group of parties, the Special Master can assess the costs of that portion of the proceedings to the responsible party or parties.

[Alternative paragraph 1] The Special Master shall be compensated at the rate of \$[amount] per hour, with the parties bearing this cost [equally (50% by the plaintiffs and 50% by the defendants) OR as follows:]. The Special Master shall be reimbursed for all reasonable expenses and costs incurred in the performance of [his/her] duties. These fees and costs shall be paid and billed as follows:

Special Master Matters Involving all Parties. Where the Special Master notices a meeting or hearing where attendance of all parties is requested and required the costs of the Special Master shall be allocated through an equal share allocation between all parties.

Motion Practice and Discovery Disputes. Where a party has initiated a discovery dispute between another party or parties by motion or otherwise, the costs of the Special Master related to *that matter* shall be allocated on a motion by motion basis through an equal share allocation between the moving, responding party(ies) and any party(ies) that support or oppose the motion, including, but not limited to any party who files a joinder to any respective pleading in support or in objection to the filed pleading. Notwithstanding the above, the Special Master has the power to adjust the division of fees and costs in [his/her] discretion based on the merits of the matter before [him/her].

The parties shall promptly pay the Special Master directly within 30 days upon receipt of the Special Master’s invoice. Upon the failure of a party to timely pay the Special Master’s fees, the Court may enter judgment in favor of the Special Master and against the non-paying party and/or counsel. The Court will determine at the conclusion of this litigation whether the amounts paid to the Special Master will be borne on the 55/50 basis or will be reallocated.

[Alternative pay provision 1]

The parties shall promptly pay the Special Master directly within 30 days upon receipt of the Special Master’s invoice. If any party is added to or removed from the case, the pro rata shares shall be reallocated as the parties agree or by order of the Court upon recommendation from the Special Master. At the request of any party, the Court shall review and approve the charges for the Special Master’s services.

[Alternative pay provision 2]

The Special Master shall submit a statement to the Court approximately monthly for approval of [his/her] fees and expenses with copies to counsel for the parties. Objections to the statement shall be filed with the Court, with copies to the Special Master and to the parties, within ten (10) days of the submission of the statement. Any party that does not object to a fee statement within ten (10) days of its submission shall be deemed to have waived any objection

permanently. At the conclusion of the 10-day period, the Court will enter an order directing payment of any sums approved. Any sum approved by the Court shall be paid within fifteen (15) days unless otherwise ordered or agreed upon.

G. OTHER MATTERS

1. Affidavit

Fed. R. Civ. P. 53(b)(3) requires the Special Master to file an “affidavit disclosing whether there is any ground for disqualification under 28 U.S.C. §455.” [If the candidate has not yet filed the affidavit] This Order shall be effective as of the date the Special Master files the compliant affidavit. [If the candidate already provided the affidavit] Attached to this Order is the affidavit earlier submitted to the Court by the Special Master.

2. Cooperation

The parties and their counsel shall fully cooperate with the Special Master. The parties will make readily available to the Special Master any and all facilities, files, databases, and documents which are necessary to fulfill the Special Master’s functions under this Order. Pursuant to Fed. R. Civ. P. 53(c), the Special Master may, if appropriate, impose upon a party any noncontempt sanction provided by Fed. R. Civ. P. 37 or 45, and may recommend a contempt sanction against a party and sanctions against a nonparty. As an agent and officer of the Court, the Special Master shall enjoy the same protections from being compelled to give testimony and from liability for damages as those enjoyed by other federal judicial adjuncts performing similar functions.

[If submitted pursuant to a stipulation of counsel]

IT IS SO STIPULATED.

Dated this ____ day of _____, 2016. Dated this ____ day of _____, 2016.

By: _____
YOUR NAME, ESQ.
FIRM NAME
Bar No. ____
ADDRESS
CITY, STATE ZIP
PHONE
yourname@yourname.com
Attorneys for

By: _____
YOUR NAME, ESQ.
FIRM NAME
Bar No. ____
ADDRESS
CITY, STATE ZIP
PHONE
yourname@yourname.com
Attorneys for

ORDER

IT IS SO ORDERED this _____ day of _____, 20__.

DISTRICT COURT JUDGE

APPENDIX D

Form Order Appointing Special Master (Nevada State Court)

Firm Name

Your Name, Esq.

Nevada Bar No. ____

Address

City, Nevada Zip

Phone

yourname@yourname.com

Attorneys for

DISTRICT COURT

CLARK COUNTY, NEVADA

PLAINTIFF, an individual,

Plaintiff,

vs.

DEFENDANT LLC, a Nevada Limited Liability Company; DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No: _____

Dept. No.: _____

[STIPULATED] ORDER APPOINTING SPECIAL MASTER

This matter was submitted to the court upon [the joint request of the parties][the consent of the parties][the [name of motion] brought by _____] [the Court’s Order to Show Cause Why a Special Master Should Not be Appointed]. The Court, having considered the factors set forth in NCRP 53(a)(2), the parties’ representations concerning the action, and having given the parties notice and an opportunity to be heard by the Court, the Court finds that current and anticipated disputes between the parties have arisen that cannot be effectively and timely addressed by the Court, making the appointment of a Special Master appropriate. The Court hereby appoints [name and address] as Special Master in this action.

A. AUTHORITY FOR AND SCOPE OF APPOINTMENT

This appointment is made pursuant to NCRP 53 and the inherent authority of the Court.

The Special Master is directed to proceed with all reasonable diligence, as further directed herein, and to undertake the appointment with a goal to resolve disputes as quickly and inexpensively as possible. The Special Master shall regulate the proceedings necessary to perform the assigned duties, and shall take all appropriate measures to perform the same fairly and efficiently. The Special Master is granted the authority in NCRP 53(d), including the power to sanction as set forth in NCRP 53(e)(2). The Special Master may exercise the court’s power to compel, take, and record evidence where appropriate.

B. THE SPECIAL MASTER’S DUTIES

The Court is required to state the Special Master’s “duties, including any investigation or enforcement duties, and any limits on the master’s authority under Rule 53(d).” NCRP 53(c)(1)(A). The Special Master shall perform all duties assigned to [him/her] herein, any function allowed by statute, as well as any ancillary acts required to fully carry out those duties.

[Alternative paragraph if appointed by consent of the parties] NCRP 53(a)(2)(A) allows the appointment of a Special Master to “perform duties consented to by the parties.” *See also* NCRP 53(b)(1). The parties have consented and the Court finds good cause for the appointment of the Special Master, who shall: [list consented to duties]. The Special Master may perform any additional duties consented to by the parties and approved by the Court pursuant to NCRP 53(a)(2)(A).

[Alternative paragraph if appointed by *sua sponte* order of the court or pursuant to the request of a party by motion] Pursuant to NCRP 53(a)(2)(B), the Court finds that these matters cannot be effectively and timely addressed by the Court because [state the cause]. Therefore, pursuant to NCRP 53(b)(2), the Special Master shall:

[List duties]

[Alternative paragraph if the court is appointing a Trial Master] The Special Master may hold trial proceedings and recommend findings of fact, conclusions of law, and a judgment. NCRP 53(a)(2)(C). This appointment is warranted by [the following exceptional condition _____] [the need to perform an accounting or resolve a difficult computation of damages]. Therefore, the Special Master shall:

[List duties]

C. COMMUNICATIONS WITH THE PARTIES AND THE COURT

NCRP 53(c)(1)(B) directs the Court to set forth “the circumstances, if any, in which the master may communicate *ex parte* with the court or a party.” The Special Master may have *ex parte* communications with the Court at the Special Master’s discretion, without providing notice to the parties, regarding: 1) whether a particular dispute or motion is subject to the scope of the Special Master’s duties; 2) procedural matters, such as consulting with the Court regarding logistics, the nature of the Special Master’s activities, and management of the litigation; (3) any matter upon which the parties or their counsel have consented; 4) the application of NCRP 53; and 5) any matter, the subject of which is initiated by the Court.

[Alternative paragraph 1] The Special Master must not communicate *ex parte* with any party or its counsel at any time during the litigation about matters related to the above-captioned matter.

[Alternative paragraph 2] The Special Master may have *ex parte* communications with

any party or its counsel regarding: 1) purely procedural or scheduling matters; 2) resolution of privilege or similar questions, in connection with in camera inspections, and with notice to the other parties; and 3) any matter upon which the parties or their counsel have consented.

[Alternative paragraph 3] The Special Master may have *ex parte* communications with any party or its counsel regarding attempts to resolve disputes as allowed by the Court.

[Alternative paragraph 4] The Special Master may engage in *ex parte* communications with any party or its counsel regarding the merits of the particular dispute, for the purpose of mediating or negotiating a resolution of that dispute, only with the prior permission of those opposing counsel who are parties to the particular dispute.

D. MATERIAL TO BE PRESERVED AND FILED BY SPECIAL MASTER

NCRP 53(c)(1)(C) requires the Court to define “the nature of the materials to be preserved and filed as a record of the master’s activities.” All orders of the Special Master shall be filed with the Court unless the parties or their counsel have agreed otherwise. It shall be the duty of the parties and their counsel, not the Special Master, to provide for any record of proceedings with the Special Master. The Special Master shall not be responsible for maintaining any records of the Special Master’s activities other than billing records. In the event of any hearing where evidence is taken, it shall be the duty of the parties and counsel to preserve any exhibits tendered or rejected at the hearing and to provide the Special Master with a copy of all transcripts.

The Special Master shall maintain normal billing records of [his/her] time spent on this matter, with reasonably detailed descriptions of [his/her] activities and matters worked upon. The Special Master [need not/must] preserve for the record any documents created by the Special Master that are docketed in this or any other court, [nor/including] any documents received by the Special Master from counsel or parties in this case. The Court may later amend the requirements for the Special Master’s record if the role of the Special Master changes.

E. REVIEW OF SPECIAL MASTER’S RECOMMENDATIONS AND ORDERS

NCRP 53(c)(1)(D) directs the Court to state “the time limits, method of filing the record, other procedures, and standards for reviewing the master’s orders, findings, and recommendations.” The Special Master shall reduce any order, finding, report, or recommendation to writing and file it with the Court in accordance with NRC P 53(e).

Subject to the provisions of NCRP 53(f), any Special Master report, recommendation, or order is effective upon its issuance. Any objection to the same shall be made in writing by the objecting party and filed with the Court within 14 days of the date of the report, recommendation, or order to which the party is objecting. Failure to meet this deadline results in permanent waiver of any objection to the Special Master’s orders, findings, reports, or recommendations. Review of the Special Master’s report, recommendation, or order shall be governed by NCRP 53(f)(1)-(2).

F. SPECIAL MASTER’S COMPENSATION

NCRP 53(c)(1)(E) requires the Court to set forth “the basis, terms, and procedure for fixing the master’s compensation under Rule 53(g).” The Court has “consider[ed] the fairness of

imposing the likely expenses on the parties and [has taken steps to] protect against unreasonable expense or delay.” NCRP 53(a)(3).

[Alternative paragraph 1] The Special Master shall be paid \$[amount] per hour for work done pursuant to this Order, and shall be reimbursed for all reasonable expenses incurred in the performance of [his/her] duties. The Special Master shall bill the parties on a monthly basis for fees and disbursements, and those bills shall be promptly paid, **[50% by the plaintiffs and 50% by the defendants]**. As to any particular portion of the proceedings necessitated by the conduct of one party or group of parties, the Special Master can assess the costs of that portion of the proceedings to the responsible party or parties.

[Alternative paragraph 1] The Special Master shall be compensated at the rate of \$[amount] per hour, with the parties bearing this cost [equally (50% by the plaintiffs and 50% by the defendants) OR as follows:]. The Special Master shall be reimbursed for all reasonable expenses and costs incurred in the performance of [his/her] duties. These fees and costs shall be paid and billed as follows:

Special Master Matters Involving all Parties. Where the Special Master notices a meeting or hearing where attendance of all parties is requested and required the costs of the Special Master shall be allocated through an equal share allocation between all parties.

Motion Practice and Discovery Disputes. Where a party has initiated a discovery dispute between another party or parties by motion or otherwise, the costs of the Special Master related to *that matter* shall be allocated on a motion by motion basis through an equal share allocation between the moving, responding party(ies) and any party(ies) that support or oppose the motion, including, but not limited to any party who files a joinder to any respective pleading in support or in objection to the filed pleading. Notwithstanding the above, the Special Master has the power to adjust the division of fees and costs in [his/her] discretion based on the merits of the matter before [him/her].

The parties shall promptly pay the Special Master directly within 30 days upon receipt of the Special Master’s invoice. Upon the failure of a party to timely pay the Special Master’s fees, the Court may enter judgment in favor of the Special Master and against the non-paying party and/or counsel. The Court will determine at the conclusion of this litigation whether the amounts paid to the Special Master will be borne on the 55/50 basis or will be reallocated.

[Alternative pay provision 1]

The parties shall promptly pay the Special Master directly within 30 days upon receipt of the Special Master’s invoice. If any party is added to or removed from the case, the pro rata shares shall be reallocated as the parties agree or by order of the Court upon recommendation from the Special Master. At the request of any party, the Court shall review and approve the charges for the Special Master’s services.

[Alternative pay provision 2]

The Special Master shall submit a statement to the Court approximately monthly for approval of [his/her] fees and expenses with copies to counsel for the parties. Objections to the statement shall be filed with the Court, with copies to the Special Master and to the parties, within ten (10) days of the submission of the statement. Any party that does not object to a fee statement within ten (10) days of its submission shall be deemed to have waived any objection permanently. At the conclusion of the 10-day period, the Court will enter an order directing payment of any sums approved. Any sum approved by the Court shall be paid within fifteen (15) days unless otherwise ordered or agreed upon.

G. MEETING OF THE PARTIES

The Special Master must notify the parties or their attorneys and must set a time and place for the first meeting of the parties or their attorneys to be held within 21 days after the date of entry of this order.

H. OTHER MATTERS

1. Affidavit

NCRP 53(b)(4)(A) requires the Special Master to file an “affidavit disclosing whether there is any ground for disqualification under Rule 2.11 of the Revised Nevada Code of Judicial Conduct.” [If the candidate has not yet filed the affidavit] This Order shall be effective as of the date the Special Master files the compliant affidavit. [If the candidate already provided the affidavit] Attached to this Order is the affidavit earlier submitted to the Court by the Special Master.

2. Cooperation

The parties and their counsel shall fully cooperate with the Special Master. The parties will make readily available to the Special Master any and all facilities, files, databases, and documents which are necessary to fulfill the Special Master’s functions under this Order. Pursuant to NCRP 53(c), the Special Master may, if appropriate, impose upon a party any noncontempt sanction provided by NCRP 37 or 45, and may recommend a contempt sanction against a party and sanctions against a nonparty. As an agent and officer of the Court, the Special Master shall enjoy the same protections from being compelled to give testimony and from liability for damages as those enjoyed by other federal judicial adjuncts performing similar functions.

[If submitted pursuant to a stipulation of counsel]

IT IS SO STIPULATED.

Dated this ____ day of _____, 20__ . Dated this ____ day of _____, 20__ .

By: _____
Your Name, Esq.
Firm Name
Bar No. ____
Address
City, State Zip
Phone
yourname@yourname.com
Attorneys for

By: _____
Your Name, Esq.
Firm Name
Bar No. ____
Address
City, State Zip
Phone
yourname@yourname.com
Attorneys for

ORDER

IT IS SO ORDERED this ____ day of _____, 20__.

DISTRICT COURT JUDGE