

RULE 4:41. References

4:41-1. Reference

The reference for the hearing of a matter by a judge of the Superior Court shall be made to a master only upon approval by the Assignment Judge, and then only when all parties consent or under extraordinary circumstances. The order of reference shall state whether the reference is consensual and, if not, shall recite the extraordinary circumstances justifying the reference.

Note: Source-R.R. 4:54-1; amended July 26, 1984 to be effective September 10, 1984; amended July 13, 1994 to be effective September 1, 1994; amended June 28, 1996 to be effective September 1, 1996.

4:41-2. Compensation

The master's compensation shall be fixed by the court and charged upon such of the parties or paid out of any fund or property as the court directs. The master is entitled to a writ of execution against a party failing to comply with an order for compensation.

Note: Source-R.R. 4:54-2; amended July 13, 1994 to be effective September 1, 1994.

4:41-3. Powers

The order of reference may specify or limit the master's powers and may direct the master to report only upon particular issues or to do particular acts or to receive and report evidence only. Subject to such specifications and limitations, the master has and shall exercise the power to regulate all proceedings in every hearing, to pass upon the admissibility of the evidence and to do all acts necessary or proper for the efficient performance of the duties directed by the order. The master may require the production of testimonial and documentary evidence upon all matters within the scope of the reference and shall have the authority to put witnesses on oath and call the parties to the action and examine them on oath. Unless the order of reference otherwise directs, the master shall cause the proceedings to be recorded verbatim, shall rule upon the admissibility of evidence, and shall make a record of evidence offered and excluded as provided by R. 1:7-3 for a court sitting without a jury. No objection to the admission or exclusion of evidence may be made before the court unless it was made before the master.

Note: Source-R.R. 4:54-3; amended July 13, 1994 to be effective September 1, 1994.

4:41-4. Proceedings

- **(a) Meetings.** Upon the entry of an order of reference the court shall forthwith transmit a copy thereof to the master who shall, unless the order otherwise provides, forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 10 days after the date of the order and notify the parties or their attorneys thereof. The hearings shall thereafter be held continuously on all regular court days unless otherwise ordered by the court due to unusual circumstances stated at length in the order. Any party, on notice to the parties and master, may apply to the court for an order requiring the master to expedite the proceedings and to make a report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.
- **(b) Witnesses.** The parties may compel the attendance of witnesses before the master by the issuance and service of subpoenas as provided by R. 1:9. A witness failing to appear or give evidence may be punished as for a contempt and subjected to the sanctions provided by R. 1:9 and R. 4:23-1 to 4:23-4, inclusive.

- **(c) Statement of Accounts.** When matters of accounting are in issue, the master may prescribe the form in which the accounts shall be submitted and may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as the master directs.

Note: Source-R.R. 4:54-4(a)(b)(c); paragraphs (a) and (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended June 28, 1996 to be effective September 1, 1996.

4:41-5. Report

- **(a) Contents and Filing.** The master shall prepare a report upon the matters submitted including any findings of fact and conclusions of law required by the order. The master shall file the report with the court within 10 days after the conclusion of the hearings, unless the court extends the time within such 10-day period by order reciting the unusual circumstances requiring such extension. The court shall forthwith notify all parties by mail of the filing of the report. Unless otherwise ordered, the master shall file the original transcript of the proceedings and the original exhibits with the deputy clerk of the Superior Court in the county where the case is to be tried, who shall, if the reference was made in an action pending in the Superior Court, transmit them to the Clerk of the Superior Court 3 years after the filing of the complaint, unless the court otherwise directs.
- **(b) In Non-jury Actions.** In an action to be tried without a jury the court shall accept the master's findings of fact unless contrary to the weight of the evidence. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties and may move the court for action upon the report and the objections thereto. The court after hearing on the motion may adopt the report, modify or reject it in whole or in part, receive further evidence, or recommit it with instructions. A party failing to object in the trial court to the master's findings shall be precluded from raising objections to the findings on appeal.
- **(c) In Jury Actions.** In an action to be tried by a jury the findings of the master upon the issues submitted are admissible as evidence of the matters found, and may together with the evidence taken before the master be read to the jury, subject to the ruling of the court upon objections to the report or the evidence.
- **(d) Stipulation as to Findings.** The effect of a master's report is the same whether or not the parties have consented to the reference; but when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report may thereafter be considered.
- **(e) Draft Report.** Before filing the report a master may submit a draft thereof to the attorneys for all parties for the purpose of receiving their suggestions.

Note: Source -- R.R. 4:54-5(a)(b)(c)(d)(e); paragraphs (a), (c) and (e) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended June 28, 1996 to be effective September 1, 1996; paragraph (b) amended July 28, 2004 to be effective September 1, 2004.