Special Masters Under Rule 53: A Welcome Evolution

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SPECIAL MASTERS UNDER RULE 53: A WELCOME EVOLUTION

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I. INTRODUCTION

In recent years, and increasingly since the amendment of Rule 53 in 2003, courts turn to special masters in constitutional, commercial, mass tort and other litigation for assistance at all stages in the adjudication process. Masters may be appointed pre-trial, to preside over trials, and in the post-trial monitoring and compliance phases of a suit. The use of masters has been constructive and beneficial to litigants and to the courts. Few administrative difficulties have been reported.

Federal Rule of Civil Procedure 53 has been a primary support for this approach.

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However, even post-amendment, courts continue to declare their inherent authority to appoint masters “beyond the provisions” of Rule 53.²

Pre-amendment, appointment of a master was reserved to the “exceptional case” and there was significant dispute in particular instances over whether a case was sufficiently exceptional to warrant a master. The 2003 rule in effect abandoned the notion that appointment of a master is disfavored, and many features of the rule are now designed to facilitate expanded use of masters.³

This article describes the early use of masters, the functions to which courts have put masters, and a selection of issues regarding the appointment and operation of masters.

II. EARLY USE OF MASTERS IN FEDERAL COURT

The use of special masters, originated in English chancery practice, continued in federal equity practice, and was introduced into the federal rules in 1938.⁴ The Supreme Court

² Satyam Computer Services, Ltd. v. Venture Global Engineering, LLC, 2007 WL 1806198 (E.D.Mich., 2007) (“Beyond the provisions” of Rule 53, court has inherent power to appoint master.”); In re World Trade Center Disaster Site, 2006 WL 3627760 (S.D.N.Y., 2006) (“inherent power to seek assistance in order to administer the cases before me efficiently, economically, and in the interests of justice.”).

³ For the “notion,” see La Buy v. Howes Leather Co., 352 U.S. 249, 257-258 (1957) (appointment is disfavored; masters should be used only in rare cases). The amended Rule 53 has not yet been interpreted by the courts or analyzed by commentators. Scheindlin & Redgrave, Revisions in Federal Rule 53 Provide New Options for Using Special Masters in Litigation, N.Y. State Bar Assn J. (Jan. 2004). Judge Shira A. Scheindlin chaired the subcommittee on Rule 53 for the Advisory Committee and is co-author of this short article summarizing the changes. On the former rule, see Farrell, Margaret, Civil Practice and Litigation Techniques in the Federal Court, The Role of Special Masters in Federal Litigation, October 14, 1993 (Westlaw at C842 ALI-ABA 931).

very early confirmed the propriety of the use of special masters in federal court, noting that masters have been used “since the commencement of our Government.”\textsuperscript{5} It has long been understood, even absent a rule on masters, that parties may consent to judgment based on a master’s ruling.\textsuperscript{6} In 1920, in an opinion by Justice Brandeis, the Court explained that courts have “inherent power to provide themselves with appropriate instruments required for the performance of their duties. This power includes authority to appoint persons unconnected with the court to aid judges in the performance of specific judicial duties, as they may arise in the progress of a cause.”\textsuperscript{7}

In the nineteenth century, special masters performed essentially clerical duties for courts, but those duties expanded and, by the late nineteenth century, masters routinely were authorized to take evidence and make non-binding recommendations to courts.\textsuperscript{8} The federal equity rules in 1912 restrained the use of masters, with Equity Rule 59 establishing the requirement, now in Federal Rule of Civil procedure 53(b), that references to masters be justified by an “exceptional condition.” State court rules and caselaw also provide for appointment of masters and other adjuncts.\textsuperscript{9}

\textsuperscript{5} Ex parte Peterson, 253 U.S. 300, 312 (1920); Kimberly v. Arms, 129 U.S. 512, 524-25 (1889) (where reference to master was by consent, findings are "taken as presumptively correct").

\textsuperscript{6} Peretz v. United States, 501 U.S. 923, 936 (1991) ("litigants may waive their personal right to have an Article III judge preside over a civil trial"); Heckers v. Fowler, 69 U.S. (2 Wall.) 123, 127-128 (1864); Baker Indus., Inc., v. Cerebrus, Ltd., 764 F.2d 204, 206, 210-211 (3d Cir. 1985).

\textsuperscript{7} Ex parte Peterson, 253 U.S. 300, 364-65 (1920). Accord, Ruiz v. Estelle, 679 F.2d 1115, 1161 (power to appoint master to supervise implementation has long been established), amended in part, vacated in part, 688 F.2d 266 (5th Cir. 1982), cert. den., 460 U.S. 1042 (1983); Kaufman, Masters in the Federal Courts: Rule 53, 58 Colum. L. Rev. 452, 462 (1958) ("there has always existed in the federal courts an inherent authority to appoint masters.").

\textsuperscript{8} See citations supra. See also Feldman, Curbing the Recalcitrant Polluter: Post-Decree Judicial Agents in Environmental Litigation, 18 Environmental Affairs 809, 819 (1991).

\textsuperscript{9} See, for example, Jackson v. Hendrick, 457 Pa. 405; 321 A.2d 603 (1974), tracing the history of appointment of masters and other judicial supports in Pennsylvania.