

**PROCEDURE FOR USING MAGISTRATES
IN CIRCUIT CIVIL CASES--Florida Rule of Civil Procedure 1.490**

ORDER OF REFERRAL

A) Initiated by the Judge

The case must be “at issue.” In this regard, an answer has been filed and the issues between the parties can be ascertained from the pleadings.

[Note: Unlike cases in domestic relations, there is no implied consent in civil. All parties must consent prior to the referral being made. This may be done at any time prior to the beginning of the hearing, including at the hearing itself.]

B) Initiated by Motion of Either Party

Both parties must consent **OR** the motion must be denied.

Once a party gives consent, it cannot be withdrawn without “good cause.”

The Court has discretion, even with consent of both parties, to decide that the Magistrate should not hear the matter.

C) Case Management Conference

Pursuant to Florida Rule of Civil Procedure 1.200(a)(9), at the case management conference the Judge may consider referring issues to a Magistrate for findings of fact. Since all parties are present and can usually agree to the referral, the referral is often handled at this time.

In addition to the order of referral, there should be entered a stipulation by the parties agreeing to waive the “evidence in writing” requirement of rule 1.490(f). **[Sample stipulation attached hereto.]** The writing requirement states that “[t]he evidence shall be taken in writing by the magistrate or by some other person under the magistrate’s authority in the magistrate’s presence and shall be filed with the magistrate’s report.” The stipulation avoids the necessity and cost to the Circuit of filing a complete transcript with every report and provides that if a party files exceptions to the Magistrate’s report that party will bear the cost of the transcript. Upon first appearing before the Magistrate, the parties will be asked to sign a Stipulation and Consent to Referral.

CONTENT OF THE ORDER OF REFERRAL [Sample attached hereto]

The order of referral must contain:

1) Notice as to what matters will be heard. All issues must be **specifically stated** in the referral order. Any order entered on a matter heard by the Magistrate which was not specifically referred is a nullity.

2) Name of Magistrate to whom the matter is referred.

3) Notice that if a party wishes to use a court reporter, the party may do so, but the requesting party must bear that expense.

The order is filed with the Clerk with copies to all parties and to the Magistrate. If any party having proper notice fails to appear, the Magistrate may proceed ex parte or may adjourn the proceeding to a future day, giving notice to the absent party of the adjournment.

AFTER EXPRESS CONSENT AGREEING TO BE HEARD BY THE MAGISTRATE

- 1) Either party may schedule the hearing or the Magistrate can set the matter for hearing.
- 2) Both parties must have notice. The Magistrate can provide the notice or instruct counsel to file and serve notice of hearing.
- 3) The Magistrate is empowered to take the same actions as the Court, i.e., issue subpoenas, examine parties and witnesses, order production of documents, etc.

MAGISTRATE'S REPORT

- 1) The Magistrate's Report must be filed with court and served upon the parties with a copy sent to the referring Judge.
- 2) The Report must contain findings of fact, conclusions of law, and recommendations to the referring Judge.
- 3) A party's attorney may be asked to prepare the Report.

COURT ORDER ON MAGISTRATE'S REPORT

- A) If no exceptions** to the Magistrate's report are filed within ten days of date of service of the report, the Court typically reviews the report and enters a final order/judgment. Should the Court determine that the Magistrate's report is deficient or silent on an issue that was referred, the Court can:
- 1) make a further determination, if there is sufficient evidence;
 - 2) hold a hearing; or
 - 3) return the matter to the magistrate for further testimony/findings.

B) Exceptions to Magistrate's Report

Exceptions must be filed within 10 days of the date of service of the report with a certificate of service to opposing counsel/party and to the Magistrate.

A party may not raise excessive exceptions, i.e., those that burden rather than aid the Court. If excessive, the exceptions will not be reviewed until reduced to reasonable number.

If exceptions are filed they shall be heard on reasonable notice by either party.

COURT'S ROLE IN CONSIDERING EXCEPTIONS IS SIMILAR TO APPELLATE COURT

- *Standard of review as to facts is the clearly erroneous standard.
- *Standard of review as to application of law to the facts is abuse of discretion.
- *Unless clearly erroneous, the Court should not overrule the Magistrate's findings.
- *The Court must determine whether Magistrate's findings are supported by substantial competent evidence.

*The Court must not accept the recommendations if the Magistrate misunderstood or misapplied the law. In this case, the Court should reinterpret the legal meaning of the Magistrate's findings based on the correct view of the law.

Please note: In older case law, rules and statutes, Magistrates are referred to as General Masters. The 2004 Legislature changed the designation to General Magistrate or just Magistrate, effective October 1, 2004.