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Ohio Civ.R. 53

Rule 53 - Magistrates

(2) Magistrate's order; motion to set aside magistrate's order.(a) Magistrate's order.

(i) Nature of order. Subject to the terms of the relevant reference, a magistrate may enter orders without judicial approval if necessary to regulate the proceedings and if not dispositive of a claim or defense of a party

(ii) Form, filing, and service of magistrate's order. A magistrate's order shall be in writing, identified as a magistrate's order in the caption, signed by the magistrate, filed with the clerk, and served by the clerk on all parties or their attorneys.(b) Motion to set aside magistrate's order. Any party may file a motion with the court to set aside a magistrate's order. The motion shall state the moving party's reasons with particularity and shall be filed not later than ten days after the magistrate's order is filed. The pendency of a motion to set aside does not stay the effectiveness of the magistrate's order, though the magistrate or the court may by order stay the effectiveness of a magistrate's order.

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may require any or all of the parties to submit proposed findings of fact and conclusions of law.

(iii) Form; filing, and service of magistrate's decision. A magistrate's decision shall be in writing, identified as a magistrate's decision in the caption, signed by the magistrate, filed with the clerk, and served by the clerk on all parties or their attorneys no later than three days after the decision is filed. A magistrate's decision shall indicate conspicuously that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b).

(4) Action of court on magistrate's decision and on any objections to magistrate's decision; entry of judgment or interim order by court.(a) Action of court required. A magistrate's decision is not effective unless adopted by the court.(b) Action on magistrate's decision. Whether or not objections are timely filed, a court may adopt or reject a magistrate's decision in whole or in part, with or without modification. A court may hear a previously-referred matter, take additional evidence, or return a matter to a magistrate.(c) If no objections are filed. If no timely objections are filed, the court may adopt a magistrate's decision, unless it determines that there is an error of law or other defect evident on the face of the magistrate's decision.(d) Action on objections. If one or more objections to a magistrate's decision are timely filed, the court shall rule on those objections. In ruling on objections, the court shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law. Before so ruling, the court may hear additional evidence but may refuse to do so unless the objecting party demonstrates that the party could not, with reasonable diligence, have produced that evidence for consideration by the magistrate.(e) Entry of judgment or interim order by court. A court that adopts, rejects, or modifies a magistrate's decision shall also enter a judgment or interim order.

(i) Judgment. The court may enter a judgment either during the fourteen days permitted by Civ. R. 53(D)(3)(b)(i) for the filing of objections to a magistrate's decision or after the fourteen days have expired. If the court enters a judgment during the fourteen days permitted by Civ. R. 53(D)(3)(b)(i) for the filing of objections, the timely filing of objections to the magistrate's decision shall operate as an automatic stay of execution of the judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered.

(ii) Interim order. The court may enter an interim order on the basis of a magistrate's decision without waiting for or ruling on timely objections by the parties where immediate relief is justified. The timely filing of objections does not stay the execution of an interim order, but an interim order shall not extend more than twenty-eight days from the date of entry, subject to extension by the court in increments of twenty-eight additional days for good cause shown. An interim order

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shall comply with Civ. R. 54(A), be journalized pursuant to Civ. R. 58(A), and be served pursuant to Civ. R. 58(B).(5) Extension of time. For good cause shown, the court shall allow a reasonable extension of time for a party to file a motion to set aside a magistrate's order or file objections to a magistrate's decision. "Good cause" includes, but is not limited to, a failure by the clerk to timely serve the party seeking the extension with the magistrate's order or decision.(6) Disqualification of a magistrate. Disqualification of a magistrate for bias or other cause is within the discretion of the court and may be sought by motion filed with the court.(7) Recording of proceedings before a magistrate. Except as otherwise provided by law, all proceedings before a magistrate shall be recorded in accordance with procedures established by the court

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Rule 14 - Magistrates

(A) A court may appoint one or more magistrates for the purpose of receiving pleas, determining guilt or innocence, receiving statements in explanation and in mitigation of sentence, and recommending penalty to be imposed. A magistrate shall have been engaged in the practice of law for at least four years and be in good standing with the Supreme Court of Ohio at the time of appointment. A magistrate shall be provided with court room accommodations resembling as nearly as possible traffic court rooms.

(B) A court may refer nonjury traffic cases to a magistrate. If the offense charged is an offense for which imprisonment is a possible penalty, the case may be referred only with the unanimous consent of the parties, in writing or on the record in open court. The consent of an alleged juvenile traffic offender or his or her parent, guardian, or custodian shall not be required.(C) Proceedings before the magistrate shall be conducted as provided in Criminal Rule 19. A defendant's payment of a fine does not constitute a waiver of the defendant's right to file objections to the magistrate's decision.

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Rule 53(C) Authority

Civ. R. 53(C) is drawn largely from former Civ. R. 53(C)(1) and (2) and reflects the admonition of the Supreme Court that "a [magistrate's] oversight of an issue or issues, or even an entire trial, is not a substitute for the judicial functions but only an aid to them." Hartt v. Munobe (1993), 67 Ohio St.3d 3, 6, 615 N.E.2d 617 (emphases added). Civ. R. 53(C)(1)(d) is added to parallel Crim. R. 19(C)(1)(g) and recognize that magistrates have authority to conduct temporary protection order proceedings in accordance with law. Consistent with the admonition in Hartt, however, any temporary protection order issued as a result of such proceedings must be signed by a judge.

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Rule 53(D) Proceedings in Matters Referred to Magistrates

Civ. R. 53(D)(1) through (4) treat each of the steps that potentially occur if a magistrate participates: (1) reference to a magistrate; (2) magistrate's orders and motions to set aside magistrate's orders; (3) magistrate's decisions and objections to magistrate's decisions; and (4) action of the court on magistrate's decisions and on any objections to magistrate's decisions and entry of judgment or interim order by the court. Civ. R. 53(D)(5) through (8) deal with good cause extensions of time, disqualification of a magistrate, recording of proceedings before a magistrate, and contempt in the presence of a magistrate.

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Reference by court of record

*Civ. R. 53(D)(1), unlike former Civ. R. 53(C)(1)(b), specifically authorizes reference of types of matters by rule as well as by a specific or general order of reference. In so doing, it recognizes existing practice in some courts. See, e.g., Loc. R. 99.02, Franklin Cty. Ct. of Common Pleas; Loc. R. 23(B), Hamilton Cty. Ct. of Common Pleas; State ex rel. Nalls v. Russo, 96 Ohio St.3d 410, 412-13, 2002-Ohio-4907 at ¶¶ 20-24, 775 N.E.2d 522; Davis v. Reed (Aug. 31, 2000), 8th Dist. App. No. 76712, 2000 WL 1231462 at *2 (citing White v. White (1977), 50 Ohio App.2d 263, 266-268, 362 N.E.2d 1013), and Partridge v. Partridge (Aug. 27, 1999), 2nd Dist. App. No. 98 CA 38, 1999 WL 945046 at *2, (treating a local rule of the Greene Cty. Ct. of Common Pleas, Dom. Rel. Div., as a standing order of reference).Dist. App. No. 76712, 2000 WL 1231462 at *2 (citing White v. White (1977), 50 Ohio App.2d 263, 266-268, 362 N.E.2d 1013), and Partridge v. Partridge (Aug. 27, 1999), 2nd Dist. App. No. 98 CA 38, 1999 WL 945046 at *2, (treating a local rule of the Greene Cty. Ct. of Common Pleas, Dom. Rel. Div., as a standing order of reference).*

Magistrate's order; motion to set aside magistrate's order

Civ. R. 53(D)(2)(a)(i) generally authorizes a magistrate to enter orders without judicial approval if necessary to regulate the proceedings and, adapting language from Crim. R. 19(B)(5)(a), if "not dispositive of a claim or defense of a party." The new language removes the arguably limiting title of former Civ. R. 53(C)(3)(a) ["Pretrial orders"] and is intended to more accurately reflect proper and existing

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practice. This language is not intended to narrow the power of a magistrate to enter pretrial orders without judicial approval on matters related to (1) pretrial management under Civ. R. 16; (2) discovery conducted pursuant to Civ. R. 26-37; (3) temporary orders issued pursuant to Civ. R. 75(N); (4) temporary restraining order governing marital property under Civ. R. 75(I) (2); or (5) any other orders necessary to the regulation of proceedings before a magistrate. All temporary protection orders, however, including orders issued to avoid bodily harm pursuant to Civ. R. 75(I)(2), must be signed by a judge and comply fully with the procedures set forth in R.C. 3113.31 and related sections. Civ. R. 53(D)(2)(b) replaces language in former Civ. R. 53(C)(3)(b), which purported to authorize "[a]ny person" to "appeal to the court" from any order of a magistrate "by filing a motion to set the order aside." The new language refers to the appropriate challenge to a magistrate's order as solely a "motion to set aside" the order. Civ. R. 53(D)(2)(b) likewise limits the authorization to file a motion to "any party," though an occasional nonparty may be entitled to file a motion to set aside a magistrate's order. Sentence two of Civ. R. 53(D)(2)(b) changes the trigger for the ten days permitted to file a motion to set aside a magistrate's order from entry of the order to filing of the order, as the latter date is definite and more easily available to counsel.

Civ. R. 53(D)(3)(b)(iv), as noted above, expands the "waiver rule" prescribed by former Civ. R. 53(E)(3)(b) (effective July 1, 1995) and former Civ. R. 53(E)(3)(d) (effective July 1, 2003) to include any factual finding or legal conclusion in a magistrate's decision, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii). The Rules Advisory Committee was unable to discern a principled reason to apply different requirements to, e.g., a factual finding depending on whether or not that finding is specifically designated as a finding of fact under Civ. R. 53(D)(3)(a)(ii). An exception to the "waiver rule" exists for plain error, which cannot be waived based on a party's failure to object to a magistrate's decision.

Disqualification of a magistrate

*Civ. R. 53(D)(6) has no counterpart in former Civ. R. 53. The statutory procedures for affidavits of disqualification apply to judges rather than magistrates. Rev. Code §§2101.39, 2501.13, 2701.03, 2701.131; In re Disqualification of Light (1988), 36 Ohio St.3d 604, 522 N.E.2d 458. The new provision is based on the observation of the Chief Justice of the Supreme Court that "[t]he removal of a magistrate is within the discretion of the judge who referred the matter to the magistrate and should be brought by a motion filed with the trial court." In re Disqualification of Wilson (1996), 77 Ohio St. 3d 1250, 1251, 674 N.E.2d 260; see also Mascorro v. Mascorro (June 9, 2000), 2nd Dist. App. No. 17945, 2000 WL 731751 at *3 (citing In re Disqualification of Wilson); Reece v. Reece (June 22, 1994), 2nd Dist. App. No. 93-CA-45, 1994 WL 286282 at *2 ("Appointment of a referee is no different from any other process in which the trial court exercises discretion it is granted by statute or rule. * * * If the defect concerns possible bias or prejudice on the part of the referee, that may be brought to the attention of the court by motion."); Moton v. Ford Motor Credit Co., 5th Dist. App. No. 01CA74, 2002-Ohio-2857, appeal not allowed (2002), 95 Ohio St.3d 1422, 2002-Ohio-1734, 766 N.E.2d 163, reconsideration denied (2002), 95 Ohio St.3d 1476, 2002-Ohio-244, 768 N.E.2d 1183; Walser v. Dominion Homes, Inc. (June 11, 2001), 5th Dist. App. No. 00-CA-G-11-035, 2001 WL 704408 at *5; Unger*

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*v. Unger (Dec. 29, 2000), 12th Dist. App. No. CA2000-04-009, 2000 WL 1902196 at *2 (citing In re Disqualification of Wilson, supra); Jordan v. Jordan (Nov. 15, 1996), 4th Dist. App. No. 1427, 1990 WL 178162 at *5 ("Although referees are not judges and arguably, are not bound by Canon 3(C)(1) of the Code of Judicial Conduct, it would appear axiomatic that a party should be able to petition the court to have a referee removed from the case if the referee is unable to render a fair and impartial decision."); In re Reiner (1991), 74 Ohio App.3d 213, 220, 598 N.E.2d 768 ("where a referee affirmatively states that he is biased on the matter before him, it is an abuse of the court's discretion to fail to recuse the referee"). Particularly because "a [magistrate's] oversight of an issue or issues, or even an entire trial, is not a substitute for the judicial functions but only an aid to them," Hartt v. Munobe (1993), 67 Ohio St.3d 3, 6, 1993-Ohio-177, 615 N.E.2d 617 (emphases added), Civ. R. 53(D)(6) contemplates that disqualification on a ground other than bias may sometimes be appropriate.*

Rule 53(C) Reference and Powers

(C)(1) Order of Reference. This division replaces language previously found in Rule 53(A). It makes clear that magistrates have authority to act only on matters referred to them by a judge in an order of reference, but permits that order of reference to be categorical or specific to a particular case or motion in a case. Rule 53(C)(1)(a) (iii) codifies in part the result in Hartt v. Munobe (1993), 67 Ohio St. 3d 3, but requires that consent to a magistrate's presiding at a jury trial must be written. Division (C)(1)(c) largely tracks prior language, which makes it clear that a particular judge in a given order of reference may limit the powers generally provided in this rule for magistrates.

Rule 53(E) Decisions in Referred Matters

New division (E) entirely replaces the prior language which required preparation of reports by referees. Experience throughout the state demonstrated that often the report writing requirement substantially slowed the decision of cases without adding anything of value to the decision-making process. The new rule preserves the authority of judges to require reports by so specifying in orders of reference. In the absence of such a requirement, however, magistrates will now prepare a magistrate's decision [division (E)(1)]. If a party desires that the magistrate's decision embody the detail characteristic of a referee's report, the party may make a request for findings of fact and conclusions of law under Civ. R. 52, either before or after the magistrate's decision is filed [division (E)(2)]. The fourteen-day time period for objections is preserved and it begins to run only when a magistrate's decision embodying findings and conclusions is filed, if they have been appropriately requested [division(E)(3)(a)].