

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

**ORDER OF REFERRAL**

**Initiated by the Circuit Judge**

The Circuit Judge, on its own, can enter an order referring the parties to the Magistrate. All parties must thereafter consent in writing before the Magistrate can hear the matter. This may be done at any time prior to the beginning of the hearing, including at the hearing itself. If any party does not give written consent then the Magistrate cannot proceed.

Once a party gives written consent, it cannot be withdrawn absent good cause shown in writing.

**Initiated by motion or action of any party**

Any party may file a motion (to be heard by the Circuit Judge assigned to the case) for any matter(s) to be referred to the Magistrate for hearing. All parties must consent to the motion or it will be denied.

A party may initiate a referral to the Magistrate by conferring with all parties and obtaining their verbal consent and then calling the Magistrate's assistant to set a hearing. Thereafter an Order of Referral will be provided to the Circuit Judge for entry and the parties will sign the consent.

Once a party gives written consent, it cannot be withdrawn absent good cause shown in writing.

**Initiated at Case Management Conference**

At the case management conference the Circuit Judge may consider referring issues to the Magistrate for findings of fact, pursuant to Florida Rule of Civil Procedure 1.200(a)(9). Since all parties are present at that time and can usually agree (or not) to the referral, the referral can be handled at that time. Thereafter the Circuit Judge will enter the Order of Referral and the parties will sign the consent.

## **CONTENT OF THE ORDER OF REFERRAL**

### **The Order of Referral contains:**

1) Notice as to what matters will be referred for hearing. All matters must be specifically stated in the Order.

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

3) Notice that if any party wishes to utilize the services of a court reporter to record the proceedings, then that party may do so, but must bear the expense of that service.

The Order is filed with the Clerk with copies to all parties and to the Magistrate. If any party, after having consented in writing and having been sent proper notice of the proceedings before the Magistrate, fails to appear, the Magistrate may proceed without that party.

### **AFTER CONSENT TO REFERRAL TO THE MAGISTRATE**

Any party or the Magistrate may schedule the matter(s) for hearing.

All parties must be provided proper notice. The Magistrate can provide the notice or instruct counsel to file and serve the notice of hearing.

The Magistrate is empowered to take the same actions as the Circuit Judge, i.e., issue subpoenas, examine parties and witnesses, order production of documents, etc.

### **MAGISTRATE'S REPORT**

The Magistrate's Report is filed with the Clerk and copies provided to the parties.

The Report must contain the recommendation(s) made to the referring Circuit Judge. (If necessary, findings of fact and conclusions of law will also be included in the Report).

A party's attorney (or a *pro se* party) may be asked to prepare the Report.

## **ORDER ON MAGISTRATE'S REPORT**

### **If no exceptions to the Magistrates Report are filed**

If no exceptions to the Magistrate's report are filed within ten days of the date of service of the report, or if the parties waive the filing of exceptions, the Court will enter an Order approving the Report and adopting it as an Order of the Court. 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 proceedings.

### **If exceptions to Magistrate's Report are filed**

Exceptions must be filed within 10 days of the date of service of the report with a certificate of service showing copies to all counsel/parties and to the Magistrate.

A party may not raise excessive exceptions, i.e., those that burden rather than aid the Court. If excessive, the Court can require they be reduced to a reasonable number.

Filed exceptions shall be heard by the Court on proper notice by any party.

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.