

2012 Kansas Statutes

60-253. Trial by masters. (a) *Reference.* (1) With the parties' consent, all or any issues of fact or law or both may be referred to a master. Otherwise, the court may order a reference only if it finds that the ends of justice will be measurably advanced, and, in a case triable to a jury, only on issues that involve an examination of complex or voluminous accounts.

(2) As used in this chapter, "master" includes a referee, an auditor, a commissioner and an examiner. A master must not have a relationship to the parties, attorneys, action or court that would require disqualification of a judge under the code of judicial conduct unless the parties, with the court's approval, consent to the appointment after the master discloses any potential grounds for disqualification.

(b) *Compensation and oath.* The court must fix the master's compensation, which must be paid as the court orders by a party or parties or from a fund or subject matter of the action within the court's control. The master may not retain the master's report as security for the master's compensation. When a party ordered to pay the compensation allowed by the court does not pay it after notice and within the time ordered by the court, the master is entitled to a writ of execution against the party. The master must swear or affirm to hear and examine the cause, and to make a just and true report according to the best of the master's understanding. The oath or affirmation may be administered by any person authorized to take depositions.

(c) *Powers.* The order of reference to the master may specify or limit the master's powers. The order may direct the master to report only on particular issues, to do or perform particular acts or only to receive and report evidence. The order may fix the time and place for beginning and closing the hearings and for filing the master's report. Subject to the specifications and limitations stated in the order, the master has the power to regulate all proceedings in every hearing before the master and to do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order. The master may require the production of evidence on all matters embraced in the reference, including the production of applicable books, papers, vouchers, documents, writings and electronically stored information. The master may rule on the admissibility of evidence unless otherwise directed by the order of reference. The master may put parties and witnesses on oath and may examine them. When a party requests, the master must make a record of the evidence offered and excluded in the same manner and subject to the same limitations as a court sitting without a jury.

(d) *Proceedings.* (1) *Meetings.* When a reference is made, the clerk must promptly furnish the master with a copy of the order of reference. Unless the order of reference provides otherwise, the master must promptly set a time and place for the first meeting of the parties or their attorneys, within 21 days after the date of the order of reference, and must notify the parties or their attorneys. The master must proceed with all reasonable diligence. If a party fails to appear at the time and place appointed for a proceeding, the master may proceed ex parte or adjourn the proceeding to a future day, giving notice to the absent party of the adjournment. A party, on notice to the parties and master, may apply to the court for an order requiring the master to complete the proceedings and to make the master's report.

(2) *Witnesses.* The parties may procure the attendance of witnesses before the master by causing subpoenas to be issued and served as provided in K.S.A. 60-245, and amendments thereto. If, without adequate excuse, a witness fails to appear to give evidence, the witness may be punished for contempt and be subjected to the sanctions provided in K.S.A. 60-237 and 60-245, and amendments thereto.

(3) *Statement of accounts.* When matters of accounting are in issue before the master, the master may prescribe the form in which the accounts must be submitted and may require or receive the testimony and statement of an accountant on the subject. On a party's objection to any of the items submitted or on 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, on written interrogatories or in another manner as the master directs.

(e) *Reports.* (1) *Contents and filing.* The master must prepare a report on the matters submitted to the master by the order of reference, and, if required to make findings of fact and conclusions of law, the master must state them in the report. The master must file the report with the clerk of the court, and, in a nonjury action, unless otherwise directed by the order of reference, must file with it a transcript of the proceedings and the evidence and the original exhibits. The clerk must promptly serve on the parties notice of the filing.

(2) *In nonjury actions.* In a nonjury action, the court must accept the master's findings of fact unless clearly erroneous. Within 14 days after being served with notice of the filing, a party may serve on the other parties written objections to the report. Application to the court for action on the report and on objections to the report must be by motion and on notice as prescribed in subsection (c) of K.S.A. 60-206, and amendments thereto. The court after hearing may adopt or modify the report, reject the report in whole or in part, receive further evidence or recommit the report with instructions.

(3) *In jury actions.* In a jury action, the master must not report the evidence unless ordered by the court. If the master is available for cross-examination, the master's findings on the issues submitted to the master are admissible as evidence of the matters found and may be read to the jury, subject to the court's ruling on objections to the report.

(4) *Stipulation as to findings.* The effect of a master's report is the same whether or not the parties have consented to the reference. When the parties stipulate that a master's findings of fact are final, only questions of law arising from the report may later be considered.

(5) *Draft report.* Before filing a report, the master may submit a draft of the report to counsel for all parties to receive their suggestions.

History: L. 1963, ch. 303, 60-253; L. 2007, ch. 190, § 17; L. 2010, ch. 135, § 126; July 1.