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Debbi Munson Clerk
Shane Yeager Deputy

MONTANA NINTH JUDICIAL DISTRICT COURT, TOOLE COUNTY

**IN RE THE ESTABLISHMENT OF A
DISTRICT STANDING MASTER
FOR THE

NINTH JUDICIAL DISTRICT COURT.**

Cause No.: SB-2016- 012

**CHARTER ORDER REGARDING
DISTRICT STANDING MASTER
ESTABLISHMENT & PROCEDURE**

Comes now the above-captioned Court and hereby establishes a District Standing Master for Toole, Teton, Glacier and Pondera Counties of the Ninth Judicial District. Pursuant to §§ 3-5-124 through 3-5-126, MCA, the terms of this Order shall constitute and define the jurisdictional charter, structure, and general procedure for proceedings before the District Standing Master.

1. Purpose of Establishment of Family Law Standing Master.

As evidenced by the Montana Supreme Court's ongoing district court workload study, the counties of the above-captioned Court are overburdened and understaffed under the existing and contemplated civil and criminal caseloads in this district. The Montana Supreme Court, by and through the Hon. Chief Justice and the Office of Supreme Court Administrator, has authorized and funded a part-time Standing Master position to jointly serve all four counties of the above-captioned Court. Accordingly, the above-captioned Court, by and through its constituent Judge, hereby establishes a District Standing Master for Toole, Teton Glacier and Pondera counties to make the Court more accessible and responsive to

litigants in all types of cases by referring selected matters to the District Standing Master in the discretion of the District Judge.

2. Enabling Authority.

The District Court may refer civil matters to a standing master for disposition subject to district court review. §§ 3-5-124 through 3-5-126, MCA; see also M.R.Civ.P. Rule 53 (2011) (as applicable to standing masters); see also, e.g., § 41-3-422(15), MCA (child abuse and neglect proceedings). The court may make civil referrals to a standing master without the consent of the parties. See § 3-5-126(3), MCA (effect of standing master's report is the same notwithstanding the parties' consent); Marriage of McMichael, 2006 MT 237, ¶ 13, 333 Mont. 517, ¶ 13, 143 P.3d 439, ¶ 13. Upon appointment of a standing master, the court may refer matters to the master for disposition either by standing order or on a case-by-case basis in the discretion of the court. § 3-5-124(1), MCA; see also M.R.Civ.P. Rule 53(b)(2) (2011) (court may make standing master referrals as provided by law). The court has broad discretion to specify or limit the scope of the standing master's authority by standing order or order of special referral. See § 3-5-124(2), MCA; M.R.Civ. P. Rule 53(c)(1) (2011).

Sections 3-5-113(1) and 3-5-114, MCA, specify the qualifications for special masters and judges pro tempore. In contrast, neither Title 3, Chapter 5, Part 1, MCA, nor M.R.Civ.P. Rule 53 (2011) specify the qualifications or procedure for establishing and appointing a standing master under § 3-5-124, MCA. In the exercise of an express statutory power or jurisdiction, the district court has inherent and implied power and authority to adopt "any suitable process or mode of proceeding . . . which may appear most conformable to the spirit of this code." § 3-1-113, MCA. Accordingly, the court hereby adopts the criteria of §§ 3-5-114

and 41-3-422(15), MCA, as the qualifications for the District Standing Master and the provisions of this order as the procedure for establishing and appointing the District Standing Master.

3. General Structure – Scope Of Authority.

The presiding district judge of the district may appoint a qualified individual to serve as the District Standing Master of the above-captioned court in accordance with the terms of this standing order. See §§ 3-5-124 through 3-5-126, MCA. Upon appointment, the District Standing Master shall serve under this order at the sole and unfettered discretion of the presiding judge of the district in relation to cases referred to the Master. The sole purpose and effect of this order is to exercise, implement, and carry out the jurisdiction of the District Court pursuant to §§ 3-5-124 through 3-5-126, MCA, and M.R.Civ.P. Rule 53(a)(1)(A) (2011) (as applicable to standing masters).

Pursuant to §§ 3-5-124 through 3-5-126, MCA, the District Standing Master shall, upon order of referral, be responsible for the administration and disposition of the following matters otherwise assigned to the court:

- (A) family law and protective proceedings arising under Title 40, MCA;
- (B) child abuse and neglect proceedings arising under Title 41, Chapter 3, MCA, except for proceedings to terminate parental rights;
- (C) guardianship and conservatorship proceedings arising under Title 72, Chapter 5, MCA; and
- (D) other types of proceedings on a case referral basis in the discretion of the referring court.

Pursuant to §§ 3-5-124 through 3-5-126, MCA, and M.R.Civ.P. Rule 53(c)(2) (2011) (as applicable to standing masters), the Court hereby charges, delegates, vests, and

confers the following specific and general powers, authority, and duties upon the District Standing Master under this order:

- (1) to assume jurisdiction over and adjudicate all procedural and substantive aspects of proceedings referred for disposition pursuant to this standing order;
- (2) to schedule, compel attendance at, and conduct all evidentiary hearings, bench trials, oral arguments, or other proceedings required, necessary, or proper within the scope of this order;
- (3) to administer oaths and issue subpoenas on behalf of the Court in the manner otherwise provided by law;
- (4) to compel and take evidence and rule on its admissibility as required, necessary, or proper;
- (5) to issue mesne or preliminary orders, including but not limited to scheduling and discovery orders pursuant to M.R.Civ.P. Rules 16 and 26-27, in the same manner as otherwise provided by law for district courts;
- (6) to control and regulate all proceedings before the Master; and
- (7) to perform any other lawful acts or measures necessary or proper within the scope of this standing order in the same manner as the District Court within the lawful the scope and authority of the Court.

Upon referral, the District Standing Master shall exercise and carry-out the foregoing powers, authority, and duties subject to and in accordance with the terms of this order, §§ 3-5-124 through 3-5-126, MCA, and all substantive and procedural law, rules, and regulations otherwise applicable to proceedings before the court, including but not limited to the Montana Rules of Civil Procedure, Montana Rules of Evidence, Montana Uniform District Court Rules, and Local Rules of this district.

Pursuant to § 3-5-124(2)(a), MCA, and M.R.Civ.P. Rule 53(c)(1) (2011) (as applicable to standing masters), the referring court may, by way of the order of referral, more particularly specify, limit, or expand the scope of the District Standing Master's authority, function, or duty in a particular case. Pursuant to §§ 3-5-124 through 3-5-126, MCA and the inherent power of the Court, this Court shall retain and exercise supervisory control over the District Standing Master, regarding the cases respectively referred to the Master, as necessary in the interests of justice in extraordinary circumstances where ordinary district court review under § 3-5-126(2), MCA, is not an adequate remedy. In the interests of justice in the sole discretion of the Court, this court may by order rescind a case referral and reassume primary administration of the case.

4. General Procedure.

(A) Referral and Initial Meeting. Pursuant to § 3-5-124(1), MCA, any judge of the above-captioned court, in his discretion, may by refer cases within the judge's jurisdiction to the District Standing Master for proceedings and disposition pursuant to this order. Pursuant to § 3-5-125(1), MCA, and M.R.Civ.P. Rule 53(d)(1) (2011), the Master shall, for the purpose of discussing the possibility of settlement and for the purposes specified in M.R.Civ.P. Rules 16(a), 16(b), and 16(c), set by order a "first meeting of the parties or their attorneys" to occur within 20 days of the order of referral. Pursuant to § 3-5-125(1), MCA, and M.R.Civ.P. Rule 53(d)(1) (2011), if a party fails to timely appear at the first meeting, the Master "may proceed ex parte, or in the standing master's discretion, adjourn the proceedings to a future day" specified by order.

(B) When Hearing Not Required. When a hearing is not otherwise required by law, the District Standing Master may file and serve an appropriate order and

judgment upon the matters submitted under the referral. § 3-5-126(1), MCA.

(C) When Hearing Required. When a hearing is required by law or in the Master's discretion, the District Standing Master shall notice and conduct a hearing in accordance with § 3-5-126, MCA, and this *Charter Order* as soon as possible.

(D) Record, Filing Procedure, and Clerk of Court Duty. Pursuant to §§ 3-5-124(3) through 3-5-126(1), MCA, the District Standing Master shall record all contested proceedings either by means of a certified court reporter or audio or video recording suitable to facilitate production of a verbatim transcription of proceedings for district court and appellate review. Pursuant to § 3-5-126(1), MCA, the Master shall file the evidence and a recording of all contested proceedings with the clerk of district court. Pursuant to § 3-5-501, MCA, the clerk of district court shall attend all contested proceedings before the District Standing Master and act as the clerk of proceedings before the Master in the same manner as proceedings before the district court. In cases referred to the District Standing Master, the parties and clerk of court shall file all pleadings, motions, briefs, and other filings in the ordinary course in the court file for the subject cause. The parties shall strictly comply with Local Rule 5(b) (notice of issue) in all proceedings before the Master by supplementally serving the notice of issue on the referring Court at chambers.

(E) Form of Decision. Pursuant to § 3-5-126(1), MCA, and M.R.Civ.P. Rule 52(a), the District Standing Master shall file and serve written findings of fact, conclusions of law, and a dispositive order for all contested proceedings tried upon the facts. The Master shall file and serve a dispositive written decision and order for all contested proceedings not tried upon the facts.

(F) Filing of "Master's Report" and Objections Procedure.

As distinct from non-dispositive scheduling, mesne, or other preliminary orders and

rulings, an adjudicatory or dispositive order of the Master on a contested proceeding shall constitute the “master’s report” for purposes of §§ 3-5-125(1) and 3-5-126, MCA. Accordingly, the filing and service of an adjudicatory or dispositive order of the District Standing Master shall constitute the filing and notice of the “master’s report” for purposes of §§ 3-5-125(1) and 3-5-126, MCA, thereby triggering the 10-day objections and district court review deadline under § 3-5-126(2), MCA. Montana Uniform District Court Rule 2 and Local Rule 5(b) shall strictly apply to procedure and substance of objections to the Master’s Report under § 3-5-126(2), MCA.

Pursuant to § 3-5-126(2), MCA, cursory or general objections to the Master’s Report shall not be valid and sufficient to trigger judicial review of the Master’s reported findings, conclusions, or judgments. Pursuant § 3-5-126(2), MCA, objections to the District Standing Master’s report must:

- (1) be written;
- (2) be timely-filed;
- (3) specifically identify the subject finding of fact or conclusion of law asserted to be in error;
- (4) for each such assertion of error, *specifically state with particularity* the asserted factual or legal basis or reason for the assertion with citation to relevant legal authority and, as applicable or necessary, precise citation to the pertinent sections of the hearing record or transcript.

Pursuant to § 3-5-126(2), MCA; M.R.Civ.P. Rule 7(b); and Montana Uniform District Court Rule 2, an objecting party’s failure to comply with these procedural and substantive requirements for objections to the Master’s Report may, in the discretion of the Court, subject the party’s objections to adverse summary ruling. Pursuant to Local Rule 5(b), otherwise timely filed objections to the Master’s Report

under § 3-5-126(2), MCA, shall not be deemed ripe and fully submitted for hearing and district court review until one of the parties has filed and served a notice of issue upon the court.

(G) Effect/Enforceability of Report as Court Order. Upon filing and except as otherwise expressly stayed by written order of the Master or the Court, the Master's Report shall be immediately effective and enforceable as an order of the Court subject to subsequent reversal, remand, revision, or supersedence by subsequent written order of the Court upon review of a timely-filed objection. *Sua sponte* or upon motion of a party supplementally served at chambers, the Master or the Court may by written order stay execution of the Master's Report pending expiration of the 10-day objection deadline under § 3-5-126(2), MCA, or entry of a final judgment by the Court upon review of objections timely-filed pursuant to § 3-5-126(2), MCA. Unless otherwise provided by subsequent written order of the Court, the mere timely filing of objections or a motion for district court review under § 3-5-126(2), MCA, does not and shall not alone nullify, stay, or otherwise impair the continued effectiveness or enforceability of a Master's Report pending review and ruling by the court on the subject objections or motion.

Absent an objection timely-filed prior to expiration of the objections deadline under § 3-5-126(2), MCA, a Master's Report shall, by operation of law pursuant to § 3-5-126(2), MCA, immediately become a dispositive final judgment of the Court upon expiration of the objections deadline. Conversely, upon a timely-filed objection under § 3-5-126(2), MCA, expiration of applicable response deadlines under Montana Uniform District Court Rule 2, and notice of issue pursuant to Local Rule 5(b), the Court shall set and conduct a hearing upon judicial review of the Master's Report pursuant to § 3-5-126(2), MCA.

(H) Standard of District Court Review. Upon review of a judgment (Master's Report) of the District Standing Master pursuant to § 3-5-126(2), MCA, the district court, after a hearing, "may adopt the [Master's] findings and conclusions or order and may modify, reject in whole or in part, receive further evidence, or recommit the findings and conclusions or order with instructions" to the Master. § 3-5-126(2), MCA. The court thus has broad discretion under § 3-5-126(2), MCA, to affirm, reverse, modify, or remand a judgment of the District Standing Master. Although the court has discretion to take supplemental evidence, an aggrieved party has no vested right to present supplemental evidence upon judicial review of a judgment of the District Standing Master. See § 3-5-126(1), MCA.

Except to the extent that it may elect to take supplemental evidence when warranted in the interests of justice¹, the standard of district court review of the findings of fact of the District Standing Master (Master's Report) under § 3-5-126(2), MCA, is whether the findings of fact are clearly erroneous, giving due deference to the broad discretion of the Master to assess the relative credibility of the witnesses and the weight of the evidence. M.R.Civ.P. Rule 53(e)(2) (2011); Patton v. Patton, 2015 MT 7, ¶ 24; 378 Mont. 22, 340 P.3d 1242; In Re Parenting of G.J.A., 2014 MT 215, ¶¶ 18-19, 376 Mont. 212, 331 P.3d 835 (rejecting asserted *de novo* standard of review); see also Maloney v. Home & Investment Center, Inc., 2000 MT 34, ¶ 28, 298 Mont. 213, 994 P.2d 1124 (standard of review of judgments

¹ If the court takes supplemental evidence on review pursuant to § 3-5-126(2), MCA, it must then make appropriate findings of fact and conclusions of law regarding the effect of the supplemental evidence. See M.R.Civ.P. Rule 52(a); see also by analogy, O'Neill v. MDOR (1987), 227 Mont. 226, 231, 739 P.2d 456, 459; Hi-Line Radio Fellowship v. MDOR (1987), 227 Mont. 150, 154, 737 P.2d 886, 888.

of special master is same as for lower court judgments); M.R.Civ.P. Rule 52(a); In re Marriage of Swanner-Renner, 2009 MT 186, ¶ 13, 351 Mont. 62, 209 P.3d 238 (clear error standard requires due deference to the broad discretion of lower tribunal to assess the relative witness credibility of witnesses and weight of the evidence). The Master's findings of fact are clearly erroneous only if:

- (1) the findings are not supported by substantial credible evidence;
- (2) the Master misapprehended the effect of the evidence; or
- (3) the district court has a definite and firm conviction that the Master made a mistake.

Patton, ¶ 42 (as applied to findings of standing masters); Swanner-Renner, ¶ 13; In re Marriage of Steinbasser, 2002 MT 309, ¶ 17, 313 Mont. 74, 60 P.3d 441; Berlin v. Boedecker, 268 Mont. 444, 455-56, 887 P.2d 1180, 1187 (1994). Except to the extent that it may take supplemental evidence, the court shall "not substitute its judgment" for that of the Master "as to the weight of the evidence on questions of fact." See M.R.Civ.P. Rule 52(a) (reviewing court deference to lower court in re witness credibility); Smith v. Tyad, Inc., 2009 MT 180, ¶¶ 23 and 48, 351 Mont. 12, 209 P.3d 228 (reviewing court may not substitute its judgment for that of lower court or agency as to weight of the evidence); In re A.S., 2006 MT 281, ¶ 51, 334 Mont. 280, 146 P.3d 778 (reviewing court may not substitute its judgment for that of the lower court or agency in resolving conflicting evidence unless findings clearly erroneous). The court shall accordingly view the District Standing Master's findings of fact in the light most favorable to the prevailing party. See Harding v. Savoy, 2004 MT 280, ¶ 20, 323 Mont. 261, 100 P.3d 976; Peschel Family Trust v. Colonna, 2003 MT 216, ¶ 19, 317 Mont. 127, 75 P.3d 793. The standard of review for a standing master's conclusions of law is whether the conclusions are correct. Maloney, ¶ 28.

In the case of property division, child custody, child support, maintenance, and attorney fee determinations under Title 40, Chapter 4, MCA, if the Master's findings of fact are not clearly erroneous and its conclusions of law are correct, then the additional standard of review for property division, child custody, child support, maintenance, and attorney fee determinations under Title 40, Chapter 4, MCA, is an abuse of discretion standard. See, e.g., Albrecht v. Albrecht, 2002 MT 227, ¶ 7, 311 Mont. 412, 56 P.3d 339; In re Marriage of Stuftt, 286 Mont. 239, 243-44, 950 P.2d 1373, 1376 (1997). A Master abuses his or her discretion only if he or she "act[s] arbitrarily without employment of conscientious judgment or exceed[s] the bounds of reason resulting in substantial injustice." Albrecht, ¶ 7. The Master must exercise his or her discretion "in a realistic manner, taking into account the actual situation of the parties." Albrecht, ¶ 7.

Accordingly, a party challenging a judgment of the District Standing Master has the burden of showing on review that the:

- (1) Master's findings of fact are clearly erroneous;
- (2) Master's conclusions of law are incorrect;
- (3) if the findings of fact are not clearly erroneous, the Master nonetheless abused his or her discretion in applying the facts to the applicable law;
or
- (4) interests of justice otherwise warrant the taking of supplemental evidence upon review.

See Patton, ¶ 42 (challenging party burden in re standing master report); see also § 3-5-126(1), MCA (challenging party duty to assert specific written objections of error); Maloney, ¶ 28 (challenging party has burden of showing special master error).

7. Decorum, Orders, and Contempt.

All parties and counsel shall formally treat and address the District Standing Master with the same formality, decorum, and respect required and customary in proceedings before a presiding District Judge and in accordance with Local Rule 17 (Rules of Decorum). All parties and counsel shall obey and comply with orders of the Master in the same manner as orders of the Court. The Court may address, remedy, and sanction or punish any violation of this order as a contempt of court. This provision does not preclude, limit, or impair the authority of the District Standing Master to otherwise address and remedy contempt within the authorized scope of the Master's authority under this order.

SO ORDERED this 6 day of September, 2016.

MONTANA NINTH JUDICIAL DISTRICT COURT

A handwritten signature in black ink, appearing to read 'Robert G. Olson', is written over a horizontal line.

Robert G. Olson
District Court Judge