**Special Masters Podcast-Episode Notes**

**March 23, 2024**

**Hello folks, and welcome to another exciting episode of the Good Judge-ment Podcast. I’m your host, Wade Padgett.**

*And once again, I will be voicing the role of Tain Kell.*

**So, Tain, how did the idea for this episode come about?**

*Well, Wade, as you know, these days I’ll do anything to make a buck- selling my plasma, Uber Eats, working as a looper.*

**A looper?**

*Yeah, you know, a looper, a jock, a caddie!*

**So I take it that fixed income thing is a little too, well, fixed, right?**

*Yeah, so I got this call from one of our judge friends down in Bibb County- shout out to our friend, Ken Smith- and Judge Smith asked if I would be interested in helping with a case as a special master.*

**And that’s how this episode of the podcast was born, right?**

*Right! So, without further delay, let’s talk about Special Masters!*

The concept of the special master is really just a person who is brought in to assist a judge with a case or a group of cases, either on a limited basis or all the way to trial.

I think we heard a bit about those during one of the many Trump cases- the one about the classified documents, I think.

That’s right. The Trump team suggested it as a way of “expediting” the case, but there was a little pushback that it might not be as expeditious as the court wanted.

Right! But the concept of the Special Master is to do just that- expedite things. The court assigns the case to a judge or an attorney to assist with things that the Court might not have time or resources to accomplish.

In a FEBRUARY 2022 article in the Georgia Courts Journal, Judge Keegan Federal, Jr. suggested:

“Due in part to the pandemic and the resulting backlog of cases throughout the State, many trial court judges are experiencing difficulties in moving their calendars as expeditiously as they (and the lawyers and parties in their cases) would like. Special Masters can alleviate the burdens and frustrations of a backlog by handling many judicial responsibilities that otherwise must be addressed by the presiding judge. Perhaps one of the most time-consuming but aggravating issues that plague trial courts is discovery disputes, e.g., objections to interrogatories, motions to compel, contested requests to produce, etc. A duly appointed Special Master has the authority to hear and resolve any and all such disputes, including motions to strike, motions for sanctions, dispositive motions, motions in limine, etc.”

He also stated:

“Every judge occasionally encounters a complex case with perplexing or convoluted facts in dispute (perhaps involving a specialized area of expertise outside the Court’s previous legal or judicial experience), and/or especially rancorous attorney(s), and/or a multitude of adverse parties. These cases can demand an unreasonable amount of the Court’s time and resources, to the extent that the Court is then required to delay addressing other matters that need and deserve the Court’s attention. Again, a Special Master, who is not burdened with a caseload, can focus exclusively on these vexatious cases and move them toward trial (or settlement!) efficiently and expeditiously, without any need to draw on the resources of the Court.”

Shout out to Judge Federal (If for no other reason than to avoid that pesky plagiarism allegation).

A special master can be appointed pursuant to **Uniform Superior Court Rule 46**.

**Ga. R. Super. Ct.:** Rule 46 - Special Masters

1. **Appointment, Removal and Substitution.**
Unless a statute provides otherwise, any party can move for the appointment of a special master, or the court can make it’s own motion to appoint a master.

The duties or reasons for appointment can be as varied as the imagination of the Court or parties. For example, the Court might appoint someone:

1. to perform duties consented to by the parties;

**(b)** to address pretrial and post-trial matters that the court cannot efficiently, effectively or promptly address;

**(c)** to provide guidance, advice and information to the court on complex or specialized subjects, including, but not limited to, technology issues related to the discovery process;

**(d)** to monitor implementation of and compliance with orders of the court or, in appropriate cases, monitoring implementation of settlement agreements;

**(e)** to investigate and report to the court on matters identified by the court;

**(f)** to conduct an accounting as instructed by the court and to report upon the results of the same;

**(g)** upon a showing of good cause, to attend and supervise depositions conducted outside of the jurisdiction; and

**(h)** to hold trial proceedings and make or recommend findings of fact on issues to be decided by the court without a jury if appointment is warranted by

**(i)** some exceptional condition, or

**(ii)** the need to perform an accounting, to resolve a difficult computation of damages or if the matter involves issues for which a special substantive competence would be beneficial.

**Qualifications for a Special Master**

**(2)** A master must not have a *relationship* to the parties, counsel, action, or court that would require disqualification of a judge under applicable standards, unless the parties consent with the court's approval to appointment of a particular person after disclosure of all potential grounds for disqualification.

**(3)** In appointing a master, the court should consider the *fairness of imposing the likely expenses* on the parties and should protect against unreasonable expense and delay,

-taking into account the burdens and the benefits such an appointment would produce.

The appointment of a special master shall not deprive any party of access to the courts or the civil justice system.

**(4)** A special master may be removed or substituted by order of the court, upon motion of a party or *sua sponte*.

How does the process start after the motion?

1. Order Appointing Master.
**(1)** Notice. The court must give the parties notice and an opportunity to be heard before appointing a master.

(Even where parties object – or if one party objects – the trial court can appoint a special master. *Nationstar Mortgage, LLC v. Brunt*, 330 Ga.App. 202, 203 (2014))

**(2)** Contents. The order appointing a master must direct the master to proceed with all reasonable diligence and must state:

**(a)** the master's duties, including any investigative or enforcement duties, and any specific limits on the master's authority;

**(b)** the circumstances, if any, in which the master may communicate *ex parte* with the court or a party;

**(c)** the nature of the materials to be preserved and filed as the record of the master's activities;

**(d)** the time limits, method of filing the record, other procedures, and standards for reviewing the master's orders, findings, and recommendations; and

**(e)** the basis, terms, and procedure for fixing the master's compensation.

**(3) Entry of Order of Appointment.**

The court may enter the order appointing a master only after the master has filed an affidavit:

**Special Master’s Affidavit**

**(i)** disclosing whether there is any ground for disqualification and, if a ground for disqualification is disclosed, after the parties have consented with the court's approval to waive the disqualification; and

**(ii)** certifying that the master shall discharge the master's duties as required by law and pursuant to the court's instructions without favor to, or prejudice against, any party.

**(4) Amendment.**

The order appointing a master may be amended at any time after notice to the parties and an opportunity to be heard.

**(C) Master's Authority.**

Unless the appointing order expressly directs otherwise, a master has authority to regulate all proceedings and take all appropriate measures to perform fairly and efficiently all assigned duties.

Unless otherwise indicated in the court's order of appointment, the master shall have the power to take evidence, to hear motions and to pass on questions of law and fact within the scope of the referral order. The master may by order impose upon a party any noncontempt sanction provided by OCGA §§ 9-11-37 and 9-11-45, and may recommend to the court a contempt sanction against a party and any sanction against a nonparty.

**(D) Evidentiary Hearings**.

Unless the appointing order expressly directs otherwise, a master conducting an evidentiary hearing may exercise the power of the appointing court to compel, take, and record evidence.

**(E) Master's Orders.**

A master who makes an order must promptly serve a copy on each party.

**(F) Master's Reports.**

Unless otherwise indicated in the appointment order, a master must report to the court:

1. all motions submitted by the parties;

**(2)** all rulings made on all issues presented and all conclusions of law and findings of fact;

**(3)** all evidence offered by the parties and all rulings as to the admissibility of such evidence; and

**(4)** such other matters as the master may deem appropriate.
The master must file the report and promptly serve a copy of the report on each party, unless the court directs otherwise.

**(G) Action on Master's Order, Report, or Recommendations.**

**(1) Action.**

In acting on a master's order, report, or recommendations, the court must afford the parties an opportunity to be heard and to object to any portion thereof. The court may receive evidence, and may adopt or affirm, modify, reject or reverse in whole or in part, or resubmit all or some issues to the master with instructions.

**(2) Time To Object or Move.**

A party may file a motion to reject or to modify the master's order, report, or recommendations within 20 days from the date on which the master's order, report, or recommendations are served, unless the court sets a different time.

(Not giving the required amount of time for the parties to object will result in reversal on appeal. *McBride v. Kelly*, 359 Ga.App. 437 (2021))

The master's order, report, or recommendations shall be deemed received three days after mailing by United States mail or on the same day if transmitted electronically or by hand- delivery. In the absence of a motion to reject or modify an order, report or recommendations within the time provided, the order, report or recommendations shall have the force and effect of an order of the court.

(3)**Fact Findings.**

The court must decide de novo all objections to findings of fact made or recommended by a master, unless the parties stipulate with the court's consent that:

**(a)** the master's findings will be reviewed for clear error, or

**(b)** the findings of a master appointed under subsections (A) (1) (a) or (b) will be final.

**(4) Legal Conclusions.**

The court must decide de novo all objections to conclusions of law made or recommended by a master.

**(5) Procedural Matters.**

Unless the order of appointment establishes a different standard of review, the court may set aside a master's ruling on a procedural matter only for an abuse of discretion.

**(H) Compensation.**

**(1) Fixing Compensation.**

The court shall fix the master's compensation on the basis and terms stated in the order of appointment, but the court may set a new basis and terms after notice and an opportunity to be heard.

**(2) Payment.**

The compensation fixed must be paid either:

**(a)** by a party or parties; or

**(b)** from a fund or subject matter of the action within the court's control.

**(3) Allocation.**

The court must allocate payment of the master's compensation among the parties after considering:

(a)the nature and amount of the controversy,

(b)the means of the parties, and

(c)the extent to which any party is more responsible than other parties for the reference to a master.

An interim allocation may be amended to reflect a decision on the merits.

**Statutory Special Masters**

# There are some additional statutory provisions for special Masters in specific situations. For example, O.C.G.A. §22-2-103 provides for the appointment of special masters for eminent domain cases. O.C.G.A. § 23-3-43 allows for an appointment in *qui timet* actions (whatever the heck those are).

Just to recap, Wade, Special Masters really are special!

They can be appointed for any number of reasons to assist the court.

Special considerations should include:

1. The parties’ ability to pay;
2. Time constraints;
3. Any potential conflicts.

The Court should always give the parties notice that it is considering appointment of a special master and allow them to weigh in.

Special masters must submit an affidavit (kind of in lieu of being sworn in).

Thanks folks! That concludes another episode of The Good Judge-ment Podcast.

Don’t forget that you can always reach out to us at goodjudgepod@gmail.com .

You can also find our show notes on this and other episodes at goodjudgepod.com.

And now for the moment you’ve all been waiting for…

**MUSIC TRIVIA!**

*Previously, we had a music trivia section dealing with One Hit Wonders of the 1980’s. We had another session dealing with One Hit Wonders from both the 1980’s and 1990’s. Let’s take another look at One Hit Wonders – but this time from the early 2000’s. We do want to be fair to our younger listeners after all.*

*In another ear worm that will probably be with me for the rest of the day, a group of young men put out the song, “Who Let the Dogs Out?” Do you remember the name of the band? [Answer – Baha Men].*

*There was a 2000’s classic that was all about a young man’s – um – “noticing” his friend’s mom. The song was “Stacy’s Mom.” I will not sing it for you here, but I bet some of you are humming the tune right now – Stacy’s mom has got it going on…..” Anywho… In a multiple choice, who sang “Stacy’s Mom?” Was it a) The All-American Rejects; B) Fountains of Wayne; or c) Weezer? Give up? [Answer – “b” Fountains of Wayne]*

*How about another 2000’s one hit wonder? Remember the song, “Chasing Cars?” Man, the 2000’s were filled with emotional songs jam packed with metaphors. Anyway, I am going to give you another multiple choice answer option here. The band that sang “Chasing Cars” - was it a) Snow Patrol; b) Train; or c) The Click Five? Give up on this one? [Answer – Snow Patrol]*

*I lied – you actually need one more trivia question before we go. Ok, this song features the line, “They’re trying to catch me riding dirty…” but the song is actually entitled “Riding.” Weird Al Yankovic parodied the song with his own tune called “White and Nerdy.” So who sang, “Riding?” Want a multiple choice option? Ok, here are your three choices. A) Gnarls Barkley; b) Afroman; or c) Chamillionaire? Give up yet? I know it is not Afroman because he sang that song, “When I got High” so he couldn’t be a one hit wonder if he had that one. The answer (drum roll please…) [Answer – Chamillionaire]*

*That’s all for music trivia today – have a great day filled with even more useless information!*