

**SUPREME COURT OF PENNSYLVANIA
CIVIL PROCEDURAL RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

**Proposed Amendment of Pa.R.C.P. Nos. 216, 227.1, 234.6,
1558, 1559, 1565, 1569, 1571, 1572, 1573, and 1574**

The Civil Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rules 216, 227.1, 234.6, 1558, 1559, 1565, 1569, 1571, 1572, 1573, and 1574 for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They will neither constitute a part of the rules nor be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **September 24, 2021**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Civil Procedural Rules Committee,

John J. Hare
Chair

PUBLICATION REPORT

Pursuant to multiple requests, the Civil Procedural Rules Committee is considering proposing amendments of the Rules of Civil Procedure that replace the terms “master” and “special master” with “hearing officer.” They include Pa.R.C.P. Nos. 216, 227.1, 234.6, 1558, 1559, 1565, 1569, 1571, 1572, 1573, and 1574.

The purpose of the proposed amendments is to two-fold. First, while the term “master” has traditionally identified a quasi-judicial officer and is considered neutral in legal proceedings, a pejorative connotation has been ascribed to the term in modern parlance outside of court. Second, the term has been either already replaced or proposed to be replaced in other bodies of rules. See 47 Pa.B. 2313 (April, 22, 2017) (amendments to the Rules of Juvenile Court Procedure) and 51 Pa.B. 1006 (February 27, 2021) (proposed amendments to the Rules of Civil Procedure Governing Domestic Relations proceedings). In addition, the Committee has observed that a number of judicial districts have also changed this terminology in their local rules.

The Committee invites all comments, objections, concerns, and suggestions regarding this proposed rulemaking.

Rule 216. Grounds for Continuance.

([A]a) * * *

(1) * * *

(2) * * *

(3) * * *

([a]i) * * *

([b]ii) * * *

([c]iii) * * *

(4) * * *

(5) The scheduling of counsel to appear at any proceeding under the Pennsylvania Rules of Disciplinary Enforcement, whether:

([a]i) as counsel for a respondent-attorney before a hearing committee, **[special master]** hearing officer, the Disciplinary Board or the Supreme Court;

([b]ii) as a **[special master]** hearing officer or member of a hearing committee; or

([c]iii) as a member of the Disciplinary Board;

(6) * * *

([a]i) * * *

([b]ii) * * *

([B]b) * * *

([C]c) * * *

([D]d) No continuance shall be granted due to the absence from court of a witness duly subpoenaed, unless:

(1) Such witness will be absent because of facts arising subsequent to the service of the subpoena and which would be a proper ground for continuance under the provisions of Rule 216(**[A]a**); or

(2) * * *

(3) The witness, having attended at court has departed without leave, and an application for attachment is made promptly after the discovery of the absence of such witness; or the court is satisfied that the witness has left court for reasons which would be a proper ground for continuance under Rule 216(**[A]a**).

(**[E]e**) * * *

(**[F]f**) Rule 216(**[B)-(E)](b)-(e)** and Rule 217 shall not be applicable to a continuance granted for any of the reasons set forth in Rule 216(**[A]a**)(5) or (6).

Rule 227.1. Post-Trial Relief.

(a) * * *

Note: * * *

The following rules provide for the filing of exceptions, e.g., Equity Rule 1534 (exceptions to a fiduciary's account), Partition Rule 1569 (exceptions to a **[master] hearing officer's** report) and Divorce Rule 1920.55-2 (exceptions to a **[master] hearing officer's** report), Support Rule 1910.12(e) (exceptions to a hearing officer's report) and Execution Rule 3136(d) (exceptions to sheriff's schedule of proposed distribution).

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EXPLANATORY COMMENT--1983

* * *

The term "exceptions" is used in the rules in contexts other than post-trial practice. No amendment is made to rules using the term in such other contexts. Thus under Rule 227, a party need not take "exception" to any ruling of the trial judge. A party must still file "exceptions" to an auditor's report under Rule 1530, a **[master] hearing officer's** report under Partition Rule 1569, a hearing officer's report under Support Rule 1910.12, a **[master] hearing officer's** report under Divorce Rule 1920.55 and a schedule of distribution under Execution Rule 3136.

* * *

Rule 234.6. Form of Subpoena.

A subpoena issued pursuant to Rule 234.1 shall be substantially in the following form:

Commonwealth of Pennsylvania
County of _____

(Caption)

SUBPOENA TO ATTEND AND TESTIFY

* * *

Note: This form of subpoena shall be used whenever a subpoena is issuable under Rule 234.1, including hearings in connection with depositions and before arbitrators, **[masters]** **hearing officers**, commissioners, etc.

To require the production of documents or things in addition to testimony, complete paragraph 2.

* * *

Rule 1558. Preliminary Conference. Appointment of [Master] Hearing Officer.

(a) The court, after the entry of the order directing partition, shall direct the parties or their attorneys to appear for a preliminary conference to consider

- (1) whether the parties can agree upon a plan of partition or sale;
- (2) the simplification of the issues;
- (3) whether any issues or matters relating to the carrying out of the order of partition shall be referred to a **[master] hearing officer**; and
- (4) such other matters as may aid in the disposition of the action.

(b) The court, at any time after the preliminary conference, may appoint a **[master] hearing officer** to hear the entire matter or to conduct any sale, or to act upon only specified issues or matters relating to the carrying out of the order of partition.

Rule 1559. [Master] Hearing Officer. Hearing.

A **[master] hearing officer** who is appointed by the court shall make such examinations and hold such hearings as may be necessary, giving reasonable notice thereof. The **[master] hearing officer** may employ appraisers and, with the authorization of the court, such other experts as are necessary to enable the **[master] hearing officer** to perform **[his or her] the** duties **of the appointment**.

Rule 1565. Retention of Undivided Interests. Election. Parties not Appearing.

(a) The court shall permit the shares of any two or more co-tenants to remain undivided between them if they so elect by writing filed within such time as the court or **[master] hearing officer** shall direct.

(b) * * *

Rule 1569. [Master] Hearing Officer's Report. Exceptions.

(a) A **[master] hearing officer** who is appointed by the court shall file a report with respect to the matters submitted. The report shall follow the form of decision in Rule 1570, insofar as the scope of the reference to the **[master] hearing officer** permits.

(b) The **[master] hearing officer** shall give all persons in interest written notice of the date on which **[he or she] the hearing officer** intends to file the report and proposed order and shall specify an address within the county where they may be examined. The **[master] hearing officer** may change the report and proposed order as **[he or she] the hearing officer** deems proper before filing them, but if any changes are made written notice thereof shall be given to all parties.

(c) Within ten days after notice of the filing of the report exceptions may be filed by any party to rulings on evidence, to findings of fact, to conclusions of law and to the proposed order. The court may, with or without taking testimony, remand the report, or enter a decision in accordance with Rule 1570 which may incorporate by reference the findings and conclusions of the **[master] hearing officer** in whole or in part.

Rule 1571. Trustees to Satisfy Liens and Charges.

(a) The court, upon motion of any party or person in interest, or upon recommendation of the **[master] hearing officer**, may appoint a trustee to receive payment of

(1) * * *

(2) * * *

(3) * * *

(b) * * *

Rule 1572. Sale not Confined to Parties.

(a) * * *

(b) * * *

(c) * * *

(d) If the court directs a **[master] hearing officer** to conduct the sale, the **[master] hearing officer** before accepting payment for the property shall file a bond in double the amount of the payment or in such lesser amount as shall be fixed by the court.

Rule 1573. Return of Sale and Schedule of Distribution.

(a) Where the sale has been conducted by a **[master] hearing officer**, the **[master] hearing officer** shall promptly file with the prothonotary a return of sale together with a proposed order which shall

(1) confirm the sale;

(2) authorize the **[master] hearing officer** to execute and deliver to the purchaser all necessary deeds and other instruments of title;

(3) contain appropriate provisions for the protection of life tenants, unborn and unascertained remaindermen, persons whose whereabouts are unknown, or other persons in interest and for the release or discharge of such interests;

(4) direct distribution of the proceeds to the persons or parties entitled;
and

(5) provide for the payment of costs.

(b) The **[master] hearing officer** shall give all persons in interest written notice of the date on which **[he or she] the hearing officer** intends to file the return of sale and proposed order and shall specify an address within the county where they may be examined. The **[master] hearing officer** may change the return of sale and proposed order as **[he or she] the hearing officer** deems proper before filing them, but if any changes are made written notice thereof shall be given to all parties.

(c) * * *

Rule 1574. Costs and Counsel Fees.

Costs shall be paid by the parties in proportion to their interests in the property. The compensation of appraisers, the **[master] hearing officer**'s fee and compensation of experts authorized by the court shall be taxed as part of the costs. Reasonable counsel fees may be charged against the property or fund resulting therefrom, and apportioned among the parties and their counsel in such amount and manner as the court shall deem equitable.