

SPECIAL MASTER
PENDENTE LITE HEARINGS

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Prepared by
John A. W. Bratcher, Clerk and Master
Chancery Court, Rutherford County
February 17, 2009

RULE 53

MASTERS

53.01. Appointment and Compensation. — The court in which any action is pending may appoint a Special Master therein. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct. The master shall not retain the report as security for compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

53.02. Powers. — The order of reference to the master may specify or limit the master's powers and may direct the master to report only upon particular issues or to do or perform particular acts or to receive and report evidence only, and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him or her and to do all acts and take all measures necessary or proper for the efficient performance of the duties under the order. The master may require the production before him or her of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. The master may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may personally examine them and call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Tennessee Rule of Evidence 103. [As amended by order entered January 26, 1999, effective July 1, 1999.]

53.03. Proceedings. — (1) Meetings. When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within twenty (20) days after the date of the order of reference and shall notify in writing the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make a report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in his or her discretion, may adjourn the proceedings to a future day, giving notice in writing to the absent party of the adjournment.

(2) **Witnesses.** The master or the parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Rule 45. If without adequate excuse a witness fails to appear or give evidence, the witness may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45.

(3) **Statement of Accounts.** When matters of accounting are in issue before the master, the master may prescribe the form in which the accounts shall be submitted and in a proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of the 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 or upon written interrogatories or in such other manner as the master directs.

53.04. Report. — (1) Contents and Filing. The master shall prepare a report upon the matters submitted by the order of reference and, if required to make findings of fact and conclusions of law, the master shall set them forth in the report. The master shall file the report with the clerk of the court and, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

(2) **In Nonjury Actions.** In an action to be tried without a jury the court shall act upon the report of the master. Within ten (10) days after being served with notice of the filing

of the report, any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6.04. The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(3) **In Jury Actions.** In an action to be tried by a jury the master may or may not be directed to report the evidence. The master findings upon the issues submitted to him are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report. The parties may submit additional proof and may cross-examine the master upon his or her findings.

(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; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(5) **Draft Report.** Before filing a report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

53.05. Application to References to Clerks and Masters. — The procedures outlined in this rule shall apply to Clerks and Masters of the Chancery Courts as well as to Special Masters appointed pursuant to Rule 53.01.

RULE 12.

DIVORCE, PENDENTE LITE HEARINGS, AND POST- DIVORCE MATTERS

12.01 PENDENTE LITE HEARINGS

(A) When a divorce action is filed and Pendente Lite hearings are sought, counsel initially shall endeavor to utilize their best efforts to resolve issues pending a final hearing. When such is not possible, counsel shall file with the Court a motion requesting the Court to conduct a Pendente Lite hearing. Where it appears a hearing is necessary, the Court will appoint a Special Master for the purpose of conducting the Pendente Lite hearing, or, at the option of the Court, the Court may schedule the hearing without appointing a Special Master. When Pendente Lite hearings are scheduled, counsel shall endeavor to present his or her entire case within two hours or less, such that each side will be allowed a maximum of sixty minutes for opening, presentation of witnesses, cross-examination of adverse witnesses, and closing arguments. As stated below, counsel shall present written statements in accordance with Appendix D to these Rules.

(B) Appeals from the decision of the Master will be conducted upon the record of the testimony presented before the Special Master and upon arguments of counsel.

IN THE CHANCERY COURT FOR RUTHERFORD COUNTY, TENNESSEE
AT MURFREESBORO

_____,'

PLAINTIFF,

VS.

CASE NO. _____

_____,'

DEFENDANT.

ORDER APPOINTING SPECIAL MASTER

This cause came on to be considered by the Court, *sua sponte*, upon consideration of the fact that a party in this cause has sought an interim order and upon consideration of the Court if the needs of the parties for an early hearing and recognizing the congested docket of the Court, and it appearing proper

IT IS HEREBY ORDERED that reference is hereby made to the Honorable JOHN A. W. BRATCHER, Clerk and Master for Rutherford County, a member of the Rutherford/Cannon County Bar Association, and Mr. Bratcher is hereby appointed Special Master in accordance with the provisions of Rule 53 of the Tennessee Rules of Civil Procedure. The Special Master shall hear all interim issues previously filed in this cause to a conclusion and shall render his report as provided in Rule 53.04. In matters involving children, the Clerk and Master shall issue a temporary parenting plan pursuant to T. C. A. §36-6-403, which plan shall be effective from the date of the hearing as an order of the Court. Objections to the Report of the Special Master may be made to the Court on the record upon argument of counsel for the parties on any motion day in accordance with the Local Rules for the Sixteenth Judicial District. Hearings in this cause shall be set for _____.

ENTER this the _____ day of _____, 20__.

CHANCELLOR/JUDGE

CERTIFICATE OF SERVICE

I hereby swear or affirm that a true and exact copy of the foregoing **ORDER APPOINTING SPECIAL MASTER** has been mailed to the following:

This the _____ day of _____, 20__.

DEPUTY CLERK AND MASTER

IN THE CHANCERY COURT FOR RUTHERFORD COUNTY, TENNESSEE
AT MURFREESBORO

_____,'

PLAINTIFF,

VS.

CASE NO. _____

_____,'

DEFENDANT.

ORDER APPOINTING SPECIAL MASTER

This cause came on to be considered by the Court, *sua sponte*, upon consideration of the fact that a party in this cause has sought an interim order and upon consideration of the Court if the needs of the parties for an early hearing and recognizing the congested docket of the Court, and it appearing proper

IT IS HEREBY ORDERED that reference is hereby made to the Honorable **JOHN A. W. BRATCHER**, Clerk and Master for Rutherford County, a member of the Rutherford/Cannon County Bar Association, and Mr. Bratcher is hereby appointed Special Master in accordance with the provisions of Rule 53 of the Tennessee Rules of Civil Procedure. The Special Master shall hear all interim issues previously filed in this cause to a conclusion and shall render his report as provided in Rule 53.04. In matters involving children, the Clerk and Master shall issue a temporary parenting plan pursuant to T. C. A. §36-6-403, which plan shall be effective from the date of the hearing as an Order of the Court. **The Temporary Restraining Order previously issued in this matter**

shall remain in effect pending further orders of this Court. Objections to the Report of the Special Master may be made to the Court on the record upon argument of counsel for the parties on any motion day in accordance with the Local Rules for the

Sixteenth Judicial District. Hearings in this cause shall be set for _____.

ENTER this the _____ day of _____, 20____.

CHANCELLOR/JUDGE

CERTIFICATE OF SERVICE

I hereby swear or affirm that a true and exact copy of the foregoing **ORDER APPOINTING SPECIAL MASTER** has been mailed to the following:

This the _____ day of _____, 20____.

DEPUTY CLERK AND MASTER

IN THE _____ COURT FOR _____ COUNTY,
TENNESSEE

AT _____

_____,

PLAINTIFF,

VS.

CASE NO. _____

_____,

DEFENDANT.

STATEMENT IN COMPLIANCE WITH RULE 12.01

Comes, now (Name of Party), the (Plaintiff/Defendant), who would show to the Court as follows:

1. He/she is employed at _____

located at _____.

His/her weekly gross income is \$ _____ and his/her net income per week is \$ _____.

If wages are paid hourly, the hourly wage is \$ _____ per hour. Sources of additional

income: _____.

1a. His/her spouse is employed at _____

located at _____.

The spouse has weekly gross income of \$ _____ and net income per week of

\$ _____. If wages are paid hourly, the hourly wage is \$ _____ per hour.

Sources of additional income: _____

c. Bank Accounts:

<u>Bank</u>	<u>Balance</u>	<u>Type of Account</u>

d. Stocks, Bonds & Other Intangibles:

<u>Shares</u>	<u>Company</u>	<u>Total Value</u>

e. Other property of significant value, e.g., riding mower, tools, equipment, insurance, boat, motorcycle, retirement plans:

<u>Item</u>	<u>Fair Market Value</u>	<u>Lienholder</u>	<u>Balance</u>	<u>Payments</u>

f. Personal items owned by the spouse other than as listed above:

<u>Item</u>	<u>Fair Market Value</u>	<u>Lienholder</u>	<u>Balance</u>	<u>Payments</u>
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4. He/she owes the following debts:

<u>Creditor</u>	<u>Balance Owed</u>	<u>Monthly Payments</u>	<u>Security</u>
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4a. The spouse owes the following debts:

Creditor Balance Owed Monthly Payments Security

5. He/she submits the following as an estimate of the necessary weekly or monthly

expenses, as indicated, for support of him/herself (and children where applicable):

ITEM	MONTHLY EXPENSE
Rent/House Payment	\$
Utilities (gas, electricity, water)	\$
Telephone	\$
School Lunches (Child(ren))	\$
Work Lunches	\$
Automobile Payments	\$
Tranportation to & from work	\$
Clothing Replacement (self)	\$
Clothing Replacement (Child(ren))	\$
Laundry & Dry Cleaning	\$
Child Care While Working	\$
Haircuts and Beauty Shop	\$
Insurance	\$
Medical & Dental Expense	\$
Drug & Medicines	\$
Furniture Payments	\$
Cigarettes	\$
Groceries	\$
Miscellaneous Expenses	\$
TOTAL EXPENSES	\$

Under penalty of perjury, I make oath that the information set forth above is true and correct to the best of my knowledge.

This the _____ day of _____,
_____.

Plaintiff/Defendant

STATE OF TENNESSEE

COUNTY OF _____

Subscribed and sworn before me on this the _____ day of
_____, _____.

NOTARY PUBLIC

My commission expires: _____

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been furnished to _____, (attorney for the

Plaintiff/Defendant) by first class mail on this the _____ day of
_____.

IN THE _____ COURT FOR RUTHERFORD COUNTY, TENNESSEE

AT MURFREESBORO

Plaintiff,

VS.

CASE NO. _____

Defendant.

NOTICE TO RESET PENDENTE LITE HEARING

Take notice that the pendente lite hearing in the above-styled cause has been re-scheduled to be heard at _____ a.m./p.m. on the _____ day of _____, _____, before the Honorable John A. W. Bratcher, Special Master, in Room _____ in the Rutherford County Judicial Building, 20 Public Square North, Murfreesboro, Tennessee 37130.

This the _____ day of _____, _____.

ATTORNEY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOTICE TO RESET PENDENTE LITE HEARING has been mailed to

_____ on this the _____ day of

_____, _____.

ATTORNEY

IN THE _____ COURT FOR RUTHERFORD COUNTY, TENNESSEE

AT MURFREESBORO

Plaintiff,

v.

Case No. _____

Defendant.

WAIVER OF FILING A TRANSCRIPT

I, _____, attorney for _____ do hereby
waive the necessity of the Special Master filing a transcript in this matter. I understand that I may
provide a court reporter at my own expense.

Attorney for _____

I, _____, attorney for _____ do hereby
waive the necessity of the Special Master filing a transcript in this matter. I understand that I may
provide a court reporter at my own expense.

Attorney for _____

IN THE _____ COURT OF _____ COUNTY TENNESSEE

_____)	
Mother/Father)	
_____)	Docket No. _____
v.)	
_____)	<input type="checkbox"/> Proposed Plan by <input type="checkbox"/> Mother <input type="checkbox"/> Father
Father/Mother)	OR
)	<input type="checkbox"/> Agreed Plan

TEMPORARY PARENTING PLAN

This plan was presented to ordered by the Court on _____, 20____.

This parenting plan applies to the following children:

Name	Birthdate
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

RESIDENTIAL SHARING SCHEDULE: The mother father shall be responsible for the child(ren), except for the following days and times when the other parent shall be responsible for the child(ren):

From: _____ to _____
(Day/Time) (Day/Time)

every week every other week other: _____

and from: _____ to _____

(Day/Time)

(Day/Time)

[] every week [] every other week [] other: _____

DAY TO DAY DECISIONS: Each parent shall make decisions regarding the day-to-day care and control of each child while the child is residing with that parent. The parents shall otherwise confer with each other.

HOLIDAY and VACATION SCHEDULE DURING THE NEXT THREE MONTHS

TRANSPORTATION ARRANGEMENTS: Transportation arrangements for the child[ren], other than costs, between parents shall be as follows:

STANDARD PARENTING ORDERS: Pursuant to *Tennessee Code Annotated*, section 36-6-101(a) both parents are entitled to the following rights:

1. To unimpeded telephone conversations with the child at least twice each week at reasonable times and for a reasonable duration;
2. To send mail to the child which the other parent shall not open and will not censor;
3. To receive notice and relevant information as soon as practical (but within 24 hours) in the event of hospitalization, major illness, or death of the child;

4. To receive directly from the school, upon written request, which includes a current mailing address and upon payment of reasonable costs of duplicating, copies of the child's report cards, attendance records, names of teachers, class schedules, standardized test scores, and any other records customarily made available to parents;
5. Unless otherwise provided by law, the right to receive copies of the child's medical, health or other treatment records directly from the physician or health care provider who provided such treatment or health care upon written request which contains a current mailing address and upon payment of reasonable costs of duplication; provided, that no person who receives the mailing address of a parent as a result of this requirement shall provide such address to the other parent or a third person;
6. To be free of derogatory remarks made about such parent or such parent's family by the other parent to or in the presence of the child;
7. To be given at least forty-eight (48) hours notice, whenever possible, of all extra curricular activities, and the opportunity to participate or observe, including, but not limited to, the following:
 - (i) School activities;
 - (ii) Athletic activities;
 - (iii) Church activities; and
 - (iv) Other activities as to which parental participation or observation would be appropriate;
8. To receive from the other parent, in the event the other parent leaves the state with the minor child or children for more than two (2) days, an itinerary including telephone numbers for use in the event of an emergency; and
9. Access and participation in education, including the right of access to the minor child or children for lunch and other activities, on the same basis that is provided to all parents, provided the participation or access is reasonable and does not interfere with day-to-day operations or with the child's educational performance.

SUPPORT OF CHILDREN:

Father's gross monthly income is \$ _____

Mother's gross monthly income is \$ _____

1. The temporary child support order is as follows:

a. The mother father shall pay to the other parent as regular child

support the sum of \$ _____ weekly monthly twice per month

9 every two weeks. **The Child Support Worksheet shall be attached to this Order as an Exhibit.***

If this is a deviation from the Child Support Guidelines, explain why:

3. Payments shall begin on the _____ day of _____, 20____.

*Child Support Worksheet can be found on DHS website at

<http://www.state.tn.us/humanserv/is/incomeshares.htm> or at your local child support offices.

This support shall be paid:

directly to the other parent.

to the Central Child Support Receipting Unit, P. O. Box 305200, Nashville, Tennessee 37229, and sent to the other parent at: _____.

by direct deposit to the other parent at _____ Bank for deposit in account no. _____. A Wage Assignment Order is attached to this Parenting Plan.

other: _____.

The parents acknowledge that court approval must be obtained before child support can be reduced or modified.

HEALTH, DENTAL AND LIFE INSURANCE and UNCOVERED EXPENSES: These policies shall remain in effect during the duration of the divorce proceedings. The beneficiaries shall name the spouse and or child[ren] as beneficiaries of the policies. All uncovered medical, dental and _____ costs will be split between the parties.

MISCELLANEOUS: If a parent fails to comply with a provision of this plan or support order, the other parent's obligations under the plan or the support order are not affected. Failure to comply with a provision in the plan or support order may result in a finding of contempt.

* * * * *

Under penalty of perjury under the laws of the State of Tennessee, I declare this plan has been proposed in good faith and is in the best interest of the child(ren) and that the statements herein are true and correct.

[] Submitted by:

OR

[] Agreed to by:

[]Mother [] Mother's Attorney

Date and Place of Signature

[]Father [] Father's Attorney

Date and Place of Signature

It is so ORDERED this the _____ day of _____, _____.

Judge or Chancellor

IN THE _____ COURT FOR _____ COUNTY, TENNESSEE

_____,'

PLAINTIFF,

vs.

CASE NO. _____

_____,'

DEFENDANT.

MASTER'S REPORT FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on to be heard on the _____ day of _____, 200____, before the Honorable John A. W. Bratcher, Special Master, upon the Petition for relief pendente lite, and upon the testimony of the parties and witnesses, and the entire file in this cause, from all of which the following findings of fact and conclusions of law are entered:

1. That the (Petitioner)(Respondent), should have primary temporary custody of the parties' minor children, _____, age _____; and _____, age _____;

2. That the (Petitioner) (Respondent), _____, should pay \$ _____ per (week) (month) temporarily for the reasonable support of the minor children, commencing on _____, 20_____;

3. That payments of support for the minor children shall be made by the (Petitioner) (Respondent) (directly by) (check) (money order) (direct deposit) (through the Central Receiving Agency) to the (Petitioner) (Respondent);

4. That the (Petitioner) (Respondent), shall have sole possession of the parties' marital home pending the final resolution of this cause;

5. That the (Petitioner) (Respondent) should have co-parenting time with the minor and visitation with the children from _____

to _____ each _____, beginning the
_____ day of _____, 20_____. Such co-parenting time shall take
place at _____;

6. Further the [Petitioner] shall be responsible for the payment of the following bills pending
further hearings: _____
_____.

The (Respondent) shall be responsible for the payment of the following bills pending further hearings:

_____;

7. The (Petitioner) (Respondent) further shall pay to the (Respondent) (Petitioner) the sum of
\$ _____ as temporary spousal support pending further hearings in this cause, which payments will
be made (directly) (by direct deposit) beginning on the _____ day of _____, 20_____;

8. The parties have ten (10) days from receiving this Report to file an objection thereto,
pursuant to Rule 53 of the Tennessee Rules of Civil Procedure. Absent the filing of objection within
the time allowed by law, this Report will be affirmed.

Appeal will be heard on the record and argument of counsel only.

Entered this the _____ day of _____, 20_____.

JOHN A. W. BRATCHER, SPECIAL MASTER

Certificate of Service

I hereby affirm that a true and exact copy of the foregoing **MASTER'S REPORT** has been mailed to the following:

(NAMES AND ADDRESSES OF BOTH ATTORNEYS OR PARTIES TO WHOM THIS MASTER'S REPORT WILL BE MAILED)

This the _____ day of _____, 20_____.

DEPUTY CLERK

IN THE _____ COURT FOR RUTHERFORD COUNTY, TENNESSEE

AT MURFREESBORO

_____,'

PLAINTIFF,

VS.

CASE NO. _____

_____,'

DEFENDANT.

ORDER APPROVING MASTER'S REPORT

This cause came on to be considered upon the Report of the Special Master, the Court finding the ten (10) days has expired since the entry of the Master's Report, and noting that no objection thereto has been filed, and it appearing to the Court that the Report is proper in all respects, and should be confirmed

IT IS, THEREFORE, ORDERED that the Report of the Special Master is hereby adopted as the Order of the Court. Court costs and further matters are reserved.

Enter this the _____ day of _____ 20__.

HONORABLE

CERTIFICATE OF SERVICE

I hereby swear or affirm that a true and exact copy of the foregoing **ORDER** has been mailed to the following:

(NAMES AND ADDRESSES OF BOTH ATTORNEY'S OR PARTIES TO WHOM THIS MASTER'S REPORT WILL BE MAILED)

On this the _____ day of _____ 20__.

DEPUTY CLERK AND MASTER

HELPFUL PRACTICE TIPS TO LAWYERS REGARDING SPECIAL MASTER'S HEARINGS

1. SETTLE THE CASE IF YOU CAN.
2. As a matter of good practice and courtesy inform the Clerk and Master's Office (even if it is a Circuit Court Case) when you settle or continue a case before the morning of your hearing.
3. Be sure that the Order Appointing Special Master is lodged, signed, and entered.
4. Be sure that you have decided whether to have a court reporter or to proceed without one. If you proceed without a court reporter, be sure to that you have the Waiver of Filing a Transcript filed or ready to file when your case is called.
5. Have answer and counter-claim filed.
6. Have 12.01 from completed and filed. If you cannot comply with the two-day rule, have it with you when you come to court.
7. Don't bring the whole dog and pony show to the pendente lite hearing. The Special Master will limit you to two hours and your two best witnesses.
8. Get to the point in your direct and cross-examination. Don't waste your time.
9. Get your Special Master's Report done and in within five days. Do not worry about getting the other side's approval. You are the one who will look bad if the other side sits on it.
10. If your Special Master's Report is not lodged, signed and filed, you will not have a comprehensive order upon which to file contempt or modification motions.
11. Be sure to include the Special Master's Finding of Facts in the Special Master's Report. This will help you if there is an objection.
12. If you agree to continue a case, then file an agreed Notice to Reset.
13. If the Special Master, at the request of either party continues a case, then the party who asked for the continuance should file a Notice to Reset and send a copy with a certificate of service to the other side.
14. Notify the Docketing Clerk in Room 302, immediately when a matter is re-set in Court.
15. Docketing Clerk – Raechelle Wilson – direct line 615-217-0063.
16. Clerk and Master, John A. W. Bratcher hears all pre-divorce matters, with the exception of contempt matters requesting incarceration.
17. Only the attorney who sets a hearing may remove it from the docket.
18. Submit an Order Approving Master's Report with the Master's Report.
19. Lodge the Order Appointing Special Master simultaneously when filing the case, if a Pendente Lite Hearing will be scheduled.
20. Filing fee for Counter-claim is \$100.00.
21. If there are children involved, bring a blank Temporary Parenting Plan with you. The Temporary Parenting Plan will be signed by the Special Master and entered that day.