

HOUSE BILL NO. 322

INTRODUCED BY C. HINKLE, S. KERNS, J. SCHILLINGER, B. MITCHELL, J. HINKLE, B. LER, A. REGIER,
F. NAVE, R. MARSHALL, J. READ, T. MANZELLA, B. BROWN, B. PHALEN, N. DURAM

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO STANDING
MASTERS; REQUIRING STANDING ORDERS TO BE POSTED ON THE DISTRICT COURT'S OR THE
JUDICIAL BRANCH'S WEBSITE; ALLOWING PARTIES TO OBJECT TO A REFERENCE TO A STANDING
MASTER; REQUIRING HEARINGS IF REQUESTED; REQUIRING DISTRICT COURT REVIEW OF
STANDING MASTER FINDINGS OF FACT AND ~~RECOMMENDATIONS FOR DISPOSITION~~ CONCLUSIONS
OF LAW; ~~PROVIDING FOR DE NOVO REVIEW OF OBJECTIONS~~; PROVIDING QUALIFICATIONS FOR
STANDING MASTERS; ~~PROVIDING FOR AN APPOINTMENT PROCESS FOR STANDING MASTERS~~;
PROVIDING FOR DISQUALIFICATION AND REMOVAL OF STANDING MASTERS; CLARIFYING THAT
STANDING MASTERS ARE STATE EMPLOYEES; AND AMENDING SECTIONS 3-5-124, 3-5-125, 3-5-126,
AND 3-5-901, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-5-124, MCA, is amended to read:

"3-5-124. Standing masters -- reference -- powers. (1) A reference to a standing master must be
made at the judge's discretion or by standing order of the district court. All standing orders of reference under
this section must be posted in a conspicuous place on the district court's or the judicial branch's website.

(2) A party may object to a reference to a standing master within 20 days after the date the matter
was referred to the standing master but before the first meeting with the standing master. On objection, the
district court shall refer the matter to another standing master in the judicial district or return the matter to the
active docket of the district court.

(2)(3) (a) The order of reference to the standing master ~~may~~ must specify or limit the standing
master's powers and ~~may~~ must direct the standing master to present written findings of fact and ~~conclusions of~~
~~law upon recommendations for disposition~~ CONCLUSIONS OF LAW on particular issues for the consideration of the

1 district court. Subject to the specifications and limitations stated in the order, the standing master shall regulate
2 all proceedings in ~~every each~~ hearing before the standing master and implement measures necessary for the
3 efficient performance of the standing master's duties under the order.

4 (b) The standing master may:

5 (i) require the production of evidence ~~upon on~~ all matters embraced in the reference, including the
6 production of all books, papers, vouchers, documents, and writings that are applicable;

7 (ii) rule ~~upon on~~ the admissibility of evidence unless otherwise directed by the order of reference.

8 The standing master's rulings must be in accordance with Montana law and the Montana Rules of Evidence, as
9 applicable.;

10 (iii) put witnesses on oath and ~~examine them~~ permit their examination;

11 (iv) call the parties to the action and ~~examine them on~~ permit their examination under oath; and

12 (v) issue temporary orders that are subject to immediate review by the district court, ~~upon on~~
13 objection by a party to the action. ~~The district court may affirm, reverse, modify, or recommit the matter to the~~
14 ~~standing master with instructions.~~

15 (c) The standing master shall make a record of the evidence offered and excluded in the same
16 manner and subject to the same limitations as provided in the Montana Rules of Evidence for a court sitting
17 without a jury. Audio and video recordings are acceptable means of record so long as a master recording is
18 properly preserved and can be transcribed for district court and appellate review.

19 (4) A standing master shall apply all applicable laws and follow the applicable rules of the judicial
20 district in which the matter is filed."

21

22 **Section 2.** Section 3-5-125, MCA, is amended to read:

23 **"3-5-125. Standing masters -- proceedings -- meetings -- witnesses -- statements of account.**

24 (1) When a reference is made, the clerk shall immediately furnish the standing master with a copy of the order
25 of reference. Unless the order of reference otherwise provides, the standing master shall set a time and place
26 for the first meeting of the parties or their attorneys to be held within 20 days after ~~the date of the order of~~
27 ~~reference~~ THE EXPIRATION OF THE OBJECTION PERIOD IN 3-5-124(2) and shall notify the parties or their attorneys.

28 THE STANDING MASTER SHALL HAVE THE AUTHORITY TO ISSUE TEMPORARY ORDERS BEFORE THE EXPIRATION OF THE

1 OBJECTION PERIOD IN 3-5-124(2). The standing master shall proceed with all reasonable diligence throughout the
2 proceedings. Either party, on notice to the parties and standing master, may apply to the district court for an
3 order requiring the standing master to speed the proceedings and to make the report of its findings of fact and
4 recommendations for disposition CONCLUSIONS OF LAW. If a party fails to appear at the time and place appointed,
5 the standing master may proceed ex parte or, in the standing master's discretion, adjourn the proceedings to a
6 future day, giving notice to the absent party of the adjournment.

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

12 (3) When matters of accounting are in issue before the standing master, the standing master may
13 prescribe the form in which the accounts must be submitted and may require or receive in evidence a statement
14 by a certified public accountant who is called as a witness. ~~Upon~~On objection of a party to any of the items
15 submitted or ~~upon~~on a showing that the form of statement is insufficient, the standing master may require a
16 different form of statement to be furnished or the accounts or specific items to be proved by oral examination of
17 the accounting parties or ~~upon~~on written interrogatories or in ~~such~~any other manner as the standing master
18 directs."

19
20 **Section 3.** Section 3-5-126, MCA, is amended to read:

21 **"3-5-126. Standing masters -- findings of fact and ~~conclusions of law recommendations for~~**
22 **~~disposition -- orders~~ CONCLUSIONS OF LAW -- ORDER -- contents and filing -- review -- stipulations as to**
23 **findings.** (1) Subject to the order of reference, the standing master shall submit findings of fact and ~~conclusions~~
24 ~~of law recommendations for disposition~~ CONCLUSIONS OF LAW to the district court CLERK OF COURT, following a
25 hearing ~~upon~~on the matters submitted to the standing master by the order of reference. If a party requests a
26 hearing on a matter submitted to the standing master, the standing master shall hold a hearing. When a hearing
27 is not required, the standing master shall submit ~~an order upon recommendations for disposition~~ FINDINGS OF
28 FACT, CONCLUSIONS OF LAW, AND A PROPOSED ORDER to the district court CLERK OF COURT on the matters

1 submitted to the standing master by the order of reference. The standing master shall file the findings of fact
2 ~~and conclusions or order recommendations for disposition~~ CONCLUSIONS OF LAW OR ORDER with the clerk of the
3 court and promptly serve copies on all parties in accordance with applicable law. All contested proceedings
4 before the standing master must be audio or video recorded. The standing master shall, at the expense of the
5 district court, file a recording of the proceedings and of the evidence and the original exhibits. The record of the
6 proceedings before the standing master must be made available to the public to the same extent other records
7 of the district court are available to the public. The reasonable cost of the preparation of a duplicate of the
8 recording is the responsibility of the objecting party. The objecting party shall serve a copy of the duplicate
9 recording on adverse parties ~~at the objecting party's expense~~.

10 (2) Within 10 days after being served with notice of the filing of the findings of fact and ~~conclusions~~
11 ~~or order recommendations for disposition~~ CONCLUSIONS OF LAW OR ORDER, any party may file and serve written
12 specific objections ~~upon the other parties~~, request a hearing before the district court, or may apply to the district
13 court for an extension to serve. ~~The district court shall make a de novo determination of the specified findings of~~
14 ~~fact or recommendations for disposition to which an objection is made~~. Application to the court for action upon
15 the findings and conclusions or order and upon the filing of specific objections to the findings and conclusions
16 or order must be by motion and upon notice as prescribed in Rule 6(e) of the Montana Rules of Civil Procedure.
17 The district court, after a hearing, may shall either, AFTER A HEARING, MAY adopt the findings of fact and
18 ~~conclusions or order recommendations for disposition~~ and may ~~of~~ CONCLUSIONS OF LAW OR ORDER AND MAY
19 modify, reject in whole or in part, receive further evidence, or recommit the ~~findings and conclusions or order~~
20 matter to the standing master with instructions. ~~If a party requests a hearing, the district court shall hold a~~
21 ~~hearing. If a party seeks to admit further evidence and the request is denied, the party may make an offer~~
22 OF PROOF WITH AFFIDAVITS AND ADDITIONAL PROPOSED EXHIBITS.

23 (3) ~~The effect of a standing master's report is the same whether or not the parties have consented~~
24 ~~to the reference, but when~~ When the parties stipulate that a standing master's findings of fact are final, only
25 questions of law arising ~~upon~~ on the findings of fact and ~~conclusions recommendations for disposition~~
26 CONCLUSIONS OF LAW may be considered."

27
28 **NEW SECTION. Section 4. Appointment of standing masters -- qualifications -- disqualification.**

1 (1) A judicial district may appoint or reappoint one or more standing masters ~~for a term of 4 years~~ for its district
2 with the concurrence of a majority of the judges in the district.

3 (2) A standing master must be:

4 (a) admitted to practice law in Montana for at least 3 years prior to the date of appointment;

5 (b) a member of good standing in the state bar of Montana; AND

6 (c) determined by the appointing judicial district to be competent to perform the duties of the
7 office; and

8 ~~(d) — selected pursuant to the standards and procedures promulgated by the supreme court. These~~
9 ~~standards and procedures must contain provisions for public notice of all vacancies or proposed~~
10 ~~reappointments in standing master positions and for the establishment by a judicial district of a merit selection~~
11 ~~panel, composed of residents of the individual judicial districts, to assist the judicial district in identifying and~~
12 ~~recommending persons who are best qualified to fill the positions. These standards and procedures must~~
13 ~~provide for the participation of a merit selection panel in the reappointment of a standing master.~~

14 (3) THE JUDICIAL DISTRICT SHALL PROVIDE PUBLIC NOTICE OF ALL VACANCIES OR PROPOSED
15 REAPPOINTMENTS IN STANDING MASTER POSITIONS.

16 ~~(3)~~(4) A standing master shall take the oath required of judges and follow the Montana code of
17 judicial conduct.

18 ~~(4)~~(5) An appointed standing master is an employee of the district court under 3-5-901.

19 ~~(5)~~(6) A standing master ~~must be disqualified~~ IS SUBJECT TO DISQUALIFICATION from proceeding on a
20 matter on the same grounds as any other judicial officer. On disqualification of a standing master, the district
21 court shall either refer the matter to another standing master in the judicial district or move the case back to its
22 active docket for further proceedings.

23
24 NEW SECTION. Section 5. — Removal of standing master. A standing master may be removed
25 during the 4-year term for which the standing master was appointed for incompetence, misconduct, neglect of
26 duty, or physical or mental disability or if the judicial district terminates the office on determining that the
27 services performed by the standing master are no longer needed. Removal must be by a majority vote of all the
28 judges in the district. Before removal, the standing master must be given notice of the charges against the

1 ~~standing master and an opportunity to be heard.~~

2

3 **Section 5.** Section 3-5-901, MCA, is amended to read:

4 **"3-5-901. State assumption of district court expenses.** (1) There is a state-funded district court
5 program under the judicial branch. Under this program, the office of court administrator shall fund all district
6 court costs, except as provided in subsection (3). These costs include but are not limited to the following:

7 (a) salaries and benefits for:

8 (i) district court judges;

9 (ii) law clerks;

10 (iii) court reporters, as provided in 3-5-601;

11 (iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth
12 court; ~~and~~

13 ~~(v) standing masters; and~~

14 ~~(vi) other employees of the district court;~~

15 (b) in criminal cases:

16 (i) fees for transcripts of proceedings, as provided in 3-5-604;

17 (ii) witness fees and necessary expenses, as provided in 46-15-116;

18 (iii) juror fees and necessary expenses;

19 (iv) for a psychiatric examination under 46-14-202, the cost of the examination and other
20 associated expenses, as provided in 46-14-202(4); and

21 (v) for commitment under 46-14-221, the cost of transporting the defendant to the custody of the
22 director of the department of public health and human services to be placed in an appropriate facility of the
23 department of public health and human services and of transporting the defendant back for any proceedings, as
24 provided in 46-14-221(5);

25 (c) except as provided in 47-1-119, the district court expenses in all postconviction proceedings
26 held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter
27 22, and appeals from those proceedings;

28 (d) except as provided in 47-1-119, the following expenses incurred by the state in federal habeas

1 corpus cases that challenge the validity of a conviction or of a sentence:

2 (i) transcript fees;

3 (ii) witness fees; and

4 (iii) expenses for psychiatric examinations;

5 (e) except as provided in 47-1-119, the following expenses incurred by the state in a proceeding

6 held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth,

7 temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent custody:

8 (i) transcript fees;

9 (ii) witness fees;

10 (iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian,
11 or other person having physical or legal custody of the youth except for expenses for services that a person is
12 eligible to receive under a public program that provides medical or psychological evaluation;

13 (iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth;

14 and

15 (v) expenses associated with court-ordered alternative dispute resolution;

16 (f) except as provided in 47-1-119, costs of juror and witness fees and witness expenses before a
17 grand jury;

18 (g) costs of the court-sanctioned educational program concerning the effects of dissolution of
19 marriage on children, as required in 40-4-226, and expenses of education when ordered for the investigation
20 and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);

21 (h) except as provided in 47-1-119, all district court expenses associated with civil jury trials if
22 similar expenses were paid out of the district court fund or the county general fund in any previous year;

23 (i) all other costs associated with the operation and maintenance of the district court, including
24 contract costs for court reporters who are independent contractors; and

25 (j) costs associated with the operation and maintenance of the youth court and youth court
26 division operations pursuant to 41-5-111 and subsection (1)(a) of this section, except for those costs paid by
27 other entities identified in Title 41, chapter 5.

28 (2) If a cost is not paid directly by the office of court administrator, the county shall pay the cost

1 and the office of court administrator shall reimburse the county within 30 days of receipt of a claim.

2 (3) For the purposes of subsection (1), district court costs paid by the office of court administrator

3 do not include:

4 (a) costs for clerks of district court and employees and expenses of the offices of the clerks of
5 district court;

6 (b) costs of providing and maintaining district court office space; or

7 (c) charges incurred against a county by virtue of any provision of Title 7 or 46."

8
9 **NEW SECTION. Section 6. Codification instruction.** [~~Sections SECTION 4 and 5~~] **are** is intended to
10 be codified as an integral part of Title 3, chapter 5, part 1, and the provisions of Title 3, chapter 5, part 1, apply
11 to [~~sections SECTION 4 and 5~~].

12 - END -