

# ANNEXURE C

## ~~Annexure E~~ Proposed Federal Court Rules Order 72A (Discovery Masters)

### Rule 1 Appointment

#### **(1) Scope.**

A court may appoint a master to manage pretrial discovery under Orders 15 to 18 of Federal Court Rules, provided that:

(A) all parties consent in writing to the appointment of such a master; or

(B) the court in its discretion finds that appointment is warranted by some exceptional condition, such as the size or complexity of the litigation.

#### **(2) Disqualification.**

A master must not have a relationship to the parties, their legal advisers or the court that would require disqualification of a judge in the same circumstances, unless the parties, with the court's approval, consent to the appointment after the master discloses any potential grounds for disqualification.

#### **(3) Possible Expense or Delay.**

In appointing a master, the court must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay.

### Rule 2 Order Appointing a Master.

#### **(1) Notice.**

Before appointing a master, the court must give the parties notice and an opportunity to be heard. Any party may suggest candidates for appointment.

#### **(2) Contents.**

The appointing order must direct the master to proceed with all reasonable diligence and must state:

(A) the master's duties, including any investigation or enforcement duties, and any limits on the master's authority under Rule 3 of this Order;

(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 under Rule 7 of this Order.

**(3) Issuing.**

The court may issue the order only after:

(A) the master files an affidavit disclosing whether there is any ground for disqualification; and

(B) if a ground is disclosed, the parties, with the court's approval, waive the disqualification.

**(4) Amending.**

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

Rule 3 Master's Authority.

**(1) In General.**

Unless the appointing order directs otherwise, a master may:

(A) regulate all discovery proceedings and disputes;

(B) take all appropriate measures to perform the assigned duties fairly and efficiently; and

(C) if conducting an evidentiary hearing, exercise the appointing court's power to compel, take, and record evidence.

Rule 4 Master's Orders.

A master who issues an order must file it and promptly serve a copy on each party. The registry must enter the order on the case file.

#### Rule 5 Master's Reports.

A master must report to the court as required by the appointing order. The master must file the report and promptly serve a copy on each party, unless the court orders otherwise.

#### Rule 6 Action on the Master's Order, Report, or Recommendations.

##### **(1) Opportunity for a Hearing; Action in General.**

In acting on a master's order, report, or recommendations, the court must give the parties notice and an opportunity to be heard; may receive evidence; and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions.

##### **(2) Time to Object or Move to Adopt or Modify.**

A party may file objections to — or a motion to adopt or modify — the master's order, report, or recommendations no later than 7 days after a copy is served, unless the court sets a different time.

##### **(3) Reviewing Factual Findings.**

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

(A) the findings will be reviewed for clear error; or

(B) the findings of a master appointed will be final.

##### **(4) Reviewing Legal Conclusions.**

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

##### **(5) Reviewing Procedural Matters.**

Unless the appointing order 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.

Rule 7 Compensation.

**(1) Fixing Compensation.**

Before or after judgment, the court must fix the master's compensation on the basis and terms stated in the appointing order, but the court may set a new basis and terms after giving notice and an opportunity to be heard.

**(2) Payment.**

The compensation 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) Allocating Payment.**

The court must allocate payment among the parties after considering the nature and amount of the controversy, the parties' means, and 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.

