

**IN THE SUPREME COURT OF FLORIDA**

**IN RE: AMENDMENTS TO THE FLORIDA  
RULES OF CIVIL PROCEDURE**

**CASE NO.: SC15-**

**AMENDMENTS TO RULES 1.490 AND 1.491**

Kevin B. Cook, Chair, Civil Procedure Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this out-of-cycle report to amend Florida Rules of Civil Procedure 1.490 and 1.491, under Florida Rule of Judicial Administration 2.140(f). The proposed rule amendments have been approved by the full committee by a vote of 23-0 and by the Board of Governors Executive Committee by a vote of 8-0. Because of time considerations, the proposals have not been published for comment. The proposed amendments are attached as Appendices A (full page) and B (two-column).

On May 3, 2013, the Court approved an amendment to rule 1.490, proposed by the Trial Court Budget Commission, which added specific provisions to the rule to govern use of magistrates in residential foreclosure proceedings. *See In re Amendments to Florida Rule of Civil Procedure*, 113 So. 3d 777 (Fla. 2013). On publication of the decision, which was effective immediately, the court invited comments. The Committee commented and suggested that the residential foreclosure magistrate provisions should be in a new rule 1.491.

In the meantime, the Committee had a subcommittee reviewing whether rule 1.490 should be changed more fundamentally (and unrelated to the residential foreclosure magistrate issue) to make the rule more consistent with the magistrate rules in the Juvenile Court Rules and Family Law Rules. The Committee ultimately recommended that procedural changes be made to the rule. The Court approved the proposed amendments in *In re Amendments to the Florida Rules of Civil Procedure*, 131 So. 3d 643 (Fla. 2013).

At the same time, the Court continued to review comments related to the addition of the residential mortgage foreclosure magistrate provision to rule 1.490. The Court adopted the Committee's recommendation and approved the creation of rule 1.491 to govern use of magistrates in residential foreclosure proceedings. *See In re Amendments to Florida Rule of Civil Procedure 1.490 and New Florida Rule of Civil Procedure 1.491*, 141 So. 3d 179 (Fla. 2014). Because the amendments

RECEIVED, 1/5/2015 11:28:43 AM, Clerk, Supreme Court

did not incorporate the procedural changes that had been approved to rule 1.490 in rule 1.491, the Court noted in footnote 2, that the Committee should address whether additional changes should be made to rule 1.491. “If the Rules Committee determines that new rule 1.491 should be amended in light of amendments to rule 1.490 that the Court adopted after the Committee suggested the adoption of the new rule in this case, the Committee should file a new report proposing the amendments.” 141 So. 3d at 180.

The Committee determined that the procedural changes made to rules 1.490(d) and (f)–(j) should be incorporated into rule 1.491. The Committee also recommends a minor clarification to rule 1.490(g). One purpose of the amendments made to rule 1.490 was to make certain procedures more consistent with those contained in Florida Rule of Juvenile Procedure 8.257 and Florida Family Law Rule of Procedure 12.490. The same rationale is applicable to rule 1.491. The Court adopted the recommended changes to rule 1.490 and their omission from rule 1.491 appears to be purely a result of the timing of consideration of the separate recommendations and comments from the Trial Court Budget Commission, Magistrate Robert Jones, and the Committee. The Court appeared to recognize this as well. *See* 141 So. 3d 179 n.2. The Committee believes that the amendments previously approved to rule 1.490 should be incorporated into rule 1.491. These amendments do not alter rule 1.491’s implied consent provision, which remains different from rule 1.490’s requirement of affirmative consent to the use of a general magistrate.

The Committee respectfully requests that the Court adopt the amendments proposed in this report.

Respectfully submitted January 5, 2015.

/s/ Kevin B. Cook  
Chair  
Civil Procedure Rules Committee  
818 A1A N., Ste. 208  
Ponte Vedra Beach, FL 32082  
(904) 473-1399  
kcook@rtlaw.com  
Florida Bar No.: 507474

/s/ John F. Harkness, Jr.  
Executive Director  
The Florida Bar  
651 E. Jefferson Street  
Tallahassee, FL 32399  
(850) 561-5600  
jharkness@flabar.org  
Florida Bar No.: 123390

## CERTIFICATE OF COMPLIANCE

I certify that this document meets the font requirements of *Fla. R. App. P.* 9.120(a)(2).

I certify that these rules have been read against West's *Florida Rules of Court, Vol. I — State* (2014 Revised ed.).

/s/ Ellen H. Sloyer  
Senior Rules Liaison  
The Florida Bar  
651 E. Jefferson St.  
Tallahassee, FL 32399  
(850) 561-5709  
esloyer@flabar.org

**APPENDIX A**

## **RULE 1.490. MAGISTRATES**

**(a) General Magistrates.** Judges of the circuit court may appoint as many general magistrates from among the members of the Bar in the circuit as the judges find necessary, and the general magistrates shall continue in office until removed by the court. The order making an appointment shall be recorded. Every person appointed as a general magistrate shall take the oath required of officers by the Constitution and the oath shall be recorded before the magistrate discharges any duties of that office.

**(b) Special Magistrates.** The court may appoint members of The Florida Bar as special magistrates for any particular service required by the court, and they shall be governed by all the provisions of law and rules relating to magistrates except they shall not be required to make oath or give bond unless specifically required by the order appointing them. Upon a showing that the appointment is advisable, a person other than a member of the Bar may be appointed.

**(c) Reference.** No reference shall be to a magistrate, either general or special, without the consent of the parties. When a reference is made to a magistrate, either party may set the action for hearing before the magistrate.

**(d) General Powers and Duties.** Every magistrate shall perform all of the duties that pertain to the office according to the practice in chancery and under the direction of the court. Process issued by a magistrate shall be directed as provided by law. Hearings before any magistrate, examiner, or commissioner shall be held in the county where the action is pending, but hearings may be held at any place by order of the court within or without the state to meet the convenience of the witnesses or the parties. All grounds of disqualification of a judge shall apply to magistrates. Magistrates shall not practice law of the same case type in the court or circuit the magistrate is appointed to serve.

**(e) Bond.** When not otherwise provided by law, the court may require magistrates who are appointed to dispose of real or personal property to give bond and surety conditioned for the proper payment of all moneys that may come into their hands and for the due performance of their duties as the court may direct. The bond shall be made payable to the State of Florida and shall be for the benefit of all persons aggrieved by any act of the magistrate.

**(f) Notice of Hearings.** The magistrate shall assign a time and place for proceedings as soon as reasonably possible after the reference is made and give notice to each of the parties. The notice or order setting a matter for hearing before

the magistrate must state if electronic recording or a court reporter will be used to create a record of the proceedings. If electronic recording is to be used, the notice must state that any party may have a court reporter transcribe the record of the proceedings at that party's expense. If any party fails to appear, the magistrate may proceed ex parte or may adjourn the proceeding to a future day, giving notice to the absent party of the adjournment.

**(g) Hearings.** The magistrate shall proceed with reasonable diligence in every reference and with the least practicable delay. Any party may apply to the court for an order to the magistrate to speed the proceedings and to make the report and to certify to the court the reason for any delay. The evidence shall be taken by the magistrate or by some other person under the magistrate's authority in the magistrate's presence and shall be filed with the magistrate's report. The magistrate shall have authority to examine on oath the parties and all witnesses produced by the parties ~~on oath~~ on all matters contained in the reference and to require production of all books, papers, writings, vouchers, and other documents applicable to the referenced matters. The magistrate shall admit evidence by deposition or that is otherwise admissible in court. The magistrate may take all actions concerning evidence that can be taken by the court and in the same manner. All parties accounting before a magistrate shall bring in their accounts in the form of accounts payable and receivable, and any other parties who are not satisfied with the account may examine the accounting party orally or by interrogatories or deposition as the magistrate directs. All depositions and documents that have been taken or used previously in the action may be used before the magistrate.

**(h) Magistrate's Report.** The magistrate must file the report on the referenced matters and serve copies on all parties, and include the name and address of any court reporter who transcribed the proceedings. The magistrate's report must contain the following language in bold type:

**IF YOU WISH TO SEEK REVIEW OF THE REPORT AND RECOMMENDATIONS MADE BY THE MAGISTRATE, YOU MUST FILE EXCEPTIONS IN ACCORDANCE WITH FLORIDA RULE OF CIVIL PROCEDURE 1.490(i). YOU WILL BE REQUIRED TO PROVIDE THE COURT WITH A RECORD SUFFICIENT TO SUPPORT YOUR EXCEPTIONS OR YOUR EXCEPTIONS WILL BE DENIED. A RECORD ORDINARILY INCLUDES A WRITTEN TRANSCRIPT OF ALL RELEVANT PROCEEDINGS. THE PERSON SEEKING**

**REVIEW MUST HAVE THE TRANSCRIPT PREPARED IF NECESSARY FOR THE COURT'S REVIEW.**

(i) **Filing Report; Notice; Exceptions.** The parties may file exceptions to the report within 10 days after it is served. Any party may file cross-exceptions within 5 days from the service of the exceptions. If no exceptions are timely filed, the court shall take appropriate action on the report. If exceptions are filed, the court shall resolve the exceptions at a hearing on reasonable notice. The filing of cross-exceptions shall not delay a hearing on the exceptions and cross-exceptions unless good cause is shown.

(j) **Record.** A party filing exceptions to the magistrate's report must provide the court in advance of the hearing a record sufficient to support that party's exceptions.

(1) The record shall include the court file, designated portions of the transcript of proceedings before the magistrate, and all depositions and evidence presented to the magistrate. The designated transcript portions must be delivered to the court and all other parties at least 48 hours before the hearing.

(2) If the party filing exceptions has the court reporter prepare less than a full transcript of proceedings before the magistrate, that party must promptly file a notice designating the portions of the transcript that have been ordered. The other parties must be given reasonable time after service of the notice to arrange for the preparation and designation of other portions of the transcript for the court to consider at the hearing.

**Committee Notes**

**1971 Amendment.** The entire rule has been revised. Obsolete language has been omitted and changes made to meet objections shown by the use of local rules in many circuits. Subdivisions (a) and (b) are not substantially changed. Subdivision (c) is shortened and eliminates the useless priority for setting the matter for hearing to permit either party to go forward. Subdivision (d) eliminates the right of the parties to stipulate to the place of hearing. Subdivision (e) is not substantially changed. Subdivisions (f), (g), (h), and (i) are combined. The right to use affidavits is eliminated because of the unavailability of cross-examination and possible constitutional questions. The vague general authority of the magistrate under subdivision (g) is made specific by limiting it to actions that the court could take. Subdivision (j) is repealed because it is covered in the new subdivision (f).

Subdivision (g) is the same as former subdivision (k) after eliminating the reference to affidavits. Subdivision (h) is the same as former subdivision (l).

**1980 Amendment.** Subdivision (d) is amended to delete the specific reference to the direction of process so that process issued by the master will be governed by the law applicable to process generally.

### **Court Commentary**

**1984 Amendment.** The consent of all parties is required for any reference to a special master. Special masters may be used as provided by statute even with the rule change. See *Slatcoff v. Dezen*, 74 So. 2d 59 (Fla. 1954).



**RULE 1.491.      GENERAL MAGISTRATES FOR RESIDENTIAL MORTGAGE FORECLOSURE MATTERS**

**(a)      General Magistrates for Residential Mortgage Foreclosure.**

~~Judges of the circuit court may appoint as many general magistrates from among the members of the Bar in the circuit as the judges find necessary, and the general magistrates shall continue in office until removed by the court. The order making an appointment shall be recorded. Every person appointed as a general magistrate shall take the oath required of officers by the Constitution and the oath shall be recorded before the magistrate discharges any duties of that office. The chief judge of each judicial circuit shall appoint such number of general magistrates to handle only residential mortgage foreclosures from among the members of the Bar in the circuit as are necessary to expeditiously preside over all actions and suits for the foreclosure of a mortgage on residential real property; and any other matter concerning the foreclosure of a mortgage on residential real property as allowed by the administrative order of the chief judge. Such general magistrates shall continue in office until removed by the court. The order making an appointment shall be recorded. Every person appointed as a general magistrate shall take the oath required of officers by the Constitution and the oath shall be recorded before the magistrate discharges any duties of that office. General Magistrates appointed to handle residential mortgage foreclosure matters only shall not be required to give bond or surety.~~

**(b)      Reference.**

~~(1)      No reference shall be to a magistrate, either general or special, without the consent of the parties, except c~~Consent to a magistrate for residential mortgage foreclosure actions and suits may be express or may be implied in accordance with the requirements of this rule.

(A)      A written objection to the referral to a magistrate handling residential mortgage foreclosures must be filed within 10 days of the service of the order of referral or within the time to respond to the initial pleading, whichever is later.

(B)      If the time set for the hearing is less than 10 days after service of the order of referral, the objection must be filed before commencement of the hearing.

(C) Failure to file a written objection to a referral to the magistrate handling residential mortgage foreclosures within the applicable time period is deemed to be consent to the order of referral.

(2) The order of referral to a magistrate handling residential mortgage foreclosures shall be in substantial conformity with this rule and shall contain the following language in bold type:

**A REFERRAL TO A MAGISTRATE FOR A RESIDENTIAL MORTGAGE FORECLOSURE MATTER REQUIRES THE CONSENT OF ALL PARTIES. YOU ARE ENTITLED TO HAVE THIS MATTER HEARD BEFORE A JUDGE. IF YOU DO NOT WANT TO HAVE THIS MATTER HEARD BEFORE A MAGISTRATE, YOU MUST FILE A WRITTEN OBJECTION TO THE REFERRAL WITHIN 10 DAYS OF THE TIME OF SERVICE OF THIS ORDER OR WITHIN THE TIME TO RESPOND TO THE INITIAL PLEADING, WHICHEVER IS LATER. IF THE TIME SET FOR THE HEARING IS LESS THAN 10 DAYS AFTER THE SERVICE OF THIS ORDER, THE OBJECTION MUST BE MADE BEFORE THE HEARING. FAILURE TO FILE A WRITTEN OBJECTION WITHIN THE APPLICABLE TIME PERIOD IS DEEMED TO BE CONSENT TO THE REFERRAL. REVIEW OF THE REPORT AND RECOMMENDATIONS MADE BY THE MAGISTRATE SHALL BE BY EXCEPTIONS AS PROVIDED IN THIS RULE. A RECORD, WHICH INCLUDES A TRANSCRIPT OF PROCEEDINGS, MAY BE REQUIRED TO SUPPORT THE EXCEPTIONS.**

When a reference is made to a magistrate, either party may set the action for hearing before the magistrate.

**(c) General Powers and Duties.** The provisions for the general powers and duties of a magistrate in rule 1.490(d) shall apply to proceedings under this rule. ~~Every magistrate shall perform all of the duties that pertain to the office according to the practice in chancery and under the direction of the court. Process issued by a magistrate shall be directed as provided by law. Hearings before any magistrate, examiner, or commissioner shall be held in the county where the action is pending, but hearings may be held at any place by order of the court within or without the state to meet the convenience of the witnesses or the parties. All grounds of disqualification of a judge shall apply to magistrates. Magistrates shall~~

~~not practice law of the same case type in the court or circuit the magistrate is appointed to serve.~~

**(d) Notice of Hearings; Hearings.** ~~The provisions for notice of hearings and hearings in rules 1.490(f)–(g) shall apply to proceedings under this rule. magistrate shall assign a time and place for proceedings as soon as reasonably possible after the reference is made and give notice to each of the parties. If any party fails to appear, the magistrate may proceed ex parte or may adjourn the proceeding to a future day, giving notice to the absent party of the adjournment. The magistrate shall proceed with reasonable diligence in every reference and with the least practicable delay. Any party may apply to the court for an order to the magistrate to speed the proceedings and to make the report and to certify to the court the reason for any delay. Unless otherwise ordered by the court, all hearings shall be held in the courthouse of the county where the action is pending. The evidence shall be taken by the magistrate or by some other person under the magistrate’s authority in the magistrate’s presence and shall be filed with the magistrate’s report. The magistrate shall have authority to examine the parties on oath upon all matters contained in the reference and to require production of all books, papers, writings, vouchers, and other documents applicable to it and to examine on oath orally all witnesses produced by the parties. The magistrate shall admit evidence by deposition or that is otherwise admissible in court. The magistrate may take all actions concerning evidence that can be taken by the court and in the same manner. All parties accounting before a magistrate shall bring in their accounts in the form of accounts payable and receivable, and any other parties who are not satisfied with the account may examine the accounting party orally or by interrogatories or deposition as the magistrate directs. All depositions and documents that have been taken or used previously in the action may be used before the magistrate.~~

**(e) Magistrate’s Report.** ~~The provisions for the requirement of the magistrate’s report in rule 1.490(h) shall apply to proceedings under this rule.~~

**(f) Filing Report; Notice; Exceptions; Record.** ~~The provisions for filing the report, notice, and exceptions to the report, including and requirements for a record, in rules 1.490(i)–(j) shall apply to proceedings under this rule.~~

## Committee Notes

**2014 Adoption.** This rule is the result of an emergency petition by the Trial Court Budget Commission and is intended to alleviate the backlog of residential mortgage foreclosure cases that Florida courts are currently facing.

**20-- Amendment.** The changes are intended to adopt certain procedural changes made to rule 1.490 by *In re Amendments to Florida Rules of Civil Procedure*, 131 So. 3d 643 (Fla. 2013).

## **APPENDIX B**

**Rule**

**Reasons for change**

**RULE 1.490. MAGISTRATES**

- (a) **General Magistrates.** [No change]
- (b) **Special Magistrates.** [No change]
- (c) **Reference.** [No change]
- (d) **General Powers and Duties.** [No change]
- (e) **Bond.** [No change]
- (f) **Notice of Hearings.** [No change]

(g) **Hearings.** The magistrate shall proceed with reasonable diligence in every reference and with the least practicable delay. Any party may apply to the court for an order to the magistrate to speed the proceedings and to make the report and to certify to the court the reason for any delay. The evidence shall be taken by the magistrate or by some other person under the magistrate's authority in the magistrate's presence and shall be filed with the magistrate's report. The magistrate shall have authority to examine on oath the parties and all witnesses produced by the parties ~~on oath~~ on all matters contained in the reference and to require production of all books, papers, writings, vouchers, and other documents applicable to the referenced matters. The magistrate shall admit evidence by deposition or that is otherwise admissible in court. The magistrate may take all actions concerning evidence that can be taken by the court and in the same manner. All parties

Grammatical correction.  
Added to clarify what matters may be considered.

accounting before a magistrate shall bring in their accounts in the form of accounts payable and receivable, and any other parties who are not satisfied with the account may examine the accounting party orally or by interrogatories or deposition as the magistrate directs. All depositions and documents that have been taken or used previously in the action may be used before the magistrate.

- (h) Magistrate’s Report.** [No change]
- (i) Filing Report; Notice; Exceptions.** [No change]
- (j) Record.** [No change]

**Committee Notes**

[No change]

**Court Commentary**

[No change]

**Rule**

**Reasons for change**

**RULE 1.491. GENERAL MAGISTRATES FOR  
RESIDENTIAL MORTGAGE  
FORECLOSURE MATTERS**

Clarifies what matters may be considered under this rule.

**(a) General Magistrates for Residential Mortgage Foreclosure.** ~~Judges of the circuit court may appoint as many general magistrates from among the members of the Bar in the circuit as the judges find necessary, and the general magistrates shall continue in office until removed by the court. The order making an appointment shall be recorded. Every person appointed as a general magistrate shall take the oath required of officers by the Constitution and the oath shall be recorded before the magistrate discharges any duties of that office.~~ The chief judge of each judicial circuit shall appoint such number of general magistrates to handle only residential mortgage foreclosures from among the members of the Bar in the circuit as are necessary to expeditiously preside over all actions and suits for the foreclosure of a mortgage on residential real property; and any other matter concerning the foreclosure of a mortgage on residential real property as allowed by the administrative order of the chief judge. Such general magistrates shall continue in office until removed by the court. The order making an appointment shall be recorded. Every person appointed as a general magistrate shall take the oath required of officers by the Constitution and the oath shall be recorded before the magistrate discharges any duties of that office. General Mmagistrates appointed to handle residential mortgage foreclosure matters only shall not be required to give bond or

Clarifies what matters may be considered under this rule.

Adds language from *Rule 1.490(a)* regarding appointment order and taking of oath by magistrate.



surety.

**(b) Reference.**

(1) ~~No reference shall be to a magistrate, either general or special, without the consent of the parties, except e~~Consent to a magistrate for residential mortgage foreclosure actions and suits may be express or may be implied in accordance with the requirements of this rule.

(A)-(C) [No change]

(2) [No change]

**(c) General Powers and Duties.** The provisions for the general powers and duties of a magistrate in rule 1.490(d) shall apply to proceedings under this rule. Every magistrate shall perform all of the duties that pertain to the office according to the practice in chancery and under the direction of the court. Process issued by a magistrate shall be directed as provided by law. Hearings before any magistrate, examiner, or commissioner shall be held in the county where the action is pending, but hearings may be held at any place by order of the court within or without the state to meet the convenience of the witnesses or the parties. All grounds of disqualification of a judge shall apply to magistrates. Magistrates shall not practice law of the same case type in the court or circuit the magistrate is appointed to serve.

**(d) Notice of Hearings; Hearings.** The provisions for notice of hearings and hearings in rules 1.490(f)-(g) shall

Clarifies when consent is required and when it may be implied.

Deletes language and provides cross-reference to rule 1.490(d). This change will ensure consistency between rules 1.490 and 1.491.

Deletes language and provides cross-reference to rules 1.490(f)-(g). This change will ensure consistency between rules 1.490 and 1.491.

~~apply to proceedings under this rule. magistrate shall assign a time and place for proceedings as soon as reasonably possible after the reference is made and give notice to each of the parties. If any party fails to appear, the magistrate may proceed ex parte or may adjourn the proceeding to a future day, giving notice to the absent party of the adjournment. The magistrate shall proceed with reasonable diligence in every reference and with the least practicable delay. Any party may apply to the court for an order to the magistrate to speed the proceedings and to make the report and to certify to the court the reason for any delay. Unless otherwise ordered by the court, all hearings shall be held in the courthouse of the county where the action is pending. The evidence shall be taken by the magistrate or by some other person under the magistrate's authority in the magistrate's presence and shall be filed with the magistrate's report. The magistrate shall have authority to examine the parties on oath upon all matters contained in the reference and to require production of all books, papers, writings, vouchers, and other documents applicable to it and to examine on oath orally all witnesses produced by the parties. The magistrate shall admit evidence by deposition or that is otherwise admissible in court. The magistrate may take all actions concerning evidence that can be taken by the court and in the same manner. All parties accounting before a magistrate shall bring in their accounts in the form of accounts payable and receivable, and any other parties who are not satisfied with the account may examine the accounting party orally or by interrogatories or deposition as the magistrate directs. All depositions and documents that have been taken or used previously in the action may be used before the magistrate.~~

(e) **Magistrate's Report.** The provisions for the requirement of the magistrate's report in rule 1.490(h) shall

Provides cross-reference to specific subdivision of rule 1.490.

Adds Record to subdivision title and provides cross reference to rules 1.490(i) (Filing Report; Notice; Exceptions) and rule 1.490(j) Record.

apply to proceedings under this rule.

**(f) Filing Report; Notice; Exceptions; Record.**

The provisions for filing the report, notice, ~~and~~ exceptions to the report, ~~including~~ and requirements for a record; in rule 1.490(i)-(j) shall apply to proceedings under this rule.

**Committee Notes**

**2014 Adoption.** [No change]

**20-- Amendment.** The changes are intended to adopt certain procedural changes made to rule 1.490 by *In re Amendments to Florida Rules of Civil Procedure*, 131 So. 3d 643 (Fla. 2013).

Adds Committee Note to explain intent of amendments.