

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 192

SPONSOR: Governmental Oversight and Productivity Committee, Judiciary Committee, and Senator Campbell

SUBJECT: Magistrates and Masters

DATE: January 22, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matthews	Lang	JU	Fav/CS
2.	White	Wilson	GO	Fav/CS
3.	_____	_____	AAV	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill revises laws governing judicial and administrative proceedings as follows:

- Substitutes obsolete references to the term “magistrate” with the term “trial court judge” which reflects changes made in the 1972 constitutional amendments to Article V of the Florida Constitution that included the redesignation of title or transfer of judicial authority from “magistrates” to “trial court judges” when specialty courts were eliminated.
- Redesignates the outmoded title of “general or special masters” to “general or special magistrates” as appointed to conduct judicial or administrative proceedings in a judicial or quasi-judicial function.
- Amends s. 394.467, F.S., to replace the term “hearing officer” with the term “administrative law judge” consistent with its use in other subsections of this section and consistent with prior legislative directive to redesignate the title of hearing officers conducting administrative hearings pursuant to chapter 120, F.S.
- Clarifies in s. 26.012, F.S., that a county or circuit court is a trial court.

The bill amends the following provisions of the Florida Statutes as relate to references to the authority or title of “master:” 29.004, 56.071, 56.29, 61.1826, 64.061, 65.061, 69.051, 70.51, 92.142, 112.41, 112.43, 112.47, 162.03, 162.06, 162.09, 173.09, 173.10, 173.11, 173.12, 194.013, 194.034, 194.035, 206.16, 207.016, 320.411, 393.11, 394.467, 397.311, 397.681, 447.207, 447.403, 447.405, 447.407, 447.409, 475.011, 489.127, 489.531, 496.420, 501.207, 501.618, 559.936, 582.23, 631.182, 631.331, 633.052, 744.369, 760.11, 837.011, 838.014,

839.17, 916.107, 938.30, and 945.43. The bill also amends the following provisions of the Florida Statutes as relate to the authority or title of the judicial “magistrate: 27.06, 34.01, 48.20, 142.09, 316.635, 373.603, 381.0012, 450.121, 560.306, 633.14, 648.44, 817.482, 832.05, 876.42, 893.12, 901.01, 901.02, 901.07, 901.08, 901.09, 901.11, 901.12, 901.25, 902.15, 902.17, 902.20, 902.21, 903.03, 903.32, 903.34, 914.22, 923.01, 933.01, 933.06, 933.07, 933.10, 933.101, 933.13, 933.14, 939.02, 939.14, 941.13, 941.14, 941.15, 941.17, 941.18, 947.141, 948.06, and 985.05.

II. Present Situation:

Magistrate System

The magistrate is generally regarded as a judicial officer with strictly limited jurisdiction and authority.¹ The United States adopted through common and statutory law the magistrate system which originated in the old English court system.

The federal magistrate system is formally established in law. *See* Federal Magistrates Act of 1968, 28 U.S.C. 631. The Act created a new type of judicial officer to replace the 175 year-old U.S. commissioner system in an effort to increase the overall efficiency of the federal judiciary. Addressed as federal magistrate judges, they (with the exception of bankruptcy referees, U.S. clerks of the court, or retired military officers) may not hold any other civil or military office or employment. A federal magistrate judge, appointed by the district court judge, serves an eight-year term. A federal magistrate judge’s duties fall into four general categories: 1) conducting most of the initial criminal proceedings (including search and arrest warrants, detention hearings, probable cause hearings, and attorney appointments); 2) deciding criminal misdemeanor cases; 3) deciding civil trial cases with the consent of the parties, and 4) conducting a variety of other assigned proceedings (including motions, prisoner petition reviews, and pretrial and settlement conferences).²

No formal Florida state magistrate system exists. Prior to 1972, depending on the county, the magistrate system was synonymous with small claims court, county court, justice of the peace court, court of record, or a civil court of record. There was, however, no uniformity in the existence of magistrate courts and the use of magistrates. In 1972, amendments to Article V of the *Florida Constitution* consolidated the various inferior trial courts into Florida’s two-tier trial court system consisting of county and circuit courts. The county courts and its judicial officers assumed the powers previously conferred on those courts including the small claims magistrate courts and magistrates’ courts.³ Although concurrent statutory changes were made then to harmonize the statutory provisions with the 1972 constitutional amendments, a number of statutory provisions still retain obsolete references to the “committing magistrate” or “magistrate.” In practice, either a county or circuit court judge acts as a committing magistrate.

¹ *See Black Law Dictionary*, 7th ed., August 1999.

² *See Understanding the Federal Courts*, The Administrative Office of the U.S. Courts. 1999.

³ *See In re Transition Rules 2, 3, 4, 5, and 6*, 269 So.2d 665 (Fla. 1972); s. 34.01(2), F.S.

Master System

In the interim, the courts, in response to the increasing demands of judicial workload and the need to maximize judicial resources, began to rely more heavily on “general or special masters”.⁴ The judicial master system originated in common law as borrowed from the old English court system.⁵ The statutory reference to the judicial master system in Florida dates back to at least 1845 in which the court could appoint *masters in chancery* to serve in a ministerial capacity in chancery proceedings. ch. 51, L.O.F. (1845). The *master in chancery* exercised limited judicial powers and functions delegated by the court, including those powers conferred on masters in chancery by the United States Supreme Court. They generally served for specific terms and were required to be members of the Florida Bar and to take a judicial oath. Subsequent legislation (See ch. 14658, L.O.F., “The Chancery Act of 1931” and ss. 63.54-63.65, F.S. (1949)), the language of which was used as the primary basis for the superseding court rules, was repealed in 1951 (See ch. 26962, Laws of Florida).

The title and primary powers of the historical judicial *master in chancery* now reside with the court rules governing *general masters* and *special masters*.⁶ The general master must be a member of the Florida Bar, must take a judicial oath, may be required to provide a bond, and continues in office until removed by court order. The special master is distinguished from general masters in that they are appointed for task-specific service which may be judicial or administrative in nature. A special master is not required to take an oath or provide a bond unless required by the court.

The use of the terms “master,” “general master,” and “special master” is not unique to the judiciary, but these terms are historically and primarily associated with the courts. A person, unconnected with the courts, may be appointed or selected to act as a “master” or “special master” and perform expressly defined duties within any legislative, executive or local governmental proceeding or function. Any prerequisite requirements of these persons is dependent within the context of the proceeding to which they have been appointed to conduct.

The appropriateness and public perception of the term “general master” or “special master,” particularly as used in the courtroom, received increased legal and judicial attention four years ago. The Family Law Section Executive Council and the Family Law Rules Committee passed resolutions at the annual Florida Bar meeting in June 1999, to recommend a title change in the family law rules for these court-appointed officers from “masters” to “magistrates.”⁷ In response, the Florida Supreme Court directed the Family Law Rules Committee to review the proposed change. In turn, the Committee filed an emergency petition with the Florida Supreme Court to amend the Florida Family Law Rules and Forms. The Supreme Court denied the petition on the grounds that the term “master” appears in other court rules and forms and throughout the Florida

⁴ General and special masters are just one category of non-constitutional judicial staffing alternatives used by the courts to discharge specific judicial responsibilities. The courts also appoint child support enforcement hearing officers (Fla. Fam.L.R.P. 12.491) and civil traffic infraction hearing officers (s. 1, art. V, Fla. Const., ss. 318.30-318.38, F.S., Fla. R. Traf. Ct. 6.630).

⁵ The federal master system is governed by Federal Rule of Civil Procedure Rule 53 in which the master's powers are limited to expressly enumerated ministerial duties. However, the formal establishment of the federal magistrate judge system has overshadowed the master system such that the appointment of a master is the exception rather than the rule.

⁶ See Fla.R.Civ.P.1.490, Fla.Fam.L.R.P. 12.490 and 12.492, Fla.R.Juv.P. 8.255 and 8.625, and Fla.Prob.R. 5.697.

⁷ See also *The Florida Bar News*, August 15, 1999.

Statutes and that a term change made solely to the Florida Family Law rules would create “unnecessary confusion system-wide” at this time.⁸ The Court deferred to the Legislature to initiate such a change.

III. Effect of Proposed Changes:

The bill removes obsolete historical references to the judicial “magistrates” whose positions were eliminated in the 1972 constitutional revision to Article V, which restructured the Florida state court system and conferred the magistrate’s power and authority upon trial court judges. The bill also redesignates the perceived outmoded title of persons serving as “general or special master” to the title of “general or special magistrate” whether such person is performing a judicial or quasi-judicial function in a judicial or administrative proceeding. The bill also corrects a statutory inconsistency within s. 394.467, F.S., which failed to redesignate the “hearing officer” as the administrative law judge in an administrative law proceeding. This change conforms to a legislative change in recent years in which “hearing officers” assigned by the Division of Administrative Hearings to conduct adjudicatory hearings were redesignated as administrative law judges. See ch. 1996-159, Laws of Florida.

This bill makes no substantive change to the existing authority, power or duties of these officers’ positions as practiced or set forth in statute, the court rules or the constitution. This bill also does not revive the obsolete position, authority, power or duties of the magistrate as existed prior to 1972.

The effective date of the bill, if enacted, is October 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

To the extent that this bill is construed to effectuate a change beyond a nonsubstantive or technical title redesignation, provisions of s. 3, article II, of the *Florida Constitution*, governing separation of powers may be implicated since the authority to appoint and assign powers to judicially appointed general or special masters for use in the courtroom lie within the exclusive purview of the courts. It is within the Legislature’s constitutional

⁸ See Order, *In re Amendment to Florida Family Law Rule of Procedure 12.490*, 758 So.2d 86 (Fla. 1999).

authority to create substantive law but the Florida Supreme Court has sole and preemptive constitutional authority to promulgate court rules of practice and procedure. Therefore, the Legislature cannot enact law that amends or supersedes existing court rules, although it can repeal them by a 2/3 vote. *See* Art. V, s. 2(a), Fla. Const.; *Market v. Johnston*, 367 So.2d 1003 (Fla. 1978). The Florida Supreme Court, however, has acquiesced on occasion by adopting court rules based in part or in its entirety on statutory laws, or expanded or harmonized conflicting statutory provisions despite their encroachment on judicial authority governing court procedural matters.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The court may incur nominal costs amending rules of the court to conform to the provisions of this bill.

There may also be some administrative costs to state and local governmental entities associated with the title redesignation of the officers described in this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.