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APPENDIX B

Proposed Amendments to Rule 1.490 – Two-column Chart

FLORIDA RULES OF CIVIL PROCEDURE

Proposed Rule	Reasons for Change
<p style="text-align: center;">FLORIDA RULES OF CIVIL PROCEDURE</p> <p>Rule 1.490 Magistrates</p> <p>(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. <u>The chief judge of each judicial circuit shall appoint such number of 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. Magistrates appointed to handle residential mortgage foreclosure matters only shall not be required to give bond or surety.</u></p> <p>(b) Special Magistrates.</p> <p>(c) Reference.</p>	<p>This proposed amendment would specifically authorize the chief judge to appoint magistrates to handle only residential mortgage foreclosure cases upon issuance of an administrative order of the chief judge of the circuit. These appointed magistrates would be members of the Florida Bar and would not be required to give bond or surety.</p> <p>[NO CHANGE]</p>

<p><u>(1) No reference shall be to a magistrate, either general or special, without the consent of the parties, except 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.</u></p> <p><u>(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.</u></p> <p><u>(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.</u></p> <p><u>(C) If the order of referral is served within the first 20 days after the service of the initial process, the time to file an objection is extended to the time within which to file a responsive pleading.</u></p> <p><u>(D) 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.</u></p> <p><u>(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 THE MAGISTRATE, YOU MUST FILE A WRITTEN OBJECTION TO THE REFERRAL WITHIN 10 DAYS OF THE TIME OF SERVICE OF THIS ORDER. IF THE TIME SET FOR THE HEARING IS LESS THAN 10</u></p>	<p>This change provides an implied consent process for referral to a magistrate for residential mortgage foreclosure cases. Modeled after current Family Law Rule of Procedure 12.490(b), the proposed rule revisions would result in the referral of a general magistrate in a residential mortgage foreclosure action and would require the parties to object within 10 days of the service of the order of referral if the parties wanted the matter heard before a circuit judge.</p> <p>Under the proposed revisions parties that fail to file a written objection to a referral within the applicable time period will be deemed to have given their consent to the order of referral to the general magistrate.</p> <p>The proposed revisions require language to be included in the order of referral that must be in bold type which gives the parties notice of their right to have the case heard by a judge if they object to the referral. The bold type language also notifies the parties that they may file exceptions to the magistrates report and recommendations which will be reviewed by the circuit judge.</p>
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<p><u>DAYS AFTER THE SERVICE OF THIS ORDER, THE OBJECTION MUST BE MADE BEFORE THE HEARING. IF THIS ORDER IS SERVED WITHIN THE FIRST 20 DAYS AFTER SERVICE OF PROCESS, THE TIME TO FILE AN OBJECTION IS EXTENDED TO THE TIME WITHIN WHICH A RESPONSIVE PLEADING IS DUE. 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.</u></p> <p>When a reference is made to a magistrate, either party may set the action for hearing before the magistrate.</p> <p>(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. <u>Magistrates shall not practice law of the same case type in the court in any county or circuit the magistrate is appointed to serve.</u></p> <p>(e) Bond.</p>	<p>The proposal would amends the rule by prohibiting magistrates from practicing law of the same case type in the court in the county or circuit the magistrate is presiding. This rule revision would apply to all magistrates, general and special, appointed under Rule 1.490.</p> <p>[NO CHANGE]</p>
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(f) Hearings	[NO CHANGE]
(g) Magistrate's Report.	[NO CHANGE]
(h) Filing Report; Notice; Exceptions.	[NO CHANGE]