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Practical Tips for Discovery Special Masters

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Tip No. 1

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- **In the order of appointment, provide that the parties stipulate that the special master's findings of fact are 1) final, or 2) only reviewed for clear error, unless the parties object within 7 days.**

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The Problem

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- F.R.C.P. 53(f)(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 under Rule 53(a)(1)(A) or (C) will be final.

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Suggested Language – ACAM Benchbook

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Any party seeking review of any ruling of the Master shall be deemed to have stipulated that findings of fact made by the Master will be final [shall be reviewed for clear error], except for a party who objects to this portion of the Order, in writing and filed with the Court, within 7 days of the date of this Order.

(Alternative 2)

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Tip No. 2

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- **Create a system when pleadings are filed that makes it easy for the appointing judge to know what the special master will handle and what the judge will handle.**

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Tip No. 3

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- **Schedule an initial meeting with counsel, even if it's not required by your version of Rule 53.**

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Tip No. 4

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- **No formal written discovery motions without permission of the Special Master or unless both parties agree.**

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Tip No. 5

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Review discovery requests when they are served and set an early deadline for objections (14 - 21 days). Then resolve objections before the responses are due (35 days).

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The Problem

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Discovery served

30 – 35 days – Responses and objections

2 – 4 weeks – Lawyers argue about sufficiency and objections

Motion to Compel

Month later – Motion ripe for ruling

Ruling – Produce in 14 days

= About 4 months before information is produced

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Tip No. 6

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Encourage or require joint submission of disputes in addition to the meet and confer requirement.

and

Require verbal conferral before disputes can be raised.

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- **In big cases, require weekly or bi-weekly meetings or status calls, with agenda submitted by counsel prior to the meeting/call. If there's nothing to discuss, you can always vacate.**

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Tip No. 8

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- **Remember, you're a special discovery master. Resist the urge to be a surrogate judge!**

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Presenters

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