

RULE 5

COMMISSIONER PRACTICE

~~The Master Commissioner's office has published "Guidelines for Lien Enforcement Actions in Jefferson County, Kentucky" to assist attorneys. This booklet is available at the Commissioner's Office. While not meant to be a legal treatise, the Guidelines are designed to help practitioners avoid common pitfalls in practice and contain helpful forms. The Court encourages practitioners to review these Guidelines as an adjunct to these Rules.~~

501 References to Master Commissioner.

- A. References shall be made to the Master Commissioner as provided by the Rules of Civil Procedure, by the Kentucky Revised Statutes, by these Rules, or by court order in individual cases. The order shall be sufficiently specific to indicate clearly the purposes of the reference and the duties to be performed by the Master Commissioner.
- B. Unless otherwise directed by the court, matters requesting a judicial sale shall be automatically referred to the Master Commissioner and shall not be docketed for a hearing at motion hour.

502 Judicial Sales.

- A. Sales under Execution or Attachment. Unless specific provisions are made to the contrary in the judgment or order directing a sale, all judicial sales may be made by the Master Commissioner. The Sheriff shall make sales under execution or attachment.
- B. ~~Time and Place.~~ Unless otherwise provided in the judgment or order of sale, all judicial sales by the Master Commissioner shall be held, as provided in the Commissioner's sale handbill, on Tuesday at or about 10:00 a.m., at a place designated by the Master Commissioner- the dates and at the times scheduled by the Master Commissioner and at a location designated for the judicial sales. The Master Commissioner's scheduling of judicial sale dates and times shall be based on availability of the designated sale location. During the conduct of a judicial sale, the Master Commissioner shall have power to keep order or may have the Jefferson County Sheriff do so.
- C. ~~Deposit - Resale if not Made.~~ In every case, except where a person ordering the sale shall direct otherwise, the cash deposit specified in the order or judgment of sale shall be made. If the deposit is not made immediately, the Master Commissioner shall reject the bid and resell the property forthwith. In making a resale, the Master Commissioner shall receive no bid from the rejected bidder. A deposit paid to the Master Commissioner shall stop interest on the bid to the extent of the deposit as of the date of payment.
- D. Amount To Be Raised.
- D.
- 1.)
- 1) ~~Within five (5) days of scheduling a sale,~~ The party requesting the sale shall

file a statement of the amount to be raised and serve a copy on all parties and the Master Commissioner. ~~A form for this statement may be obtained from the Commissioner's office. A new statement shall be filed if a sale is rescheduled. The statement shall itemize all amounts included in the party's judgment, current through the sale date and~~ The statement shall include a per diem rate and the party's itemized courts costs. ~~The statement will not include court costs and reserved amounts and matters not adjudicated.~~

~~2) Any other lien holder who has secured a judgment in the case shall file with the Master Commissioner and serve a copy on all parties, an updated statement of the amount to be raised, within five (5) days after submission of the original statement by the party requesting the sale. The updated statement shall itemize all amounts included in the party's judgment, current through the sale date and a per diem rate. (The updated statement shall also include the amounts to be raised by the party requesting the sale.) If a lien holder should secure a judgment after submission of any statement of the amount to be raised, but before the sale, then the lien holder shall also file an updated statement, no later than five (5) days after entry of the new judgment.~~

~~3) Any party may file a pleading in Court soliciting a pay off from the party requesting the sale and any other lien holders who have secured a judgment. The request shall be filed at least twenty (20) days before the sale. The party requesting the sale shall file the pay off statement within ten (10) working days. The pay off (s) shall include the amount to be raised, plus itemized current charges and costs.~~

2.)

~~4) The Commissioner's sale handbill shall include advertise the amount to be raised as set forth in the statement of the party requesting the sale, on the most recently updated statement(s), thirty five (35) days before the sale.~~

3.)

~~5) The Commissioner shall withdraw the sale if the debtor pays the Receiver in full either the pay off (s) or the amount to be raised in the Commissioner's sale handbill, from the most recent statement, and files an affidavit that the pay off statement required by JRP 502D(3) was not filed.~~

E.
~~E.~~

Proceeds from Sale of Real Estate. The Master Commissioner shall collect the proceeds from sales of real estate and upon appropriate orders shall distribute the proceeds or a portion thereof to parties as approved by the Court. ~~Any ad valorem taxes that are delinquent at the time of sale shall be paid out of the proceeds of sale regardless of the entity that is owed those taxes unless the entity owning the delinquent tax lien timely files a pleading demanding the property be sold subject to the taxes. This shall include any ad valorem taxes that have become delinquent while the action was pending.~~

503 Bidding Procedures.

Bids shall be increased in amounts equal to or greater than the following minimum increments: All bids between \$500 and \$50,000.00 shall be increased in increments of \$500.00. Bids of \$50,000.00 up to \$100,000.00 shall be increased in increments of \$1,000.00. All bids more than \$100,000.00 shall be increased in increments of \$2,000.00.

The Master Commissioner shall only accept bids which specifically state the amount of the bid and shall reject bids which only state the amount that the bid is to be increased. If the required minimum increase would cause the party to the lawsuit to exceed their authorized maximum bid, a party to the lawsuit shall be allowed one final bid which is less than the above required minimum increase provided that the bid is stated to be a final bid. Non-parties to the lawsuit shall have no right to make a final bid.

504 ~~Advertisement of Sale.~~ Advance Sale Deposit.

A. ~~Deposit for Advertisement. When any order is entered requiring an advertisement or notice in any newspaper or handbill, the moving party shall deposit with the Master Commissioner an amount sufficient to pay the costs of the advertisement or notice. -An advance sale deposit in the amount of \$2,000.00 shall be paid to the Master Commissioner by the party requesting the sale. Until the deposit is made, the Master Commissioner shall not make the advertisement or publish the notice. If a sale is withdrawn, sale costs shall be assessed in accordance with Part IV of the Administrative Procedures of the Court of Justice.~~

B. ~~Cost of Advertisement. When more than one sale is set for the same date, all notices in any newspaper shall be advertised by one single item with the general information applicable to each sale appearing only once and the cost of advertising the general information equally apportioned to the cost of the sale of the various cases.~~

505 Inclusion by Reference in Judgment of Procedure of Sale.

Unless the judgment specifically states otherwise, every judgment directing the Master Commissioner to sell real estate will be considered to include the following provisions, which will be a part of the judgment by reference to this Rule:

The Master Commissioner is directed to sell the real estate described in the judgment at public auction to the highest bidder ~~on some Tuesday morning about 10:00 a.m. on the date, at the time, and at the location designated in the Commissioner's sale handbill. Notice of the judicial sale of the time and location of the sale shall be given in two ways: first by the posting of handbills at the Master Commissioner's office and on or near the property to be sold for at least ten (10) days prior to the date of sale, and second, -and by placing an advertisement once a week for three (3) successive weeks next preceding the sale in the daily newspaper of the largest circulation published in Jefferson County, Kentucky. The notice shall include the place, time and terms of the sale, along with a short description of the property to be sold. Sale advertisement shall be in accordance with Part IV of the Administrative Procedures of the Court of Justice.~~

The real estate shall be sold on terms as set forth in Part IV of the Administrative Procedures of the Court of Justice ~~of one fourth down and the balance on credit of six (6) months, bearing~~

interest at the rate of twelve percent (12%) per annum from date of sale. ~~The one-fourth down and the provisions of KRS 426.705 must be complied with in a reasonable time not to exceed thirty (30) days from the date of sale. When the purchase price is paid, the deed will be delivered.~~ Where the property sold includes insurable improvements, the successful bidder, at the bidder's own expense, shall carry fire and extended coverage insurance on the improvements from the date of the sale until the purchase price is paid to the extent obtainable or to the court appraised value of the improvements or to the unpaid balance of the purchase price, whichever is less as a minimum, with a loss clause payable first to the Master Commissioner of the Jefferson Circuit Court, or first to the person or persons entitled under the judgment to receive the purchase price. Failure of the purchaser to effect the insurance shall not affect the validity of the sale or the purchaser's liability but shall allow the party or parties entitled to receive the purchase price to purchase this insurance and the premium paid, or the proper portion thereof, shall be charged to the purchaser as purchaser's costs.

506 Confirmation

- A. Report of Sale shall be filed in accordance with Part IV of the Administrative Procedures of the Court of Justice. A successful bidder at a sale may move for an order confirming the sale ten (10) or more days after the filing of a Master Commissioner's Report of Sale. Otherwise, a motion for an order confirming the sale may be filed twenty (20) or more days after the filing of a Master Commissioner's Report of Sale. The motion shall be docketed for a hearing at motion hour unless (1) all parties who are not in default (including purchaser) waive notice; (2) the Plaintiff is the purchaser and all other parties are in default for failure to appear; or (3) the motion is automatically referred to the Master Commissioner under JRP 506B.
- B. Cases to enforce Liens - Reference to Master Commissioner of Post Sale Motion.

After the judicial sale has taken place in the action involving the enforcement of any lien on real estate, motions made by any party may, at the option of the movant, stand automatically referred to the Master Commissioner to examine the record and report promptly as to what disposition should be made of the motion. A motion which is automatically referred under this Rule shall not be docketed for a hearing at a motion hour. Responses and objections to a motion so referred may be made in writing, shall not be noticed for a hearing and shall be filed directly with the Court. Such responses and objections shall be served within seven (7) days of service of the motion. Unless specifically limited by the Court in a particular action, the Master Commissioner has the general powers set out in CR 53.04 and 55.01, including the power to require the filing of briefs prior to making a report.

507 Master Commissioner Reports.

- A. Reports of the Master Commissioner shall be confirmed by the Court without the necessity of motion if no objections are filed within the time period prescribed by Civil Rules, except as otherwise provided in JRP 506.
- B. Except as provided in JRP 506, objections to a Master Commissioner's Report shall not be noticed for motion hour and shall be filed directly with the Court. A response to the objections may be filed within five (5) days of the filing of the objections. The objections will then stand submitted upon the filing of Form AOC 280. Prior to submission counsel may request a hearing.

- C. Objections to the Master Commissioner's Report shall be made with particulars and with a memorandum of authorities, if appropriate.

508 Master Commissioner's Fees.

A. ~~The Master Commissioner shall assess all judicial sale fees in accordance with Part IV of the Administrative Procedures of the Court of Justice. the following fees and expenses:~~

A. ~~A sale fee shall be assessed for each judicial sale, which shall be a percentage, set forth below, of the final bid, or in the case of several lots sold at the same time under the same judgment, the aggregate of the final bids. The sale fee shall be as follows: 5% of the first \$5,000~~

~~2% of the next \$20,000~~

~~1 1/2% of the next \$175,000~~

~~1/2% of the excess over \$200,000~~

~~However, the fee shall never exceed \$5,000.~~

~~The fee for each cancelled judicial sale shall be 50% of the proposed judicial sale fee, based upon the appraised value of the property, or a flat fee of \$100 if the property has not been appraised. In no case shall the fee for a cancelled sale exceed \$2,500. If the property is sold, but the sale is not confirmed, the entire sale fee shall be assessed.~~

B. ~~Direct expenses attributable to the case shall be assessed, including copies, advertising, printed bills and appraisals. A deposit shall be paid to the Master Commissioner sufficient to pay the direct cost of the sale. The deposit must be submitted with the Master Commissioner's copy of the JRP-502D Statement of Amount to be Raised. If a sale is withdrawn, incurred expenses will not be refunded.~~

B.

~~C. A \$50 report fee shall be assessed for each recommendation on a tendered judgment, whether the report should recommend in favor or against the tendered judgment. A fee shall not be assessed for any reports upon tendered distribution and confirmation orders. The Master Commissioner shall assess all report fees in accordance with Part IV of the Administrative Procedures of the Court of Justice. Sanction fees may be authorized by the court in cases where repeated corrective action is required, or where individual attorneys or firms repeat the same mistakes causing cases to be reviewed repeatedly by the Master Commissioner's office. Any sanction fee assessed shall be paid to the Jefferson Circuit Court Clerk.~~

C.

~~D. The Master Commissioner shall assess all deed fees in accordance with Part IV of the Administrative Procedures of the Court of Justice. A \$50 deed fee shall be assessed for the Master Commissioner to draft and execute a deed. In cases which do not involve a Master Commissioner sale and the Master Commissioner~~

does not draft the deed, a \$25.00 deed fee shall be assessed for review and execution.

D.

~~E.~~ The Master Commissioner or Receiver shall assess the following fees when receiving and paying out money under court order (except as otherwise provided for judicial sales) or for settling the accounts of -estates in accordance with Part IV of the Administrative Procedures of the Court of Justice:

- ~~_____ 3% of the first \$2,000~~
- ~~_____ 2 1/2% for the next \$3,000; and~~
- ~~_____ 1 1/2 % for the excess over \$5,000.~~

~~The fee shall not be assessed if a sale fee is assessed. For settlement of accounts of insolvent estates this computation shall exclude any amounts exempt from creditors. The fee shall never exceed \$5,000.~~

E.

F. When the Master Commissioner hears a possessory or attachment matter pursuant to KRS Chapter 425, a \$25.00 fee shall be assessed for the hearing and report. This fee shall be paid to the Master Commissioner prior to the hearing.

F.

G. For any other hearing in which there is no sale, settlement, or receivership, a fee shall be assessed at ~~\$60 per hour in quarter-hour increments~~ in accordance with Part IV of the Administrative Procedures of the Court of Justice. These fees shall be paid to the Master Commissioner ~~and shall be due on the fifth working day following the conclusion of the hearing~~. No more than \$600 in hearing fees shall be assessed in any case regardless of the number and length of hearings unless recommended by the Circuit Judge and approved by the Chief Judge for extraordinary circumstances shown. If a case is reopened, additional fees totaling no more than \$200 may be assessed.

G.

H. A fee of ~~\$7.50~~ \$25.00 shall be assessed for the initial Bill of Discovery conducted before the Master Commissioner. A fee of ~~\$7.50~~ \$25.00 shall be assessed for a Letter of Arrest.

~~I. The fees charged by the Master Commissioner are subject to a schedule promulgated in Part IV of the Administrative Procedures of the Court of Justice.~~

509 Appraisals.

- A. In all sales of real estate under judgment or decree of Court where an appraisal is required, the fee for each appraiser shall be \$100.00 and taxed as costs.
- B. However, in sales of real estate under judgment or decree of Court involving an appraisal of commercial, industrial real estate or real estate consisting of multiple apartments or multiple parcels, the Court may order a fee of more than \$100 for each appraiser taking into consideration the time, labor and skill involved.

~~C.~~ The appraiser shall post a written or printed notice of sale upon or near the real estate to be sold.

~~C.~~

~~D.~~ Where an appraisal of personal property is directed by a judgment or decree of sale, the fee of each appraiser shall be determined by the Court on evidence as the Court may require showing the kind of property appraised, the number of items of property involved, its value, and the time, labor and skill involved in making the appraisal.

510 Bills of Discovery.

~~A.~~ Bills of Discovery shall automatically be referred to the Master Commissioner when a copy of the notice together with the required fee is filed in the Commissioner's office. Notice shall be served under the Rules of Civil Procedure directing the party to appear before the Master Commissioner on a Friday, at 10:00 a.m., for the purpose of discovery and examination. For this notice and hearing, the Master Commissioner shall receive a fee, as set pursuant to JRP 508.

~~A.~~

Bills of Discovery shall automatically be referred to the Master Commissioner. Bills of Discovery shall be conducted in the Office of the Master Commissioner on Friday mornings. The judgment creditor shall telephonically contact the Office of the Master Commissioner to request and obtain a date and time at which the discovery will be undertaken, and, by the close of the second business day thereafter, the judgment creditor shall file its Notice of Bill of Discovery with the Office of the Circuit Court Clerk, and deliver to the Office of the Master Commissioner a file stamped copy of the aforesaid notice, together with payment to the Master Commissioner of the fee assessed under JRP 508 (G). Failure of the judgment creditor to timely comply with these requirements shall result in the Bill of Discovery being remanded from the post-judgment discovery docket. The notice shall be sent to the last known address of the judgment debtor or party and shall direct the judgment debtor or party to appear before the Master Commissioner at the designated date and time for the purposes of discovery and examination.

~~B.~~

~~B.~~ No party shall be subject to additional discovery proceedings for six (6) months following their ~~after her~~ appearance and examination unless an affidavit is filed by ~~_____~~ counsel showing a change of circumstances warranting this.

~~C.~~

~~C.~~ If a judgment debtor fails to appear in response ~~respond~~ to a notice of discovery, the judgment creditor may subpoena the debtor for an appearance before the Master Commissioner. If the debtor is served with a subpoena and fails to appear, a forthwith order of arrest may be sought by the creditor.

511 Possessory and Attachment Hearings.

A. Actions brought pursuant to KRS Chapter 425 shall be automatically ~~be~~ referred to the Master Commissioner. The Master Commissioner and Deputy Commissioners ~~her~~

deputies shall act as the "judicial officer" to perform whatever duties are statutorily required.

- B. After an ex parte action brought under KRS Chapter 425 has been filed, the clerk shall deliver the court file to the Master Commissioner's Office. The Clerk shall also deliver files in other actions where the Defendant requests a hearing or where Plaintiff's counsel wants the Master Commissioner to act.
- C. Required preliminary hearings in possessory and attachment actions shall be held before the Master Commissioner each Wednesday at 2:00 p.m., or at a day and hour designated by the Master Commissioner. Ex Parte Motions and Applications may be heard by the Master Commissioner or the Court at any convenient time.
- D. The demand required by KRS 425.012 and KRS 425.301 ~~informing shall inform~~ the Defendant of ~~this~~ the right to be heard before the Master Commissioner, and shall include the following statement:

If you want a hearing, you must notify the Master Commissioner either in writing- (514 West Liberty Street, Louisville Kentucky 40202) or by phone (502-574-5934) within seven (7) days. and send a copy of your request to the attorney for the Plaintiff. You will receive written notice of the date and time of the hearing. ~~If your request is by telephone, ask for the "possessory action clerk" who will tell you the date and time of the hearing.~~

When the Defendant's request is received, the Master Commissioner's Office shall set a date and time for a hearing and notify the Defendant and counsel for the Plaintiff of the date and time.

- E. If no request for a hearing has been made within seven (7) days of the demand notice, the clerk shall issue the writ or order, upon receipt of the required compliant affidavit and bond, unless the attorney for the Plaintiff and/or the Court request findings by the Master Commissioner.

512 Uncontested Cases to Enforce Liens -Reference to Master Commissioner.

An uncontested action involving the enforcement of any lien on real or personal property shall be submitted for final judgment (whether submission be upon complaint or cross-complaint) to the Master Commissioner. The Master Commissioner shall examine the record and report promptly whether the case is ready for judgment and what judgment is justified by the record. Unless specifically limited by the Court in a particular action, the Master Commissioner may exercise the general powers set out in CR 53.04 and 55.01, including the power to require the filing of briefs prior to making a report.

513 Uncontested Cases to Sell Real Estate other than Cases to Enforce Liens.

An uncontested action involving the sale of real estate (other than a sale to enforce a lien or private sale), shall be automatically referred to the Master Commissioner for final judgment (whether submission be upon complaint or cross-complaint). The Master Commissioner shall examine the record and report promptly whether the case is ready for judgment and what judgment is justified by the record. Unless specifically limited by the Court in a particular

action, the Master Commissioner may exercise the general powers set out in CR 53.04 and 55.01, including the power to require the filing of briefs prior to making a report.

514 Procedure for Attachment and Garnishment/Service Thereof.

- A. All writs and orders of attachment and garnishment directed to third-party garnishees, such as employers and financial institutions, may be served, at the option of counsel for Plaintiff, by regular first class mail, certified mail return receipt requested, or may be personally served by any person authorized to serve a subpoena pursuant to CR 45.03. Funds attached or garnished pursuant to a writ or order shall, within twenty (20) days of service, be forwarded by the garnishee directly to the attorney for the party on whose behalf the writ or order was issued, unless the order directs otherwise.
- B. All actions in enforcement of garnishment pursuant to KRS 425.501, et seq., shall be brought before the Commissioner. They may be instituted by payment of the fee set forth in JRP 508 and will be docketed for the same day and time as Bills of Discovery.

515 Collection of Judicial Sale Administrative Fee

Beginning January 1, 2007, in all mortgage foreclosure or real estate lien enforcement cases filed in Jefferson County, the JSAF (Judicial Sale Administrative Fee) required by Part IV, ~~Sec. 1(9)~~ of the Administrative Procedures of the Court of Justice shall be collected by the Jefferson Circuit Clerk along with the original filing fee. The fee shall be transmitted by the Circuit Court Clerk to the Administrative Office of the Courts on a quarterly basis as requested.