



by Judge Paul Bacigalupo (Ret.)



Judicial Reference

A judicial reference can be a valuable instrument in the judge's arsenal, especially in contentious discovery disputes, in highly complex cases and at those times when a judge's caseload becomes extraordinary. Let me briefly explain how a judicial reference can assist judges by utilizing the reference process pursuant to the guidelines established by the Code of Civil Procedure.

General Reference

There are two main types of statutory judicial references. The first is a referral of any or all issues in a case pursuant to an agreement or consent of the parties. This is called a general reference. It results in a binding determination by the referee. (CCP Sections 638 and 644(a)) In other words, the CCP provides that, in the case of a consensual general reference, the decision of the referee is binding and must stand as the decision of the court. Thereafter, upon filing a statement of decision, judgment may be entered in the same manner as if the action had been tried by the court. The scope of the powers of a general judicial reference are set forth in the order of the appointment. (CCP Section 638; see also California Rule of Court 3.900 et. seq.)

Special Reference

The second type of judicial reference is a special reference. (CCP Section 639)

This type of reference can be either voluntary, by stipulation of the parties; or involuntary, by a court order. Under CCP section 639, a referee is only making a recommendation to the court. Such a recommendation might typically be on discovery matters that are defined by the court in the appointment order. Courts may also utilize the reference process for other purposes, such as: complex cases requiring specialized expertise; large volumes of e-discovery; highly contentious disputes; oversight of depositions; in camera review of documents; sensitive information like trade secrets that may involve protective orders; and cases that have a long history of litigation that could benefit from consistent oversight. The most common appointment, however, is as a discovery referee.

Contrasted to the general reference, which results in a binding determination by the referee, a finding by a special referee is advisory only. (CCP section 644(b)) Under a special reference, the referee writes a report with recommendations for the trial court to adopt. If the court chooses, it can ignore the recommendations of a special referee and issue its own ruling.

Referee Appointment Process

The court's appointment process includes issuing an appointment order, obtaining the referee's consent and certification, and

providing a statement of the proceedings. The court's appointment order will define the referee's authority and the procedures that are to be followed. For example, the appointment order will specify if the appointment is for all pending and future discovery motions or only particular discovery matters. Judges are recommended to utilize the code-compliant California Judicial Council forms in appointing a referee: ADR-109, "Stipulation or Motion for Appointing Referee"; ADR -110, "Order Appointing Referee"; and, ADR-111, "Report of Referee."

Once the referee issues a report and recommendations to the court (including a suggested ruling on the merits of the motion, a statement of the hours spent and fees charged by the referee, and a recommended allocation of the referee's fees), the judge independently reviews and considers the referee's recommended rulings. (CCP Section 644) Objections to the report may be submitted to the court. (CCP Section 643) The judge has the discretion regarding how to consider the objections and may adopt, modify, or reject the referee's report. See *Lopez v. Watchtower Bible & Tract Society of New York* (2016) 246 Cal.App.4th 566.

In short, a judicial reference can be a partner with the judge and an asset to the litigants in a myriad of case challenges. 🎯