

Opinion No. 63-14

March 7, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Honorable W. T. Scoggin District Judge P. O. Box 328 Las Cruces, New Mexico

QUESTION

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1. Can a Juvenile Court appoint a referee for the purpose of hearing traffic offense charges against a juvenile?
2. If a referee can be appointed, what powers does he have?
3. Can probation officers or juvenile attorneys make disposition of juvenile traffic offense cases without bringing the matter to the Juvenile Court by means of a petition?

CONCLUSIONS

1. See analysis.
2. See analysis.
3. No.

OPINION

{*33} ANALYSIS

There appears to be no authority in the New Mexico law for appointment of referees by a district court other than Rule 53, Rules of Civil Procedure. That rule uses the term "master" but expressly encompasses hearing officers, auditors, commissioners or referees. Rule 53 (a) and (f). This rule supersedes previous statutes {*34} providing for appointment of referees and, if it does not repeal by implication, it governs over any inconsistent provisions in Section 21-8-26 thru 21-8-30, N.M.S.A., 1953 Compilation.

1. Power To Appoint.

At the outset we conclude that Rule 53 is applicable to Juvenile Court proceedings. Although such proceedings are generally concerned with violation of criminal laws they are held not to be criminal proceedings. **In re Santillanes**, 47 N.M. 140, 138 P2 503. They are special statutory proceedings in the nature of a civil action. **In re Santillanes**, supra. **State v. Doyal**, 59 N.M. 454, 286 P2 306. This being so, the Rules of Civil

Procedure apply except where inconsistent with the special statutory rules (Rule 1, Rules of Civil Procedure) and there is no special statutory rule in the Juvenile Code (Sections 13-8-9 thru 13-8-73, N.M.S.A., 1953 Compilation P. Supp.) concerning reference of cases to a master.

Rule 53 (b) defines under what conditions a reference to a master can be made:

"(b) REFERENCE. A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it."

Juvenile cases are non-jury (Section 13-8-9, N.M.S.A., 1953 Compilation) so the "exceptional condition" rule is applicable. Reference cannot be made as a matter of convenience and the federal court decisions have shown a marked reluctance to approve use of the device unless a truly "exceptional condition" exists. See **LaBuy v. Howes Leather Co.**, 352 U.S. 249, 77 S. Ct. 309, 1 L. Ed. 2 290; **Hartford Empire Co. v Shawkee Mfg. Co.**, D. C. Pa., 5 F.R.D. 46.

It is our conclusion that a master can be appointed to hear traffic offense charges against a juvenile when the Juvenile Court before which the matter is pending determines that the requirements of Rule 53 (b) are met.

2. Powers Of Master.

Rule 53 (c) defines at length what powers a master has and in itself answers the second question. We think it unnecessary to quote the section. In addition, the master's power would be subject to the hearing procedure in the Juvenile Code, e.g. Sections 13-8-46 thru 13-8-51, N.M.S.A., 1953 Compilation P. Supp.

It may be helpful to point out that reference by no means ends the court's role in a case. After hearing, the master must report to the court. Rule 53 (c). After receiving the report the court has the task of taking action on it - either adopting, rejecting or modifying it. Rule 53 (c) (2). Thus the court must enter a judgment expressing such action. True, the master's findings in regard to fact are binding on the court if supported by substantial evidence, **Lopez v. Singh**, 53 N.M. 245, 205 P2 492, but the court is not at all bound by the master's conclusions of law. **D.M.W. Contracting Co. v. Stolz**, 158 F2 405; **Eddy v. Prudence Bonds Corp.**, 165 F2 157; Barron & Holtzoff, Federal Practice, Section 1170.

3. Proceeding Without Petition.

There is a provision in the Juvenile Code for handling matters without petition. This is only in those instances where preliminary investigation satisfies that no further action should be taken in the matter. Section 13-8-25, N.M.S.A., {35} 1953 Compilation.

However, we understand the question to have reference to those cases where action is warranted and the proposed "disposition" by a probation officer or juvenile attorney would be tantamount to a decision on the merits of the case. It is our opinion that Section 13-8-25 supra, prohibits any such action on the matter and requires instead the filing of a petition with the court. A case is not in the court until a petition is filed and it is obvious that there can be no judgment on an alleged offense unless the case is before the court.

By: J. E. Gallegos

Assistant Attorney General