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PERSPECTIVE

## Mastering the use of special masters in complex civil cases

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Complex cases often require intensive judicial management. The “complexity” could be a result of many factors. Such factors could include geographically dispersed opposing parties, complex subject matters, extensive discovery needs, etc. A lack of proper judicial management could cause these cases to place unnecessary burdens on the court or the litigants, raise costs and cause preventable delays in the decision-making process.

Rule 3.400 of the California Rule of Court sets forth the most common features of civil cases which may be designated as “complex.” One such attribute is “a substantial amount of documentary evidence.” Another is “numerous pretrial motions raising difficult or novel issues that will be time-consuming to resolve.” As such, it is becoming increasingly common for counsel to stipulate to, and courts to appoint, special masters to assist in the management of complex civil cases. Special masters may support the court by streamlining pretrial discovery and other

aspects of the case to avoid placing unnecessary burdens on the court and promoting efficient and cost-effective proceedings. The parties also benefit from the special

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master, as most counsel find it is easier to have access to the special master, who can convene informal telephone conferences with counsel to explore issues and suggest solutions as an alternative to the more costly and lengthier process of briefing followed by motion hearings and reports. Special masters generally have more flexibility in their schedules to accommodate the schedules and needs of counsel.

Consider, for example, a trade secrets case that involves allegations that a former key employee “stole the secret sauce” and brought it with them to a new employer. In such a case, counsel would typically seek the production of electronically stored information and a forensic evalua-

tion of computers and other devices to learn if the employee was improperly accessing, downloading, or forwarding information which the company contends is either

stored information experience as the discovery referee, or as an adjunct to a different referee who is presiding over the law and motion, for example, can help provide expertise in formulating appropriate search terms other search parameters. This informal management of the process, guided by a neutral with expertise, helps save the parties time and money and helps conserve judicial resources.

protected as trade secrets or otherwise confidential. Several steps commonly precede the request for forensic evaluation: interrogatories and requests for production may be propounded, objections may be made, privilege lists may be provided, and motions to compel may be filed. In such a case, the parties and counsel will benefit from an early discovery management conference with a special master. The special master can meet with counsel, telephonically or virtually, to help craft a discovery plan and timeline to ensure an orderly process designed to get the information flowing while avoiding unnecessary and expensive law and motion proceedings. The use of a technical special master with electronically

Separately, consider a large, multidistrict class action case, which is a consolidation of numerous lawsuits filed in various districts across the country. Such consolidated cases often involve dozens of law firms, each of which expects to be compensated. Unfortunately, this compensation can sometimes come at the expense of the class members. The appointment of a special master to review attorneys’ fees in such a case for duplicate billing or excessive fees would enable the court to prevent overbilling of class members. For example, in the data breach class action lawsuit involving Anthem, Inc., the U.S. District Court for the Northern District of California appointed a special master to investigate

potential overbilling after the Center for Class Action Fairness, on behalf of class members, challenged the excessive attorney fees charged. In this case, the special master identified both excessive charges for contract attorneys and staff attorneys and unreasonable amounts of time having been expended on certain categories of tasks. In the Anthem case, the special master's findings and recommendations enabled the court to appropriately award attorneys' fees and expenses to the class counsel.

In general, the role of a master helps provide the parties with access to justice during uncertain times. The tasks delegated by the court or stipulated to by the parties may vary from helping parties exchange documents;

assisting with the settlement of certain issues to prevent delays in the decision-making process; making recommendations and findings related to discovery disputes; assisting with post-settlement disbursement; reviewing documents "in camera"; and more. As such, judicious use of special masters in appropriate cases can significantly benefit both the parties and the court. Identifying and selecting a special master with the expertise and knowledge needed in a particular case can significantly alleviate any unnecessary burdens that complex cases can often create. ■

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