

# Efficiently Moving Cases: The Essential Role of Court-Appointed Neutrals

By Hon. Peggy A. Leen (Ret)

April 8, 2025

Our courts are often overwhelmed with a backlog of cases and overburdened. Their enormous workload results in delays in decision-making needed to resolve cases. Finding ways to keep cases moving is important to judges, litigants and their lawyers. One invaluable tool at the disposal of the courts is court-appointed neutrals, also known as special masters or referees, who are appointed to address pretrial and post-trial matters that cannot be effectively and timely addressed by the court.

## When Are Court-Appointed Neutrals Used?

Neutrals are typically appointed in complex cases; multiparty, mass tort and class action cases; and other judicial time-intensive cases that require extensive case management and prompt resolution of discovery and privilege disputes. Neutrals are also viewed as an efficient option in cases requiring specialized expertise in science and technology, such as patent cases, and business and commercial cases involving complex financial and accounting issues.

## Expediting Case Resolution

Counsel for parties in these types of cases are increasingly requesting the appointment of court-appointed neutrals to expedite resolution of their disputes. Court-appointed neutrals have been appointed to conduct settlement conferences, oversee the distribution of settlement funds, review voluminous documents for privilege determinations, make findings and recommendations in eminent domain and construction



lien cases, resolve discovery and case management disputes and conduct evidentiary hearings.

Neutrals with extensive experience in information technology have also been appointed to investigate and report to the court in disputes over whether parties have complied with their duty to preserve documents and information, and have preserved, collected and produced reasonably available electronically stored information in discovery.

## Legal Authority for Appointing Court Neutrals

In federal court, Rule 53 of the Federal Rules of Civil Procedure governs the appointment of a special master to perform duties consented to by the parties, or as authorized by Rule 53(c). Under Rule 53, the court is authorized to appoint a master if the court finds some exceptional condition warrants it or there is a need

to perform an accounting or difficult computation of damages or to address pretrial and post-trial matters that cannot be timely and effectively addressed by an available district judge or magistrate judge.

### **Procedural Considerations for Appointment**

Before appointing a master, the court must give the parties notice and an opportunity to be heard. The court must also consider and protect the parties against unreasonable expense or delay. The court may have a list of potential masters in mind, but any party may suggest candidates for appointment.

### **Defining the Scope of Authority**

It is essential that the order of appointment delineate the special master's authority and duties and any limits on that authority, reporting obligations to the court and the parties, time limits, method of filing the record of special master proceedings, and standards for reviewing special master orders, findings and recommendations.

Rule 53(b) identifies the mandatory and optional contents of the appointing order. Rule 53(c) provides that unless the appointing order directs otherwise, a master may regulate all proceedings and take all appropriate measures to perform assigned duties. If the appointing order directs the master to conduct evidentiary hearings, the master may exercise the appointing court's power to compel, take and record evidence.

### **The Role of Counsel in Requesting a Court-Appointed Neutral**

If you have a case you believe warrants the appointment of a special master or other neutral, the first step is to determine what, if any, statutory or other legal authority the court in your jurisdiction has to appoint one. Thoughtful consideration should be given to the scope of the authority and duties you believe a court-appointed neutral can more timely and effectively perform. Counsel should also determine the type of experience or area of expertise of a neutral you believe would be best suited to address the needs of your case.

### **Considerations for Counsel**

It is important to consider the standard of review that will be applied to objections to a court-appointed neutral's findings of fact and conclusions of law in your jurisdiction, and whether the parties may stipulate to a different standard of review.

Additionally, it is essential that any potential conflicts of interest be explored with respect to all candidates for appointment. Rule 53(a)(2) explicitly provides that a master must not have a relationship to the parties, attorneys, action or court that would require disqualification of a judge under federal law unless the parties, with the court's approval, consent to the appointment after the master discloses any potential grounds for disqualification.

Finally, counsel should evaluate the expense the parties are likely to incur given the scope of the appointment, as well as the potential for additional attorneys' fees and costs incurred in judicial review of the neutral's orders, findings of fact, conclusions of law and recommendations to the court. The basis, terms and procedures for compensating the court-appointed neutral and how the costs should be allocated among the parties must be clearly established and included in the order of appointment.

### **The Impact of Court-Appointed Neutrals**

Court-appointed neutrals play an important role in assisting the court and litigants in performing specifically delineated judicial duties to "secure the just, speedy, and inexpensive determination of every action and proceeding." Fed.R.Civ.P.1. Court-appointed neutrals can give the parties the time and attention courts cannot. Neutrals with the appropriate experience and expertise tailored to the needs of your case can be instrumental in expediting its resolution.

Judge Peggy A. Leen (Ret.) serves as a JAMS mediator, arbitrator, special master and neutral evaluator in a variety of practice areas, including business/commercial, civil rights, employment, health care, insurance, intellectual property, personal injury/torts and professional liability.

**Disclaimer: This content is intended for general informational purposes only and should not be construed as legal advice. If you require legal or professional advice, please contact an attorney.**

