

Academy of Court-Appointed Masters

Appointing Special Masters and Other Judicial Adjuncts *A Handbook for Judges and Lawyers* January 2013

Section 1. Types of Appointments

Judicial adjuncts can take on several types of roles. Often—but not exclusively—these roles arise in multi-district litigation (MDL) cases, class actions, or other complex or multi-party litigation. Judicial adjuncts appointed pursuant to Rule 53 of the Federal Rules of Civil Procedure are referred to as “masters.” Other adjuncts can have titles that reflect the nature of their role, such as monitor, mediator, facilitator, or arbitrator. Sometimes one adjunct will play multiple roles throughout the lifetime of a complex case. Generally, special masters and other judicial adjuncts serve in one or more of the following roles.

1.1 Settlement Master

The use of settlement masters to reach global settlements in large-scale tort litigation dates back at least to the Dalkon Shield litigation and Agent Orange litigation beginning in the late 1980s. Courts have come to realize that the appointment of a neutral third-party who is granted quasi-judicial authority to act as a buffer between the court and the parties can provide a useful approach to reaching a settlement. This is especially true in complex litigation involving numerous parties, or when the dispute has matured and individual settlements become repetitive and time-consuming.

1.2 Discovery Master

The use of discovery masters to manage and supervise complex cases is relatively commonplace. The discovery master can manage a discovery plan, issue orders resolving discovery disputes, make recommendations to the judge, and monitor ongoing discovery. Sometimes a discovery master will sit in on depositions that are particularly contentious. Because the authority of the master is limited to managing discovery, the courts and parties often view the discovery master’s role as less judicial and more managerial in nature.

1.3 Electronic Discovery Master

Modern cases typically deal with electronically stored information (ESI) issues. The recent amendments to the discovery rules affect how judges and lawyers can resolve problems that arise from determining what information is readily accessible or recoverable, what is an appropriate native format, and whether meta data needs to be disclosed. A special master experienced in both discovery procedures and computer systems and software can be an invaluable help to a court and the parties. Substantial time and money can be saved by the use of a special master to help resolve ESI disputes.

1.4 Coordinating Master

The term ‘coordinating master’ includes special masters whose work requires them to coordinate activities in a variety of ways. For example, they may meet and confer with lawyers to develop proposed orders to submit to the judge; they may chair a liaison committee of lawyers; or they may work on other aspects of complex cases or the claims administration of class action settlements. They may also coordinate events in cases that are filed in both state and federal courts to provide uniform and efficient procedures.

1.5 Trial Master

Masters may be assigned trial duties. Parties may agree to have their dispute heard by a master, either for final decision or for findings and recommendations subject to review by the court. Trial masters may also compile and interpret technical or complex evidence or voluminous data. Trade secret suits are one context in which the need for a trial master may arise. In patent suits, an experienced patent attorney may be asked to conduct a *Markman* hearing and prepare findings and recommendations on the subject of disputed claim terms.¹

1.6 Expert Advisor

It has long been considered within a court’s inherent authority to engage the help of an expert advisor. An expert advisor can act as a judicial tutor, providing guidance on complex or specialized subjects. Patent cases and trade secret cases are two contexts in which the need for an expert advisor occasionally arises. When an advisor is utilized, the trial court conducts the trial with support from the advisor.

1.7 Technology Master

In cases intertwined with technological, scientific, or complex issues, masters with technical expertise can be very helpful. Adjuncts who are experts in civil procedure as well as experts in a technical field can provide the courts and parties with the expertise necessary to understand and resolve problems. Lawyers who retain their own experts also benefit from the contributions made by these independent court appointed experts.

¹ *Markman v. Westview Instruments*, 517 U.S. 370 (1996).

1.8 Monitor

Masters can be helpful after the case is resolved to ensure that a court's order or settlement agreement is implemented properly and complied with over time. In civil cases, masters are often appointed to monitor compliance with structural injunctions, especially those involving employment or other organizational change, those involving facilities assisting the disabled, or those requiring reform in government agencies. By surveying the defendant's remedial efforts, the master can facilitate judicial evaluation of compliance with equitable relief. Federal courts almost never utilize monitors in criminal cases.

1.9 Class Action Master

Masters assisting in a class action may perform a variety of tasks specific to this context, including drafting or implementing a notice to the class or supervising settlement fairness hearings under Fed. R. Civ. P. 23.

1.10 Claims Administrator

Claims administration masters can be used to administer the settlement of class action claims or to pay out money damages to a class of recipients after trial. These masters can help select, work with, and monitor the claims administration organization that administers and manages the details of the settlement.

1.11 Auditor/Accountant

A judicial adjunct can assist the court by providing an accounting of complex financial information. For instance, a court might ask an adjunct to sort out a plaintiff's claims of damage or a defendant's ability to pay.

1.12 Receiver

An adjunct can be asked by the court to function as a receiver. As a receiver, the adjunct would hold and preserve property until a dispute is resolved. A receiver can be given quite extensive responsibilities. In some cases, they have been appointed to run parts of governments or businesses.

1.13 Criminal Case Master

In criminal cases, special masters can assist the court in administering the resolution of cases. Masters can assist the prosecution and the defense in negotiating plea bargains while preserving and protecting the interest of the public and the constitutional rights of the defendant. Judicial adjuncts may also help in administering or monitoring non-jail sentencing terms and conditions. A master may accompany a peace officer who is conducting a search for documents in the possession of certain professionals, such as attorneys or clergy. The master's role is to review sensitive documents and secure them until a court determines if the items are privileged.

1.14 Conference Judge

A settlement master in a criminal case is sometimes referred to as a “conference judge.” These masters help to settle cases, often employing a community approach that involves the prosecutor, defendant, victim, and their families. Witnesses such as police officers sometimes participate. Conference judges are often able to obtain results that are more creative and more beneficial to the victims and their families than a typical plea bargain.

1.15 Ethics Master

A state court may appoint a Special Master to review evidence in connection with ethics complaints against attorneys. These Special Masters will recommend whether disciplinary action against an attorney is appropriate, and if so, what sort. This process may supplement the work done by an ethics board.

1.16 Appellate Master

The United States Supreme Court and state Supreme Courts have original jurisdiction over certain types of cases—for example, election disputes, or boundary disputes between states. Because these cases are outside of the Supreme Court’s normal appellate function, courts will often appoint a Special Master to secure and review an initial evidentiary record, manage discovery and motion practice as would a trial court, and recommend a final disposition.