What's In a Name?

Reinventing "Special Masters" as "Court-Appointed Neutrals"

Merril Hirsh

It's tough to rebrand a profession. In July 2022 (just before the publicity surrounding the *Trump* case was finally getting people to ask "what is a special master, anyway?"), what had been the Academy of Court-Appointed Masters[1] and what had been the American Bar Association Judicial Division Lawyers Conference Special Masters Committee both changed their names to use "Court-Appointed Neutral," instead.[2] In October 2022, the National Association of Women Judges also adopted a resolution calling for the use of "Court-Appointed Neutral," or other names, instead of "master."[3] In August 2023, the American Bar Association House of Delegates adopted one resolution supporting rule and legislative changes designed to replace the term "master" or "special master" with "court-appointed neutral"[4] and another supporting a model state rule on "court-appointed neutrals."[5]

But that still does not make rebranding easy. There are always unintended consequences. So even if you have problems with a name, you have to be convinced that the devil you know is really worse than a devil you don't know. You are also going to have to devote efforts to explaining the change. So, you also need to make sure that time is better spent explaining a new name than it is defending an old one.

But this particular rebranding from "master" to "court-appointed neutral" is at least in the category of tough, but ironic. Unintended consequences and lots of explaining are what these organizations are trying to avoid. Understand the problems, and you will start to understand the name "court-appointed neutrals," why it matters, why it is much better, and how changing the name helps to reinvent a profession.

SO, WHAT IS A "COURT-APPOINTED NEUTRAL," ANYWAY?

A "court-appointed neutral" is a disinterested professional appointed as an adjunct—a special officer appointment—to assist a court in its case-management, adjudicative, or post-resolution responsibilities in accordance with court rules and any standards established by a court for qualification to hold such an appointment.

Think Swiss army knife. It could be someone appointed when judges have pulled their hair out in frustration with the parties' approach to discovery or when a court needs someone to:

- monitor a decree;
- perform claims administration;
- provide advice on how a biochemist would understand a patent;
- provide advice on what is junk science;
- participate in the execution of a warrant to prevent access to attorney-client information;
- facilitate the handling of ediscovery;
- review allegedly privileged documents so that the court need not be exposed to them; or
- operate as a forensic accountant to investigate and report back to the court on where the money went from a trust.

The role can be quasi-adjudicative, facilitative, investigatory, advisory, intermediary, or anything else that might be helpful. Court-appointed neutral is a generic term that is not limited to any particular role in which the court might want to use the neutral.

But the goal is also to turn "court-appointed neutral" into a term of art. A neutral in a particular case might be appointed to conduct evidentiary hearings in the way an arbitrator might. But the term is not intended to encompass all arbitrators. A neutral might be appointed to assist the parties in coming to their own resolution of disputes (over procedure, merits, or both and in whole or in part) in the way a mediator might. But the term is not intended to encompass all mediators. The limiting factor is that the neutral is being appointed, in this instance, by a court, as a special officer to a proceeding for which the court remains the ultimate arbiter.

As courts are not the only ones who appoint neutrals, other settings may use similar names. For example, the 9/11 Fund is an example of a congressionally appointed neutral. British Petroleum's gulf oil explosion and General Motors' ignition switch led to "privately appointed neutrals." And neutrals have been used as adjuncts to administrative proceedings and arbitrations. But stressing the appointment and the neutrality allows us a means to discuss how to use this collection of tools.

WHAT HAVE WE BEEN CALLING THIS POSITION?

History has taught us two things about this multifaceted profession. First, having neutrals help arbiters in appropriate cases is a good enough idea that it has been around for a very long time. As Magistrate Judge Wayne D. Brazil explained, citing earlier case law, "[t]he office of master in chancery, of French origin and imported [to England] with the Norman Conquest, is one of the

Footnotes

1. *See Why We Became the Academy of Court-Appointed Neutrals,* at www.courtappointedneutrals.org/acam/assets/file/public/namechange/on%20becoming%20the%20academy%20of%20court-appointed%20neutrals.pdf.
2. *See Why We Became the Court-Appointed Neutrals Committee,* at https://www.americanbar.org/groups/judicial/conferences/lawyers_conference/committees/court-appointed-neutrals/committee-name-change/.
3. *See NAWJ Resolution in Support of Ceasing to Use the Term "Master" or "Special Master" and, the use of "Court-Appointed Neutrals,"* at www.nawj.org/uploads/files/resolutions/resolutionsupportingcourtappointedneutrals10-22-2022.pdf.
4. *See* https://www.courtappointedneutrals.org/acam/assets/file/public/resources/aba_resolution_516-annual-2023_amend_19m100_final.pdf (ABA Guidelines).
5. *See* https://www.courtappointedneutrals.org/acam/assets/file/public/resources/resolution-517-annual_approval_copy_8_5_23.pdf.

oldest institutions in Anglo-American law."[6] This means the use of court-appointed neutrals in England predates the use of English, and it may date back to the Roman empire.

The United States Supreme Court appointed a committee of neutrals to assist in deciding the very first case filed on its docket.[7] And over 100 years ago, the Court wrote that the inherent power of the judiciary "includes authority to appoint persons unconnected with the court to aid judges in the performance of specific judicial duties, as they may arise in the progress of a cause. From the commencement of our government it has been exercised by the federal courts, when sitting in equity, by appointing either with or without the consent of the parties, special masters."[8]

Second, despite the long history of using neutrals to assist arbiters, no one has ever coined a universally accepted or fairly descriptive term for it. Federal Rule of Civil Procedure 53, and the state rules that track it, now use "master" and used to use "special master." And so, it is not surprising that a committee by the ABA Judicial Division Lawyers Conference to examine whether these professionals could be used more effectively and the academy for this profession would have started out by using the term "master." Nor is it surprising that the ABA used the same term, in January 2019, when its House of Delegates adopted "Guidelines on the Appointment and Use of Special Masters in Federal and State Civil Litigation."[9]

But legislatures and courts have used dozens of other terms that often have their own meanings in other contexts. These terms include "adjunct," "special magistrate," "hearing examiner," "special facilitator," "discovery facilitator," "appointed mediator," "monitor," "court advisor," "investigator," "claims administrator," "claims evaluator," "ombuds," "court mediator," "case evaluator," "referee," "receiver," and "commissioner."[10]

WHY DOES IT MATTER WHAT WE CALL IT?

It matters because for us lawyers, words matter. A lot. First, these terms are a poor description of both the job and how the ABA Guidelines think about the profession. Start with the fact that the most common term "master," although having obvious positive connotations, also has obvious negative connotations. It can refer to admirable qualities, like expertise, proficiency, accomplishment, scholarship, or leadership. But the term "master" also refers to one (male) person who has control or authority over another, and the most obvious example of that is slavery.

In recent years, many organizations, in many contexts, have been considering whether they should use a different term that does not carry a negative racial or a restrictive gender meaning. For example, electrical and software engineers are discussing whether they should continue (as they have for decades) to use master and slave to refer to situations in which one device exercises asymmetric control over others. Colleges, including Harvard, Yale, and Rice, have stopped using "master" as an academic title or the name for the head of a residential college. Real estate professionals are debating whether "master" bedroom is the best name. The wine industry is debating whether to delete the term "master" from "master sommelier."

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At least three states—Maryland,[11] Delaware,[12] and Pennsylvania[13]—have changed court rules in recent years to substitute a different term for "masters." In Pennsylvania's case, the move followed a resolution of the Philadelphia Bar Association that raised a number of concerns about appointing someone called a "master."[14] The resolution noted that the term "creates a sense of separation, anxiety, and confusion" because it suggests that some people are subject to others."[15]

As the Philadelphia Bar Resolution reflects, even the positive connotation of master is a really poor description of a Swiss army knife. In this setting, it suggests someone put on a pedestal to take over, not someone who is brought in to help and certainly not someone to assist the parties in a self-determined process to work out differences. A "master facilitator" is an oxymoron.

But it is not as if the other terms really work that well either. As some of the examples above illustrate, the terms range from the nondescriptive, if accurate, "adjunct," through many function-specific terms that can be confusingly limited when used to refer to an array of roles. Terms like "special magistrate," "hearing examiner," and "referee," for example, suggest that the role is quasi-adjudicative, and not that it can be facilitative or advisory. "Special facilitator" and "appointed mediator," suggest that the role is facilitative, and not a way that courts can benefit from specialized judgment or expertise. "Monitor," "court advisor," "investigator," "claims administrator," and "forensic analyst" connote specialized roles that may or may not be accurate in particular cases. Other terms, like "mediator," "arbitrator," "case evaluator," or "ombuds," potentially create confusion with those who serve these roles in other settings.

Second, as the Philadelphia Bar Resolution also recognizes, when you describe the job poorly, people are confused about it. If you use a term like "master" that suggests someone brought in to take over, and it is only fair to expect people to ask questions like don't we have a judge to do that? Why should I pay someone else separately? Is this really privatizing a public function? Shouldn't I be able to veto this? And, as David Cohen once noted, "is this going to ruin my vacation plans?"[16] When you get down to it, no one really likes having a "master"—OK, except maybe a St. Bernard.

6. Wayne D. Brazil, *Referring Discovery Tasks to Special Masters: Is Rule 53 a Source of Authority and Restrictions?* 8 Am. B. Found. Res. J. 143, n.31 (1983), and accompanying text.
7. Vanstophorst v. Md., 2 U.S. 401 (1791).
8. In re. Peterson, 253 U.S. 300, 312 (1920).
9. See www.americanbar.org/content/dam/aba/directories/policy/midyear-2019/100-midyear-2019.pdf.
10. *See* ABA Guidelines, *supra*. n.4 at 4.
11. *See* https://www.courts.state.md.us/news/new-rule-changes-masters-magistrates.
12. *See* https://legis.delaware.gov/BillDetail?LegislationId=140635.
13. *See* https://law.justia.com/cases/pennsylvania/supreme-court/2023/744-civil-procedural-rules-docket.html.
14. *See* https://philadelphiabar.org/?pg=ResNov20_1.
15. *Id.*
16. David Cohen, *The Judge, the Special Master, and You,* Litig., Summer 2014.

"[A] history of the current F. R. C. P. 53 suggests that up until quite recently, even very sophisticated rulemakers did not focus on how this tool might effectively be used."

Understand that this is someone brought into help, not to take over, and you start asking better questions like "will this help?" "how might it help?" and "does the benefit outweigh the cost?" No one thinks we should appoint court-appointed neutrals just to ruin people's vacations or supplant judges. The ABA Guidelines on the Appointment and Use of "Special Masters" in Federal and State Litigation (as this is written, we have a resolution in the works to change the reference) urges courts and litigants to avoid a knee-jerk reaction. Consider the cost and benefit in the case; appoint neutrals when the benefit outweighs the cost and not the opposite; and create standards, training, and systems of evaluation to make sure they afford that benefit.

When people are confused about a tool, they do not use it effectively. The report that accompanied the ABA Guidelines noted that "the use of (or even consideration of using) special masters is so rare that the very idea is alien to many judges and lawyers." It is not possible to know the reasons why the idea is so alien. The report suggests some possible reasons, but the use or even discussion of using a neutral is so rare that there are no current statistics on it. But having a name that does not describe the tool cannot possibly help.

Indeed, a history of the current Federal Rule of Civil Procedure 53 suggests that up until quite recently, even very sophisticated rulemakers did not focus on how this tool might effectively be used. The version of Rule 53 that was adopted in 1983 (over 200 years after "masters" were first used in the United States) did not even discuss the *possibility* that a judge might appoint a neutral to address discovery or other pretrial disputes, assist settlement, or engage in posttrial or post-settlement work such as monitoring or claims administration. Instead, the rule was located in the "Trial" section of the Federal Rules and discussed when a court might issue an "order of reference" to a *trial* master—an individual empowered "to receive and report evidence," conduct hearings, and file a report.[17] The Rule even contemplated that federal district court judges would refer a case to a "special master" to conduct a *jury* trial "where the issues are not complicated."[18]

It is hard to imagine that a trial judge would want to have a "special master" conduct a jury trial, and hardly surprising that the rule would declare it to be the "exception and not the rule" that a master would conduct a bench trial either.[19] It is probably not fair to say that the name "special master" led the rules drafters to think of the role as conducting trials. But if you are going to use a neutral to conduct trials, "special master" is an apt term. Bringing in a neutral to preside over a trial does look a lot like someone was brought in to take over. So the use of the term "special master" is, at least, not so surprising.

But this confusion spawned at least *four* other types of confusion in how people have thought about using neutrals.

CONFUSION #1: THE RULE DID NOT FIT THE PRACTICE.

Judges recognized that appointing a neutral had uses in pre- and posttrial (or settlement) proceedings that did not involve trying cases on the merits. Indeed, in 1983, the same year the old rule was adopted, Magistrate Judge Wayne Brazil wrote an article (cited above) arguing that while the rule could not be construed to authorize the appointment of "special masters" for pre- and posttrial functions, longstanding case law gave judges inherent authority to do that apart from the rule.

By the 1990s, the disparity between the trial role the rule discussed and the practice of using neutrals in other ways led to proposals to revisit Rule 53. Eventually, the Advisory Committee on the Federal Rules established a subcommittee to consider revisions to Rule 53. The subcommittee, in turn, asked the Federal Judicial Center to investigate and report on how "special masters" were actually being used. The Federal Judicial Center concluded that "[d]espite Rule 53's failure to address pretrial and posttrial functions," "judges appointed special masters to perform discovery management functions at the pretrial stage and decree monitoring or administration at the posttrial stage"; indeed, these appointments were about as common as those trial functions the rule actually contemplated and "litigants rarely questioned special masters' authority to perform pretrial and posttrial functions."[20] This recognition of inherent authority is important as a practical matter because, for example, it is the basis for appointing "masters" in criminal proceedings, even though there is no Rule of Criminal Procedure analog to Civil Rule 53.[21]

Because "[b]y the end of the twentieth century, the use and practice of appointing special masters had grown beyond the then-current version of Rule 53,"[22] the Rule 53 Subcommittee rewrote the rule into its current form effective December 2003. Instead of saying, as the 1983 Rule had, that the court "may appoint a special master" for a very limited trial purpose, the first line of the 2003 version of Rule 53 (which is the current version) presumed that courts had the authority to appoint special mas-

17. Former Rule 53(c) (1983).
18. Former Rule 53(b) (1983).
19. *Id.*
20. Thomas Willging et al., Special Masters' Incidence and Activity, Federal Judicial Center (2000) at 1.
21. United States v. Black, No. 16-20032-JAR, 2016 WL 6967120, at *3 (D. Kan. Nov. 29, 2016) (*citing* Schwimmer v. United States, 232 F.2d 855, 865 (8th Cir. 1956) (*quoting* In re: Peterson, 253 U.S. 300, 311 (1920)). *See generally, e.g.,* Reed v. Cleveland Bd. of Educ., 607 F.2d 737, 746 (6th Cir. 1979) (the authority to appoint "expert advisors or consultants" derives from either Rule 53 or the Court's inherent power); Regents of the Univ. of Cal. v. Micro Therapeutics, Inc., No. C 03-05669 JW, 2006 WL 1469698, at *1 (N.D. Cal. May 26, 2006) (to similar effect).
22. Shira A. Scheindlin and Jonathan A. Redgrave, *Revisions in Federal Rule 53 Provide New Options for Using Special Masters in Litigation,* 76 N.Y. State Bar Ass'n J., January 2004, at 18, 19.

ters for an unspecified array of potential needs and described the ***limits*** on how that authority should be exercised.

Since 2003, Rule 53 has begun with the phrase "[u]nless a statute provides otherwise, a court may appoint a master *only to* perform duties" that the Rule then defines broadly. [23] The 2003 change contemplated not only appointing trial masters,[24] but also appointing masters to "perform duties consented to by the parties,"[25] and to "address pretrial and posttrial matters that cannot be effectively and timely addressed by an available district judge or magistrate judge of the district."[26] Then the current rule goes on to specify details such as factors that would potentially disqualify an appointee[27]; factors that need to be considering in making an appointment[28]; the notice, content, and submissions requires in advance of an order that appoints the "master"[29]; how the entry and review of the master's orders, reports, and recommendations are to operate[30]; the master's compensation[31]; and the ability to appoint a magistrate judge to serve as a "master."[32]

CONFUSION #2: IF YOU DO NOT KNOW WHAT A "MASTER" IS, YOU CANNOT KNOW WHAT THE RULE COVERS.

Although the 2003 version of Rule 53 did a much better job of reflecting the actual practice, the rule does not define the term "master." As described above, pre-2003, when the rule was written as if it purported to *authorize* the use of "special masters," but then limited the discussion to "trial masters," Magistrate Judge Brazil and other jurists who appointed "masters" to perform non-trial functions, either explicitly or implicitly, were recognizing that judges had inherent authority to appoint masters, and, therefore, Rule 53 did not delimit all of the "neutrals" a judge might appoint. But now that the rule says that a court may appoint a "master" "only to" perform certain functions (that it defines broadly), in accordance with certain requirements, does it apply to all appointments of neutrals? And if not, which ones are outside the rule?

OK, sure, if the judge calls the appointee a "master," Rule 53 would have to apply. But do all the requirements Rule 53(a)(2), (a)(3), and (b)-(h) apply if a judge calls the appointee a "monitor"? What if the judge uses the term "facilitator"? What about "ombuds?" Does it matter whether the appointee is performing the role one might traditionally ascribe to a "master"? And what is that role anyway? Is it a "master" if the neutral issues reports and recommendations sometimes and not otherwise? Suppose one neutral is instructed to try to help the parties work out their differences over discovery and another is appointed to try to help the parties work out their differences on the merits. Is the former a "master" who might be incidentally using mediation skills, while the latter a mediator and not a "master" at all? And what if the instruction is "try to get the parties to cooperate in discovery, but if the parties cannot cooperate, then you should consider their differences and draft a report and recommendation?" As the Lord Chancellor commented in Gilbert and Sullivan's *Iolanthe,* "it is indeed painful to have to sit upon a woolsack which is stuffed with such thorns as these!"

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CONFUSION #3: IT GETS WORSE: THE CONFUSION IN FEDERAL RULE 53 SPAWNED EVEN MORE CONFUSION IN THE BANKRUPTCY RULES.

Federal Rule of Civil Procedure 53 was, at least, amended in 2003, so it that it could reflect to modern practice. But a bankruptcy rule, also adopted in 1983, was never amended to take into account the change. Bankruptcy Rule 9031 says "Rule 53 F.R.Civ.P. does not apply in cases under the Code." The Advisory Committee notes on this Rule read, *in their entirety*: "This rule precludes the appointment of masters in cases and proceedings under the Code." Currently, these words do not make literal sense. Rule 53 does not purport to authorize the appointment of masters. It purports to *limit* the exercise of inherent authority by saying "a court may appoint a master only to" to do various things. So if Rule 53 does *not* apply to bankruptcy proceedings, there are no such limitations.

But in any event, even if we assumed that there was, in 1983, some reason for assuming that bankruptcy judges would not need themselves to refer matters to trial masters, there is no reason to assume that bankruptcy judges could never make effective use of a court-appointed neutral. And, again, if bankruptcy judges cannot appoint a "master," what if they call the appointee a special receiver, monitor, referee, etc.?

CONFUSION #4: THE EVIL WE HAVE DONE LIVES AFTER US.

As noted above, before 2003, when Federal Rule of Civil Procedure 53 discussed only the use of "special masters" to conduct trials, it understandably provided that this use would be the "rule not the exception."[33] Those words have not appeared in Rule 53 for almost 20 years. The Advisory Committee notes accompanying the 2003 rule explain under the heading **"Trial Masters"** that it generally remained true that the idea of appointing "masters" *to conduct trials* was "exceptional," neither the rule nor the notes say that appointing a "master" to perform functions by consent or pre- or posttrial should be the "exception but not the rule." Nonetheless the lore that using a "master" should be the "exception not the rule" lived on in the 2004 (fourth edition) of the *Manual for Complex Litigation* for years.

There are some obvious negative effects of putting a special thumb on the scale against considering whether to use a tool that has been around for a thousand years. If courts and litigants do not know what "masters" do, they cannot be expected to use

23. Fed. R. Civ. P. 53(a)(1) (2003) (emphasis added).
24. Rule 53(a)(1)(B).
25. Rule 53(a)(1)(A).
26. Rule 53(a)(1)(C).
27. Rule 53(a)(2).
28. Rule 53(a)(3).
29. Rule 53(b).
30. Rule 53(c)-(f).
31. Rule 53(g).
32. Rule 53(h).
33. Former Rule 53(b) (1983).

"Having a broader term 'court-appointed neutral' helps us to clarify what rules should govern regardless of the role and which rules might be role specific."

them effectively. "Master" does not sound like a judge's tool. It sounds like a judge's abdication. It is rare that we want a judge to abdicate. But it should not be rare that a judge might want to consider using a creative tool.

Some of the negative effects of this predisposition against considering a tool, however, are less obvious, but perhaps even more important. If courts and litigants think that there needs to be some extraordinary circumstances to justify have a "master" brought in, they are unlikely even to consider the option until the case has developed enough fights, problems, expense, and backlogs to qualify as extraordinary. That means that neutrals are not considered in advance—so that they can help the judge manage the case in a way that avoids these problems in the first place.

Worse still, it means that the selection is not based on a regular procedure. Because very few courts have historically maintained rosters of "masters," they tend to be selected *ad hoc*. This biases the selection in favor of people the judge already knows. It is a thumb on the scale that favors repeat players and, therefore, cuts against diversifying the profession.

This is not to say that experience is bad or that every "master" the judge knows is a bad choice. People the judge knows may be excellent and many experienced masters are. But the fact that an appointee knows a judge does not necessarily either guarantee or provide the parties comfort that the appointee will be excellent. It can be awkward for parties to criticize the work of a master who is perceived to be the judge's friend. (Who wants to tell a judge "your best friend is an idiot"?). This problem, in turn, makes it more difficult to obtain buy-in: It is hard enough to tell a lawyer to do anything they have not done before. (Remember: the word "enfeoff" still appears in some deeds). But telling a lawyer that the judge has appointed a "master" feeds into concerns about the choice and the process. Buy-in is especially important, because to be successful, neutrals often not only need to be but also perceived to be honest brokers.

The judge can ameliorate a part of this problem by selecting the appointee from lists recommended by the parties. But that potentially creates a different problem. A judge may appoint neutrals in a number of cases and is in a position to evaluate whether the appointment process as a whole is fair and produces a diverse pool of appointees. Lawyers, who may have one case in their career involving a "master," have to explain the recommendation(s) for that case to a client who will make the ultimate decision on the recommendation(s). In this way, lawyers face a pressure judges do not: to rely on choices they already know or people known to the lawyer in the office next door. It is not every lawyer who will advise a client "this person has never done this before, but I know they'll be great."

To add to that, thinking that masters are reserved for "extraordinary" cases cuts against implementing ordinary means to help them work better. Because courts have rarely had rosters, they have rarely had candidates pre-vetted. They have not generally established ways of training the neutrals who will be used. They do not generally have means of evaluating the quality of the work. And they have not maintained statistics on when neutrals have been appointed, the diversity and quality of the selections, and what use of neutrals has proven to be most effective.

In short, the fact that many masters have done a terrific job is something that has happened in spite of the system under which they are used, not because of it. If you only think to use a tool rarely, you are less likely to use it well.

HOW DOES "COURT-APPOINTED NEUTRAL" HELP?

The ABA Guidelines have spawned a rethinking about how people come to serve as court-appointed neutrals and how courts and litigants can make more effective use of these professionals' services. Here again, there is the obvious and the subtle.

Although there is no reason to think that people have historically used the term "master" intending to evoke images that are racially insensitive or gender selective, it is obvious why you would want to stop using the term. If you are genuinely trying to diversify the profession, it is common sense to stop using a term that carries such potential baggage rather than trying to defend it.

More subtle is the fact that "court-appointed neutral" better captures the Swiss army knife. When a court appoints a neutral, the court is choosing to use a tool that serves the court's needs. The tool the court chooses can be as different as a finishing polisher is from a power saw and is limited only by the court's and parties' creativity. Having a broader term "court-appointed neutral" helps us to clarify what rules should govern regardless of the role and which rules might be role specific. Thinking of the role as someone the court appoints as an adjunct, rather than as someone to take over, helps us ask the right questions about whether the neutral is needed, for what, and whether the benefit outweighs the cost. We can regularize the process by setting up rosters of people who bring a vast array of experience and background to serve these different functions. We can invite stakeholders to vet the rosters, so we improve the quality, integrity, and legitimacy of the selection process. We can regularize the process of selection to insist that the selection be done from a broad pool, instead of relying on who the judge, the lawyer, or the lawyer in the next office over already knows. And we have a regular system of training, regular evaluation, regular feedback, and the maintenance of data that facilitates regular study.

The effort to achieve these ends is in full swing. In August 2023, the ABA Resolution 516[34] urging legislators and rule-makers to substitute "court-appointed neutral for "master" or "special master" and to permit bankruptcy courts to use court-appointed neutrals; and Resolution 517[35] urging state, local, territorial and tribal courts to use an ABA Model Rule on "court-appointed neutrals." In February 2024, ABA President Mary Smith asked the Judicial Conference of the United States to amend the Federal

34. https://www.americanbar.org/content/dam/aba/directories/policy/annual-2023/516-annual-2023.pdf.

35. https://www.americanbar.org/content/dam/aba/directories/policy/annual-2023/517-annual-2023.pdf.

Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure to implement Resolution 516[36], and state rule-makers are also considering changes. The National Asian Pacific American Bar Association has now also adopted a broad resolution in support of the name change, broadening the profession and making more effective use of court appointed neutrals.[37] Other organizations, including the AJA, are considering similar various actions to support the name change. While the rule change requests are pending, there is a broad "CAN-onization" campaign that urges urge judges, ADR professionals and lawyers to start using the term "court-appointed neutral" — if necessary, with a parenthetical reference like "(what Rule 53 calls 'master')." Meanwhile the ABA Court-Appointed Neutrals Committee and the Academy of Court-Appointed Neutrals, or both, have developed a survey instrument for evaluating the work of neutrals; published criteria for selecting neutrals to a roster; added to the thinking on ethics for court-appointed neutrals; brainstormed ideas for using court-appointed neutrals more effectively; presented programs across the ABA and the country; and written articles—like this one.

Meanwhile, the Academy of Court-Appointed Neutrals has opened its membership up to people who have never previously served as neutrals and broadly recruited to diversify its membership. It has worked with former Federal Judicial Center Director and Judge Jeremy Fogel to develop the first-ever curriculum for training neutrals. It has launched an Incubator program to provide not only training, but mentoring. It has revised and made available a benchbook with checklists and information on how to use neutrals fairly and appropriately, model orders, and principles of ethics. And it is developing partnerships with sections, divisions, forums, and conferences of the ABA and with dozens of other organizations to discuss how this tool can be used effectively for the administration of justice.

Having a name for this profession is the first step in being able to talk about it. It will take time to get used to using "court-appointed neutrals," but we will all be better for having this toolkit.

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36. https://www.uscourts.gov/file/78168/download (name change); https://www.uscourts.gov/file/78167/download (bankruptcy rule changes).
37. https://cdn.ymaws.com/www.napaba.org/resource/resmgr/policy/resolutions/DR_Committee_Resolution_APPR.pdf. See also https://www.linkedin.com/posts/iilp_iilp-letter-support-of-academy-of-court-appointed-activity-7159275995949129728-Pi-4?utm_source=share&utm_medium=member_desktop (an open letter from the Institute for Inclusion in the Legal Profession supporting the name change).

Answers to Crossword

from page 41