

What, Who, Why, When, Where and How: Using Court-Appointed Neutrals in New Ways to Improve the Administration of Justice

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It is not just Juliet who asked “what’s in a name?” For at least a thousand years, jurists have appointed neutrals to assist in managing cases and providing justice. In the federal system (under Fed. R. Civ. P. 53), these neutrals currently go by the name “master,” except that the Supreme Court calls them “special masters.” Some states use those names, while others use various other names such as “adjunct,” “special magistrate,” “hearing examiner,” “early evaluator,” “facilitator,” “monitor,” “court advisor,” “investigator,” “ombuds,” “referee,” and “claims administrator.” When people cannot even figure out a name for something, it is fair bet that they have not figured out what it can do or how best to use it.

Recently, a movement has taken hold to standardize a common name – “court-appointed neutrals” – for these appointees and to rethink how courts could use them more effectively. In August 2023, the American Bar Association adopted two resolutions designed to help. [Resolution 516](#) among other things calls for rule makers and legislators to use “court-appointed neutral” to replace “master” or “special master.” [Resolution 517](#) adopts and asks state, local, territorial and tribal courts to adopt a Model Rule on court-appointed neutrals. There is now also a wealth of resources and people willing to help courts make use of these ideas.

Understanding the What, Who, Why, When, Where and How of this new name and related new thinking can help your court harness a very old resource to assist in meeting modern court needs.

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

The ABA’s Model Rule defines a “court-appointed neutral” as “a disinterested professional appointed as an adjunct special officer appointment to assist a court in its case-management, adjudicative or

post-resolution responsibilities in accordance with the provisions of this Rule and any standards established by this Court for qualification to hold such an appointment.”

Think “Swiss army knife.” It could be someone appointed by judges who have pulled out hair in frustration with the parties’ interactions; or someone to help parties with financial planning or a parenting plan or using social or community support services to help work through their issues. The court-appointed neutral could monitor a decree; to investigate and report on where the money went from a trust; administer claims; advise the court on how what is junk science; or ... again you get the idea. The role can be quasi-adjudicative, facilitative, investigatory, advisory, intermediary, or anything else that might be helpful.

WHY THE NAME: COURT-APPOINTED NEUTRAL?

The goal of rebranding this profession is to replace negative or confusing descriptions with an accurate description that can be accepted as a term-of-art every jurisdiction can use. It is easy to see that we should not be using the term master to describe a court official who has a measure of authority over a person involved with the court. Besides the obvious negative connotations, “master” leaves the misimpression that this is someone brought in to take over, when it is really someone brought in to help. But the terms in use also do not define the job well. “Adjunct” is un-descriptive (and non-descript), and other terms like “facilitator” or “monitor” or “referee,” etc., focus on one possible work a neutral could be appointed to do, but not others.

Court-appointed neutral captures the range of possible assistance and makes it possible to appreciate that assistance can come in different forms. It also emphasizes the critical parts of the role. First, this is a special judicial officer.

Changing the name is not intended to supplant existing court-based alternative dispute resolution programs. It supports them with appointments for specific helpful purposes. Second, this is a “neutral.” This is not an advocate (like a guardian ad litem or victim’s representative). This is someone who can gain trust and assist the process by being independent.

WHEN AND WHERE TO USE COURT-APPOINTED NEUTRALS

The use of a court-appointed neutral is limited by our imagination. First, think about a problem. Then, see if appointing a neutral can be a cost-effective answer to it.

Traditionally, uses of court-appointed neutrals have been case-specific in cases where parties can afford to pay for it. For example, judges have appointed neutrals in civil cases (in among other ways) to oversee discovery; to report and make recommendations on motions; to help parties work together to facilitate more less contentious or expensive exchanges; coordinate related proceedings; to investigate; to advise the court or the parties as an expert; to monitor compliance; to conduct audits or provide accountings; to serve as a receiver, etc.

If, however, the court were to establish a roster of court-appointed neutrals, it could require that the neutrals agree to perform work pro bono. That would allow court-appointed neutrals to be used in cases where parties cannot afford to pay for their services or in non-case specific ways such as triaging dockets for case handling, or helping to harness artificial intelligence to help manage cases, or helping unrepresented litigants understand and feel served by the judicial process.

This is one tool, not a cure for all ills. The idea is to consider the possibility of using a neutral as a regular part of the administration of justice, but to appoint a neutral only when there is a particular need and the benefit of appointing the neutral outweighs the cost.

WHO DO YOU PICK

The goal should be to find honest and effective brokers who are respected by, and will ably serve and reflect, the court, the parties, and the community. Courts should (1) evaluate the needs to be filled and the knowledge, skills and abilities the potential appointee(s) will bring to serve those needs; and (2) ensure the use of methods



likely to locate a broad pool of applicants. A roster is a particular effective way to do this because it affords an effective way to recruit broadly; and provides an opportunity for stakeholders to work together in determining the needs and how best to fill those needs; and a creates a chance for buy-in that will make the program more effective.

If there is no roster, you can still reach broadly. Ask the parties to propose lists of neutrals that are broad and diverse in background and skill sets, and explain how they located people for their list. This makes the process fairer and increases confidence in the selection.

HOW DO YOU THIS?

With the development of thinking in this area has come a large collection of supportive resources. The ABA Judicial Division Lawyers Conference Court-Appointed Neutral’s Committee [has a webpage](#) with the ABA resolutions, videos and articles, and other resources including a guide to setting up a roster and a survey instrument for evaluating the work of neutrals. The [Academy of Court-Appointed Neutrals \(ACAN\)](#) makes publicly-available resources, including a [benchbook](#) (with guides, checklists, model orders, a compendium of rules, ethical principles and articles), [training guides and programs](#), [articles](#), a [search tool for locating a wide group of potential neutrals](#), and a [form for posting an RFP](#). ACAN also offers people who will work with courts to create pilot programs for using court-appointed neutrals.

Anyone interested can contact me at merril@merrilhirsh.com.

[Read the NCJFCJ's Resolution in support of The National Academy of Court Appointed Neutrals Regarding Ceasing to Use the Term "Master" or "Special Master" and, the Use of "Court-Appointed Neutrals"](#).