From:	Greg Whitehair
To:	jones, jerry
Cc:	michaels, kathryn
Subject:	[EXTERNAL] FW: Proposal to retitle C.R.C.P. 53 to "Court-Appointed Neutrals"
Attachments:	2024 suggestion from ABA re federal Rule 53.pdf
Sent:	1/20/2026 7:30:43 AM

Dear Judge Jones:

I write to provide context concerning the nationwide movement proposing replacement of Rule 53's title of "Master" (sometimes "Special" Master, though that word was essentially removed from the federal rules in 2003) to the eponymously neutral "Court-Appointed Neutral." */ Judge Lipinsky's September 19, 2025 email in our January 2026 Civil Rules Committee agenda recites the Colorado proponents accurately.

As our Committee may recall, in 2018 we updated Rule 53 to reflect long-settled federal changes and incorporate our own lived experience with the previous Rule. For additional detail, please refer to Judge Zenisek's thoughtful article in the November 2018 edition of *The Colorado Lawyer*.

The focus of the more recent renaming movement is much more modest: a simple title change.

At the national level, in 2019, the ABA adopted Resolution 100 with guidelines suggesting to all jurisdictions an increased use of "masters" and the allowance of masters in Bankruptcy Court. Notably, the responsible ABA Working Group comprised a broad array of state and federal representatives, including federal judge Shira Scheindlin of e-discovery fame. **See attached letter** of February 12, 2024 from ABA President Mary Smith to Federal Rules Committee Secretary Thomas Byron.

In that 2024 ABA letter, please see reference to the ABA's 2023 Resolutions 516 and 517, proposing to replace the title "Master" (or Special Master) with "Court-Appointed Neutral," in both federal and state/local/tribal rules. *Id*. The ABA letter goes on to recite five substantive reasons why the name change is both timely and apt, including its flexibility and, well, neutrality, in contrast to the controller assumption implicit in the present term.

To be clear, the Federal Rules Committee has not yet acted on the ABA's federal proposal, and only the Indiana Commercial Court has thus far adopted the CAN nomenclature. Nonetheless, a handful of other states have recently replaced the term, including Maryland and Delaware (to "Magistrate"), Pennsylvania (to "Hearing Officer"), and New Jersey (to "Special Adjudicator").

Professional groups supporting the change to CAN include:

- The American Bar Association (as noted)
- The ABA Judicial Division Lawyers Conference Court-Appointed Neutrals Committee
- The National Association of Women Judges
- The American Judges Association
- The National Council of Juvenile and Family Court Judges
- The National Asian Pacific American Bar Association
- The Institute for Inclusion in the Legal Profession
- The National Association for Court Management
- The Philadelphia Bar Association
- The American Arbitration Association (AAA)
- JAMS
- The International Institute for Conflict Prevention and Resolution (CPR)

I will be pleased to provide active hyperlinks to each of these references' resolutions but wanted to maintain both safety and accessibility in this email.

I look forward to speaking on this topic at our upcoming meeting.

Greg

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*/ Full disclosure: before joining the Colorado Attorney General's office in 2022, I was completing the last of a number of state and federal Rule 53 "master" appointments. I was also serving on the Board of the Academy of Court Appointed Neutrals (fka Academy of Court Appointed *Masters*) and was active in the effort to change the name and the identifying acronym, ACAN. I have since resigned my Board post but remain a member of the organization.

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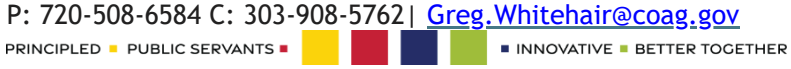

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February 12, 2024

H. Thomas Byron III,
Secretary Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
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Washington, DC 20544
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Re: Amendment of the Federal Rules of Civil Procedure to Substitute the Use of the Phrase "Court-Appointed Neutral" for "Court-Appointed Master"

Dear Mr. Byron:

The American Bar Association (ABA) respectfully requests that the Judicial Conference of the United States recommend that the Federal Rules of Civil Procedure be amended to substitute the term "court-appointed neutral" for "court-appointed master" both in Federal Rule of Civil Procedure 53 and in other rules that reference potentially appointing a "master."

Background

At its Midyear Meeting in January 2019, the ABA House of Delegates approved ABA Resolution 100.[1] This Resolution approved "Guidelines on the Appointment and Use of Special Masters in Federal and State Civil Litigation" (the "Guidelines") and urged that Bankruptcy Rule 9031 be amended "to permit courts responsible for cases under the Bankruptcy Code to use special masters in the same way as they are used in other federal cases."

This 2019 Resolution resulted from 18 months of effort by a Working Group that included representatives of the National Conference of Federal Trial Judges, the National Conference of State Trial Judges, the Lawyers Conference, the ABA Standing Committee on the American Judicial System, and the ABA's Litigation, Business Law, Dispute Resolution, Intellectual Property Law, Tort Trial and Insurance Practice, and Antitrust Sections on best practices concerning the use, selection, administration, and evaluation of "special masters."

[1] www.americanbar.org/content/dam/aba/administrative/board_of_governors/greenbook/greenbook.pdf at 227. Under ABA Policy, ABA Resolutions themselves are official policies of the Association. Reports that accompany resolutions are not adopted as official policy, and are treated as guidance provided by resolutions' drafters.

The Working Group that drafted the 2019 Resolution included retired Southern District of New York Judge Shira Scheindlin, who chaired the Subcommittee of the Advisory Committee on the Federal Rules of Civil Procedure that drafted the 2003 version of Federal Rule of Civil Procedure 53; then District of South Carolina Federal District Court Judge (now District of Columbia Circuit Judge) J. Michelle Childs; a former chair of the ABA Business Law Section, the then chairs of the ABA Litigation and Intellectual Property Law Sections; two former chairs of the ABA Section on Dispute Resolution; two former chairs of the ABA Antitrust Section; one former, and one now, state supreme court justice and numerous other judges and practitioners.

The central principle of the Guidelines enunciated in Guideline 1 is that "[i]t should be an accepted part of judicial administration in complex litigation and in other cases that create particular needs that a special master might satisfy, for courts and the parties to consider using a special master and to consider using special masters not only after particular issues have developed, but at the outset of litigation."[2] Over the decades courts have become increasingly involved in case management. Expanding the understanding of how neutrals might assist with case management benefits both the courts and the parties. While court-appointed neutrals may be appointed to serve quasi-adjudicative functions (e.g., discovery referees), they can also serve in non-adjudicative roles such as performance management (e.g., monitoring a decree), facilitation (e.g., working with the parties to resolve discovery disputes without motion), advisory (e.g., providing expertise to assist the court in assessing the adequacy of expert reports); information gathering (e.g., a forensic accountant, who reports to the court on where money went from a trust); or a liaison (e.g., providing a distillation of information to the court without exposing the court to settlement discussions or privileged material).[3]

In the three and one-half years following the adoption of Resolution 100, the ABA examined approaches to implementing these precepts. This process required thousands of hours of discussion, involving at least 14 of the ABA's sections, divisions and forums, and over 20 organizations outside of the ABA. It has resulted in the drafting of two other resolutions co-sponsored by both the Judicial Division and the Section of Dispute Resolution and their approval by the ABA House of Delegates in August 2023:

> Resolution 516, which is the focus of this request, provides:
>
> RESOLVED, That the American Bar Association amends the *ABA Guidelines for the Appointment and Use of Special Masters in Federal and State Civil Litigation* ("Guidelines"), adopted January 2019 (Resolution 100, 19M100), by retitling the Guidelines, "*ABA Guidelines for the Appointment and Use of Court-Appointed Neutrals in Federal and State Civil Litigation*" and replacing the terms "Special Master" and "Master" with "Court-Appointed Neutral;"
>
> FURTHER RESOLVED, That the American Bar Association further amends ABA Resolution 100, 19M100, to urge that Bankruptcy Rule 9031 and other provisions of rules or law related to Bankruptcy be amended to permit courts

[2] *See* ABA Resolution 100 Guideline 1.

[3] *See, id.* Guideline 4.

> responsible for cases under the Bankruptcy Code to use court-appointed neutrals (whether identified as "masters" or otherwise) in the same way as they are used in other federal cases; and
>
> FURTHER RESOLVED, That the American Bar Association supports rule and legislative changes designed to replace the term "master" or "special master" with "court-appointed neutral."[4]

In addition, Resolution 517 adopts and urges state, local, territorial, and trial courts to adopt a Model Rule on the use of Court-Appointed Neutrals. (Although this resolution is not directed to amending federal rules, it may be helpful to have as background and also because it includes a definition of "court-appointed neutral.")[5]

This Request

This request seeks to make the changes necessary to use "court-appointed neutral" rather than "master" in the Federal Rules of Civil Procedure. The ABA is submitting a separate letter today requesting that the Federal Rules of Bankruptcy Procedure be amended to permit the use of "court-appointed neutrals" in proceedings under the Bankruptcy Code. For convenience, that letter is attached.

Rationale for Having the Term "Court-Appointed Neutral" Replace "Master" in the Federal Rules.

(1) "Master" is a very poor term and a very poor description.

The term "master" has both positive and negative connotations. It can refer to admirable qualities, like expertise, proficiency, accomplishment, scholarship, or leadership to which others can aspire and usually obtained through years of effort. In the context of calling someone a "chess master" or a "master of the art" it does convey one of those meanings.

The situation, however, is very different when "master" is used to identify people invested by a court with some measure of authority over parties. Although no one suggests that the use of "master" in court settings was intended to have a negative meaning, "master" carries an extremely negative connotation in situations involving power relationships. It 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 – especially in situations that describe arguable control over others or invoke images of dominance and subservience. For example, electrical and software engineers are discussing whether they should continue (as they have for decades) to use master and slave to

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[4] www.americanbar.org/content/dam/aba/directories/policy/annual-2023/516-annual-2023.pdf

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

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. Many real estate professionals have decided that "master" bedroom is not the best name. The wine industry is debating whether to delete the term "master" from "master sommelier."

By supporting "rule and legislative changes designed to replace the term "master" or "special master" with "court-appointed neutral," in ABA Resolution 516, and using the term "court-appointed neutrals" in Resolution 517 for a model state, local, tribal, and territorial rule, the ABA joined in an active effort already underway to change the term used by many courts. At least three states – Maryland,[6] Delaware[7] and Pennsylvania[8] – 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."[9] The resolution noted that the term "creates a sense of separation, anxiety, and confusion" because it suggests that some people are subject to others."[10]

As the Philadelphia Bar Resolution reflects, even the positive connotation of "master" is a poor description of the role. In this setting, it suggests someone who is put on a pedestal to take charge, not someone who is brought in to help, and certainly not someone to assist the parties in a self-determined process to resolve differences.

Even before these latest movements, some settings have highlighted the difficulty in using the term "master." For example, after years of litigation, one court approved a consent decree in *Pigford v. Glickman*,[11] – a case that resulted ultimately in payment of billions of dollars to settle allegations of discrimination against black farmers in United States Department of Agriculture programs. The consent decree called for neutrals in various capacities. But none of them was called a "master" – a name that would be particularly inappropriate.[12]

Numerous organizations have now recognized that what was inappropriate in *Pigford* may be equally inappropriate, if less obvious, in other settings. In 2022, the ABA's Judicial Division's Lawyers Conference committee that had been leading the effort to implement the Guidelines changed its name from the "Special Masters Committee" to the "Court-Appointed Neutrals

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[6] *See* https://www.courts.state.md.us/news/new-rule-changes-masters-magistrates.

[7] *See* https://legis.delaware.gov/BillDetail?LegislationId=140635.

[8] *See* https://law.justia.com/cases/pennsylvania/supreme-court/2023/744-civil-procedural-rules-docket.html.

[9] *See* https://philadelphiabar.org/?pg=ResNov20_1

[10] *Id.*

[11] 185 F.R.D. 82 (D.D.C. 1999).

[12] https://media.dcd.uscourts.gov/pigfordmonitor/orders/19990414consent.pdf

Committee."[13] The Academy of Court-Appointed Masters changed its name to the Academy of Court-Appointed Neutrals.[14] The National Association of Women Judges adopted a Resolution in Support of Ceasing to Use the Term "Master" or "Special Master" in favor of using the term "Court-Appointed Neutrals."[15]

Since the ABA adopted these resolutions, many organizations either have already or are currently considering similar changes or have urged their members to use "court-appointed neutral" rather than "master" on resumes, websites and business cards. The American Arbitration Association has stopped using the term "master" for neutrals appointed to assist in arbitration. The Institute of Inclusion in the Legal Profession has announced its support for the change from "master" to "court-appointed neutral." We have also learned that organizations that are actively considering similar name changes include the American Judges Association, the National Council of Juvenile and Family Court Judges, the National Association for Court Management, the National Bar Association, the National Asian Pacific American Bar Association, the International Institute for Conflict Prevention and Resolution, and Judicial Arbitration and Mediation Services.

(2) "Court-Appointed Neutral" Is a Much More Accurate Term

The use of a court-appointed neutral to assist adjudicators has a very long history. "The office of master in chancery, of French origin and imported [to England] with the Norman Conquest, is one of the oldest institutions in Anglo-American law."[16] Some historians trace the practice to "civilian judex of the Roman Republic and Early Empire – a private citizen appointed by the praetor or other magistrate to hear the evidence, decide the issues and report to the [appointing] court."[17] The United States Supreme Court appointed a committee of neutrals to assist in deciding the very first case filed on its docket.[18] 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, federal courts have exercised authority,

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13 https://www.americanbar.org/groups/judicial/conferences/lawyers_conference/committees/court-appointed-neutrals/committee-name-change/

14 *See* *www.courtappointedneutrals.org/acam/assets/file/public/namechange/on%20becoming%20the%20academy%20of%20court-appointed%20neutrals.pdf*

15 Available at www.nawj.org/uploads/files/resolutions/resolutionsupportingcourtappointedneutrals10-22-2022.pdf

16 Wayne D. Brazil, "Referring Discovery Tasks to Special Masters: Is Rule 53 a Source of Authority and Restrictions?," 8 American Bar Foundation Research Journal, 143 at n.31 and accompanying text (Winter 1983).

17 *Id.*

18 *Vanstophorst v. Md.*, 2 U.S. 401 (1791).

when sitting in equity, by appointing either with or without the consent of the parties, special masters, auditors, examiners, and commissioners."[19]

Despite the long history of courts appointing neutrals, courts and rule-makers have never completely settled on a single term to refer to a neutral appointed by a court to perform one or more of these functions or to serve in one or more of these roles. Since 2003, Federal Rule of Civil Procedure 53, and state rules that adopt the federal language, have used the term "master." However, the Supreme Court rules use the term "special master."[20] And states 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," "court mediator," "case evaluator," "referee," "receiver," "commissioner," and others.[21]

Court-appointed neutrals have these different titles because they can fill very different roles depending on case needs. Where the term "master" suggests someone brought in to adjudicate, court-appointed neutrals are a multipurpose tool that could be used for quasi-adjudicative work, but could also be used for facilitative, investigative, intermediary, informatory, administrative, monitoring, implementing or various other purposes.

Calling someone "Master" suggests that their role is to make decisions or recommendations to the court. That mischaracterizes someone who is used to facilitate or otherwise assist the parties in reaching their own resolution of differences; or to offer expertise about science, or industries like construction, forensic accounting or computer forensics. Indeed, even when the role is ostensibly quasi-adjudicative, a significant benefit from appointing a neutral can come from helping the parties resolve differences without the need for motions in the first place.

"Court-Appointed Neutral" better describes a professional appointed as a special officer to help, rather than to take over specific functions in a litigation. It makes it easier for parties to appreciate that this is a multi-faceted tool and to focus the consideration on whether and which facet might be useful in a particular case and whether the benefit from using the tool in a particular case outweighs the costs.

(3) "Court-Appointed Neutral" Is Becoming the Standard Term.

As noted above, the inaccurate term "master" has never gained universal acceptance and, with three states already specifically rejecting the term, it never can be expected to serve as a unifying term. By contrast, "court-appointed neutral," is an accurate description. It captures the wide variety of names that jurisdictions use for this tool. And it is also becoming a term of art.

Both the main professional organization of those who serve courts as appointed neutrals (the Academy of Court-Appointed Neutrals) and the main Committee of the ABA Judicial Division

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[19] *In re Peterson,* 253 U.S. 300, 312 (1920).

[20] *See* Sup. Ct. R. 33(1)(g); 37(1).

[21] *See* ABA Resolution 100, Report at 1 n.1.

(the "Court-Appointed Neutrals" Committee) have adopted this term. The ABA has standardized the use of the term "Court-Appointed Neutrals" in a Model Rule that it is urging state, local, territorial and tribal courts to adopt.[22] That Model Rule defines "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.[23]

(4) Adopting "Court-Appointed Neutral" Will Clarify an Ambiguity in the Existing Rules.

In discussions concerning Proposed Federal Rule of Civil Procedure 16.1, the Advisory Committee on the Federal Rules noted an important ambiguity in Rule 53. Neither Rule 53, nor any of the other rules that use the term "master" define the term. Under the current rule, if a court in a civil case appoints a neutral that the court calls a "master," it is clear that Rule 53 applies to the appointment. But if the court appoints someone as a "monitor," or "referee" or "discovery facilitator" the application of the rule is unclear.[24]

Standardizing and defining the term "court-appointed neutral" to encompass the broad roles of a neutral clarifies these rules. If there are appointments of neutrals (for example, referrals to court-based mediation programs or the appointment of a mediator outside of a court-based referral program) that should *not* follow the strictures of Rule 53, then they should be carved out of Rule 53, instead of leaving courts and parties to guess what rules apply. The ABA Proposed Model Rule for state, local, territorial, and tribal courts, contains such a carve out. It permits courts to

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[22] Resolution 517.

[23] *Id.* Subpart (a).

[24] (Draft) Minutes of the Civil Rules Advisory Committee (reporting on Subcommittee Discussions), March 28, 2023 at 7. Available at https://www.uscourts.gov/sites/default/files/2023-03_advisory_committee_on_civil_rules_meeting_minutes_final_0.pdf ("[t]here has been, and to some extent still is, substantial disagreement about the necessity of following the entire Rule 53 procedure every time there is a need for such an appointment."). Indeed, a significant reason for considering and adopting the 2003 rules was that before the 2003 version of Rule 53 was adopted, the rule discussed only the use of "masters" or "special masters" to conduct trials and "[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," Shira A. Scheindlin and Jonathan A. Redgrave, "Revisions in Federal Rule 53 Provide New Options for Using Special Masters in Litigation," 76 N.Y. ST. BAR ASS'N J. 18, 19 (January 2004), to include appointments based on inherent authority to conduct pre- and post-trial functions that the preexisting Rule 53 did not discuss. *See* Advisory Committee Notes on 2003 Amendments to Federal Rule of Civil Procedure 53. Courts making those types of appointments before the 2003 Amendments were doing so as a matter of inherent authority, which existed regardless of what Rule 53 provided. *See* Brazil, *supra* n.16.

make appointments in appropriate cases "[u]nless law or the court provides otherwise, and subject to any court rules, procedures (including the provisions of any court-based alternative dispute resolution program) and principles of ethics applicable to the services being performed."[25]

(5) The Changes Are Non-Substantive and Relatively Simple to Implement.

The ABA is not proposing at this time to make substantive changes to Federal Rule of Civil Procedure 53. The Model Rule is directed to state, local, territorial and tribal courts. The changes proposed to the Federal Rules of Civil Procedure relate only to changing the name.

Including the index and headings, the term "master" currently appears 42 times in the Federal Rules of Civil Procedure, each time used in the context of a person appointed by the court. (Some comments on Proposed Rule 16.1 use the term "master complaint" to reference what the proposed rule identifies as a "consolidated" complaint). The change could be made by adding a definition of court-appointed neutral to Rule 53, with an appropriate carve-out and changing the term "master" to "court-appointed neutral" where it appears throughout the rules.

We appreciate the Judicial Conference's consideration of these changes and are of course available to address any concerns. Attached for reference is a copy of the request the ABA has submitted today to enable the use of court-appointed neutrals in bankruptcy proceedings.

Sincerely,

Mary Smith

Mary Smith
President, American Bar Association

[25] https://www.americanbar.org/content/dam/aba/directories/policy/annual-2023/517-annual-2023.pdf, subpart (c).