



April 5, 2024

By Electronic Delivery

H. Thomas Byron III,
Secretary Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE, Room 7-300
Washington, DC 20544
RulesCommittee_Secretary@ao.uscourts.gov

Re: American Bar Association Rule Suggestion 24-CV-A Substitution “Court-Appoint Neutral” for “Master”

Dear Mr. Byron:

I am writing on behalf of the Academy of Court-Appointed Neutrals (ACAN) to express our strong support for the American Bar Association’s (ABA’s) Suggestion that the Federal Rules of Civil Procedure be amended to substitute the term “court-appointed neutral” for “master”¹ and also to update some of the information that the ABA provided in connection with its Suggestion in advance of the Advisory Committee’s meeting on Tuesday April 9, 2024.

The Academy of Court-Appointed Neutrals (ACAN)

The Academy of Court-Appointed Neutrals was formerly the Academy of Court-Appointed Masters. We are a national organization of people who serve, are interested in serving, or are interested in the use of what Federal Rule of Civil Procedure 53 currently calls “masters.” Our members include former federal and state court judges, lawyers, practitioners, ADR professionals and other thought leaders on the creative use of court-appointed neutrals as tools to assist in the administration of justice. ACAN’s members have dedicated themselves to helping:

- People become court-appointed neutrals
- Court-appointed neutrals become better and
- The profession better serve justice.

In July 2022, our board and members voted to take the extraordinary step of renaming our Academy and working to rename our profession to stop referring to people who courts appoint to positions of authority as “masters,” and to standardize “court-appointed neutrals” as a name that much

¹ American Bar Association Rule Suggestion 24-CV-A, available at <https://www.uscourts.gov/file/78168/download>

better describes what these professionals do. We did this because the term “master” ill-serves the administration of justice and ill-describes our profession in a way that leads to confusion about what these appointees do and can do to assist courts.²

American Bar Association Suggestion 24-CV-A

ABA Suggestion 24-CV-A asks that the Federal Rules of Civil Procedure be amended to substitute the term “court-appointed neutral” for “master.” It also seeks to clarify what we mean by the term we are using in the rule by offering a definition of “court-appointed neutral” and language to make clear that the procedures set forth in Rule 53 do not apply to supplant other uses courts may make of neutrals (for example, as part of ADR programs run by the court as whole) and are subject to ethical principles and other local rules. ABA President Mary Smith’s February 12, 2024 letter making this Suggestion outlines the rationale for it in detail and we join it without need to repeat it.

However, we would like to add five observations that may help the Advisory Committee’s consideration of this suggestion and update some of the points ABA President Smith makes.

(1) Substituting “court-appointed neutral” for “master” is not just about semantics. As the ABA’s Suggestion explains, the word “master” carries numerous meanings, some of them positive and others extremely negative, but none of them helpful in understanding this role. Just this past week the American Judges Association Journal, Court Review, published an article by our organization’s Executive Director, explaining the layers of confusion fostered by the continued use of the term “master” (a term that connotes someone brought in to take over) to describe someone brought in to help.³

(2) Substituting “court-appointed neutral” for “master” is not, at all, about politics. As neutrals we are more than sensitive to the fact that we live in an extraordinarily politicized age. As an organization that, for 18 of its 20 years, called itself the Academy of Court-Appointed Masters, we are also more than sensitive to the fact that people of good will have used the terms “master” or “special master” in this context for hundreds of years and in our Federal Rules for decades. This Suggestion does not criticize people for using a term in the past or for, themselves, finding the term to be inoffensive. It recognizes that continuing to use a term the *misdescribes* these court appointees and creates confusion does not become appropriate because term may offend “only” *some* people and, perhaps, not others.

² See “Why We Became The Academy of Court-Appointed Neutrals,”

<https://www.courtappointedneutrals.org/acam/assets/file/public/namechange/on%20becoming%20the%20academy%20of%20court-appointed%20neutrals.pdf>

³ Merril Hirsh, “What’s In a Name? Reinventing ‘Special Masters’ as ‘Court-Appointed Neutrals,’” COURT REVIEW, v. 60, Issue 1, 28 (2024), available at <https://nationalcenterforstatecourts.app.box.com/v/AmJudgesCourtReviewArchive/file/1474739593997> ACAN asked Mr. Hirsh to serve as its Executive Director effective September 2021 after he had already served for five years as the Chair of what is now the ABA Judicial Division Lawyers Conference Court-Appointed Neutrals Committee and had also served as the convener of a Working Group of judges, former judges, court-appointed neutrals and other ADR professionals, practitioners (including Judge Shira Scheindlin and other current or former chairs of the ABA Business Law, Antitrust, Intellectual Property Law and Dispute Resolution Section, the then Chair of the National Conference of Federal Trial Judges), that drafted what are now called the ABA Guidelines on the Appointment and Use of Court-Appointed Neutrals in Federal and State Civil Litigation. <http://www.americanbar.org/content/dam/aba/directories/policy/midyear-2019/100-midyear-2019.pdf>

(3) The suggestion to substitute “court-appointed neutral” for “master” is the product of a very broad consensus. ACAN is also sensitive to the fact that court-appointed neutrals are not an end in themselves, but a means to an end of improving the administration of justice. The fact that the ABA suggested this change based on a resolution drafted by a committee in its Judicial Division with representatives across the wide spectrum its sections, divisions, forums and conferences, co-sponsored by both the Judicial Division and the Section of Dispute Resolution, and then approved (on a voice vote with no apparent opposition) by the ABA House of Delegates is testament by itself to broad support obtained for this change before the ABA made its suggestion.

Moreover, as the ABA Suggestion notes,⁴ it is not merely the ABA and ACAN that urge the substitution of “court-appointed neutral” for “master.” In October 2022, before the ABA adopted its August 2023 Resolution 23A516 urging the change,⁵ 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.”⁶ Since the ABA adopted Resolution 23A516:

- The Board of the National Asian Pacific American Bar Association adopted a “Statement Supporting Replacing the Term “Master” or “Special Master” with “Court-Appointed Neutral,” Broadening Pool of Candidates, and Supporting Skills Development.”⁷
- The Board of the National Council of Juvenile and Family Court Judges adopted a Resolution In Support of The National Academy Of Court Appointed Neutrals Regarding Ceasing To Use The Term “Master” Or “Special Master” And [Using] “Court-Appointed Neutrals”;⁸ and,
- The Institute for Inclusion in the Legal Profession issued an open letter supporting the change to “court-appointed neutral.”⁹

We understand that the American Judges Association, which recently published the article cited in n.3 above, is also considering a resolution and that in addition to the three states that as ABA reported previously changed their rules to stop using the term “master,”¹⁰ at least two other states are currently in the process of considering amending rules to use the term “court-appointed neutrals.” Efforts are underway to raise the issue for consideration by still other states.

(4) “Court-appointed neutral” is the term the Rules should use. As the ABA letter explains,¹¹ still more confusion arises from the fact that the term “master” has never become standard. “Master” is merely the most common of dozens of terms used for the role. These terms carry different confusing connotations about the role these neutrals perform. The lack of a standardized term

⁴ <https://www.uscourts.gov/file/78168/download> at 5.

⁵ www.americanbar.org/content/dam/aba/directories/policy/annual-2023/516-annual-2023.pdf

⁶ Available at www.nawj.org/uploads/files/resolutions/resolutionsupportingcourtappointedneutrals10-222022.pdf

⁷ https://cdn.ymaws.com/www.napaba.org/resource/resmgr/policy/resolutions/DR_Committee_Resolution_APPR.pdf

⁸ Available at <https://www.linkedin.com/feed/update/urn:li:activity:7181704438149980160>

⁹ Available at 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

¹⁰ Maryland, Pennsylvania and Delaware. See <https://www.uscourts.gov/file/78168/download> at 4.

¹¹ *Id.* at 6.

impedes the effective consideration of when to use a neutral and even when rules should or should not apply in the first place.

“Court-appointed neutral” is a generic term that accurately describes the position, that is in the process of becoming the standard term of art. We support the ABA’s Suggestion¹² to address the confusion by adopting “court-appointed neutral” as the term, defining it as the ABA suggests, and specifying that the rule applies “[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.”

(5) We should substitute “court-appointed neutral” for “master” now. Amending the Federal Rules of Civil Procedure is an essential part of the process of coalescing on a proper term for this role that does not offend or confuse. Judges whose lives are devoted to providing equal justice under law should not have to use a term that understandably offends a segment of the population in order to apply a rule as drafted. Nor should these judges, who are also required to secure the just, speedy and inexpensive resolutions of every action, need to remind parties that we are using the term “master” to refer to people whose role can be purely to facilitate the parties’ own discussion, or to advise, or to serve as a liaison. People who do these roles are not “masters.” They are court-appointed neutrals.

The Federal Rules should not use continue to use a term that some states have already abandoned, others are considering changing and organizations invested in the administration of justice have decried. Our Federal Rules should reflect this sensible change.

Respectfully submitted,



Randi Ilyse Roth, ACAN President

¹² *Id.* at 6-8.