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5 Tips For Serving As A Successful Special Master

By **Allissa Wickham**

Law360, New York (July 08, 2014, 8:42 PM ET) -- If you're an attorney with a knack for complex litigation, you may someday be asked to serve as a special master when a case threatens to consume an excessive amount of a court's already-scarce time.

Appointed by a judge to oversee specific issues in a suit, a special master's duties can truly run the gamut and may cover anything from resolving discovery issues to overseeing the administration of a class action settlement.

Given the complex and often highly technical nature of these assignments, serving as a special master might feel like a formidable endeavor — but it doesn't have to be. After speaking with several experienced special masters, Law360 has compiled five tips for achieving a smooth, productive process if you ever find yourself in this role.

Create a Culture of Respect

With many people unfamiliar with special masters, parties might be unsure of how much weight to give to a master's authority. In order to build trust in your abilities as a court adjunct, be sure to show respect to each party in the suit, says Randy Evans, a partner with McKenna Long & Aldridge LLP and a former special master with the Georgia Supreme Court.

"More often than not, there's ... the idea that you're not actually in front of a real court," Evans told Law360. "And the only way in which you can then command that respect is to show respect to the participants."

However, setting certain boundaries while maintaining general accessibility is also key, according to David Cohen, a veteran special master and the previous president of the Academy of Court-Appointed Masters. This helps parties understand which issues are substantial enough for a special master's attention.

"I think a special master also has to be careful that they don't ... enable the parties to be whiners," Cohen told Law360. "And sometimes, you really kind of have to be stern and say, 'Look, you guys need to sit and try to work this out. If you still can't work it out, then give me a call tomorrow.'"

Cohen noted that after boundaries are set once or twice, parties tend to figure out what kinds of issues are appropriate to bring before a special master.

Be Accessible to the Parties

Accessibility and organization are perhaps two of the most valuable traits a special master can have. Cohen recommends maintaining a high level of communication with the parties

in order to resolve conflicts as they arise.

"I might be talking to folks as often as once a day during certain periods of time," Cohen told Law360. "They know that if they're in the middle of a deposition and there's an objection ... they can call me and get me on the phone."

There are several methods special masters can employ to keep themselves and the parties in a case organized. Barbara Reeves Neal, a special master and mediator, told Law360 that she frequently emails copies of schedules and other important documents to involved parties, uses an online electronic system to keep track of filings, and maintains a message board where those involved can ask questions.

Talk to the Judge (as Much as You Can)

When you are first appointed, the judge will issue a order explaining your responsibilities, as well as how you're expected to communicate with the court. While appointees must heed these guidelines, they will often vary from judge to judge, special masters told Law360.

For instance, while some judges may require that all communication be in writing, others will allow a more informal arrangement that could include sporadic meetings or conversations.

Judges who allow informal communication are often looking for "battlefield intelligence," Cohen says. This could might include reporting on the progress of a discovery hearing, chatting with the judge about testimony or pointing out contentious issues that could wind up in court.

Know Your Order

Although your appointment order might give you new levels of authority, it's crucial to act within the order's scope and restrain from delving into aspects of the case that fall outside of your prescribed role. Judge Marina Corodemus, who previously oversaw mass tort cases in New Jersey and now serves as a special master through Corodemus & Corodemus LLC, says it's important to "stick to the rules very closely."

"Be very realistic ... so that you understand the role that the parties want you to play, and the court wants you to play," said Corodemus, who currently serves as the president of the Academy of Court-Appointed Masters.

However, due to the often complicated nature of a special master's duties, it may be necessary to seek clarification on your order or to even modify it. Kostas Katsiris, an attorney with Venable LLP who acted as a special master in a consumer fraud class action, told Law360 he worked closely with the court to figure out how frequently to submit reports after his appointment order was vague on that topic.

And when it comes to tweaking your order, don't be afraid to ask for a modification to view certain documents or speak to additional parties if that will better serve the court's goals, says Peter Vogel, an attorney with Gardere Wynne Sewell LLP and an experienced special master.

"If, after the case gets going, it becomes apparent that the special master needs to meet with one of the parties and it's not in the order, there ought to be a special opportunity," Vogel told Law360.

Strike the Right Tone

Although striking an informal tone with parties can sometimes facilitate dialogue or settlement discussions, Corodemus says special masters should also be "scrupulously aware" of their words in order to avoid misunderstandings.

"What may seem very innocent may not be understood by parties, so you really almost have to conduct yourself with the impartiality and thoroughness that a court would," Corodemus told Law360.

And if a particularly contentious issue is being discussed, it may be helpful to retain a court reporter to record the hearing, Evans says, just in case the court is called upon to review your decision making.

Still, if the occasion calls for humor, introducing some levity into the room can be helpful, Reeves Neal says.

"The parties have enough stress between their clients and the court, so I try to be viewed as a safe haven for the discussion of legal issues," Reeves Neal told Law360. "[I] inject humor when things seem tense, and then be firm when it comes time for decisions."

--Editing by Katherine Rautenberg and Kat Laskowski.

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