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## PERSPECTIVE | GUEST COLUMN

# Cutting the cost of complex disputes with special masters

What if you could cut months — or even a year—from getting a case to disposition? In California's constrained courts, a retained neutral acting as special master can deliver faster, more cost-effective outcomes in high-stakes litigation.

By Anne-Christine T. Massullo

**W**hat if you could reduce the time it takes to get a case to disposition, either by way of settlement, motion or trial? What if that reduction in time was several months or even up to a year? How could that time savings translate into substantial savings for your client?

This column will examine the limitations on the state courts in California and explain why the early use of a retained neutral to act as a special master for all purposes can be an extremely cost-effective way to manage high-conflict and high-stakes litigation.

### The problem: Courts lack resources

Before I served as the presiding judge, I spent three years in a complex litigation assignment. The department in which I worked was one of two such departments in the San Francisco court. The Los Angeles Superior Court has the largest number of complex departments in the state, but some state courts have no complex departments. Instead, they operate through direct or single assignment of cases.

Regardless of the presence or absence of complex departments within a court, one factor affects all the trial courts in California: a lack of resources. The National Center for



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State Courts tracks, among many things, the clearance rate for each state trial court that provides data, and California is one of the reporting states. The clearance rate for courts ideally is 100%, which means that the number of new filings is matched by the number of disposed cases in any given year. For the 13-year period from 2012 through 2024, California was in the top five states with the largest number of new civil filings; some years it was

in third place behind Texas and New Jersey. During this same time period, however, California's clearance rate was at or close to the bottom of all reporting state courts: an average 75% clearance, compared to the 98% median across the nation. This low clearance rate translated into delays for litigants in high-stakes antitrust, commercial, trade secret and large construction defect cases, as well as high-conflict family law and probate matters.

### The solution: Special masters

The solution to the problem is actually quite simple. An experienced hands-on special master can serve in tandem with the superior court judge. While the judge may have hundreds of cases to manage, the special master has both the time and resources to dedicate to an individual case.

The special master can assist the judge and the litigants by helping to create a discovery plan, conduct

ing more frequent case management conferences, and being readily available to quickly resolve discovery or other disputes. The sitting judge, in contrast, must balance the needs of a specific case against a schedule that may not allow the court to hear matters for weeks or sometimes months.

In high-volume courts, the time and expense of filing a discovery motion, following the lengthy meet-and-confer process required under Code of Civil Procedure Section 2016.040, delays any resolution. When resolution of discovery issues delays depositions of witnesses and experts, it ultimately delays setting the case for trial.

#### **The benefit:**

##### **A knowledgeable neutral**

While time savings is critical, perhaps the biggest advantage of using a special master for all purposes is that the parties now have a neutral, either a retired judge or a practitioner, who is actually educated about their case. The more frequent the interaction between the special master and the parties, the more the special master is able to learn about the positions of the parties, their evidence and the status of the case as it is postured for settlement.

While I was on the bench, I observed first-hand the synergy that arises from using a special master in conjunction with the trial judge. In several multimillion-dollar cases that came before me, the parties had retained a special master long before their case came up for trial. I suggested, and the parties agreed, to allow me to work with their special master to resolve their case. I found that the special master had the requisite historical knowledge, which allowed me to truly be neutral and give both sides another perspective or validate the special master's position. The combination of judge and special master was almost magical in helping secure settlements in each of these complex cases.

Sometimes the parties will retain a discovery referee and another neutral to serve as a mediator. When appropriate, the use of both resources can provide valuable support to parties who are trying to resolve a complicated matter. Such a "tag team" approach has been particularly successful on large construction defect cases, with a special master used early on to manage the case and either a sitting judge or other neutral brought in toward the end to try and settle the case before trial.

Although the special master for

all purposes can be especially valuable in litigation involving construction defect claims, special masters provide value in a range of applications. The parties can even, if they choose, use the special master to conduct a mediation. In the right case, using the same person for the mediation can provide additional cost and time savings.

#### **Conclusion**

California's budget constraints and their adverse impact on the courts will not be resolved anytime soon. Civil cases now take longer to get to trial — no surprise for practitioners — but using an outside, experienced neutral to work with the parties early in the process can provide significant overall savings. Cases can get to summary judgment, trial or settlement far sooner.

Ask any economist which is best for the market: certainty or uncertainty. The same is true for most civil disputes in the trial courts. For cases that will eventually need the appointment of discovery referees, counsel should think seriously about using special masters. These neutrals can skillfully and efficiently assume the discovery role, as well as other roles, helping control and ultimately resolve high-conflict, high-stakes litigation.

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**Hon. Anne-Christine Massullo (Ret.)** is a neutral with Signature Resolution who served as Presiding Judge of the San Francisco Superior Court. Before that she served in the court's complex litigation department and as a federal prosecutor handling sophisticated and complex criminal and civil fraud cases. Judge Massullo has settled dozens of the most challenging cases across a wide spectrum and served for two years on the San Mateo Superior Court, where she was appointed to handle a high-profile death penalty and habeas matter.

