



HOW TO LITIGATE CIVIL CASES EFFECTIVELY WHEN COURTS ARE FACING BUDGET CUTS

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It is no secret that budget cuts are affecting court systems adversely across the United States and overseas. Courtrooms are being shuttered, staff is being furloughed, and dates are being rescheduled. We are finding this particularly true in our firm's trial practice both in Nevada and California. We applaud how the courts manage to keep going in such difficult times. As Justice Ron Parraguirre of the Nevada Supreme Court said in 2010: "We will continue to do all we can to be careful stewards of the public's funds and we will do so while ensuring the access to the justice our state's residents and businesses require."^{*} We continue litigating cases effectively despite the courts' limitations. We propose these solutions, which have been proven to work:

- ❖ ***Stipulate to the use of temporary (or pro-tem) judges.*** These are experienced attorneys who are appointed by the presiding judge of the courthouse to exercise the same powers as trial judges. All hearings are open to the public.

One key advantage is that a temporary judge typically can handle matters faster than many courts can. A temporary judge also is often more accessible to the parties, and ideally is knowledgeable in the particular area of law involved in the dispute.

On the other hand, the trial might be held in the lawyer's office without the assistance of bailiffs or court clerks. Another challenge is that the temporary judge may be an excellent lawyer but his or her judicial demeanor might be unknown, therefore making it difficult to predict the outcome.

- ❖ ***Refer the matter to a judicial reference.*** Judicial references can be very flexible and may be performed somewhere other than the courthouse. The judicial referee, sometimes referred to as a "special master," is not necessarily a lawyer. All proceedings are public.

Special masters can be appointed in one of two ways, either voluntarily by mutual consent of the parties or pursuant to court order. Statutes govern whether this is a general reference (for all purposes) or a special reference (for limited purposes). As such, a special master may oversee portions of a case or the entire matter. His or her duties can include the resolution of discovery disputes, accountings and settlement facilitation.

Please note that some references might result in binding decisions, while other references can result in recommended decisions for the trial court to adopt. Consensual references may define what type of decision is made, so be sure to clarify the scope of the reference beforehand. Also note that special masters might request to be paid for their services beyond the scope of traditional filing fees, which can make the judicial reference an expensive proposition.

CAVEAT: THE FOREGOING DOES NOT CONSTITUTE LEGAL ADVICE. PLEASE CONSULT AN ATTORNEY FOR INDIVIDUAL ADVICE REGARDING INDIVIDUAL SITUATIONS.

^{*} The Annual Report of the Nevada Judiciary, Fiscal Year 2010, p. 9 at <http://www.leg.state.nv.us/Session/76th2011/Exhibits/Senate/JUD/SJUD45e.pdf>