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Update on ABA Guidelines for the Appointment and Use of Special Masters --

What have we done for you lately?

Merril Hirsh, HirshADR PLLC
Cary Ichter, Ichter Davis LLC

A promotional graphic for the 2020 ACAM Virtual Annual Meeting, similar to the one above but with text on the left. The text on the left includes the title "Update on ABA Guidelines for the Appointment and Use of Special Masters --", a question "What have we done for you lately?", and the names "Merril Hirsh, HirshADR PLLC" and "Cary Ichter, Ichter Davis LLC". The graphic on the right is a smaller version of the ACAM logo and meeting information, surrounded by photos and a smartphone.

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Well ... back before the pandemic ...

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Step One: 2017

ABA Judicial Division Lawyers Conference
creates the Special Masters Committee –
Committee has no known acronym

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Step Two: 2018

Special Masters Committee creates a
“Working Group” to develop consensus
guidelines on Special Masters

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Step Three: January 2019

The ABA House of Delegates approves the ABA Guidelines on the Appointment and Use of Special Masters in Federal and State Civil Litigation, over NO apparent opposition

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Step Four: 2019

The Special Masters Committee forms 4 subcommittees to seek to implement the guidelines

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(1) Outreach: headed by Cary Ichter



- ABA website https://www.americanbar.org/groups/judicial/conferences/lawyers_conference/committees/special-masters/
- “A Revolution That Doesn’t Offend Anyone: The ABA Guidelines on the Appointment and Use of Special Masters in Civil Litigation,” American Bar Association Judicial Division JUDGES JOURNAL (Fall 2019) at 30 (discussing background behind the guidelines)
- Judge Shira Scheindlin, We Need Help: The Increasing Use of Special Masters in Federal Court, 58 DePaul Law Review, Art. 11, available at <https://core.ac.uk/download/pdf/232966675.pdf>
- We do programs in
 - Minneapolis (Dispute Resolution 2019 Spring Meeting)
 - Chicago (ACAM 2019 Annual Meeting);
 - Des Moines (Annual Bench and Bar Meeting)
 - Tampa (Joint meeting of the local Federal Bar Association and Federal Bankruptcy Bar Association)
 - Columbus (Ohio Supreme Court Alternative Dispute Resolution Program)
- We schedule a bunch of other programs ...
- We begin to create Law School/Court partnerships

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(2) Support: headed by Barbara Meierhoefer, PhD and David Ferleger.



- Works with Texas A&M Professor (former Dispute Resolution Section Chair) Nancy Welsh to develop an instrument for evaluating special masters and to include it as part of a DR Section Court-based ADR project
- Works to develop criteria on selecting special masters to a roster.

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**(3) Ethics: headed by Bill Johnston with Randi Roth
as ACAM rep, Marla Greenstein and others**

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See Randi's program this morning

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(4) Rules: headed by Kathleen Massey

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- Examining potential model state rules for special masters
- Cataloging variation among state rules to identify categories rules should address
- Then will move on to evaluating best practices

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Then the Pandemic Hit ...

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- The leadership of the Judicial Division asks the Special Masters Committee to brainstorm ideas for how special masters could help courts deal with the demands of the pandemic
 - Demands in the pandemic
 - Demands when the other shoe drops

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Results in

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- The “Checklist”
- A May 2020 Judicial Division webinar with Judge Scheindlin, Justice David Thomson, Judge Heather Welch, available at https://www.americanbar.org/groups/judicial/events_cle/program-library/brainstorming-session-special-masters/
- When Tom Icard brings a request from Judges in Sarasota, Keeping Civil Cases Moving While Jury Trials Are Delayed, available at https://www.americanbar.org/content/dam/aba/administrative/lawyers_conference/2020/jdlc-keepingcivilcasesmoving.pdf
- A program at the Federal Bar Association Annual Meeting in virtual Charleston (with USDC S.C. District Judge J. Michelle Childs and Magistrate Judge, Kaymani West and Randi)
- Tom Icard talk at the Circuit Court Townhall in Sarasota, FL

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Next– Putting this into practice

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- The Indiana Program
- The NY Federal/State Program
- The DC Programs
 - Superior Court – (LC Executive Committee member Jim Pauli)
 - Federal District Court (Randi)

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Other Worlds to Conquer

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