

UNITED STATES MAGISTRATE

UNITED STATES DISTRICT COURT

U.S. COURT HOUSE

DETROIT, MICHIGAN 48226

VIRGINIA M. MORGAN
MAGISTRATE

(313) 226-4082
FTS 226-4082

April 19, 1990

Honorable Eugene E. Siler, Chief Judge
United States District Court for
the Eastern District of Kentucky
207 U. S. Courthouse
London, KY 40741

RE: Proposed Civil Justice Reform Act of 1990 (S.2027)

Dear Judge Siler:

I write in response to your memo of April 13, 1990, requesting our views on S.2027. I am the Sixth Circuit Director of the National Council of U. S. Magistrates. Recently, the magistrates met and discussed the above-referenced bill at our Judicial Conference. We support the sentiments expressed by the Honorable Aubrey E. Robinson, Jr., on behalf of the Judicial Conference of the United States regarding S.2027. We share the serious concerns of the Judicial Conference regarding both underlying assumptions inherent in the proposed legislation as well as the specific methods of achieving the stated goals.

We concur in the view of the many district and circuit judges who have noted that the bill is "extraordinarily intrusive into the internal workings of the Judicial Branch." The Judicial Conference and the Administrative Office of the U. S. Courts have taken the lead in major efforts to improve the delivery of civil justice, by education of judicial officers and implementation of case management techniques. The responsibility for additional improvement should continue to rest in the judicial branch, with support from and communication with the legislative branch.

We are particularly troubled by the aspects of the proposed legislation which diminish the role of magistrates in civil case management. As expressed by Judge Robinson and by several other judges and attorneys, the experience of more than a decade shows that magistrates have become a critically important resource in the work of our district courts as those courts seek to adjudicate their civil and criminal caseload efficiently and expeditiously.

The proposed legislation manifests troubling and uninformed assumptions about the office and judicial duties of magistrates. Those assumptions appear to have been assimilated uncritically

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from the Brookings Institution Report, "Justice for All - Reducing Costs and Delay in Civil Litigation." That report, which does not appear to have been based on a meaningful, much less comprehensive study or understanding of the magistrate's system, overlooks the express intent of Congress that magistrates, as a flexible and supplemental resource for the district courts, are to exercise a wide range of judicial duties in order to expedite case disposition. The Report and S.2027 likewise disregard the desirably diverse ways in which 94 district courts have used their magistrates as each court and judge deems to be most helpful and useful. This has been particularly true with regard to those functions of case management, including successful supervision and settlement activities, that S.2027 would reserve exclusively to the district judge.

Throughout the Sixth Circuit, magistrates perform a wide variety of judicial duties in civil cases. In addition to case management and Reports and Recommendations (R & Rs) in social security and prisoner initiated cases, magistrates conduct pretrial and status conferences, resolve discovery disputes and enter orders on non-dispositive motions, enter R & Rs on dispositive motions in civil cases, and try civil cases with the consent of the parties. In some courts, judges routinely assign all civil cases to a magistrate for pretrial case management including orders and R & Rs as appropriate. In other courts, judges assign selected cases to magistrates. Some magistrates maintain significant consent trial dockets; others are assigned only occasional consent cases for trial.

Magistrates' duties depend on long-standing local practices, the caseload of the individual courts and judges, the experience of the judicial officers, and the judgment of each district about how magistrates may most effectively serve the needs of that court. The legislation as proposed would limit the ability of district judges to assign duties to magistrates in a manner which would most effectively meet the needs of their courts.

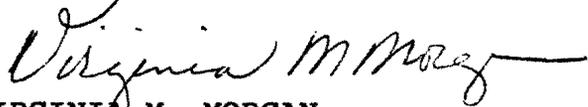
Criminal prosecutions have increased dramatically. Judges have less time available for civil cases. The magistrate, acting under the general supervision and direction of the district judge, can enter orders, meet with the parties, conduct necessary hearings, and keep the case moving toward a trial. The district judge, freed of the day-to-day pretrial management responsibilities, has more time available for the trial of both criminal and civil cases. We view the proposed legislation as diminishing the ability of individual courts and judges to use

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their magistrates in the manner which best suits the unique needs of their ever-changing caseloads. Instead of accomplishing greater efficiency, we expect that adoption of S.2027 will impair and impede the disposition of civil and criminal cases.

We are persuaded, therefore, that without valid and unbiased, serious study and statistical analysis, as suggested by the Judicial Conference, legislation based on reports as critically flawed as the Brookings Report is not likely to bring about any improvement in the delivery of civil justice. As judicial officers of the United States, we are committed to the prompt delivery of civil justice, as well as the fair and prompt adjudication of all matters, civil and criminal, which are referred to us. Our deep personal and professional commitment to render justice leads us collectively to pledge that we shall work constructively with the Judicial Conference to bring about responsible legislation to achieve those goals.

Sincerely,



VIRGINIA M. MORGAN
United States Magistrate

cc: Hon. Gilbert Merritt, Chief Judge, Sixth Circuit
Hon. Joseph Hatchett, Chair, Magistrates Committee of the
Judicial Conference
Ralph Mecham, Director, Administrative Office of the United
States Courts