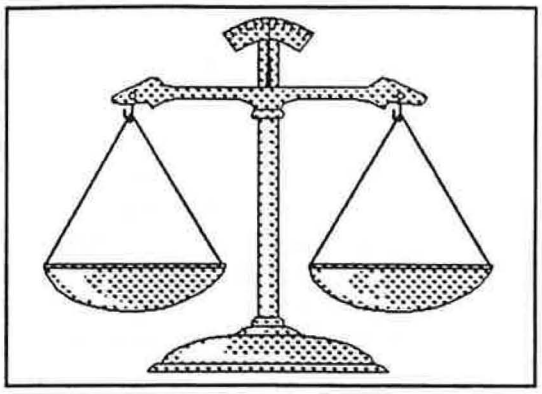
UNITED STATES GOVERNMENT
M E M O R A N D U M



TO: All Members of the Advisory Committee

FROM: Ronald J. Hedges
United States Magistrate Judge

DATE: June 29, 1993

RE: Oversight Subcommittee Minutes

Attached are minutes of the June 15th meeting of the Oversight Subcommittee.

RJH:tlc
Attachs.

cc: Hon. John F. Gerry, Chief Judge
William T. Walsh, Clerk

MINUTES OF THE JUNE 15, 1993 MEETING OF THE OVERSIGHT SUBCOMMITTEE

The June 15th meeting of the Oversight Subcommittee was convened in Newark at 11:30 a.m. Messrs. Kugler, Robinson and Cracas were present as was Ms. Jacob and Magistrate Judge Hedges. Ms. Nancy Stanley, the Director of the Dispute Resolution Program in the United States Courts for the District of Columbia, was present by invitation of the subcommittee.

The subcommittee was advised that the Plan's recommendation that Civil Rule 53(b) be amended has been referred to the appropriate committee or committees of the Judicial Conference. ATTACHED IS CORRESPONDENCE FROM THE SECRETARY OF THE COMMITTEE ON RULES OF PRACTICE AND PROCEDURE DATED JUNE 8, 1993, ON THE STATUS OF THE RECOMMENDATION.

The subcommittee was also advised of discussions within the Court of possible use of additional CJRA monies. Inasmuch as CJRA monies could not be used to hire additional personnel (to assist in the administration of arbitration/mediation or to serve as a second pro se clerk), the consensus of the subcommittee was that such monies were unnecessary.

The March 19, 1993 issue of the Court Administration Bulletin (attached) was brought to the attention of the subcommittee. Specific reference was made to pages 4 and 5, where our Annual Assessment is discussed.

The attention of the subcommittee was directed to correspondence from Judge Sarokin to Chief Judge Gerry dated April 2, 1993 (attached). Judge Sarokin, who had attended a meeting of the Court Administration and Case Management Committee of the Judicial Conference, reported that our Plan was "one of the most outstanding submitted" and that the Annual Assessment was by far "the most detailed and comprehensive."

The subcommittee next discussed a "Memorandum" and "Statement" from the CPR Legal Program (attached). The latter described concerns of the "Judiciary Conference Advisory Council" related to the adequacy of resources for court-annexed ADR. The subcommittee agreed that adequate resources are essential for the success of ADR but recognized the limited financial resources available to the Court. The subcommittee also agreed that adequate training is "at the heart of quality service delivery." The subcommittee noted that such training had been provided for the District's mediators, but not for District's arbitrators.

The consensus of the subcommittee was that a formal training program be conducted for arbitrators. This would be intended to promote uniformity among the arbitrators in both

procedural and substantive aspects of the arbitration process. The subcommittee also agreed that participation in training should be a condition for continued certification of arbitrators under General Rule 47. It was noted that this would require an amendment of General Rule 47 to impose such a condition.

The subcommittee next considered arbitration statistics for the 12-month period ending March 31, 1993 (attached). Magistrate Hedges directed the attention of the subcommittee to the substantial increase in the "number of cases placed in arbitration" since the adoption of the Plan. He attributed this to the Plan's amendment of General Rule 47 to increase the types of cases subject to compulsory arbitration. Magistrate Hedges then noted that the statistics did not demonstrate that arbitration cases were being disposed of in proportion to the total number of cases placed in arbitration. He attributed this to the burden placed on the arbitration clerks in Newark, Trenton and Camden by the expansion of General Rule 47. The consensus of the subcommittee was that this situation warranted close monitoring. However, given staffing restrictions in the Clerk's office there did not appear to be any means to alleviate this burden at present.

The subcommittee then considered statistics for Track I and II case terminations for the period April 1, 1992 to March 31, 1993 (attached). The subcommittee noted that the median disposition time for Track I cases was 9.8 months and for Track II cases was 16.9 months. The subcommittee was of the opinion that a major factor in these excellent disposition statistics was the presence of a full complement of judges and magistrates.

The subcommittee then considered the items referred to by Judge Simandle at the Third Circuit conference (see attached April 21, 1993 correspondence from Magistrate Hedges to subcommittee members):

1. With regard to better management of pro se litigation, the subcommittee noted that the Advisory Committee had considered the imposition of a partial filing fee and had also considered whether to ask the Attorney General of New Jersey to seek 1997(e) certification as a means to impose an exhaustion of administrative remedies requirement. These were rejected in the past for both procedural and substantive reasons and the subcommittee deemed it inappropriate to raise either again.

   A question was raised as to the advisability of securing a second pro se clerk to assist in the workload.

Magistrate Hedges noted that no funding was available for any such position.

The subcommittee was of the opinion that a major source of delay in the prisoner caseload came from the late setting of trial dates. In an attempt to eliminate this source of delay the subcommittee recommended that mediation be attempted. It was agreed that no mediation effort should be made until a final pretrial order was entered and all dispositive motions decided. This should filter out non-meritorious cases and allow the mediation process to focus on cases which would otherwise proceed to trial.

The subcommittee also agreed that pro bono attorneys should be appointed to represent prisoners in mediation. There was a great deal of discussion within the subcommittee. As to the advisability of a prisoner being present for "his" mediation session. Although it might be preferable for a prisoner to be physically present for the mediation, concern was expressed both as to security and as to the costs of transporting and guarding a prisoner. It was then suggested that mediation sessions be conducted at institutions where prisoners are incarcerated or that a procedure be developed such that attorneys could speak with prisoners over the telephone. It was agreed that Magistrate Hedges would raise this with Mr. Sabatino of the Division of Law.

2. With regard to the "developmental procedures for prompter disposition of older and/or complex civil cases," the subcommittee noted the now-permanent availability of mediation in the District. The subcommittee agreed that "refresher" and/or "advance" training would be appropriate for the District's mediators. Advance training would be in specific areas (for example, Title VII, civil rights litigation or CERCLA cases). Ms. Stanley noted that she was developing such advance training for the District of Columbia courts. It was agreed that Magistrate Hedges should remain in touch with Ms. Stanley and that any refresher training or advance training should be conducted in the fall with the consent of the Chief Judge.

3. With regard to "regulation of discovery," the subcommittee noted that proposals for early discovery of documents and for limitations on interrogatories had been considered by the Advisory Committee and rejected. The subcommittee also acknowledged the proposed amendments to the Federal Rules of Civil Procedure (see attached memorandum from Magistrate Hedges to Chief Judge Gerry dated May 19, 1993), as to the effect of any such amendments on General Rules. The Advisory Committee deemed it inappropriate to consider any "regulation" until final action on the proposed amendments.

The subcommittee meeting adjourned at 1:00 p.m.