UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA
OFFICE OF THE CLERK

RICHARD T. MARTIN
CLERK

June 2, 1995

Mr. Abel Mattos
Administrative Office of the U.S. Courts
#OCP-CAD-CPB
One Columbus Circle, NE
Washington, D.C. 20544

Re: Civil Justice Advisory Group 1994 Assessment of the Court

Dear Sir:

Please find enclosed the above captioned report for the Middle District of Louisiana.

If you have any questions, please feel free to call.

Sincerely,

Richard T. Martin
Clerk, U.S. District Court

RTM:tmr
w/enclosures

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REPORT OF THE MIDDLE DISTRICT OF LOUISIANA'S ADVISORY GROUP CONCERNING THE ADVISORY GROUP'S 1994 ASSESSMENT OF THE COURT, ITS PLAN, AND ITS DOCKET PURSUANT TO THE CIVIL JUSTICE REFORM ACT OF 1990

Pursuant to Section 475 of the Civil Justice Reform Act of 1990, Public Law 101-650, the Advisory Group for the Middle District of Louisiana has assessed the condition of the Court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the Court to reduce cost and delay in civil litigation and to improve the litigation management practices of the Court.

In connection with preparing this Report, the Advisory Committee has: met on a number of occasions, both with and without Court officials present; solicited advice, comments, and input from members of the community at large and from other legal organizations and groups around the State of Louisiana; publicized its activities in a publication sent to all attorneys who are members of the Baton Rouge Bar Association, an organization comprised of lawyers not only from East Baton Rouge Parish but also other parishes within the Middle District of Louisiana; and examined the civil and criminal docket of the Court both before and after the report of the Committee filed with the Court in 1993 ("the 1993 Report").

I. ASSESSMENT OF THE DOCKET

A. Condition of the Docket

The Clerk of Court of the United States District Court for the Middle District of Louisiana reported statistics which represent the reporting period ending December 31, 1994; these statistics are attached as Exhibit A to this Report.

As can be seen, the number of cases is huge in comparison to the number of judges.

The Exxon cases are included in the statistics to demonstrate the number of cases that the Court must handle. In each of the Exxon cases, there are individual plaintiffs seeking relief against different defendants. The cases have not been initiated nor adjudicated as class actions.

Whether the statistics include or exclude the Exxon cases as a separate category, the two judges in this Court have a caseload that exceeds that for judges in other districts. Consider that without the Exxon cases being included in the statistics, the judges of the Middle District have an average of approximately 750 cases each. Compare the caseload of the 12 judges (and 8 magistrates) of the Eastern District: each judge has approximately 200 cases. If the Exxon cases are included in the statistics, the judges in the Middle District have approximately 1899 cases per judge, representing one-half of the total of 3798 cases pending as of December 31, 1995.

In addition to the extraordinary caseload per judge in the Middle District, the Advisory Committee, after interviewing the judges and magistrates, is concerned about the extent to which current practices of the Clerk's office have contributed to errors in the preparation and distribution of notices to the parties and/or counsel of conferences and hearings before the Court. The failure to receive the requisite notice resulted in some cases in unnecessary delay and consequential congestion of the docket. It is the understanding of the Advisory Committee that the current internal procedure of the Clerk's office is to rotate employees by assigned days to the task of generating notices, rather than to assign directly particular personnel to the two Sections, the two judges or the two magistrates. The employee in the Clerk's office who by random assignment "works the file" is identifiable by his or her initialling the work product.

Therefore, the Advisory Committee recommends that the judges and magistrates meet

to determine whether or not there should be a change in the internal procedure of the Clerk's office. It is suggested that the judges and magistrates consider the advisability of assigning one or more specific persons (preferably at least two so as to avoid confusion should one person be absent) in the Clerk's office to each of the two judges and magistrates. The designated personnel would be responsible for the business in the Clerk's office that concerned cases assigned to their judge or magistrate.

B. Trends in Filings:

Data from the Clerk of Court of the Middle District of Louisiana, compiled by the Administrative Office of the United States Court for the period ending March 31, 1994, revealed that the following kinds of cases were filed in the Middle District: civil rights, contract, ERISA, labor, land condemnations, foreclosures, personal injury, prisoner, Social Security, student loan and veterans, as well as other miscellaneous categories.

1. Civil filings:

Among civil filings, the largest number of cases were prisoner suits. The trend, which is expected to continue, is that prisoners increasingly seek relief in the federal court forum. The rate of increase in such suits has been gradual and steady.

Personal injury suits, some of which are "mass tort" cases, represent the next largest number of case filings in the Middle District. The large number of such suits is expected to continue. These cases typically involve multiple actions by multiple plaintiffs and against multiple defendants. Procedures for case management do assist in organizing these cases, but they do require enormous expenditures of the Court's resources in the form of time and

personnel. The Exxon cases, Dow Chemical cases, Cajun/Gulf States case, the Devil's Swamp cases, and the Abbeville Hospital cases are examples.

Contract cases and civil rights actions have gradually but steadily increased.

2. Criminal filings:

Criminal filings both here in the Middle District, and nationally are expected to increase significantly.

C. Court Resources

The Advisory Committee's 1993 Report contained the following recommendation:

> "Addition of one or more judges to the Middle District would be the main and most efficacious method of eliminating delays, which invariably lead to increased costs of litigation."

The Court, in its Civil Justice Reform Act Plan adopted in 1993, stated:

> "The Court fully concurs in this recommendation and urges the Congress to act upon it promptly."

No changes in either the number of judges or the number of magistrate-judges has occurred, and although the Court has made strenuous and valiant efforts to keep current with its docket, and despite having "visiting judges" from the Western and Eastern Districts of Louisiana and from Texas from time to time assisting in particular cases or in "trial weeks," the Court remains chronically understaffed considering the volume of both civil and criminal cases in the Middle District.

II. COST AND DELAY

There have been no changes since its 1993 Report in the Advisory Committee's assessment of the reasons for cost and delay. As was stated in the 1993 Report, a statement the Advisory Committee stands by today:

> " It is abundantly clear to the members of this Committee that the Middle District of Louisiana is in dire need of at least one, preferably two, new judgeships. Each judge in the Middle District has a 25% greater caseload than the national average. * * * An additional judge or judges would lighten the load for both the criminal and civil docket and provide swifter justice on behalf of all citizens involved in the federal legal system."

In addition, even if another new judgeship is not added, there is a need for an additional magistrate-judge to assist in the crushing caseload that continues unabated in the Middle District, despite the ardent attempts of the judicial officers in the Middle District to move cases as quickly as possible.

III. DISCOVERY AND PRE-TRIAL PROCEDURE

A. Pre-Trial Orders

In its 1993 Report, the Advisory Committee noted that there are two separate pre-trial order formats used in the Court and recommended that there be a single form adopted.

Despite the Advisory Committee's recommendations, and despite the fact that the Court's Plan provided that there be "a uniform form of Pretrial Notice and Instructions to be used by all sections of the Court," it appears that no single form is used and each Section of the Court uses its own format.

The Advisory Committee recommends that there be but one form and that it should be

set forth clearly in the Local Rules so that all lawyers will be aware of its format. Additionally, the Advisory Committee proposes an alternative "short form" for the Court's consideration:

1. Jurisdiction
2. Pending Motions
3. Plaintiff's Claims
4. Defendant's Affirmative Defenses/Counterclaims
5. Claims of Other Parties
6. Facts Established
7. Exhibits. Any exhibits as to which all parties have not stipulated both as to authenticity or admissibility shall be noted. The notation shall state whether admissibility or authenticity or both is contested and the Federal Rule of Evidence upon which any objection is based.
8. Witnesses, including rebuttal witnesses but excluding impeachment witnesses.

B. 90-Day Status Reports

Although not noted in the 1993 Report, the Advisory Committee points out that while different pre-trials orders are being used, the Court now has a single 90-day status report for all sections. The Committee suggests that this has had a salutary effect and hopes that a single pre-trial report also can be achieved by the Court.

C. Settlement Conferences

The Advisory Committee has noted that there is a split among many judges throughout the country on whether a presiding judge at a trial should be involved in settlement conferences. Some courts are involved in all settlement conferences. Others take the position that it is appropriate for a judge to be involved in a settlement conference if there is a jury trial but not a settlement conference if there is to be a bench trial. Others take the position that the trial judge should not be involved at all in settlement conferences. The Committee recommends that the

Court continue in all of its efforts aimed at settlement of ongoing litigation, but that it also consider adopting a rule on whether it is appropriate for a judge in a bench trial to hold settlement conferences, or whether, in such cases, the settlement conferences should be conducted by a magistrate or another judge.

D. Motion Docketing Dates

The Advisory Committee notes that there are often lengthy delays between the date a motion is filed and the date upon which it is noticed for hearing. Uniform Local Rule 2.01M requires that a motion at the time of filing be noticed for a hearing "at the first available motion day provided by the Clerk of Court." In some instances, the first available date is more than six months away. The vast delay between the filing date and the hearing date leads to delays in litigation as well as increased costs, for it requires counsel to get prepared not once (when the motion is filed) but twice — at the filing date and at the much later hearing date.

While it is the understanding of the Advisory Committee that the use of "visiting judges" will alleviate this problem somewhat, the Advisory Committee recommends that there be no more than 90 days between the date of filing and the hearing date. If attorneys are required to file a 90-day status report following the filing of a case, it would seem that the same 90-day time frame is an appropriate one for the Court to schedule a hearing on a motion, barring extraordinary circumstances.

E. Memorandum Filing Dates

Related to the issue of docketing dates is the time for filing responsive memoranda. Local

Uniform Rule 2.07M requires that response and opposition memoranda must be filed "within 20 days after service of the motion." The Advisory Committee understands the desire of the Court to have briefs in hand early; however, the Committee recommends that this rule be changed. Particularly with the potential for a delay between the date of filing of the motion and the date of the hearing, an artificial 20-day response rule generates additional cost and expense, for the opponent must act quickly to respond, only to wait for the hearing date and then re-prepare for the hearing. *If* the hearing can be set within 90 days of the filing of the motion, then perhaps a 30 or 45-day period of response is appropriate; however if there is no assurance that the hearing can be set within 90 days, then the Advisory Committee recommends that the rule be amended to make the reply brief due "the later of (a) 30 days after the service of the motion or (b) 45 days prior to the noticed hearing date."

F. Local Counsel Rules

The Advisory Committee recommends that the Court not require local counsel to sign all pleadings. While the *in terrorem* effect of having local counsel sign may be desirable from the Court's viewpoint in making sure that pleadings comply with local requirements, the conjunction of Rule 11 with the local requirements often increase the cost of litigation to clients. Rule 11, as interpreted by the courts, does not allow local counsel to rely conclusively upon citations of authority or even statements of fact in briefs prepared by co-counsel; therefore, local counsel has to duplicate costs and efforts to review the pleadings and the law that another firm already has reviewed and researched. This adds to the cost of litigation for the client without a concomitant benefit for the Court. The Court already possesses methods (whether by Rule 11, inherent powers, or otherwise) to control attorneys, local or not, whose names appear on

pleadings and who abuse the system.

The Advisory Committee recommends that, if the Court does not wish to eliminate a requirement of local counsel signing pleadings because of a concern about form, then the Court should promulgate a rule allowing local counsel to sign pleadings under a line "form approved by local counsel," indicating that the local counsel has taken responsibility for the form and format of the pleadings but has not undertaken separate liability under Rule 11 merely by making sure that the pleadings comply with the local requirements.

Further, the Committee recommends that the Court consider requiring that all documents served or mailed by the Court be mailed to the designated trial attorney as well as to the local counsel. In cases in which there are short deadlines or other important matters, it may be important that the trial counsel have direct notification, since the Court will be looking to trial counsel for responses and pleadings.

IV. ALTERNATIVE DISPUTE RESOLUTION

In its 1993 Report, the Advisory Committee stated:

> "The Committee recommends that, in addition to the existing summary trial procedure, voluntary mediation be instituted on a limited and formal basis."

In 1994, Magistrate Judge Noland began an informal Alternative Dispute Resolution program using volunteers. Among the volunteers are attorneys and non-attorneys who do not charge for their services. Although the pilot program has been in operation only a short period of time, those who have served as mediators in the program have indicated an interest in continuing to serve and have believed the pilot program to be a useful way to help settle litigation.

The pilot program has only an informal method of ascertaining the success of the program through voluntary questionnaires; there is no way at the present time to statistically measure the success of the program. While it is encouraging that the volunteers in the program continue to express an interest in serving, and while a number of litigants have voluntarily entered into this program, the Advisory Committee notes that this is an appropriate issue to be addressed in a later report, once the pilot program has been under way for twelve months or more.

The Advisory Committee commends the Court on its pilot program and suggests that future evaluations of the program by both this Committee and the Court include:

- How it should be determined which cases should or can use non-lawyers as mediators. The Committee notes that those with specialized, non-legal training are often useful in bringing the parties closer together, but the Committee also notes that the responses of some participants in the program have indicated that the lack of legal knowledge of the mediator made it difficult to reach final resolution of issues, since the non-lawyer mediator was unable to advise the parties on the apparent relative merits of their legal positions.

- The expanded use of "team mediators." The Advisory Committee notes that in several cases two mediators have been assigned to a single case. While the mediators who have participated in such endeavors have found them useful, such an approach consumes the time of volunteers and may lessen the total mediation time available in all cases.

- The creation of a statistical database by which to evaluate the success of mediation efforts, not only in settling cases, but whether such efforts have, in fact, saved the parties time and money as well as aiding the Court's docket.

- Whether, if the program is successful, it can be maintained as a voluntary one with the mediators donating their services. The Committee notes that there may be imposed on parties a fee to cover the out-of-pocket costs of mediation. If there are costs involved, should this be imposed by the parties? Is funding from other sources available? Should mediators be compensated? If so, how?

- Because this is a pilot program, the selection of mediators has not been formalized and no specific qualifications have been promulgated. Should there be a formal mechanism for applying to be a mediator? What should be the criteria for selection? Who should determine if a mediator stays on the list of mediation panelists (e.g. who judges the effectiveness of mediators)?

- If the program is as successful as it is hoped, can it sustain an increased number of requests for mediation? Are there enough mediators? Is the Court's internal structure set up to handle the administration of a large number of mediations?

- How much power should a mediator have? Some mediators have expressed frustration that parties who have agreed to mediation do not appear in person or with settlement authority. Should this be communicated to the Court? What are the dangers of communicating informal settlement positions (including a refusal to settle) to the Court? Who should receive such reports, if such reports are appropriate?

V. MEMBERS OF THE ADVISORY COMMITTEE

The members of the Advisory Committee at the time of this report, appointed pursuant to Section 478 of the Act, are:

Warren Byrd, Esq.
Frank Coates, Jr., Esq.
Karen E. Dugas, Esq.
Wendell Foushee
Etta Kay Hearn, Esq.
Brent Honore
Honorable L.J. Hymel, Esq., U.S. Attorney
H. Alston Johnson, III, Esq.
Phyllis W. McLaurin
Michael H. Rubin, Esq., Chair
Ann Scarle
Professor Katherine Spaht, Esq., Reporter
Edward J. Walters, Jr., Esq.

Professor Katherine Spaht

Professor Katherine Spaht, Esq. Reporter