

**MINUTES OF THE SECOND MEETING OF THE
MIDDLE DISTRICT OF LOUISIANA'S ADVISORY GROUP
CONCERNING THE CIVIL JUSTICE UNIFORM ACT OF 1990**

The second meeting of the Advisory Group was held on Monday, April 29, 1991 at 5:15 p.m. at the Federal Courthouse. Committee Members present were:

Helen N. Crouse
H. Alston Johnson, III
Brent Honore
Katherine S. Spaht
William J. Miller
Ernest L. Johnson
Edward J. Walters, Jr.
Karen Eddlemon
Michael H. Rubin

Members of the Court and Court staff that were present were:

Honorable John V. Parker, Judge
Honorable Frank J. Polozola, Judge
Magistrate Judge Christine Noland
Magistrate Stephen C. Riedlinger
Honorable C. Lee Dupuis, Clerk of Court

Judge Parker discussed the filings in the Middle District in 1991 and the current trends and handed out a chart and projections through the remainder of 1991. He pointed out that the Middle District is far above the national average in cases per judge. He also pointed out that the trend nationally seems to be flattening out, and when 77 new judges take their seats (they have been authorized but have not yet been appointed and confirmed) the national average will go down, but it will have no effect in the Middle District. He also pointed out that the Middle District's docket is a heavy docket in civil cases, and many of the civil cases are large, complex cases that take a great amount of time.

Judge Parker also pointed out that although diversity cases amount to about 25% of the Court's docket, in terms of work load it is over 50%. This includes diversity cases filed in federal court as well as cases that have been removed to federal court.

The Committee has received word that a budgetary funds may be available. A subcommittee consisting of Katherine Spaht, Ed Walters, and Lee Dupuis was appointed to prepare a budget and submit it by the May 3rd deadline.

Magistrate Riedlinger then made a presentation to the Committee concerning differential case management in the Middle District. He pointed out that differential case management means that each case is dealt with individually and that all cases are not dealt with in the same way.

Magistrate Riedlinger pointed out that General Order 57 contained certain criteria for differential case management. He talked about habeas corpus cases, social security cases, and pro se cases.

Habeas corpus cases are handled very quickly. Rather than waiting for the parties to be served and letting the case take its course according to the wishes of the parties, the Court orders that the District Attorney or the U.S. Attorney be served and to file a response. The Magistrate does a report. The Magistrate sets deadlines for the parties.

Social security cases only reach the Court after the social security benefits have been denied or a request for review has been made. There is a state administrative review procedure as well as a federal administrative review procedure. Usually the cases are handled by cross-motions for summary judgment.

On pro se cases from prisoners, cases that prisoners file on their own, the Magistrate issues orders to move the case through the system. For pro se cases, the Administrative Remedy Procedures are also available. East Baton Rouge Parish has approval of this procedure through the Department of Corrections and it gives the Court an administrative finding to refer to in addition to the petition. This is done under the Civil Rights Institutionalized Persons Act.

It was pointed out that differential case management has been ongoing in the Middle District for a number of years.

Magistrate Riedlinger pointed out that many cases do not need constant direct management, such as student loan cases handled by default judgments, overpayment of benefits, handled by default judgments, and other such matters. These cases are not outside of any system; they still must be part of the reporting process, but they do not require the direct involvement of the Magistrate that these other cases do.

For all of the cases there is an automatic ninety day status conference that is required when the case is filed; the status conference report is a form that allows the Magistrate to ascertain what the issues are to determine what discovery will be needed, and to start to set schedules.

Magistrate Riedlinger pointed out that there are other types of differential case management within civil cases, such as mass torts (like the Exxon explosion), which look to the Manual for Complex Litigation for procedures; toxic tort cases; and asbestos cases, which are organized into groups (such as type of disease, where the plaintiff worked, or who the defendants are). Magistrate Riedlinger also pointed out that even smaller groups of cases might be managed differentially; for example, certain cases might be consolidated for discovery only, either on a formal or informal basis.

Magistrate Riedlinger pointed out that there is early and ongoing judicial intervention throughout the process. There are court orders to get the cases moving; there are status conferences that are required; there are scheduling orders to require parties to act within a certain period of time; and Magistrates continue to meet with attorneys as the case progresses. Attorneys can even request a conference with a Magistrate.

It was pointed out the F.R.C.P. 16 contains the broad boundaries under which these procedures occur.

Magistrate Noland pointed out that all cases have status conferences. Usually there are at least two, one at the ninety day point and one at the end of the discovery period. There may be more status conferences depending upon the type of the case; there may even be settlement conferences. Finally, there is a pre-trial conference with the judge. Every case has to have something set in it all the time so that it does not get lost in the system.

Magistrate Riedlinger pointed out that the only time that there is not at least two status conferences is when a case is terminated by default judgment or otherwise. He said that it is not unusual to have to four to six status conferences before a pre-trial in a complex case or an active matter.

In a response to a question from the Committee as to why the initial status conference is set for ninety days rather than earlier, Judge Polozola pointed out that there needs to be time for service on all of the parties, and in addition, private parties have thirty days to answer from service and the government has sixty days. By the time service is made and the attorney has a chance to investigate the file, the ninety days may be close to being up; sometimes attorneys even ask for extensions of time in which to answer.

Judge Parker pointed out that the backlog of cases in the Middle District is not caused by the ninety day status conference but rather by the fact that there are more filings than terminations and there is a much much higher per judge filing in the Middle District. In addition, there are many complex cases in the Middle District that take a long time to try and they are too few judges for the case load.

Judge Polozola pointed out that the Court cannot set arbitrary limits for complex cases; these need to be worked out individually.

Judge Parker pointed out that the vast majority of cases eventually terminate because of settlement. He said that the Middle District does have an active Alternative Dispute Resolution process, like summary jury trials that require the clients' presence.

Judge Polozola indicated that the Middle District had been approved for funding for a settlement week to use lawyers as mediators. He also pointed out that on civil RICO cases there is a special standing order that allows the Court to narrow the issues.

Magistrate Noland that cases are designated as "complex" and, in such cases, sometimes a status conference is required right away without waiting for the ninety day period to run. This is particularly important when there are protective orders or other matters involved.

Alston Johnson indicated that insofar as differential case management is concerned, the Middle District is doing an excellent job of complying with the Civil Justice Reform Act procedures.

Magistrate Riedlinger said that one of the possible suggestions in the Reform Act materials, under Item 11, is that requests for continuances might have to be signed by clients as well as counsel; this might be particularly useful, said the Magistrate, for matters like continuing a trial date. Magistrate Riedlinger said that he thinks this might be appropriate because he believes that many clients may not be aware that trial dates are being moved back by the request of their counsel. Judge Polozola pointed out that in some cases many lawyers cannot find their clients to get instructions. Judge Polozola also pointed out that trial continuances are seldom granted and closely scrutinized.

Judge Polozola said that the judges, in addition to the magistrates, have their own separate "tickler" system on service and answers to doublecheck to make sure the case is moved through the system. Furthermore, case management orders entered early in the case are closely tied to the ultimate pre-trial order to try to get matters organized as quickly as possible. Other organizational tools used by the Court to manage cases include a master docket, where there is a single filing although there may be multiple cases, thereby saving the Court and attorneys from duplicative paperwork. There is also little oral argument on motions; most of these are done through briefs.

Judge Polozola pointed out that one of the main mechanisms for keeping the docket current is the single case setting. Unlike many courts which set more than one case for one day (and therefore, neither clients nor attorneys know exactly when their case will be called but must prepare for the case even though it may be fourth or fifth on the docket), the Middle District sets only one case on a day. Therefore, when your trial date comes, you know you are going to trial.

The only exception to this is in asbestos cases with the same defendants and the same counsel on both sides of the table. The lawyers on the Committee indicated that they were very much in favor of this system and they thought that it worked very well. Judge Parker pointed out that the single case system setting comports with justice, decreases the cost of the litigation, and not only does not have an adverse impact on the termination rates, but rather that the Middle District's termination rates indicate that it is far above the national average.

The Committee decided to continue the discussion with the Court to enable all Committee members to know exactly what it is that the Court is currently doing and to question members of the Court about matters of concern to the Committee.

The next Committee meeting will be held on Thursday, May 23rd at 5:15 p.m.

Respectfully Submitted:



Michael H. Rubin, Chairman