

AM

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

The third meeting of the Advisory Group was held on Wednesday, May 23, 1991 at 5:15 p.m. at the Federal Courthouse. committee Members present were:

Frank Coates, Jr.  
Karen Eddlemon  
Brent Honore  
H. Alston Johnson, III  
P. Raymond Lamonica  
Phyllis McLaurin  
William Miller  
Mike Rubin  
Jennifer Schaye  
Ed Walters, Jr.

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

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

**SYNOPSIS**

Subcommittees were appointed. The subcommittees are:

1. **Pretrial Procedure and Discovery Problems**  
P. Raymond Lamonica  
Ed Walters, Jr.  
Katherine Spaht  
Charles Patin  
Mike Rubin

2. **Alternative Dispute Resolution and Settlement**  
Jennifer Schaye  
William Miller  
Frank Coates, Jr.  
Luke Lavergne  
Helen Crouse
  
3. **The Unjust Case/Allocation/Client Information/Rule 11**  
Karen Eddlemon  
Brent Honore  
Phyllis McLaurin  
Alston Johnson  
Ernest Johnson

The next meeting will be scheduled in September or October on a date yet to be announced.

#### **MINUTES**

Ed Walters gave a report concerning the meeting on Civil Litigation Expense and Delay Reduction Advisory Groups that was held in Florida earlier this year. Materials were provided to Committee Members.

Ray Lamonica led a discussion from the subcommittee concerning differential case management and judicial intervention issues. Ray pointed out that law finding and fact finding are different. The law finding function of the court is sometimes easier and quicker than the fact finding function. The truth is sometimes hard to ascertain, but that ought to be the goal of all justice. Ray discussed the fact that sometimes in an effort to build a system, bureaucracy results, and the greater the bureaucracy, the harder it is to discern the truth.

Ray discussed the history of the rules of Civil Procedure and their evolution from jurisprudential common law to liberal rules, from liberal rules to rules that were so broad that almost anything is possible, and the current effort now to control litigation.

It was noted that the federal courts in the Middle District are extremely active in handling cases and in judicial intervention; this is in contrast to some state courts where the judges do not act until the lawyers request that something be done.

Ray then went through the Federal Judicial Center Guidelines and a discussion that ensued.

Magistrate Noland noted that "fast track" litigation had been offered but that there were few people who wanted to go on the "fast track." Ray noted that it is sometimes hard to designate a "simple" versus a "complex" case on a fast track basis; sometimes cases that are legally simple nevertheless are difficult and lengthy factually.

Judge Parker pointed out that the purpose of the Act is not to eliminate all costs and delays; sometimes these are inevitable, and lawsuits are costly. The purpose of the Act is eliminate *unnecessary* costs and delays. Judge Parker pointed out that sometimes the client needs to police the lawyers.

Judge Polozola gave some specific examples of problems where settlement occurs on the day of the trial. The cost and expense of the trial, the inconvenience of the jurors, and the delay in the system could have been avoided had the settlement occurred earlier.

Brent Honore noted that sometimes it is easier for big companies to oppress small companies by litgating rather than discussing settlement.

Karen Eddlemon noted that the Middle District has sufficient judicial intervention; the problem is not the lack of judicial intervention but rather the lack of enough judges.

Alston Johnson initiated a discusson about whether there are sufficient statistics to indicate whether judicial intervention actually accelerates the disposition of cases. A spirited discussion followed.

Judge Polozola noted that many lawyers want to use federal court because of a perception that state courts do not act quickly enough. He asked whether the Committee would want to consider recommending amendment to Section 1332(c) to limit jurisdiction. There was an open give-and-take of views among the group.

Judge Polozola suggested that perhaps a rule might be enacted requiring a lawyer who tries a case to show up at the pre-trial conference and barring a lawyer who doesn't show up at the pre-trial conference from trying a case.<sup>1</sup>

---

<sup>1</sup> Note that at the Fifth Circuit Conference (copies of which Minutes have already been provided to members of the Committee) it was pointed out that Philadelphia courts a number of years ago had instituted a rule limiting the number of active cases a single lawyer could have pending at any one time. A law firm could have as many cases as it desired, but a designated "trial attorney" could have only a limited number of cases at any one time.

A discussion concerning discovery followed. Questions were raised whether complete discovery is in the interest of all parties, whether it merely adds to costs, whether cases can be tried without discovery, and whether there might be some rule, similar to criminal court Brady-type motions, requiring turning over exculpatory documents, along with a query about whether lawyers would really comply with such a rule outside of the criminal case context.

Ray Lamonica noted that the Federal Judicial Center suggests bifurcated conferences with earlier pre-pretrial conferences with authorized representatives being required to attend. Judge Parker noted that with summary jury trials the client is required to attend. Judge Polozola indicated that he has required clients to attend pretrial conferences on a number of occasions and noted that a Seventh Circuit en banc decision allows this to occur.

Ray Lamonica suggested that perhaps, pursuant to Item 11 of the Federal Judicial Center's publication, requests for continuances might have to be signed by clients as well as counsel.


The Committee decided that it would not do empirical research but would try to break up into smaller groups to discuss various areas of concern. The Committee has a whole would then meet again in September or October to review each group's findings. It was also noted that our Committee could expect to receive reports in January of 1992 from the areas in the Fifth Circuit that are required to turn in reports by December 31st of this year.

The subcommittees and the members of each subcommittee are as follows:

1. **Pretrial Procedure and Discovery Problems**  
P. Raymond Lamonica  
Ed Walters, Jr.  
Katherine Spaht  
Charles Patin  
Mike Rubin
  
2. **Alternative Dispute Resolution and Settlement**  
Jennifer Schaye  
William Miller  
Frank Coates, Jr.  
Luke Lavergne  
Helen Crouse

3. **The Unjust Case/Allocation/Client Information/Rule 11**  
Karen Eddlemon  
Brent Honore  
Phyllis McLaurin  
Alston Johnson  
Ernest Johnson

Respectfully Submitted:



---

Michael H. Rubin, Chairman