

AM

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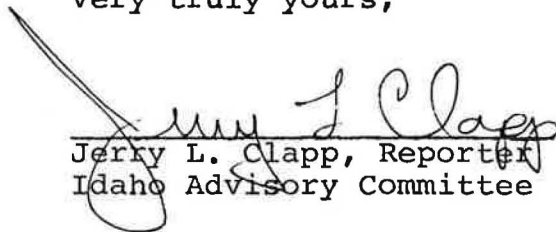
May 21, 1991

Duane R. Lee, Chief
Administration Office of the U.S. Courts
Court Administrative Division
Washington, D. C. 20544

Dear Duane;

Please find enclosed the Minutes of the
third meeting of the Civil Justice Advisory Committee
to refer to appropriate person.

Very truly yours,


Jerry L. Clapp, Reporter
Idaho Advisory Committee

CIVIL JUSTICE REFORM ACT

DISTRICT OF IDAHO

Advisory Committee Minutes

3rd Meeting, May 14, 1991

The Committee was called to order by the Reporter, Jerry L. Clapp acting in place of the Chairman the Honorable Edward J. Lodge. Mr. Burke, Mr. McNichols, and Mr. Hollifield were excused from the meeting.

Travel vouchers for out of town members were submitted, approved and paid.

Minutes of the April 19, 1991 meeting were approved. Mr. Smith will submit questionnaires received from Eastern Idaho members of the bar for incorporation into the record of the April 19th meeting.

The Clerks report indicated that \$3,200.00 from the budget had been approved for travel of members of the committee. It is anticipated that approval of the balance of the budget will be forthcoming from the AO. The Committee approved the budget as submitted. As a result of the last meeting 1200 questionnaires have been mailed to District and Bankruptcy bar members and approximately 100 had been returned. Mr. Tom Murawski has been retained in a temporary position as a Management Analyst and will be available to assist the Committee in an analysis of the pending civil case load in this District. He will also assist in the compilation and analysis of the Committee's questionnaire. Mr. Murawski is a lawyer with a graduate degree in Judicial Administration. He also served as a Research Assistant to the Dean of the Masters program at Denver University.

The Committee proceeded to hear statements from members of the public:

Dave Pittam, an adjuster for the Medical Insurance Exchange of California, addressed the cost and delay in complex malpractice cases and he described the following issues: delays in court proceedings translate into high insurance rates; with no firm trial settings, the case has to be prepared twice; the court needs to enforce scheduling deadlines; the court should establish a time line for all events in the case; there are discovery problems and abuse of interrogatories; early settlement conferences are suggested; identification of experts early in the litigation is important; pre-litigation screening panels and alternative dispute resolution techniques would help combat cost and delay.

Sollie Callender, Callender Real Estate, described his experiences in civil litigation as it related to unnecessary cost and delay. He expressed the following concerns: continuation of a case that had little merit; too many postponements; all parties (including litigants) need access to the courts; suggested that attorneys present litigants with a list of recourses which are available; enforcement of sanctions rule is a problem; he also indicated a need for lawyers to be held personally accountable for their actions in cost and delay problems.

David Metcalf, a Law Clerk to Senior U. S. District Judge Callister, described how the criminal sentencing guidelines provide very little incentive to plea. As a result, the District Judges are spending an inordinate amount of time on criminal matters which results in the continuance of civil proceedings. Other comments included: get cases off the judicial track by using early settlement conferences (even if both parties do not agree); look into mandatory arbitration--he explained in detail the success of the 10 pilot courts who have used mandatory arbitration.

The Committee requested copies of the Federal Judicial Center report on Arbitration and suggested that David keep the Committee informed about this project.

Scott Bourn, a former inmate and law clerk from the Idaho State Penitentiary, related a perceived insensitivity of Courts, lawyers and prison administration to legal problems of inmates. He suggested that neutral legal assistance would solve many problems without the need of Court action and would expedite and lower the cost of meritorious claims. Other comments included: pro se cases are handled more slowly than cases involving an attorney; some cases slip through the cracks without a status conference; the court doesn't always follow the Local Rules; a full time attorney to screen and counsel (not litigate) would help; litigation should be the last resort--use arbitration and negotiation; suggested that the Judges get tough on attorneys and prisoners with strict time frames and sanctions for non compliance.

Mr. Bourn agreed to summarize some of the data relating to prisoner litigation.

Donald Stennett, a retired Adjuster with Argonaut Insurance Company, explained pre-litigation expenses and the need to explore settlement early. He suggested that the Courts may be on the verge of socialized litigation similar to the path of the medical profession. Other comments included: businesses and the general public does not understand the cost of litigation; the public has unrealistic visions of the outcome; there is generally no thought of compromise by attorneys; many times cases are over prepared despite the merits of the case; attorneys should be forthright with what the case will cost and use the least expensive alternative--settlement or arbitration.

Judge Harold L. Ryan, Chief Judge of the U. S. District Court for the District of Idaho, described the impact of criminal cases upon civil caseload. He extended his thanks to the committee for its efforts.

The Reporter and Clerk were instructed to explore the possibility of obtaining transcripts of the public statements.

After general questions to the public attendees, the meeting was interrupted by a fire drill.

General discussion followed in regard to the benefits of a legal education program sponsored by the Court.

No decision was made in regard to the public representative member of the Committee.

The committee agreed to complete a cursory analysis of the Bankruptcy Court.

The committee asked the Reporter to invite Chief Justice Bakes to the next meeting. The committee then continued the remaining agenda items and adjourned until THURSDAY JUNE 6, 1991 at 9:30 am.