UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

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TO: Hon. Ann C. Williams, Chair, Committee on Court Administration and Case Management DATE: 12-5-94

FROM: Hon. Wilbur D. Owens, Jr., Chief Judge

RE: 1994 Annual Report of the Advisory Group

As requested, the enclosed annual report for the Middle District of Georgia is enclosed.

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1994 Annual Report of the Advisory Group to the United States District Court For the Middle District of Georgia Pursuant to the Civil Justice Reform Act of 1990

Updating the Group's Analysis of Docket Conditions and Recommendations for Reform

Submitted December 1, 1994

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THE ADVISORY GROUP ON CIVIL JUSTICE REFORM
TO THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
1994

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Purpose of this Report

This annual report for 1994 updates our inquiries into the nature of justice delivery in this district, and is conducted pursuant to Section 475 of the Civil Justice Reform Act, which states:

> After developing or selecting a civil justice expense and delay reduction plan, each United States District Court shall assess annually 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 performing such assessment, the court shall consult with an advisory group appointed in accordance with section 478 of this title.

In accordance with Section 475, we offer in this document

(1) our updated review of the condition of the docket in the Middle District of Georgia, and

(2) our suggestions for additional actions that might decrease costs, minimize delays, and enhance litigation management.

1. Condition of the Docket[1]

The overall caseload volume in the Middle District of Georgia appears to have varied little this past year, in keeping with recent trends. In 1993, civil filings per judge in this district declined slightly to 263 from 294 in 1992. Meanwhile, prosecutors filed 44 criminal felony cases per judge in 1993. Although criminal felony filings have been somewhat more erratic year to year than civil filings, they do not appear to have become more onerous, and if anything, seem to have decreased on average since 1989 and 1990, when an average of 67 felony cases were filed annually per judge.[2] In 1993, filings of all kinds (both civil and criminal) remained at or slightly below the average levels encountered over the past five years in the Middle District.

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[1]The statistical analysis in this section is based on:

(a) the 1993 edition of Federal Court Management Statistics,

(b) some additional statistics on the Middle District of Georgia provided by the Federal Judicial Center in a document entitled, "Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990 -- SY94 Statistics Supplement" (as later amended by John Shapard's memo dated November 8, 1994), and

(c) other statistics maintained by Gregory Leonard, Clerk of the United States District Court for the Middle District of Georgia.

[2]If the criminal felony filings during 1989 or 1990 had been distributed over four judges instead of three to make the rate-per-judge comparison with 1993 fairer, the revised rates for those earlier years would still have been about 50 per judge -- still higher than the rate for 1993.

Civil filings in this district continue to be classified as relatively light by both national and Eleventh Circuit standards. Both civil filings per judgeship and total filings per judgeship ranked last in the Eleventh Circuit, and in or near the bottom quartile nationally (72d and 76th respectively, out of 95). Criminal filings also ranked as light -- eighth of nine in the Eleventh Circuit and 57th nationwide.

As to the pace of civil litigation in this district, the Advisory Group notes a modest degree of improvement over the past five years. The Middle District appears to be slowly but steadily whittling away at its stack of pending cases. There have been slight decreases in that stack each year since 1990, with the single biggest decrease occurring in the most recent year (from 1,503 cases pending to 1,443). We expect that trend to continue after the district's fourth judge, who was seated in 1994, begins to make a significant impact on the Middle District's caseload statistics.

Indeed, the Middle District's judiciary, which pursuant to its 1993 Civil Justice Reform Plan undertook to reduce the amount of time taken to decide motions, is already performing well. As of September 30, 1994, the four district court judges together had only 22 motions outstanding for over 6 months -- a substantial collective improvement over similar statistics reviewed earlier by this Advisory Group.

On the other hand, the two magistrate judges who handle civil matters in the Middle District reported a disturbingly high number of

old outstanding motions as of September 30, 1994 -- 90, more than four times as many old motions as those left undecided by all the district court judges. As discussed below, statistics like this have drawn the Advisory Group's attention to the increasingly problematic nature of the caseload being shouldered by the magistrate judges in the Middle District today.

On the positive side, the median time from filing to disposition in all civil matters decreased from 12 months in 1989 to 11 months in 1994. Unfortunately, this still does not compare favorably with the national average, which decreased over that same period from 9 to 8 months. As a result, the Middle District still ranks last in the Eleventh Circuit in this respect, and 73rd nationally.

Since issuing its 1993 Report, the Advisory Group has given additional thought to what may account for the slow statistical profile of civil litigation in the Middle District. Now, with the benefit of another year of data, the Advisory Group wishes to draw attention to some increasingly distinctive characteristics of the Court's caseload.

Although, as discussed above, the overall volume of litigation in the Middle District has changed little since we first began studying the docket here, we have detected some significant changes in the character of the cases that are being filed. These changes warrant close scrutiny, and were probably not adequately addressed in our 1993 Report or the Court's 1993 Plan.

The importance of these changes may best be understood by reviewing recent caseload history in this district.

In 1986, more contract cases were filed (248) than any other type of case in the Middle District. Since then, however, though the amounts at stake in such contract cases have increased, their overall numbers have steadily declined. Only 84 new contract cases were filed in statistical year 1994 -- making it only the third largest category when adjusted for complexity, and sixth largest in raw number.

While contract cases have been declining both as a share of all civil cases and in terms of their demand on court resources, prisoner petitions have been rocketing. One of every three civil cases in the Middle District is now filed by a prisoner. By contrast, in 1986, less than one in ten civil cases was filed by a prisoner. 384 prisoner petitions were filed in statistical year 1994, compared with only 115 in 1986. Prisoner petitions here grew by 38 percent in statistical year 1994 alone, and now account for the largest single category of filings in this district.

Civil rights filings, meanwhile, also have grown steadily since 1986, and today represent the largest category of cases when adjusted for complexity. However, the primary delays in the Middle District are not associated with the many civil rights cases filed by free persons. Only the cases filed by prisoners, most of whom are proceeding pro se, pose serious case-management difficulties for the Court.

Those difficulties are substantial. Prisoner petitions alone account for more than half of all the stale cases (i.e., cases more than three years old) that were terminated in the Middle District in statistical year 1994. Civil rights cases account for the second largest group of stale case terminations, but a far smaller share.

Furthermore, as of September 30, 1994, prisoner petitions alone accounted for 56 percent of all stale motions in the Middle District (i.e., motions pending more than six months). Civil rights cases, by contrast, accounted for less than 4 percent of all stale motions.

In short, we conclude that

(a) a large and growing number of prisoner petitions are being filed in the Middle District, and

(b) prisoner petitions are being processed far more slowly than any other category of case in the Middle District.

Addressing these issues is the greatest current challenge to civil justice delivery in the Middle District.

However, even if the Court takes no action to address the high volume and slow pace of prisoner litigation, there is some reason to suspect that the rate of growth in prisoner petitions may ebb of its own accord. With the Middle District's support, Georgia's Department of Corrections is implementing a new prisoner grievance procedure that could divert many petitions. Moreover, recent changes to parole procedures in Georgia unfavorable to prisoners may have caused an unusually high but temporary degree of dissatisfaction among

prisoners, causing a glut of petitions; that dissatisfaction may eventually dissipate as prisoner expectations adapt to parole board practices.

On the other hand, the trend toward more prisoner filings could well continue. The prisoner population in Middle Georgia is growing because of higher densities of prisoners and the addition of prison facilities here. A new 1,000-bed prison hospital, for example, will soon be built in Macon. Meanwhile, major anti-crime initiatives have recently been enacted at both the national and state levels. Further, the prisoners that are already incarcerated are becoming more legally sophisticated, and today enjoy greater access to legal materials.

Regardless of whether the growth in prisoner petitions continues, there is good reason to believe that the present system for processing prisoner petitions in the Middle District is already so troubled that it contributes greatly to the profile of the Middle District as a slow district. Dealing with prisoner petitions more effectively therefore seems to be the key to achieving substantial improvement in the delivery of civil justice in this district. It is to the subject of how to effect such improvement that we now turn.

2. Recommendations for Further Reform

The Advisory Group's primary present concern, as discussed above, is that the Court seems to be having trouble processing a torrent of prisoner litigation in the Middle District. In general, however, the Advisory Group does not recommend revamping the basic structure of the prisoner litigation process. Rather, the Advisory Group suggests that the Court adjust and augment the present system to enhance the Court's ability to meet the contemporary demands.

Pursuant to Local Rule 12.1, two magistrate judges are now given exclusive original jurisdiction over all prisoner litigation in the Middle District. This arrangement funnels prisoner filings through these two offices, and seems desirable for reasons of specialization and efficiency. Even if prisoners do not waive their rights to a trial before one of the district court judges, the magistrate judges can still oversee pleading, discovery and motion practice.

To maximize the advantages of systemic centralization even further, the Advisory Group recommends as a threshold matter that the magistrate judges meet as a group with one another, their clerks, the prisoner pro se law clerk, the Court Clerk and the Chief Judge at least twice each year to share ideas about problems with and possible improvements to the handling of prisoner petitions.

The magistrate judges bear substantial responsibilities in addition to overseeing prisoner litigation. For instance, the

magistrate judges handle all social security appeals, civil cases referred to them by consent, most misdemeanor matters, and other matters referred to them by the district judges.

Given the heaviness of the caseloads borne by the magistrate judges, the Advisory Group recommends that the Court secure an additional law clerk for each of the two magistrate judges who handle the prisoner litigation. The recent addition of a pro se law clerk under the Court Clerk's supervision seems so far to have helped streamline the preliminary handling of prisoner petitions. Additional personnel under the direct supervision of the magistrate judges would probably help further to improve the handling of the prisoner petition caseload, especially in the later stages of litigation.

The Advisory Group also recommends that the district judges minimize their use of the magistrate judges for the handling of miscellaneous matters.

But greater attention to the caseload would not alleviate all problems with prisoner petitions. The Advisory Group suspects that tardy terminations of prisoner matters may also be caused by (a) a lack of understanding by the pro se plaintiffs about how to prepare and press for trial, (b) a tactical reluctance among the defendants to file dispositive motions or go to trial, and (c) a general uneasiness among the judges about supervising pro se trials. To help mitigate these various problems, the Advisory Group recommends that the Court consider taking the following six actions.

First, the Court could develop more explicit, detailed, informative sets of instructions to be presented to pro se litigants at appropriate intervals in the litigation, e.g., immediately after filing, before the discovery scheduling conference, in anticipation of dispositive motions, before the pre-trial conference, before trial, and after verdict.

Second, the Court could expand its practice of assigning the most apparently meritorious cases to willing and interested attorneys from lists compiled by the local bar associations. Younger attorneys in particular, some of whom might not even yet be members of the bar of the Middle District, may welcome the opportunity to take reasonably meritorious cases to trial to gain federal courtroom experience. If the petitioner-plaintiffs prevail, furthermore, attorney fees might even be recoverable under statute.

Incidentally, the Chief Judge has already approached Mercer Law School about facilitating the assignment and supervision of some third-year students to help in representing prisoners. The Advisory Group joins in encouraging the development of this other potential source of counsel for prisoners, but is under the impression that the law school will be unable to supply a sufficient number of student lawyers to make a big difference.

Third, the Advisory Group recommends that the Court communicate on a regular, perhaps annual, basis with the primary counsel for defendants in the bulk of prisoner petitions, i.e., attorneys under

the supervision of the state's Attorney General. Outside the context of particular cases, the Court could offer useful insights on the most appropriate general techniques that the defendants' counsel might reasonably employ to accelerate the fair processing of prisoner petitions.

Fourth, in conjunction with the Mercer Law School/Macon Bar Association CLE program, Middle District court personnel involved in processing prisoner petitions could participate in occasional Continuing Legal Education programs in which interested persons could join to discuss the conduct of prisoner litigation.

Fifth, the Advisory Group recommends that the Court set aside regular weeks on its calendar for the trial of prisoner petitions. Furthermore, if the Court feels that six-person juries would help give speedier treatment to prisoner petitions, then at least some of the "prisoner petition weeks" could also be designated as weeks during which six-person juries would normally be impanelled. Prisoners could then be given the option of waiving any claim to a twelve-person jury in order to get to trial more quickly by appearing during one of the prisoner-petition weeks. Similar six-person-jury-weeks might also occasionally be offered in other areas of civil practice, and might well be particularly appropriate for cases in which the stakes are relatively small.

Sixth, the Advisory Group recommends that the Chief Judge regularly collect and scrutinize statistics on the processing of

prisoner petitions. Careful monitoring of this large but lagging element of the Middle District's caseload should be recognized as a critical aspect of effective court management in this district.

In sum, the Advisory Group recommends that the Court take a variety of actions to facilitate the improved, speedier disposition of prisoner petitions in this district. The Advisory Group generally envisions two basic types of changes: increasing the number of personnel devoted to processing prisoner petitions, and cultivating specialized case management techniques.

Finally, on another subject, the Advisory Group notes that the new Local Rules adopted June 2, 1993, which made explicit much local procedure and implemented several important procedural changes, have apparently performed well in facilitating the conduct of civil litigation in the Middle District. The Advisory Group is aware that the Local Rules Advisory Committee has recommended some changes to the local rules, principally to opt out of new Federal Rule 26(a)(1), (2) and (3) in favor of mandatory local interrogatories patterned on the local rules of the Northern District of Georgia. Our Advisory Group takes no official position on the proposed amendments, except to stress our previously stated support for the general idea that mandatory disclosure is preferable to pointless skirmishing at the bunker's gate.