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DIRECTOR

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

DUANE REX LEE
CHIEF, COURT ADMINISTRATION
DIVISION

JAMES E. MACKLIN, JR.
DEPUTY DIRECTOR

WASHINGTON, D.C. 20544

July 16, 1992

MEMORANDUM TO WILLIAM R. BURCHILL JR.

SUBJECT: Court Payment of Special Masters

In its Civil Justice Expense and Delay Reduction Plan, the Northern District of Georgia, a pilot district, included a provision "to develop a list of persons qualified to serve as special master from which parties could select a special master *to be paid out of government funds appropriated for this pilot program.*" Plan at page 20 (emphasis added). Chief Judge O'Kelley in a letter to Judge Parker dated February 14, 1992, which is attached, sought \$198,000 in supplemental funds for FY 92 to pay these special masters. The court also informed our CJRA budget person that it would need nearly \$2 million to fund the program for a full year in FY 93.

At the time of the request, Abel Mattos discussed the issue with John Chastain of your office and both agreed that Rule 53(a) of the Federal Rules of Civil Procedure appears to preclude using government funds to pay special masters in the manner suggested by the Northern District of Georgia. Because of the questionable authority for the practice and the large amount of funds involved, the Committee on Court Administration and Case Management did not approve the request. Recently it has come to our attention that the court expects a legal opinion on the issue from the General Counsel's Office. I am therefore requesting a formal opinion on the permissibility of using government funds for the payment of special masters as outlined in the Northern District of Georgia plan. A copy of the relevant section of the plan is attached. Please contact Abel Mattos if you have any questions regarding this request. As always, we appreciate your office's assistance in these matters.


DUANE R. LEE

Attachments

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Memorandum

DATE: September 2, 1992
FROM: John L. Chastain, Assistant General Counsel
SUBJECT: Special Masters
TO: Duane R. Lee, Chief, Court Administration Division

Bill Burchill has asked me to respond to your memorandum of July 16, 1992, concerning the proposal by the Northern District of Georgia to appoint Government-paid special masters as part of its alternative dispute resolution (ADR) plan. I have discussed with Abel Mattos Rule 53 of the Federal Rules of Civil Procedure, which sets forth the duties that special masters may perform and provides that the parties shall defray their costs. I believe we agree that Rule 53 and the absence of any appropriation for special masters preclude the Judiciary from funding any costs of special masters, except when a magistrate judge serves as a special master as provided in Rule 53.

The Civil Justice Reform Act Advisory Group recommendation on which the court's special master plan is based would give these special masters powers more like those of an arbitrator under the title 28 arbitration program and considerably beyond those permitted by Rule 53. The special masters would "control and manage discovery, conduct a trial of the action, and enter Findings of Fact and Conclusions of Law dispositive of the case and render a decision which would be binding on the parties." The recommendation further proposes a clearly-erroneous standard of review, while arbitrators are subject to de novo review. In my opinion, the term "special master" is a misnomer. The court would be better advised to call these special masters arbitrators. In that case, there might be funds available under the title 28 arbitration program to implement this part of the court's Civil Justice Expense and Delay Reduction Plan. Title 28 also provides for taxation of the arbitrator's fees as costs when appropriate. 28 U.S.C. § 655(d). Note that the Advisory Group recommendation also contemplated payment of these special master costs by the parties.

cc: Abel Mattos

JLChastain/JLanier

Director
OGC Reading
Daybook - JLC
File: Special Masters

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