An Updated Study of the Domestic Early Intervention Triage Program Utilizing Domestic Commissioners and Domestic Hearing Officers

Twenty-Fourth Judicial District Court for the Parish of Jefferson State of Louisiana

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I. INTRODUCTION

This study was commissioned by the sixteen (16) Judges of the Twenty-Fourth Judicial District Court (hereinafter referred to as the Court or 24th JDC) located at 200 Derbigny Street in the Gretna Courthouse Building in Gretna, Louisiana 70053. The Court consists of Divisions A through P. Additionally, the judges are assisted by the following: as governed by La. R.S. § 13:717, three (3) Commissioners, one (1) with jurisdiction over criminal cases, one (1) with jurisdiction over domestic relations and family law cases, and one (1) with jurisdiction over criminal, domestic relations, and family law cases; and as governed by La. R.S. 46:236.5, four (4) domestic hearing officers.

This report was drafted by Bobby Marzine Harges, the Adams and Reese Distinguished Professor of Law II at Loyola University New Orleans College of Law and a member of the Louisiana Bar. I conducted two previous studies for the Court, in 2002 and 2006. The first study, which was entitled *Efficiency Study of Court Commissioners, How Can the Court Serve the Public Through the Use of Commissioners?* ("First Study"), was presented to the Court on July 31, 2002. And the second study, entitled *Efficiency Study of Court Commissioners and Domestic Hearing Officers, An Analysis of the Domestic Early Intervention Triage Program* ("Second Study") was delivered to the Court on July 31, 2006.

A synopsis of the Court's use of domestic commissioners and domestic hearing officers, along with an analysis of domestic hearing officers and domestic commissioners generally, was published in the Loyola Public Interest Law Journal in 2007. That article is entitled, *Appropriate Dispute Resolution Inside the State Courts - A Closer Look at the Power, Duties, and Responsibilities of Court Commissioners and Hearing Officers in Domestic Cases*, 9 Loy. J. Pub. Int. L. 1 (2007)[1] by Bobby Marzine Harges (hereinafter referred to as "the Harges Law Review Article").

II. EFFECTIVENESS OF DOMESTIC TRIAGE PROGRAM[2]

In my opinion, the Court's use of commissioners and hearing officers is an overwhelming success. The Domestic Triage Program is beneficial to litigants in that they can now appear

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[1]Bobby Marzine Harges, *Appropriate Dispute Resolution Inside the State Courts - A Closer Look at the Power, Duties, and Responsibilities of Court Commissioners and Hearing Officers in Domestic Cases*, 9 Loy. J. Pub. Int. L. 1 (2007) (referred to hereinafter as "the Harges Law Review Article").

[2]Much of this information in this section was reported in the Harges Law Review Article.

before an experienced quasi-judicial officer in a facilitative environment soon after the initial filing for an opportunity to settle their disputes in a more comfortable, less adversarial setting than the courtroom environment. The overwhelming amount of the litigants scheduled for hearing officer conferences will settle their disputes either before, during, or shortly after the hearing officer conferences. Those conferences that do not result in settlements will be heard by district judges soon thereafter.

The detailed benefits of the Domestic Triage Program, which were identified earlier in the Harges Law Review article, are summarized here. The first benefit is the speed in which litigants can now see a domestic hearing officer and have a realistic chance to resolve their disputes early in the litigation. Currently, hearing officer conferences (hereafter HOCs) are being set at the time of the filing of a pleading and are being scheduled to be held within not less than thirty (30) days and not more than thirty-five (35) days of the filing of pleading in which an issue exists and 1) is within the authority and responsibility of both the district court or 2) is within the authority and responsibility of the domestic commissioner and the hearing officer and requiring a domestic HOC. At the same time that the Clerk of Court sets the HOC in the 24th JDC, the Clerk of Court also schedules the hearing or rule date before the district judge to whom the case was allotted, with the hearing to be held in not less than forty (40) or more than fifty-five (55) days following the filing of the pleading. The subsequent date that is scheduled on the district judge's docket allows the parties to have a quick date before the district judge in the event the case does not settle at the HOC and one or more of the parties disagrees with the recommendations of the domestic hearing officer. Prior to the use of HOCs in the 24th JDC, litigants could appear before a support-only domestic hearing officer within thirty days of a demand for child support or interim or final spousal support. However, it usually took over three months for litigants to get a hearing before a district judge or domestic commissioner for the other matters in a divorce such as child custody, visitation, use of the family home and automobile, and community property issues.

Another benefit of the HOCs is that they are much less adversarial than either a trial on the merits or a motion hearing. These conferences give litigants - who are normally parents going through a divorce and who are arguing over child custody, visitation, child support and/or spousal support, or community property issues - an opportunity to appear before a quasi-judicial officer of the court in order to voice their concerns, needs, and interests. Because the conferences are usually one to two hours long, the HOCs allow the litigants sufficient time to state their views, all while not being subjected to direct or cross-examination by lawyers or the judge. The HOCs are informal, mediation-type sessions that are conducted in private with the domestic hearing officer serving as the neutral third party. The parties are represented by their attorneys and are allowed to participate in the conferences in a meaningful way. Because of the informality of the conferences and the lack of examinations by attorneys, litigants cannot help but feel as

though they are given their "day in court" without the grilling that normally occurs in a courtroom environment. This environment is simply a more peaceful, more amicable method for resolving disputes between parties than is an adversarial trial or motion hearing wherein the attorneys usually do all of the speaking and the clients play a secondary role to the attorneys. In the HOCs, the litigants are allowed to speak freely without the rules of evidence being applicable. This freedom to speak is aided by the fact that HOCs are viewed as settlement conferences so that statements made by the parties or legal representatives are not admissible in later trials or hearings. Another benefit to the use of HOCs in domestic cases is the assistance the domestic hearing officers provide to district court judges in the processing of cases. It is envisioned that most cases that appear on the domestic hearing officers' dockets will settle, resulting in a significant amount of judicial time being freed up for the court to handle other matters on its docket.

One additional benefit to the judicial system is that litigants in divorce actions in Louisiana are now appearing before individuals who have significant expertise and experience litigating divorce and family law cases. Although the enabling statute, title 46, section 236.5 of the Louisiana Revised Statutes, requires a domestic hearing officer to be a Louisiana licensed attorney with at least five years of prior experience in cases involving child support services, the domestic hearing officers currently serving in the 24th JDC have significantly more experience than the five year minimum. The expertise and experience of the domestic hearing officers can only aid in their processing of cases.

III. A BRIEF DESCRIPTION OF THE DOMESTIC EARLY INTERVENTION TRIAGE PROGRAM

As governed by La. Rev. Stat. § 13:717, the judges of the 24th JDC are assisted by three Commissioners: one with jurisdiction over criminal cases; one with jurisdiction over domestic relations and family law cases; and one with jurisdiction over criminal, domestic relations, and family law cases. The judges are also assisted by four domestic hearing officers as governed by La. Rev. Stat. § 46:236.5.

The current procedures used by the domestic hearing officers in the 24th JDC are detailed in the Twenty-Fourth Judicial District Court Rules - Domestic Early Intervention Triage Program (hereinafter referred to as the "Domestic Triage Program". Pre-trial conferences known as Hearing Officer Conferences (HOCs) are scheduled in not less than thirty (30) and not more than thirty-five (35) days of the date of filing of the initial pleading for relief. The hearing or trial date before the court or domestic commissioner to whom the case is allotted is scheduled in not less than forty (40) and not more than fifty-five (55) days of the date of filing of the initial pleading for relief.

The HOCs are scheduled for one and one-half (1 1/2) hours, unless a party or counsel makes a written request for a conference period of up to two hours. Additionally, the hearing officer has the discretion to schedule additional conferences, hearings, rule dates, or additional time if necessary. The scheduling of HOCs throughout the day is in sharp contrast to the previous system with a general docket call at a specific time such as 9:00 a.m. where all lawyers and their clients appeared at the same scheduled time and waited for minutes or hours until the district judge or commissioner heard their case. During the HOCs, the domestic hearing officers act as quasi-mediators conducting settlement conferences on all disputed issues. Most of the HOCs result in a Joint Stipulation and Order that is drafted by the hearing officer during the conference and then sent directly to the district judge for his or her signature. Many matters left unresolved after the HOCs are scheduled for hearings before the district judges; however only five percent (5%) of the matters scheduled for HOCs are actually being heard by the district judges. Therefore, this suggests that even when cases do not settle during the HOC, they settle before the court date.

Every effort is made in the HOCs to reduce all agreements reached between the parties to a written agreement entitled Stipulations and/or Recommendations of Hearing Officer. This form, which also summarizes the HOC and notes the hearing officer's specific recommendations regarding the unresolved issues, is prepared by the domestic hearing officer at the HOC while the parties and their attorneys are present. The domestic hearing officer signs the Stipulations and/or Recommendations of Hearing Officer form and takes it to the domestic commissioner for his or her signature. The domestic commissioner's signature on the documents becomes a Judgment or Interim Judgment of the court, which implements the hearing officer's recommendations pending the filing of an objection and hearing before the district court. A copy of all written stipulations, recommendations, orders, rulings, or judgments resulting from the HOC is provided to the parties and their counsel at the time of the HOC. Any party who disagrees with a recommendation, order, ruling or judgment resulting from the HOC is allowed to file a written objection within three (3) days of receipt of the recommendation, order, ruling or judgment.

The objection is then heard by the district judge or domestic commissioner to whom the case is allotted. The district judge or domestic commissioner hears the matter at a contradictory hearing wherein the judge or domestic commissioner is allowed to accept, reject, or modify in whole or in part the findings and recommendations of the hearing officer. The district judge or domestic commissioner may receive evidence at the hearing or remand the proceeding to the domestic hearing officer.

IV. PURPOSE OF UPDATED STUDY

The Court requested an updated study of the Domestic Triage Program in the 24th JDC with the goal of addressing the key complaints that have been lodged against the Court's use of domestic commissioners and domestic hearing officers. As detailed in the previous section, the Court's use of commissioners and hearing officers is an enormous success. However, some attorneys who practice before the domestic commissioners and domestic hearing officers expressed concerns about the Domestic Triage Program. Additionally, the Court wanted to know how it can conduct, with minimal time and costs involved, yearly audits of the success of the hearing officers. Another issue addressed in this report is whether the Court is holding meaningful contradictory hearings after parties have filed written objections to the hearing officers' recommendations. Further, the Court wanted to know what it means to have a meaningful contradictory hearing. Is it enough to have a pretrial settlement conference with the lawyers and read the agreement on the record? Do the parties feel "squeezed" or "forced" by the judges or hearing officers to settle their disputes? Also, how long does it take for parties to get a contradictory hearing before individual judges on the Court? Moreover, are the judges simply "rubber stamping" the domestic hearing officers' recommendations even when the judges state that they are granting parties the right to a contradictory hearing? Additionally, what are the major complaints about individual hearing officers? How can the Court make the hearing officers more effective? These major questions and ancillary ones will be the focus of the updated study.

In conducting the study, I met with and/or had telephone interviews with more than fifty (50) lawyers who attend Hearing Officer Conferences and who practice before the domestic commissioners. A large majority of lawyers are satisfied with the Domestic Triage Program in the 24th JDC and offered positive comments about the speed of the program, the quality of the commissioners and hearing officers, the high settlement rate associated with the HOCs, and the predictability of the program. The predictability results from lawyers and their clients being able to appear before hearing officers at a scheduled time without having to wait until the hearing officers complete another case. Most lawyers do not see any problems with the Domestic Triage Program at all. Lawyers are generally satisfied with all hearing officers and commissioners. Thus, this report is an attempt to increase the effectiveness of a program that seems to benefit domestic litigants in Jefferson Parish. It is important to understand that this report does not chronicle the successes of the Domestic Triage Program, as that has been done in an earlier report and in the Harges Law Review Article. In this report, I made a choice to highlight the perceived problems associated with the Domestic Triage Program. The perceived problems and solutions address the overall management of the Domestic Triage Program. With some perceived

problems, I offered comments to indicate that the problems had no merit at all. With other perceived problems, I offered comments that will make a successful program even better.

A. Goals and Objectives of Study: The study considers the issues stated above and will conclude with specific recommendations to address the issues.

B. Preliminary Background Research: As background research, I analyzed the previous studies and reviewed all reports from the domestic relations commissioners and hearing officers that have been rendered since July 31, 2006, the date of the Second Study. This analysis gave me a better understanding of the current roles and responsibilities of the commissioners and hearing officers.

C. How the Study Was Conducted: In order to attain the goals and objectives mentioned above and with the preliminary research in mind, I performed the following tasks so that the conclusions reached would be accurate and all-encompassing:

1. I examined how the 24th JDC currently uses domestic hearing officers by reading the previous studies and all reports and summaries since July 31, 2006, that have been issued by the hearing officers to the judges of the 24th JDC;

2. I interviewed all domestic hearing officers and domestic commissioners to obtain a thorough understanding of the internal operating procedures used by each commissioner and hearing officer and determined how each commissioner and hearing officer processes cases;

3. I interviewed all judges of the 24th JDC who volunteered to be interviewed to get their views on the roles of the hearing officers and how the hearing officers can be used to assist the judges in performing their duties;

4. I observed the hearing officers and domestic commissioners in practice to assess their skills and offer recommendations on how they can become more effective;

5. I interviewed over fifty (50) lawyers who practice before the hearing officers in the 24th JDC to obtain their views and perceptions on the Domestic Triage Program;

6. I visited the Sixteenth Judicial District Court (St. Mary, St. Martin, and Iberia Parishes) (hereinafter "16th JDC"), a court that utilizes three domestic hearing officers to assist the court in the processing of domestic cases. During this visit, I interviewed three judges, Judge John E. Conery, Judge Ed Leonard, and Judge Charles Porter. Judge Ed Leonard supervises the domestic hearing officers in the 16th JDC. Additionally, I interviewed Tamera Washburn, a domestic hearing officer who hears cases in Franklin, Louisiana. I also observed Hearing Officer

Washburn conduct a hearing officer conference and a domestic abuse hearing. Moreover, I interviewed four lawyers who practice before the domestic hearing officers in the 16th JDC;

7. I compared court filing fees in cases that were heard by domestic hearing officers in the 24th JDC with cases that were heard by domestic hearing officers in the 16th JDC as well as with cases that were heard by the judges in family court in Civil District Court for the Parish of Orleans (hereinafter referred to "CDC"); and

8. I visited Civil District Court for the Parish of Orleans to observe the procedures used in CDC as well as had discussions with law clerks, docket clerks, and lawyers who practice there to learn the practices and procedures used by judges to process domestic cases in CDC in order to compare those procedures to those used in the Domestic Triage Program.

D. Length of Time of Study

The study began on October 1, 2008 and ended on May 31, 2009. Thus, the study took eight (8) months to complete.

E. Conducting Annual Assessments of the Domestic Triage Program

To conduct annual assessments of the effectiveness of the Domestic Triage Program, the Court could develop surveys to be sent to domestic lawyers and litigants. The surveys would request lawyers and their clients to provide their candid and anonymous opinions of the Domestic Triage Program to the Court, highlighting both positive and negative aspects of the program. Lawyers and their clients would also be requested to make suggestions on how the Domestic Triage Program could be improved.

V. RESULTS OF INTERVIEWS WITH DOMESTIC LAWYERS

A. General Concerns of Lawyers Who Were Interviewed

The overwhelming concerns of lawyers who practice domestic law in the 24th JDC are that 1) the use of domestic commissioners and hearing officers creates excessive costs in attorney time and court filing fees, and 2) many attorneys assert that most litigants get into an endless loop with the hearing officers and never get to the district judge. Lawyers commented that litigants run out of money long before their issues are properly resolved by the district judge. They contend that the powerless litigant or less earning litigant is often the party who must settle because the system has defeated the litigant.

The lawyers' concerns about costs resulted from the fact that the Domestic Triage Program was originally designed to create a court-like record for virtually all documents that were used by the hearing officers to make their recommendations. This design created unnecessary filing fees because almost all documents were filed with the Clerk of Court's Office. However, all documents associated with HOCs should not be filed with the Clerk of Court's Office because a HOC is not a court of record. Consequently, in hindsight, it was a mistake to require almost all documents resulting from HOCs to be filed with the Clerk of Court's Office. Some of the recommendations in this report will significantly reduce the filing fees associated with HOCs thus reducing the filing fees paid by litigants.

In the next four subsections, I will list the concerns or complaints of lawyers about the Domestic Triage Program and make suggestions on how the concern or complaint should be addressed by the Court.

B. Specific Concerns of Lawyers Regarding District Judges

1. Problem - Lawyers complain that it is simply too difficult to get a case heard before certain trial judges. After the HOCs are completed, some judges will reschedule the original trial date. This seriously inconveniences the objecting party because she has to file a motion to reset the trial. Again this is an additional cost to the mover. Lawyers are concerned that with some judges the trial dates are just artificial dates that are set and rescheduled at the whim of the particular judge. Every resetting of a trial date is an additional cost to the parties because the court will not reschedule the trial date, and the litigant is forced to do so at the litigant's cost. Each court appearance could result in the litigants paying up to five hundred dollars ($500.00) or even more in attorney’s fees. Moreover, lawyers complained that some judicial staff members often comment when they are approached about having domestic matters set before the trial judges that, “We don’t hear domestic cases. You have to go to the commissioners or hearing officers.”

A corollary **problem** stated by a few lawyers is that hearing officers will not allow the parties to have hearings before the trial judges. Lawyers commented that hearing officers require the parties to return again and again to HOCs because the hearing officers are determined to get agreements regarding all the possible issues that could ever be presented to the Court. One statement made at a joint meeting of fifteen domestic lawyers in December 2008 was that, “Hearing officers are like fullbacks; they simply will not let litigants get to the trial judges.” A few lawyers commented that one hearing officer informed litigants that they should settle the case because they will never have the case heard by the trial judge.

This concern has caused many lawyers to believe that the continued employment of hearing

officers is dependent on hearing officers keeping litigants away from the trial judges. According to these lawyers, the intent of the hearing officers to keep litigants away from the trial judges creates a significant conflict of interest.

These concerns have led some lawyers to believe that a few judges have no desire to hear domestic cases and that these judges will do whatever is necessary to avoid hearing domestic cases.

Solution - These problems are remedied by the trial judges hearing domestic cases when they are scheduled on the judges' dockets. Unless there is a compelling reason to do so, a domestic hearing before a trial judge should not be continued. Continuances should not occur with frequency. Also, when the hearing is continued based on a resetting by the judge, there should not be any additional cost to the parties. Furthermore, the judges can instruct the hearing officers that they are to hear the cases in a facilitative manner without attempting to force settlements. Parties should be given opportunities to settle their cases before the hearing officers in a non-coercive manner. If the case does not settle at the HOC, litigants should be encouraged to have their day in court before the district judge.

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2. Problem - According to some lawyers, another problem for parties is that when matters are heard by the district judges, the judges do not have trials on the merits. According to some lawyers, the most that the judges will do is have a settlement conference and coerce the parties into settlements without actually hearing testimony from the parties. Also, lawyers contend that some judges are making factual determinations from pretrial conferences and informing the parties what their decisions will be without hearing the actual facts or testimony from witnesses. When attorneys push for an actual hearing on the merits, some of the judges will continue the matter, stating that they do not have time to hear the matter that day, or the judges will simply refuse to have a hearing on the merits and make a ruling based on the information learned at the pretrial conference. Consequently, lawyers stated that clients are forced to enter into consent judgments because they cannot afford to pay additional attorney and filing fees to return to the court for another hearing. Attorneys report that some people want to go to trial, to win or to lose. Litigants have this right, lawyers contend.

Lawyers also believe that when judges actually have hearings on the merits, the judges defer to the hearing officers too much. According to La. R.S. 46:236.5(C)(6), the enabling statute for domestic hearing officers, judges are not required to have a trial de novo. La. R.S. 46:236.5(C)(6) states in part, *"Upon filing of the objection, the court shall schedule a contradictory hearing where the judge shall accept, reject, or modify in whole or in part the findings of the hearing officer. If the judge in his discretion determines that additional*

information is needed, he may receive evidence at the hearing or remand the proceeding to the hearing officer." This leads lawyers to believe that the rulings of the hearing officer are forced on the litigants.

Solution - The solution to these concerns is for the judges to hear testimony at a hearing if the parties reach impasse at a pretrial conference. Judges should not simply "rubber stamp" or automatically ratify the recommendation of the domestic hearing officer. Rather, the trial judge should schedule a contradictory hearing and hear the matter de novo.

It is entirely appropriate for a judge to hold pretrial conferences and pre-try cases before trials on the merits. Pretrial conferences are the norm in many Louisiana courts. It is not unusual for trial judges to attempt to settle cases at pretrial conferences, sometimes even giving their opinions or views on how the case should be decided. Lawyers often seek guidance from trial judges on their perspectives on cases. However, when litigants want to have their day in court by testifying under oath, they should be allowed to do so. Trial judges should not be heavy-handed and force settlements on the litigants.

With regard to the concern that trial judges are deferring too much to the recommendations of the hearing officers when the judges make decisions on the merits, the trial judges may wish to consider whether this allegation is true. If this assertion is true, judges should note that while the hearing officers are experienced former domestic practitioners, the hearing officers do not hear testimony, as court reporters are not present at the HOCs, and litigants are not sworn. Thus, hearing officers are not actually holding evidentiary hearings since evidence is not presented at the HOCs. Hearing officers simply hear unsworn allegations of lawyers and their clients.

One suggestion that the judges might want to consider is a practice utilized by some district court judges in the 16th JDC; these judges do not review the recommendations of the hearing officers until after the judges have made their decisions on the merits. These judges believe that they should not be persuaded by the recommendations of the hearing officers and that it is appropriate to give litigants their day in court with a trial de novo, which is a trial anew or from the beginning.

A contrary view was stated by a district judge in the 16th JDC on April 29, 2009, when I visited the court. The district judge stated that it is difficult for him to ignore the recommendations of the hearing officers because the hearing officers have much more practical experience handling domestic cases than he does. The hearing officers' recommendations are important to him because they provide him a perspective on how the case should be decided. This view was also shared by some of the judges on the 24th JDC who were interviewed for this report.

3. Problem - Some lawyers believe that the recommendations of the hearing officers regarding the unresolved issues should not become an interim judgment at the end of the HOC, when the recommendations are signed by the domestic commissioner or the district judge, because no testimony is taken and no record is created at the HOC. Because these recommendations can have serious consequences to the lives of litigants navigating their way through the court system, some lawyers believe that it is better for the ruling of the trial judge to affect the parties rather than the recommendation of a hearing officer or commissioner who has not heard any evidence.

Solution - The Domestic Triage Program was designed in part to provide an expedited procedure for handling domestic cases. The program is accomplishing that objective. If the effective date of the hearing officer's recommendations is delayed, the program ceases to become expedited and will cause the parties in need of quick relief to be delayed even further. Thus, I do not recommend that the effective date of the hearing officer's recommendation be delayed.

After the interim judgment has been signed by the domestic commissioner following the HOC, litigants who may suffer immediate and irreparable damage because of the immediate effectiveness of the interim judgment may file a motion to stay the interim judgment. For example, if a party believes that immediate and irreparable harm will occur before the matter is heard by the district judge because the interim judgment allows a party to sell movable or immovable property or has an immediate negative effect on a child's educational needs, the party may immediately file an objection to the hearing officer's recommendation and a motion to stay the interim judgment. The motion to stay the interim judgment will then be heard shortly thereafter.

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4. Problem - Although the local rules allow the domestic commissioners and the district judges to sign orders and consent judgments in domestic matters, lawyers complain that the district judges do not sign orders and judgments for their divisions of court. Lawyers commented that the judges simply send the parties back to the commissioners as if the district judges have no responsibility for domestic relations matters. Lawyers are disappointed that even the district judges who serve as Duty Judges will have nothing to do with domestic matters. On occasions when the Duty Domestic Commissioner is not available or has left the courthouse, lawyers comment that it would be convenient to them if the duty judges would sign orders and judgments.[3]

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[3]The Domestic Commissioners reported to me that the instances that they are not present during business hours are rare.

Solution - Because the local rules of court require the Duty Judge and the Duty Commissioner to sign domestic orders and consent judgments, then both should be available during business hours to sign domestic orders and consent judgments. If only the domestic commissioners will be allowed to sign judgments and orders, then the local rules should be amended to reflect this practice.

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5. Problem - The Clerk of Court is not simultaneously setting matters on the dockets of the domestic commissioner and the district court as required by Local Rules of Court, Rule 24(A)(2)(a). Apparently, the matters are being set on the dockets of the domestic commissioners but are not being set on the dockets of the district court at all. To get relief before the district court after a matter is heard by the domestic commissioner, lawyers complain that parties have to incur additional expense and file a motion to set the matter before the district court. Local Rule of Court, Rule 24(A)(2)(a) requires the hearing before the domestic commissioner to be set not less than thirty (30) nor more than thirty-five (35) days of the filing of the original pleading in question, and Local Rule of Court, Rule 24(A)(2)(b) requires the hearing before the district court to be set not less than forty (40) nor more than fifty-five (55) days of the filing of the original pleading in question.

Solution - To comply with the local rules of court, the Clerk of Court should schedule the matters on the dockets of the district court at the same time the matter is set before the domestic commissioners.

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6. Problem - Lawyers are concerned that there is no opt out procedure for cases that should bypass the hearing officers and be heard directly by the district judges. Some cases are high conflict cases or highly combative cases that will not benefit from the HOCs. In other cases, litigants want to fight and disagree with each other and have no intention of settling or resolving the cases amicably. Lawyers believe that these cases should be heard directly by the trial judges, not the hearing officers.

Solution - The Court should develop criteria for the hearing officers to use in determining the cases that should be heard directly by the trial judges. Using these criteria, the hearing officers will serve as screeners to determine which cases should proceed along this alternative track. Then the hearing officers will make recommendations directly to the trial judges that the cases should be heard by the trial judges. It is the trial judges, not the hearing officers, who have the ultimate decisions on whether the trial judges or the hearing officers should initially hear the

cases.

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7. Problem - Most lawyers who were interviewed for this report would like more time to file a memorandum following an objection to the hearing officer's recommendation after it is signed by the domestic commissioner. Currently, a party has three (3) days from the receipt of the hearing officer's recommendation to file a written objection to said recommendation. Local Rules of Court, Rule 24(A)(3)(e). Moreover, the objecting party is required to file a memorandum on the law and facts with the district judge within five (5) days of the date the objection is filed. *Id*. Consequently, the memorandum on the law and facts must be filed by the objecting party within eight (8) days after receipt of the hearing officer's recommendation. Lawyers would like additional time to file the memorandum on the law and facts, similar to the delays for filing memoranda in other civil cases.

Solution - Litigants should be given more time to file the memorandum on the law and facts (hereinafter referred to as "Memorandum"). The time to file the Memorandum should be closer to the date of the trial before the district judge than closer to the date that the objection to the hearing officer's recommendation is filed. Consequently, I recommend that the Memorandum of the objecting party be filed at least ten (10) days prior to the trial date on the disputed issues, and that the Memorandum of the opposing party be filed at least three (3) days before the trial date on the disputed issues. The ten (10) day time period will provide sufficient time for the opposing party to respond to the objecting party's Memorandum, while the three (3) day time period will allow sufficient time for the trial judge and objecting party to adequately prepare for the trial.

There are several purposes of the Memorandum. One purpose of the Memorandum is to educate the trial judge on the remaining disputed issues in the case. Another purpose of the Memorandum is to educate the opposing party of the basis of the objection and to provide the appropriate citations and authorities relied on by the objecting party. Finally, another purpose of the Memorandum is to require the parties to focus on how they intend to support or defend against issues presented at the trial before the district judge. This purpose could be better served by requiring each party to submit a detailed Memorandum which, in addition to presenting the arguments and counter arguments of each party, could also include the procedural history, uncontested facts and stipulations, a witness list, an exhibit list, and citations and authorities supporting the party's positions. The witness lists should include known impeachment witnesses and the nature of the testimony of each witness that "may" or "will" be called at the trial. This detailed memorandum, which will be filed by each party, will force the parties to focus on the important disputed issues remaining in the case. Requiring both parties to focus on the remaining issues shortly before the trial on the merits will have a beneficial effect on the litigants. When the issues are crystallized and the exhibits and witnesses are known in advance of trial, settlement is

likely to occur before the trial.

Thus, in addition to moving the required filing date of the Memorandum closer to the trial date before the district judge, the Court should also require a more detailed Memorandum. As a result, Local Rules of Court, Rule 24(A)(3)(e) will have to be amended to reflect these new requirements. This rule change will give litigants more time to file the Memorandum resulting in more memoranda being filed prior to trials on the merits. Consequently, this should reduce the impact of Edwards v. Edwards, 2 So.3d 482 (La. App. 5th Cir. 2008) on the Court, which prevents a district judge from dismissing with prejudice a party's objection for failure to file the memorandum required by Local Rules of Court, Rule 24(A)(3)(e).

An alternative to requiring each party to file a Memorandum is to require both parties to a Joint Pre-Trial Order at least three (3) days before the hearing. The pre-trial order should contain all the items that would be filed with the Memorandum except that the parties will be required to confer before the trial and produce the Joint Pre-Trial Order together. This is a policy decision that must be made by the Court.

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8. Problem - Several lawyers commented that many district judges are not following the Local Rules of Court, Rule 23(C) which states in part, "It is the goal of the 24th Judicial District Court that each district judge hold an aggregate of two domestic rule days per month and an aggregate of one domestic trial week per month. The domestic docket may be commingled with other dockets."

Lawyers complain that each judge is different in holding domestic rule days and trial days. However, lawyers contend that most judges simply do not follow Rule 23(C) at all.

Solution - The Court should follow its own rules of court.

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9. **Problem** - Lawyers contend that judges will not hear emergency domestic issues on non-domestic dates. This presents a real problem to litigants who need quick relief. The attorneys assert that apparently some of the judges believe that they do not have to hear domestic matters under any circumstances.

Solution - Local Rules of Court, Rule 24(A)(1)(b) requires the district judge to whom the case is allotted, or if that judge is unavailable, the duty judge, to hear emergency matters immediately.

The Court should follow this rule.

C. Specific Concerns of Lawyers Regarding Domestic Commissioners

1. Problem - Exceptions and discovery issues are heard by the domestic commissioner instead of the district judges without the parties having an opportunity to consent, as required by La. R.S. 13:717(G) which states in part:

> *Except as provided in this Subsection, the Domestic Commissioners shall not have the power to adjudicate cases in a contested matter of divorce, custody, permanent spousal support, paternity, or partition of community property, unless the parties **consent** in writing to the jurisdiction of the commissioner. Each time an action is filed with the clerk of court for the Twenty-Fourth Judicial District Court, the clerk shall notify the parties to that action of their right to consent to jurisdiction by the commissioners. In each case in which all the parties provide a written waiver of their right to have their case heard by a district court judge, and provide written consent to the matter being heard and adjudicated by a commissioner, the commissioners may conduct any and all proceedings on any matter pending before the court and may order the entry of judgment in the case. Each judgment so recommended by a commissioner shall be signed by a judge of the Twenty-Fourth Judicial District Court. Any party who is aggrieved by a judgment entered by a commissioner may appeal that judgment in the same manner as any other judgment entered by a district court.*

Lawyers complain that under Louisiana statutory law, the power of the domestic commissioner is limited and that the 24th JDC is violating state law by forcing litigants to appear before the commissioner without their consent.

Solution - The Court needs to determine if consent by the parties to appear before the domestic commissioner should be required. If the court determines that it does not wish to require party consent, then perhaps the law should be changed so that party consent to appear before the domestic commissioner is not required.

Note that Local Rules of Court, Rule 23(D)(3)(f) & (k) allows the domestic commissioners to hear disputes concerning discovery issues, issuance of subpoenas, exceptions, and motions for extension of time. The local rule does not require consent of the parties. It is also noteworthy that

a local rule of court cannot modify a state statute. In a case that challenged the actions of a domestic hearing officer, Piccione v. Piccione, the Third Circuit Court of Appeal reversed the judgment of the trial court which held a party in contempt of court for failing to pay spousal support and child support in accordance with the recommendations of the domestic hearing officer.[4] The local rule of court stated that if the domestic hearing officer's recommendation is objected to, then the recommendation becomes an interim order pending the final disposition of the claims by the court.[5] This rule conflicted with La. R.S. 46:236.5(C)(5) because that section did not allow the domestic hearing officer's recommendations to become an interim order of the court. After both parties objected to the domestic hearing officer's recommendations, the payor party was held in contempt of court because he failed to pay spousal and child support as recommended by the domestic hearing officer.[6] The Court of Appeal found that the local rule of court modified section 236.5 by giving the recommendations of the domestic hearing officer the effect of a court order, "an authority never contemplated by that statute."[7] Since no authority existed in Louisiana allowing a local rule of court to expand a state statute to allow a contempt proceeding against a party against whom no court order had ever been issued, the district court erred in holding the payor party in contempt of court for failure to pay child and spousal support in compliance with the domestic hearing officer's recommendations.[8]

Because the local rules of court (Local Rules of Court, Rule 23(D)(3)(f) & (k)) arguably conflict with a state statute (La. R.S. 13:717(G)), the Court needs to consider how it wishes to address this issue.

Another solution to this problem is to allow the hearing officers to hear disputes concerning discovery issues, issuance of subpoenas, exceptions, and motions for extension of time. The rules could be modified to allow objections to the recommendations of the hearing officers to be heard by the district judges.

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[4]*Piccione v. Piccione*, 01-1086, pp. 11-12 (La. App. 3 Cir. 05/22/02); 824 So.2d 427, 434.

[5]*Id*. at 434.

[6]*Id.*

[7]*Id.*

[8]*Id.*

2. Problem - Lawyers complain that motions to compel discovery, which are heard by the domestic commissioner, create unnecessary costs and expenses to the parties. For example, when a motion to compel discovery is filed, it is heard by the domestic commissioner. If a party disagrees with a ruling of the domestic commissioner on the discovery issue, that party must file an objection with the district court. When the discovery issue reaches the district court, the court is not yet hearing the merits of the dispute; it is only hearing the discovery issue. After the district judge issues a ruling on the discovery issue, the matter must then be reset before the hearing officer. If a party disagrees with the hearing officer's recommendation, the party has to file an objection to the hearing officer's recommendations. Each filing in this matter adds additional filing fees to the litigants, as well as attorney's fees and an increase in time needed to resolve the issues.

Consequently, discovery issues can result in a matter being heard first by the domestic commissioner, then by the district judge - all before the matter is heard on the merits by the hearing officer. Once the substantive matter is heard by the hearing officer, if a party disagrees with the recommendation of the hearing officer, the matter could end up before the district judge a second or third time. Of course, if other disputed issues arise, these issues will be heard by a hearing officer or domestic commissioner before being heard by the district judge.

Solution - Motions to compel can result in litigants appearing before the commissioner, the hearing officer, and the district judge. Each appearance requires court costs, minute entries, and attorney's fees. A solution to this issue is to allow motions to compel to be heard initially by the domestic hearing officers with the objection being heard by the trial judge.

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3. Problem - After matters such as exceptions and motions to continue have been heard by the domestic commissioner, lawyers complain that they have to incur an additional expense by filing a motion to reset the matter before the hearing officer. Lawyers suggest that the HOC should be reset without additional expense to the parties.

Solution - The resetting of the HOC should occur without additional cost to the parties. Perhaps the resetting of the HOC could be reset automatically by the court after the hearing before the domestic commissioner. Alternatively, when a party requests relief in a matter that may go to the domestic commissioner, the domestic hearing officer, and the district judge, the party should

consider drafting a document with three orders in one, so that all three dates can be set simultaneously.

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4. Problem - Lawyers complain that their clients are not allowed to get uncontested divorces on days other than Friday even though they may have other matters, such as domestic violence matters, set before Domestic Commissioner Bailey on days other than Friday. Thus, if the domestic violence issue is heard on a day other than Friday, the litigant must return to court again to obtain the divorce.

Response - Commissioner Bailey responds that he cannot recall any case where this occurrence happened, and without a specific case to refer to, it is difficult for him to provide a response that is well informed. However, it is true that he generally is reluctant to hear Civil Code Article 102 divorces on days other than Friday. Most of the domestic violence cases come to him before the case is ripe for the Article 102 rule to show cause. For issues other than divorce, Commissioner Bailey feels that it is necessary to make a finding and ruling on the domestic violence allegation before he hears other issues in the case. He feels that most of these cases contain nothing more than conclusory allegations of harassment with a request for injunctive relief. In most instances the requests for injunctive relief are denied for lack of proof, and the cases are sent back to the hearing officers.

To benefit litigants, he has suggested that lawyers draft three orders in one if they are seeking domestic violence relief along with relief that normally goes to the hearing officers - one order each for the domestic commissioner, the hearing officer, and the district judge. The domestic commissioner's hearing on the domestic violence issue will be heard first and if it is granted, other issues such as custody and support, if requested, are included in the protective order. Commissioner Bailey believes that a protective order can only be modified on a motion to modify, and that the issues of custody and support, which are part of the principal demand, cannot be addressed outside of the protective order until the protective order expires.

Additionally, Commissioner Bailey states that when the divorce is ripe and the parties are both present for a hearing on a matter other than the divorce and the divorce is set on a later date, he has allowed the parties the opportunity to complete the divorce at that time. However, not all lawyers accept his offer.

Finally Commissioner Bailey was concerned that some lawyers feel as though they cannot

discuss their concerns with him about how he handles his docket. This concern was also addressed by the hearing officers and judges who were interviewed by me. All hearing officers, commissioners, and judges who discussed this matter urged me to communicate to lawyers that they should feel free to approach them and discuss any disagreements or concerns they have about the Court's practices or policies that affect lawyers and their clients.

D. Specific Concerns of Lawyers About Domestic Hearing Officers

1. Problem - Lawyers contend that the procedure for obtaining a judgment against a party who does not appear at a HOC is unfair and expensive. Apparently, many attorneys believe that in order to obtain relief against a party who does not appear at a HOC, they have to obtain a default judgment against that party. The procedure used by many lawyers in the 24th JDC is as follows. If an opposing party does not appear at a HOC, to obtain a final judgment, some lawyers believe that the appearing party has to confirm a default hearing before the district judge, thereby punishing the "good litigant." The litigant who appeared and obtained a recommendation of default from the hearing officer feels as though he or she has to file a document entitled "*Objection to Hearing Officer's Recommendation(s) and Interim Order and/or Order to Set Default Hearing Before the District Court.* This document is then served on the opposing party who already has an order to appear in court for the hearing with the district judge. According to lawyers, this causes litigants to miss additional time from work, pay additional attorney's fees and costs (service fees and filing fees), and pay transportation costs to return to court if the litigant resides outside of the state of Louisiana or in a distant part of the state. Many times the out-of-state litigants have to return to the 24th JDC more than one time to get matters resolved.

Solution - Parties usually appear at a HOC after a rule to show cause has been filed. When a party does not appear at the HOC after having been properly served, the hearing officer will listen to the arguments of the party present and make the appropriate recommendations to the trial judge. Then under Local Rules of Court, Rule 24.1(B)(9), "the domestic commissioner shall sign an interim judgment implementing the hearing officer recommendations pending the filing of an objection and hearing before the district court." Further, under Local Rules of Court, Rule 24(A)(3)(e), a "party has three days from the receipt of the interim judgment to file a written objection to said order." Additionally, under Local Rules of Court, Rule 24(A)(3)(e)(2), "if neither the party nor that party's attorney is present at the HOC, the objection shall be filed within three (3) days of receipt of the recommendation or order." Moreover, notice of the signing of the recommendation or order shall be mailed in conformity with La. C.C.P. art. 1313, and receipt is presumed five (5) days after mailing.

In effect, if the party who fails to appear at the HOC does not file an objection to the interim judgment of the court, the judgment, after it is mailed to the absent party, becomes a final judgment of the court and shall be signed by a district judge and appealable as a final judgment as allowed by Local Rules of Court, Rule 24.1(B)(10 & 11). Consequently, the default judgment procedure may not be necessary for a rule to show cause.

Hence, there may be no need for the additional service of process after a party has failed to appear at the HOC, for the absent party has already been served with the notice of the date for the hearing before the trial judge. This service, which is either by the sheriff or in accordance with La. C.C.P. arts. 1313 or 1314, and required by Local Rules of Court, Rule 24(A)(3)(c)(1), occurred when the party was served with notice of the HOC. Furthermore, the hearing officer's recommendation becomes an interim judgment upon the signature of the domestic commissioner. And if there is no objection within three days of the domestic commissioner's signature, the interim judgment, after it is signed by a district judge, becomes a final judgment that is appealable to the Court of Appeal.

Several lawyers and hearing officers believe that Falcon v. Falcon, 05-0804 (La. App. 4th Cir. 03/29/06); 929 So.2d 219, requires the default judgment procedure provided in La. C.C.P. art. 1702 to be utilized when one of the parties does not appear at the HOC. However, because *Falcon* specifically discussed the default judgment procedure, not the procedure that applies to a rule to show cause, and because hearing officers were not discussed at all in *Falcon*, in my opinion, *Falcon* is inapplicable to the procedures in the 24th JDC.

Thus, when the parties do not reach an agreement on all issues in the HOC, the hearing officer's recommendations should be signed by the domestic commissioner, and if there is no objection within three days of receipt of the interim judgment (or within five days after the interim judgment has been mailed), the interim judgment becomes a final appealable judgment.

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2. Problem - Some lawyers argue that contempt proceedings, which are currently heard by the hearing officers, should be heard directly by the trial judge because the current system actually penalizes the non-contempt party. When a recommendation and/or stipulation of the hearing officer becomes a judgment of the court after it is signed by the domestic commissioner and not objected to in three days after the commissioner's signature, a party who does not follow the court's order is not punished sufficiently in order to deter bad behavior. Lawyers complained that the "contempt conferences" before the hearing officers are ineffective because the hearing

officers usually do not find any party to be in contempt of court. This greatly empowers the offending litigant and forces the aggrieved litigant to repeatedly file expensive motions for contempt until the hearing officer finally understands that a finding of contempt of court is appropriate.

Additionally, lawyers complain that hearing officers do not recommend reasonable attorney's fees against the party he or she is recommending to be found in contempt of court. Moreover, in instances where the hearing officers have assessed the attorney's fees, the sanction is usually small compared to the offending conduct. And because of the difficulty in having the matter heard before a district judge, the sanction is trivial compared to the costs the prevailing party has to incur in attorney's fees and filing fees in order to finally be heard by a district judge.

A few lawyers commented that it appears that prevailing domestic litigants are actually being penalized when the plight of these litigants is compared to non-domestic litigants. For example, when a non-domestic litigant files a contempt of court proceeding, that litigant pays a smaller filing fee and can be heard by a district judge shortly after the pleading is filed. Thus, the lawyer only has to prepare for one hearing. On the other hand, when the domestic litigant files a contempt of court proceeding, that litigant has to pay a filing fee that is twice that paid by non-domestic litigants, has to pay a lawyer to appear at the HOC where the hearing officer can only issue a recommendation including the penalty in attorney's fees, and then has to pay the lawyer to prepare for the hearing before the district judge. Thus, the domestic litigant pays more in filing fees and attorney's fees than does the non-domestic litigants in contempt of court matters.

Solution - As to the complaint that hearing officers do not recommend reasonable attorney's fees against the party he or she is recommending to be found in contempt of court, the hearing officers informed me that lawyers are reluctant to request attorney's fees against the party in contempt, particularly if that party is represented by counsel. Hearing officers commented that lawyers want the hearing officers to sanction the party in contempt with attorney's fees without a request from the party bringing the contempt action. The hearing officers believe that lawyers are extending professional courtesies to other lawyers in this regard and are complaining about the hearing officers' failure to recommend attorney's fees.

The filing fee for a contempt of court proceeding in a domestic case is actually twice that required for non-domestic contempt of court matters, the deposit for a domestic filing being $200.00 while the deposit for a contempt of court proceeding in a non-domestic case is $100.00, according to the filing fees published by the Jefferson Parish Clerk of Court's Office. A representative of the Jefferson Parish Clerk of Court's Office commented that this increased

deposit results from that fact that the domestic contempt of court matters are routed to the hearing officers first before they are heard by the district judges. Matters heard first by the hearing officers cause additional documents to be filed in the Clerk of Court's Office, thereby increasing the amount of filing fees.

With reference to the assertion that domestic litigants who file contempt proceedings are being forced to pay hundreds of dollars more than non-domestic litigants, lawyers commented that these problems can be remedied by having contempt of court matters in domestic cases heard directly by the district judge instead of being heard first by the hearing officers. While this solution may remedy the disparity in filing fees, it will increase the costs to litigants by increasing the number of court appearances, thereby increasing the amount of attorney's fees paid by litigants.

Contempt issues in domestic cases, which are generally child support and visitation related issues, are usually brought with other issues where parties are requesting relief. If the contempt issues are heard directly by the trial judge, then the parties will have to appear before the trial judge on the contempt issues and before the hearing officer on the non-contempt issues, thus requiring dual appearances in the same case. Then if a party has an objection to the recommendation of the hearing officer regarding the non-contempt issue, the party has to appear before the trial judge again.

As explained in Problem 1 above, if the party against whom the recommendation of contempt is made does not file an objection to the interim judgment of the court, the judgment becomes a final judgment of the court and shall be signed by a district judge and appealable as a final judgment as allowed by Local Rules of Court, Rule 24.1(B)(10 & 11). Since approximately eighty-five percent (85%) of the matters heard by the hearing officers are not heard by the district judges, one can expect that same percentage of contempt matters to be resolved before the hearing before the district judge.

In my opinion, having the district judges hear motions for contempt first would increase, not decrease, costs to litigants. Consequently, I do not recommend that contempt issues be heard initially by the trial judges before they are heard by the hearing officers. The current practice should continue.

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3. Problem - Some lawyers believe that a record should be created at the HOCs. They contend

that since hearing officers have the power to administer oaths, hearing officers should do so. This will provide much needed information to the trial judges when they have hearings or trials on the merits. Lawyers commented that the judges have no idea of what goes on in the HOCs and would be shocked to learn what occurs there. Lawyers commented that serious matters such as custody and visitation arrangements should not be based on the statements of rank hearsay and serious misrepresentations that are allowed in the HOCs. They contend that these problems can be cured by creating a record of each HOC.

Solution - Hearing officers do have the power to administer oaths. To create records of the HOCs, stenographers would have to be present. The Court should consider whether it wishes to bring court reporters into the HOCs.

Currently, the domestic hearing officers are not holding evidentiary hearings or hearing testimony. Rather, the HOCs are facilitative-type sessions with the domestic hearing officer conducting something akin to mediation with most of the conferences resulting in agreements between the parties. If an agreement is not reached, the hearing officer will render a written recommendation at the end of the HOC.

Allowing the hearing officers to conduct evidentiary hearing would change the structure of the HOCs. This is a policy decision which has to be made by the Court.

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4. Problem - Several lawyers commented that the HOCs cause litigants and lawyers to lie and misrepresent the facts. Because there is no record of the HOCs, lawyers claim that obvious misrepresentations are made to the hearing officers during the conferences. The lawyers assert that since no one is sworn in the HOCs, there is no way to prevent lawyers and litigants from lying during the HOCs.

Solution - The creation of a record may not eliminate misrepresentations or false statements made by lawyers and clients. If litigants or their attorneys wish to lie in order to gain an advantage during a HOC, then it is questionable whether the administration of oaths will force litigants to tell the truth. The Court needs to consider whether it wishes to create official records of the HOCs.

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5. Problem - Several lawyers commented that some of the hearing officers are simply rude and unprofessional. Because the parties are behind closed doors with the hearing officers, in a small office that can comfortably seat only five or six people, and because there is no record of the conferences, lawyers complained that some hearing officers dominate the conferences, often yelling at the lawyers, calling litigants liars, and telling the lawyers to "shut up" and/or leave the room and allow their clients to speak. Lawyers have objected to being required to remain quiet only to have the hearing officers threaten harmful results such as making a recommendation against the lawyer wishing to be heard. Lawyers commented that because they have to appear before these hearing officers in the future in the same or different matters, the abusiveness of the hearing officers is intimidating to the lawyers, thereby preventing the lawyers from being zealous advocates for their clients. Lawyers also stated that the abuse by the hearing officers is unfair to their clients as well.

Lawyers believe that the lack of a record of the HOCs causes the hearing officers to become abusive toward lawyers and their clients. Lawyers believe that they were hired by clients to represent them and that it is their ethical duty to do so diligently and zealously, even in HOCs. Lawyers commented that if the clients are required to speak in the HOCs, this should be done with the benefit of an official record so that a reviewing court could examine exactly what occurred in the HOCs.

Solution - The hearing officers should remain professional and courteous at all times. Domestic lawyers and litigants should not be subjected to abusive conduct by any court official. Perhaps the hearing officers should receive additional training or continuing education seminars on how to develop better practices as hearing officers. Another solution is for the hearing officers to work with the domestic hearing officers in other judicial districts to learn how other domestic hearing officers conduct their conferences. When this idea was presented to hearing officers in the 16th JDC, they thought it would be a beneficial exchange. The suggestion is for domestic hearing officers in the 16th JDC to come to the 24th JDC to conduct HOCs and to observe the hearing officers in the 24th JDC conduct HOCs as well as provide feedback and critiques of the 24th JDC's practices. This exchange of information among hearing officers from different judicial districts would benefit hearing officers in the 24th JDC as well as hearing officers in the 16th JDC.

The Domestic Triage Program is designed so that clients can participate meaningfully in the HOCs. HOCs are patterned after domestic mediations where neutral mediators work with disputing parties to help them resolve their differences. One major difference between a domestic mediation and a HOC is that at the end of the HOC, if the parties do not resolve all issues, the hearing officer must make a recommendation to the trial judge on how the matter

should be resolved. Maximum client input is beneficial in both settings.

In dealing with the reluctance of lawyers to have their clients speak during the HOC, it may be appropriate for the hearing officer to state, "This process is for the clients. I was instructed by the judges of the 24th JDC to make all attempts to engage the clients. Thus, I understand your desire not to have your client speak, but I believe the program works better when the clients are engaged."

I have learned from discussions with lawyers and hearing officers who practice in the 15th JDC (Parishes of Acadia, Lafayette and Vermillion) that clients sometimes feel isolated and left out when they are not allowed to participate fully in HOCs. In my opinion, the better approach is to have the clients, with the assistance of their lawyers, participate meaningfully in the HOCs.

When confronted with this concern, the hearing officers reported that often lawyers and litigants are rude and offensive to the hearing officers and that many times the hearing officers are simply responding to unprofessional conduct directed at them. Regardless of the cause of the conduct, hearing officers and lawyers should behave in a professional manner during all HOCs.

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6. Problem - Attorneys complained about the use of the *Hearing Officer Conference Affidavit, and Statement of Income and Expenses*, a nine page document that must be completed by the parties and delivered to the opposing party and to the hearing officer not later than five (5) days prior to the HOC. Local Rule of Court, Rule 24(A)(3)(d). This document is filed with the hearing officer's support staff, not with the office of the Clerk of Court. When this document is filed with the hearing officers' clerks, lawyers complained that the clerks will not send a return copy to the attorneys, unlike the office of Clerk of Court. Thus, lawyers have no proof that the document is actually filed with the hearing officers' clerks unless they file the document in person. To obtain proof that the document has been filed, lawyers have to incur the expense of hiring a court runner who actually goes to the hearing officers' clerks' office to physically file the document.

Moreover, because the document can be filed only with the hearing officers' clerks, it cannot be filed with the Clerk of Court's East Bank Satellite Office as can all other documents. Additionally, some of the hearing officers do not allow the document to be filed electronically or by facsimile transmission. On the other hand, the Clerk of Court's Office allows all pleadings filed in that office to be filed electronically or by facsimile transmission. These facts present additional hardships to attorneys and their clients.

Finally, another problem with the *Hearing Officer Conference Affidavit, and Statement of Income and Expenses* document is that unrepresented parties seldom complete the document. Consequently, the represented party is at a disadvantage by disclosing its information and not having access to the financial information of the unrepresented party. Some attorneys commented that the document should be filed in the record because it is a document on which the hearing officer relies when he or she makes a recommendation.

Solution - Since the form is not filed with the Clerk of Court's Office, it cannot be filed in the East Bank Satellite Office. Fax filing or electronic filing of documents with the hearing officers would be a real benefit to lawyers and their clients and should be allowed.

At least one hearing officer does not allow fax filings because of the difficulty in reading some faxed copies. However, in my opinion, that is not a sufficient reason to prohibit all faxed copies. Also, allowing the document to be filed by fax or electronically is a resource issue. The hearing officers process thousands of cases each year. Fax and electronic filings will generate additional costs that are associated with facsimile or electronic transmissions such as fax machines, printers, ink, toner and paper. The Court will need to consider how it will address these costs.

The issue of the sanction that should be imposed on self-represented litigants who fail to complete the *Hearing Officer Conference Affidavit, and Statement of Income and Expenses* should be addressed by the Court. As to the filing of the form in the record, I would advise against this because it would add an additional filing fee of at least forty-five dollars ($45.00) to litigants who are already complaining about excessive court costs in the 24th JDC.

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7. Problem - Some lawyers commented that the domestic hearing officers should require lawyers and their clients to arrive at the HOCs prepared. According to several lawyers, many of their opponents attend the HOCs without completing the *Hearing Officer Conference Affidavit and the Monthly Income and Expense Sheet* as they are required to do in the Hearing Officer Conference Order that is provided to the parties prior to the HOC. Although the Hearing Officer Conference Order states that failure to comply with the Order may result in an order adverse to the party, lawyers complain that the domestic hearing officers are holding the HOCs without imposing any adverse consequences on the noncompliant party. Some lawyers suggested that there should be negative consequences to the parties who do not comply with the Hearing Officer Conference Order.

Permitting a party to come unprepared results in an unproductive or inefficient administration of the case by the domestic hearing officers. On the other hand, several lawyers commented that the required completion of the *Hearing Officer Conference Affidavit and the Monthly Income and Expense Sheet* and the required exchange of documents with opposing counsel is really beneficial. Many times, this exchange of information promotes settlement prior to the HOC. Moreover, when parties arrive at the HOC prepared after reviewing information from both sides, the HOCs are much more efficient, resulting in a significant amount of settlements.

Solution - This problem was reported to the Court in 2006 in an earlier report. Apparently this problem continues and needs to be addressed by the Court. Perhaps the court should provide guidance to the domestic hearing officers on the appropriate steps to be taken when parties attend the HOCs without complying with the Hearing Officer Conference Order.

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8. Problem - Another problem is that there is no procedure to combine motions or rules to show cause filed by adverse parties in the same matter. For example, if the mother files a request for relief and the father later files a request for relief, lawyers contend that these matters will usually be heard on different dates before the hearing officer. This adds additional expense to the parties.

Solution - Hearing Officer Paul Fiasconaro responded that 90% of the time, issues are joined at the same hearing when the parties agree. When a request for relief is filed by a party and a HOC is already set in the same case, the hearing officer's docket clerks will call the plaintiff in the matter previously set to ask if there is any objection to the matters being combined. The overwhelming majority of conferences scheduled before Hearing Officer Fiasconaro proceed with adverse motions and rules being heard in the same HOC.

Sometimes, adverse rules and motions cannot be combined because the filing of the plaintiff in reconvention was filed too closely to the initially scheduled HOC to give the opposing party an opportunity to be served or to respond. In these instances, the hearing officers informed me that only one hearing is usually held: either the first hearing is rescheduled so that it can be combined with the issues in the reconvention, or the issues in reconvention will be combined and heard in the first hearing. These continuances should be handled by correspondence between the hearing officers and the lawyers or their clients, without a minute entry.

This practice appears to be a workable solution. Hearing officers are encouraged to continue this

practice.

The hearing officers also report that there are instances where the parties have raised a large number of issues that cannot possibly be heard in the one and one-half (1 ½) hour time period. On these occasions, depending on matters that may be scheduled immediately following the HOC, a second HOC may have to be scheduled to address satisfactorily all of the issues.

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9. Problem - Lawyers argue that motions to continue are a problem. One complaint is that it is too difficult to get a continuance with the hearing officers. According to some lawyers I interviewed, there is no way to get a valid continuance with the hearing officer when the parties disagree about a continuance. These lawyers contend that the hearing officers will not continue a HOC unless the lawyers agree on the continuance. This is even true when a lawyer had planned to be out of the country on pre-arranged matters. One lawyer commented that she had to go to the district judge in order to obtain a continuance because the hearing officer would not continue a HOC even though she was going to be out of the country on the initially scheduled date of the HOC. The lawyer contended that when a party wants a continuance, he or she has to file a motion to continue which is heard by the domestic commissioner, not the hearing officers. This motion adds additional costs in the form of filing fees, minute entries, and attorney's fees. With service of the motion by the sheriff, the deposit required for a routine motion to continue could be as much as one hundred twenty dollars ($120.00). The filing fee for a motion to continue is forty dollars ($40.00) for the first page with no service and four dollars ($4.00) for each additional page. The sheriff's service fee is seventy-five dollars ($75.00) for each service. Apparently many lawyers choose to have the motion to continue served by the sheriff because the service of process is much more successful by this method than by certified mail, which is allowed by the Louisiana Code of Civil Procedure. Some lawyers contend that service by certified mail is unsuccessful in many instances because lawyers or parties refuse to accept the certified mail. Generally, the sheriff has much more success in serving parties than do lawyers utilizing certified mail. Lawyers believe that motions to continue should be initially heard by the domestic hearing officers, not the commissioners, while some of the domestic hearing officers and domestic commissioners believe that motions to continue should be heard by the domestic commissioners.

Another complaint about motions to continue is the lack of consistency among the hearing officers regarding this issue. Whenever there is an opposed motion to continue, one hearing officer will telephone both parties or their lawyers to attempt to resolve the conflict. Other hearing officers require lawyers to file a motion to continue when the parties disagree about

whether a motion to continue should be granted.

Several attorneys related that there were instances when they filed timely motions to continue the HOCs because of a conflict by either the lawyer or client only to have the hearing officers fail to rule on the motions prior to the HOCs. Conflicts can arise for any number of reasons - previously scheduled vacations, other court appearances, or business or family obligations that require the attorney or client to be unavailable on the date of the HOCs. And because many HOCs are scheduled without input from lawyers or their clients, the HOC may be set at an inconvenient time and date for the parties. In those instances where the hearing officer failed to rule on the motion to continue before the HOC, either the lawyer had to appear at the HOC without the client (when the client had a conflict) or the client had to appear at the HOC without his or her lawyer but with a substitute lawyer (when the lawyer had a conflict). Thereafter, the hearing officer would rule on the motion to continue at the HOC, severely prejudicing the client. Lawyers commented that at least one hearing officer believes that it was not within his or her power to rule on opposed motions to continue and that motions to continue should be handled only by the domestic commissioners. Lawyers contend that there should be a consistent procedure among the four hearing officers pertaining to motions to continue.

Solution - Local Rule of Court, Rule 24.1(B)(5) states, " *Motions to continue hearing officer conferences are discouraged. Where possible, no hearing officer conference should be continued except within the delays prior to the pre-set date before the district court or domestic commissioner.*

Rule 24.1(B)(5) envisions that very few continuances will be granted. If the hearing officers are not granting routine continuances, then the hearing officers are simply following the local rules of court. The question then, is whether the rule is applied too rigidly? When parties disagree about whether a matter should be continued, should the hearing officer be more flexible in granting a request to reschedule a HOC or should the hearing officers continue the current practice of sparingly continuing HOCs?

Responding to this concern, the hearing officers informed me that matters are reset routinely for the benefit of the litigants. They assert that they make every effort to grant continuances when jointly requested by the parties. According to the hearing officers, there are very few problems with continuances. When a lawyer requests a continuance, the practice of some of the hearing officers is to telephone both lawyers to mediate a solution to the continuance issue. With another hearing officer, the docket clerks will telephone the parties to work out an amicable agreement on the new date. The hearing officers stated that these procedures resolve 90-95% of the cases

without any disagreement between the lawyers or the litigants. In these instances, the continuance could easily be recorded by the hearing officers' support staff on the Hearing Officer Information Sheet.

Apparently, in the overwhelming majority of cases, parties are able to agree on whether and when a HOC should be continued. In those cases where the parties do not agree on a continuance, lawyers argue that the hearing officers are inflexible, resulting in additional filing fees, minute entries, and attorney's fees being charged to the clients. Whenever a HOC is continued to a new date without a need to continue the hearing before the trial judge, a minute entry should not be recorded. All such continuances should be recorded by correspondence between the attorneys and the hearing officers. The correspondence should then be kept in the hearing officers' separate files and not filed in the Clerk of Court's Office. Facsimile and electronic transmissions of documents should be encouraged.

When the parties disagree about the rescheduling of a HOC, the hearing officers are encouraged to follow Local Rules of Court , Rule 28.2(D), Continuances, which states,

> *D. Motions to continue hearing officer conferences shall be directed to the hearing officer to whom the case is allotted.*
> *1. Hearing officer conferences shall be continued only for good cause shown. Every attempt shall be made to conduct hearing officer conferences on the date and time originally set.*
> *2. Whenever possible, hearing officer conferences shall be reset only within the period prior to the date set before the district court.*
> *3. Hearing officer conferences shall not be continued without date unless the case is being dismissed, except for good cause.*
> *4. Upon granting a motion to continue a hearing officer conference to a date after the scheduled district court date, the hearing officer shall notify the district court of the continuance and shall reset the matter on the dockets of both the hearing officer and the district court.*

Rule 28.2(D) clearly directs the hearing officer to handle continuances. If the parties agree to a continuance, then the hearing officers should work with the parties and grant the continuance, preferably with correspondence between the hearing officers and the attorneys, and a minute entry should not be recorded. On the other hand, if the parties do not agree on the continuance, after a motion to continue is filed with the Clerk of Court's Office, the HOC should be continued only for good cause shown. In this instance, the hearing officer should, if possible and prior to the scheduled HOC, make a written recommendation to the domestic commissioner to reset the

conference within the period prior to the date set before the district court. And further, if the HOC has to be scheduled on a date after the scheduled district court date, the hearing officer should recommend in writing to the domestic commissioner that the matter be reset on both the dockets of the hearing officer and the district court.

Whenever possible, the hearing officers should rule on motions to continue well in advance of the HOCs. Consequently, lawyers and their clients will be given proper notice and guidance from the hearing officers about when the HOCs will occur.

Because of the costs associated with filing an opposed motion to continue in the Clerk of Court's Office, the hearing officers should continue to make every effort to accommodate the parties and their attorneys.

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10. Problem - Lawyers are complaining that Hearing Officer Karl Hansen does not abide by Local Rules of Court, Rule 24(A)(3)(a) which states in pertinent part that "*the clerk of court shall endeavor to set a domestic hearing officer conference date before the hearing officer in not less than thirty (30) nor more than thirty-five (35) days of the date of filing, unless an earlier, or later, date is required by law.*"

Solution: HOCs are scheduled by the individual hearing officers, not by the Clerk of Court's Office. Hearing Officer Karl Hansen is currently scheduling HOCs sixty (60) days after the parties file a document with the court requesting relief. This appears to violate Local Rules of Court, Rule 24(A)(3)(a). Also, Hearing Officer Karl Hansen is setting many single issue hearing days. Furthermore, Hearing Officer Hansen is setting up to five cases per day, one hour apart. This appears to be in violation of Local Rules of Court, Rule 24.1(B)(2) which requires HOCs to be scheduled for one and one half (1 ½ hours) unless a party or counsel makes a written request for a conference period of up to two hours.

It is noteworthy that Hearing Officer Hansen states that he is a part-time hearing officer and he does not schedule hearings on Wednesday and Friday afternoons. Also Hearing Officer Hansen commented that of the four divisions of court from which each hearing officer receives cases, he is hearing cases in two divisions of court that were formerly domestic divisions of court having many more domestic cases than other divisions of court. Further, Hearing Officer Hansen added that he is hearing cases from a third division of court where initially the district judge did not participate in the Domestic Triage Program and consequently had a large number of domestic

cases on her docket. Thus, Hearing Officer Hansen's response is that he has three divisions of court with many more domestic cases and filings than do the other divisions of court. Finally, Hearing Officer Hansen states that he is holding as many HOCs as the other domestic hearing officers.

Hearing Officer Hansen should comply with Local Rules of Court, Rule 24(A)(3)(a). If he is unable to comply with the local rule because of his part-time status, the Court should consider whether the position should remain part-time or whether it should be converted to a full-time position. The other three hearing officers are full-time employees of the Court, as are the three commissioners.

If Hearing Officer Hansen has a significantly larger number of domestic cases than do the other hearing officers, the Court should consider reassigning the divisions of court among the hearing officers. This would result in a more equitable distribution of the cases.

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11. Problem - Some lawyers complained that hearing officers are sometimes recommending non-petitioned for relief over the objection of the attorneys. For example, hearing officers may grant fair market rental when not petitioned for or without a request for use and occupancy.

Solution - When the hearing officers were asked about this concern, they denied that this assertion was true. The Court should note that in Domingue v. Bodin, 08-62 (La. App. 3rd Cir.. 11/05/08); 996 So.2d 654, the Third Circuit Court of Appeal held that the hearing officer and the trial court exceeded their authority by considering issues beyond the pleadings. In *Domingue*, the hearing officer made factual determinations of issues that were not raised in the pleadings filed by either party by recommending interim spousal support even though that issue was never pled. And the trial judge erred by rendering a judgment adopting the recommendations contained in the hearing officer's report. *Id*. at 659.

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12. Problem - Lawyers complained that one hearing officer routinely requires the attorneys to complete the hearing officer's *Stipulations and/or Recommendations Of Hearing Officer* at the end of the HOC so that he can leave early.

Solution - The *Stipulations and/or Recommendations Of Hearing Officer* form should be completed by the domestic hearing officer, not the parties or their lawyers.

13. Problem - A recurring complaint among lawyers is that the hearing officers send too many contested cases to custody evaluators. The practice in the 24th JDC is for hearing officers to provide the parties with a list of custody evaluators with the selection of a particular custody evaluator to be made by the parties. The advertised rates are very expensive. Additionally, lawyers stated that the advertised rates are incorrect. Lawyers report that many of the rates are three times higher than those advertised. Fees of custody evaluators range from $1,500 to $5,000 in the Greater New Orleans area. In a typical case, each litigant may have to pay an attorney a retainer fee of $1,500 to $3,000, along with a $1,500 to $2,500 fee to the custody evaluator. Added to these amounts are court costs which could be an additional $1,000 to $2,000. Thus, the costs to each litigant for a simple contested divorce can be thousands of dollars. Attorneys question the practice of the hearing officers sending virtually every contested child custody case to a custody evaluator. Although the Louisiana Civil Code permits this practice, should it be mandatory?

Solution - To appreciate the burdens imposed on litigants by the domestic hearing officers when they order custody evaluations, it is important to understand what occurs during a custody evaluation. An article by Mary E. O'Connell entitled *Mandated Custody Evaluations and the Limits of Judicial Powers*, explains custody evaluations:

> No one who has conducted or observed a custody evaluation or read an evaluator's report can deny that the custody evaluation process is extraordinarily intrusive. Parents subjected to an evaluation are interviewed at length, often about extremely personal matters, such as use of substances and sexual activity. Evaluators ask for, and routinely receive, the parents' consent to contact their children's physician, teacher, and babysitter. Neighbors and friends may also be called (again, with the parents' consent) if the evaluator concludes that they might offer useful information. Parents may be required to arrange a home visit or to have the evaluator observe them interacting with their child in some other setting. The process can be quite lengthy.[9]

In my opinion, the hearing officers are sending too many cases to custody evaluators. La. Rev.

[9]Mary E. O'Connell, *Mandated Custody Evaluations and the Limits of Judicial Power*, 47 Family Court Review 304, 304-305 (2009).

Stat. 9:331 states that custody evaluations may be ordered for *good cause* shown.[10] This article does not contemplate that custody evaluations will be ordered whenever the parties do not agree on custody. Good cause could be found to exist when there are serious issues pertaining to mental health; neglect; drugs or drug abuse; parental alienation; physical, mental, or emotional abuse; or educational problems such as school suspensions or failing grades. Furthermore, some of these issues may not call for a full custody evaluation. In some cases, it may be appropriate for the hearing officer to recommend that a parent or child undergo a psychological or educational assessment.

In the typical custody dispute when just cause does not exist to send the litigants to a custody evaluator, the hearing officers should make the custody recommendation. The hearing officers in the 24th JDC have significant expertise and experience litigating divorce and family law cases. This expertise and experience should be used by the domestic hearing officers to make decisions on the custody and visitation issues coming before the Court. Consequently, the current practice of the hearing officers routinely appointing custody evaluators should be discontinued.

Some of the hearing officers responded that they appoint custody evaluators when the lawyers request the appointment of a custody evaluator. However, La. Rev. Stat. 9:331 does not allow the appointment of a custody evaluator based upon the request of the parties. Only "good cause" is referenced in the statute. Thus, the statute requires something more than the consent of the parties.

Because the fees charged by the custody evaluators are expensive for litigants in Jefferson Parish, I suggest that the court require the mental health professionals who conduct court-ordered custody evaluations to use a reduced fee sliding scale based on the combined income of the parties. There is precedent for this approach. In the 1990s, when the Court was ordering parties to domestic mediators pursuant to La. Rev. Stat. 9:332, the Family Mediation Council of Louisiana, Inc. devised a reduced fee sliding scale because of the court's concern that litigants could not afford

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[10]See La. Rev. Stat. 9:331: Custody or visitation proceeding; evaluation by mental health professional:

> *A. The court may order an evaluation of a party or the child in a custody or visitation proceeding for good cause shown. The evaluation shall be made by a mental health professional selected by the parties or by the court. The court may render judgment for costs of the evaluation, or any part thereof, against any party or parties, as it may consider equitable.*

the fees of domestic mediators even though domestic mediators were charging no more than $125.00 per hour for up to four one-hour mediation sessions. The reduced fee sliding scale was used with great success without any significant problems and there was never a shortage of domestic mediators to provide the court-ordered mediation services.[11] The hearing officers can work with custody evaluators to devise a reduced fee sliding scale. Alternatively, custody evaluators can present a reduced fee scale to the Court for its approval.

Alternatively, if the hearing officers feel that they need assistance in resolving the custody disputes that come before them, they might want to consider the use of child custody mediators. Many of the custody evaluators currently being used by the hearing officers are also domestic mediators. Mediation is a process whereby a neutral third person assists parties to resolve their disputes in a way that is acceptable to all parties. As a neutral party, the mediator, unlike a judge or arbitrator, does not evaluate the case but simply facilitates discussions between the parties in an effort to reach a mutually agreeable solution.[12] The use of mediation to resolve child custody and visitation disputes has grown tremendously in recent years. Most states, including Louisiana, resolve child custody and visitation disputes according to the best interests of the child. In most cases, the parents - not a judge, commissioner, or the lawyers - are in the position to know what is best for the child. By participating in a mediation, parents are able to work toward an agreement that meets the best interests of the child.

Judges and hearing officers in custody and visitation disputes in Louisiana have the authority under La. R.S. § 9:332 to send these disputes to a child custody mediator who will assist the disputants in resolving their disagreements. Mediators in custody and visitation disputes are attorneys, psychiatrists, psychologists, social workers, marriage and family counselors, professional counselors, or members of the clergy who have received general and specialized training in the mediation of child custody and visitation disputes.[13]

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[11]This information comes from first-hand knowledge because I was a court-appointed mediator in the 24th JDC in the late 1990s and early 2000s. During an en banc presentation to the Court by the Family Mediation Council of Louisiana, Inc., the primary concern of the judges who attended that meeting was the additional costs to litigants as a result of court-ordered mediation. The sliding scale was developed to address the Court's concern.

[12] See Bobby Marzine Harges, *Mediator Qualifications: The Trend Toward Professionalization*, 1997 B.Y.U.L. Rev. 687 (1997).

[13] See La. R.S. 9:334 (mediator qualifications in child custody and visitation cases).

Several studies have been conducted on the benefits of mediation to litigants and the court system. When comparing mediation to litigation, studies have shown the following:

1. Mediation proved more effective than litigation;
2. Mediation reduced the cost and number of court hearings;
3. Mediation increased the compliance of the parties when compared with litigation;
4. Mediation proved much more satisfying to all parties than did litigation; and
5. Parents were more satisfied with decisions made, how they were made, and with the win-win outcomes.[14]

The use of child custody mediators would benefit litigants financially because a child custody mediation would cost the parties hundreds, not thousands, of dollars. In the Greater New Orleans Metropolitan area, the rates of child custody mediators range from one hundred dollars ($100.00) to two hundred dollars ($200.00) per hour. The hourly rates are even less when a reduced fee sliding scale is used. And most custody and visitation disputes can be resolved in four one-hour sessions. Consequently, the cost of a full fee child custody mediation is about eight hundred dollars ($800.00). Because most litigants in Jefferson Parish will likely qualify for reduced fee mediations, the mediation fee will be much less than eight hundred dollars ($800.00). This fee should be compared to the fees charged by custody evaluators in the Greater New Orleans area which range from fifteen hundred dollars ($1,500.00) to five thousand dollars ($5,000.00) per case.

What has happened since the Domestic Triage Program began in 2005 is that the Court has shifted from using child custody mediators to assist the Domestic Commissioner in resolving child custody disputes to using custody evaluators to assist the Domestic Hearing Officers to resolve these disputes. Since the Domestic Triage Program began, the use of child custody mediators to assist litigants in the 24th JDC in resolving their issues has been virtually

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[14] See Robert E. Emery (1994). *Renegotiating Family Relationships.* (New York: Guilford); Judith V. Caprez and Micki A. Armstrong, *A Study of Domestic Mediation Outcomes with Indigent Parents*, 39 Family Court Review 415 (2001); Deutch, Morton and Coleman. (2000). *The Handbook of Conflict Resolution*. (San Francisco: Jossey-Boss); Birnbaum and Radovanovic. (1999). Brief Intervention Model for Access-Based Postseparation Disputes. *Family and Conciliation Courts Review*, 31, 504-512; and Depner, Cannata, Ricci. (1994). Client Evaluations of Mediation Services: The Impact of Case Characteristics and Mediation Service Models. *Family and Conciliation Courts Review*, 31, 306-325.

nonexistent. Because both child custody mediations and custody evaluations usually take four (4) to six (6) weeks to complete, one of the major differences between the use of these professionals is cost, with the expenses associated with custody evaluators being significantly more than those associated with child custody mediators.

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14. Problem - When custody evaluations are completed, copies are sent to the parties and the hearing officers. Then a copy of the custody evaluation is filed in the official record in the Clerk of Court's Office. As a result, the parties' very personal, sensitive, and private information becomes public for all to see. Additionally, because the Clerk of Court charges at least four to five dollars ($4.00- $5.00) for every page filed in the record, the parties are assessed additional fees for the filing of the custody evaluation in the record. Thus, the filing fees of a fifteen (15) page custody evaluation will cost the parties an additional seventy-five dollars ($75.00).

Solution - After the custody evaluation is completed, if the parties have not settled, they will usually appear at a second HOC. Most cases will settle before, during, or shortly after the second HOC. Thus, for most cases, there is no need for the custody evaluation report to be filed in the record at this stage of the litigation. If the parties proceed to a hearing with the district judge after an objection to the HOC has been filed, then the report can be introduced into evidence by one of the parties if necessary. This practice will prevent the disclosure of personal, sensitive, and private information into the court record as well as result in savings to the parties in the form of reduced court costs and filing fees. Alternatively, if the custody evaluation must be filed in the official record, it should perhaps be filed under seal.

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15. Problem - A few lawyers contend the hearing officer's *Stipulations and/or Recommendations Of Hearing Officer* form that is hand-written and signed by the commissioner or judge at the time the parties leave the HOC that becomes the Interim Judgment is unenforceable. Some lawyers commented that police officers will not enforce the Interim Judgment because it is hand-written, and often times pages are left out because the pages are blank. Thus, when a parent attempts to have visitation with her children at a particular time and a law enforcement agency such as the sheriff's or police department is called, the responding police officers will often not enforce the hand-written document.

Additionally, in one case, Daboval v. Stein, No. 08-C643 (La. App. 5th Cir. 2008), the Fifth Circuit Court of Appeal made unfavorable comments about the hand-written and partially

illegible recommendations of the hearing officer. The Court of Appeal granted a writ application after finding that the hearing officer's recommendations did not conform to the mandatory requirements of La. R.S. 46:236.5 because the hearing officer failed to include a proposed judgment, as he directed one of the lawyers to prepare the judgment. That was problematic to the Court of Appeal because the hearing officer's recommendations were hand-written and partially illegible.

Solution - The solution is for the hearing officers to type the *Stipulations and/or Recommendations Of Hearing Officer* form during or at the end of the HOC and then have the document signed by the commissioner or district judge. The form should be completed by the hearing officer, not by the lawyers or their clients. The template document could be saved in the computer and the hearing officer could fill in the appropriate portions of the document and print the document at the end of the conference. This is the procedure used by hearing officers in the 16th JDC. Of course, all the hearing officers would need to know how to type or to have an administrative assistant who would do the typing. I have provided the hearing officers with sample templates from the 16th JDC that could be used to draft templates for documents used in the 24th JDC.

Additionally, as required by La. R.S. 46:236.5(C)(5), the written recommendation of the hearing officer is required to contain all of the following: "(a) A statement of the pleadings. (b) A statement as to the findings of fact by the hearing officer. (c) A statement as to the findings of law based on the pleadings and facts, including his opinion thereon. (d) A proposed judgment." By including these items in the typed stipulation and recommendation form, the hearing officers will easily satisfy the statutory requirements.

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16. Problem - Once the *Stipulations and/or Recommendations Of Hearing Officer* form becomes an Interim Judgment of the Court after it is signed by the commissioner or district judge, lawyers report that it is difficult to get the opposing party to sign a consent judgment. When two lawyers are involved, it is somewhat easier but not always problem-free. If one party changes his or her mind after the HOC and decides that he or she does not like what was agreed to at the HOC, or wants things changed after the parties leave the HOC, then the party will not sign the consent judgment.

Solution - This problem is addressed by Local Rules of Court, Rule 28.0, Agreements and Stipulations - (C) Consent Judgments, which states:

> Consent judgments resulting from a hearing officer conference, but not prepared at the conclusion of the conference while both parties are present, shall be prepared and submitted to the court by the party ordered by the hearing officer to do so within ten (10) days of the hearing officer conference. If there is an objection, the objecting party shall immediately submit the objection to the hearing officer in writing with the hearing officer's recommendation sheet. In the event the judgment is not circulated to counsel for all parties and to unrepresented parties, within five (5) days after the hearing officer conference, the other party may prepare and present a judgment, in accordance with La. District Court Rule 9.5, to the domestic commissioner. If the judgment is submitted without the opposing counsel's signature or if the judgment is submitted in a matter where the opposing party is unrepresented, the judgment shall be presented to the domestic commissioner with the hearing officer's recommendation sheet.

Rule 28 allows a party who wishes to file an actual Consent Judgment in the record to do so by submitting the Consent Judgment, along with the hearing officer's recommendation sheet, to the Domestic Commissioner for his or her signature. Thus, if a party has changed his or her mind after the HOC but fails to file an objection within the appropriate time, the other party can finalize the initial agreements from the HOC by submitting the Consent Judgment to the Domestic Commissioner.

Another solution to this problem is to have the hearing officers prepare the consent judgment at the conclusion of the HOC. The hearing officers will be provided a very detailed electronic copy of a consent judgment form that is used in the 16th JDC. This form can easily be tailored for use in the 24th JDC. If this document is used during HOCs, pages and paragraphs that are not relevant to the parties can be easily deleted electronically before the final document is printed at the end of the HOC.

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17. Problem - Lawyers commented that the Domestic Triage Program is harmful to out-of-state litigants because of the excessive costs involved with appearing before the hearing officers several times. Each time a party requests relief from the court, the parties are required to appear at a HOC. This requires great expense to the out-of-state party in attorney's fees and travel time and expenses because the party has to appear at every HOC. The costs increase when the matters are set before some trial judges who simply appear at the scheduled hearing date only to continue the matters or send them back to the hearing officer or commissioner. This results in the out-of-state party incurring unnecessary expenses in returning to Jefferson Parish.

Solution - Lawyers suggest that out-of-state litigants should be able to attend the HOCs by telephone at the litigant's expense. In my opinion, discretion should be granted to the hearing officers to allow certain litigants to attend the HOCs by telephone. Upon good cause shown, the hearing officers should allow litigants who are residing out of the state of Louisiana to attend the HOCs by telephone.

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18. Problem - Many domestic litigants in the 24th JDC are not represented by attorneys. Lawyers report that it is often difficult to contact and serve self-represented litigants in the Domestic Triage Program because many of these litigants are mobile, moving from place to place. These litigants are often residing with friends or relatives. Thus, self-represented litigants should be required to enroll in each case by providing up-to-date contact information to the hearing officers, as lawyers are required to do.

Solution - The domestic hearing officers hand-deliver to self-represented litigants a form entitled, "Notice To Persons Representing Themselves." This form explains the procedures used in the Domestic Triage Program and provides self-represented litigants a form document that can be used to file an objection to the hearing officer's recommendations. This Notice document needs to be updated with instructions to self-represented litigants that they have a duty to enroll in the case and to provide up-to-date contact information. The document should also contain a sheet where the litigant's contact information can be typed or hand-written so that it can be delivered to the hearing officer.

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19. Problem - Lawyers complained that the hearing officers' clerks will not "hold" dates and times for HOCs as a convenience. According to the attorneys, it would be a great service to them and their clients if they could get the clerks to hold for a short time specific dates and times for HOCs that are convenient to the lawyers and their clients. Because of the clerks' refusal to hold dates and times, lawyers contend that HOCs are set without their input thereby resulting in costly continuances.

Solution - The hearing officers' clerks informed me that earlier in the Domestic Triage Program, they held dates and times for lawyers. However, because lawyers would not file the necessary pleadings shortly thereafter with the Clerk of Court's Office as required by the clerks holding the dates and times, the clerks discontinued this practice. Moreover, the clerks informed me that lawyers, paralegals, and court runners are constantly physically appearing at their desks every day

throughout the day requesting a specific date and time with the hearing officers, and that it would not be fair to those persons to hold dates for other lawyers and clients. The clerks also report that because of the large volume of HOCs that are set in the Domestic Triage Program, it is not feasible for them to hold dates and times for lawyers. The current practice is to schedule HOCs only after the pleading with a request for relief has been filed with the Clerk of Court's Office.

In my opinion, the Hearing Officers' support staff should attempt to work with litigants and hold dates and times for HOCs. Perhaps the support staff could hold a date and time for a short time, up to close of the next business day. When a litigant requests a specific time and date, the staff member could write the date in pencil in the hearing officer's calendar with a notation of when the hold will be removed if the appropriate pleading is not filed. And if the pleading is not filed by close of business the following day, the staff member could remove the hold thereby freeing the date and time for other litigants. If this practice proves unfeasible, then it should be discontinued.

E. Specific Concerns of Lawyers About Clerk of Court's Office

In this subsection, I will address the concerns that lawyers have about the Clerk of Court's Office. Although these concerns are enumerated in other sections of this report, they are summarized here so that the specific concerns about the Clerk of Court can be found in one place. Additional comments about the filing fees assessed by the Clerk of Court's Office are contained in Section VII of this report.

1. Problem - The overwhelming concerns of lawyers who practice domestic law in the 24th JDC are that 1) the use of domestic commissioners and hearing officers creates excessive costs in attorney time and court filing fees, and 2) many attorneys assert that most litigants get into an endless loop with the hearing officers and never get to the district judge. Lawyers commented that litigants run out of money long before their issues are properly resolved by the district judge. They contend that the powerless litigant or less earning litigant is often the party who must settle because the system has defeated the litigant.

I found many of the concerns of the lawyers to have merit. Since the Domestic Triage Program became fully functional in the 24th JDC in 2006 after Hurricane Katrina struck Southeastern Louisiana in August 2005, the costs to litigants have increased significantly because of court costs associated with the Domestic Triage Program and because of the hearing officers' practice of

sending most contested child custody cases to custody evaluators.[15] Because all filings of documents associated with the Domestic Triage Program are filed in the office of the Clerk of Court, with a filing fee charged for every page that is filed, costs to litigants have increased substantially since early 2006. Lawyers complained that they are constantly being notified by the Clerk of Court's Office that additional deposits of funds must be made before subsequent filings can be accepted. Many lawyers commented that filing fees in the 24th JDC are the highest in the State of Louisiana.

When asked about attorney's fees associated with court appearances before the domestic hearing officers in the 24th JDC, attorneys advised me that each court appearance could cost as little as three hundred dollars ($300.00) and as much as five hundred dollars ($500.00). Court appearances for other lawyers are even higher. The attorney's fees for the court appearances include actual preparation time as well as the time spent in the courthouse. As one might expect, most attorneys charge clients for each appearance before the domestic hearing officers, the domestic commissioners, and the district judges. If clients are required to repeatedly appear before the court officials, then it is understandable why litigants are complaining about the excessive costs associated with obtaining relief in domestic cases in the 24th JDC.

One consistent concern among lawyers is that they believe that there are too many filing fees associated with the Domestic Triage Program. For example, when one disagrees with the recommendation of the hearing officer, the party has to file an objection with the court. The filing of the objection costs money. Also, the objection has to be served on the opposing party. The service of process comes with a fee. Also, when the party files a memorandum in support of the objection, additional costs are assessed. Other costs associated with the Domestic Triage Program are costs for service of the HOC packet, the filing of the order for a custody evaluation in the record, the filing of the custody evaluation, excessive minute entries associated with the matters set on the dockets of the domestic hearing officers and commissioners, and motions to reset the HOCs.

The Clerk of Court charges five dollars ($5.00) per minute entry as allowed by La. Rev. Stat. 13:841(A)(7). Thus, where multiple issues are set on the dockets of the domestic hearing officers and domestic commissioners, the Clerk of Court officials assigned to the Domestic Triage

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[15]The Domestic Triage Program initially began on May 25, 2005. But when Hurricane Katrina struck the New Orleans metropolitan area on August 29, 2005, court systems in the New Orleans metropolitan area, including the 24th JDC, ceased operations for several weeks. This caused a disruption in the Domestic Triage Program and many cases that were scheduled in the Fall of 2005 were continued to later dates.

Program record the occurrences of the hearings, whether they be continuances of the hearing or records of the recommendations or decisions made by the hearing officers or commissioners, and assess a fee of five dollars ($5.00) per rule or motion. For example, in Shannon Lee Conatser Pickens v. Richard Rowland Pickens II, Case Number 660-541 (Division C, Twenty-Fourth Judicial District Court for the Parish of Jefferson), the HOC that was scheduled for November 6, 2008, was continued without date. Because there were seventeen (17) matters on the hearing officer's docket, a one page minute entry was created at a cost of seventy-five dollars ($75.00) to the litigants. For the one-page minute entry, the plaintiff was assessed a fee of forty dollars ($40.00) because she had filed a pleading requesting relief on eight (8) issues and the defendant was assessed a fee of thirty-five dollars ($35) because he had filed a pleading requesting relief on seven (7) issues.[16] When multiple minute entries are created by the minute clerks, the parties are

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[16]The following minute entries were created after the continuance on November 6, 2008:

Motions taken up:
By D 1 Against P 1 Motion for injunction MOTION TO CONTINUE WITHOUT DATE SIGNED ON 10-27-08.
ByD1 Against P1 Motion for joint custody MOTION TO CONTINUE WITHOUT DATE SIGNED ON 10-27-06,
ByDI Against P1 Motion to set child support MOTION TO CONTINUE WITHOUT DATE SIGNED ON 10-27-08,
ByD1 Against P1 Motion to set visitation MOTION TO CONTINUE WITHOUT DATE SIGNED ON 10-27-08.
By D 1 Against P 1 Motion for temporary restraining Order MOTION TO CONTINUE WITHOUT DATE SIGNED ON 10-27-08.
By D 1 Against P 1 Motion for rental MOTION TO CONTINUE WITHOUT DATE SIGNED ON 10-27-06.
ByD1 Against P1 Motion for use and occupancy of home MOTION TO CONTINUE WITHOUT DATE SIGNED ON 10-27-08.
By P 1 Against D 1 Motion to set child support MOTION TO CONTINUE WITHOUT DATE SIGNED ON 10-27-08.
ByP1 Against D1 Motion to set custody MOTION TO CONTINUE WITHOUT DATE SIGNED ON 10-27-08.
ByP1 Against D1 Motion for temporary restraining Order MOTION TO CONTINUE WITHOUT DATE SIGNED ON 10-27-08.
By P 1 Against D 1 Motion for interim periodic support MOTION TO CONTINUE WITHOUT DATE SIGNED ON 10-27-08.
ByP1 Against D1 Motion for use and occupancy of auto MOTION TO CONTINUE WITHOUT DATE SIGNED ON 10-27-08.
ByP1 Against D 1 Motion for use and occupancy of home MOTION TO CONTINUE

forced to pay substantial fees while the document that is actually filed in the Clerk of Court's Office is only one page. Thus, each time a HOC is continued and each time a HOC is held, minute entries routinely cost the parties $50.00, $60.00, or even more.

Solution - A solution to this problem is to eliminate the minute entries associated with HOCs and reduce the number of documents that are filed in the official records in the Clerk of Clerk's Office. Because of the expense associated with minute entries of HOCs, the use of minute entries to reflect activities of the hearing officers such as continuances and rescheduling of HOCs should be totally eliminated. A minute entry is the official summary of the activity and decisions of a court that took place on a particular date, at a particular time, concerning a particular case. In essence, a minute entry summarizes orders of the court and describes what happened and what is to happen next regarding the case. Minute entries should be used by courts of records such as the district court and the commissioner's court, not by hearing officers since HOCs are not courts of record. Informal and incidental matters handled by hearing officers should be reflected by letters or faxes from the hearing officers' administrative staff or by letters or faxes between the parties or their lawyers with a copy to the appropriate hearing officer. Separate files should be kept by the hearing officers' staff members for all documents that are not filed with the Clerk of Court's Office. The only documents from the HOCs that should be filed in the official records are the following:

1. All pleadings filed by the parties;

2. The Hearing Officer Conference Order that is served on the parties after a request for relief is filed;

3. The Hearing Officer Conference Report prepared by the domestic hearing officer;

4. The Consent Judgment prepared by the domestic hearing officer;

5. The Hearing Officer Information Sheet (also known as the Disposition of Hearing Officer Conference Document) that is prepared by the domestic hearing officer at the conclusion of the HOC. (This is a one page document that should be filed in the record and faxed to the district judge's docket clerk.); and

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WITHOUT DATE SIGNED ON 10-27-08.
ByP1 Against 01 Motion for use of community funds MOTION TO CONTINUE WITHOUT DATE SIGNED ON 10-27-08.
ByP1 Against D1 Motion for injunction MOTION TO CONTINUE WITHOUT DATE SIGN ED ON 10-27-08.

6. The Objection to Hearing Officer Conference Report.

Thus, when a HOC is rescheduled but does not require a rescheduling of the hearing before the trial judge, the matter should be handled internally without documents being filed with the Clerk of Court's Office. On the other hand, when the hearing before the trial judge has to be rescheduled because of a rescheduling of a HOC, the parties should file a motion to continue with the Clerk of Court to continue the judicial hearing. Effort should be made to reduce or eliminate the documents that are actually filed with the Clerk of Court's Office.

There are certain documents that should not be filed with the Clerk of Court's Office. For example, the report of the custody evaluator should not be filed in the record. Only the official pleadings, the documents signed by the commissioners or the district judges, and the Hearing Officer Information Sheet (which serves as a one page minute entry of the HOC) should be filed in the record. Again, all minute entries associated with the activities of the HOCs should be eliminated. Thus, costs to litigants in the 24th JDC will be significantly reduced. Consequently, the following documents should not be filed with the Clerk of Court's Office:

1. Minute entries of HOCs;
2. Letters from hearing officer staff members to litigants rescheduling HOCs;
3. Letters from attorneys confirming the rescheduling of HOCs; and
4. The Hearing Officer Conference Affidavit (currently not filed with Clerk of Court's Office).

The Court should also consider implementing a paperless system wherein all documents generated as a result of HOCs will be scanned regularly. In order to implement these changes, the hearing officers will have to create separate files for each case handled by the hearing officers. These files should be maintained and kept in the hearing officers' work area, not in the Clerk of Court's Office. Contained in the files will be any document that does not need to be filed in the official record. Because the tasks performed by the hearing officer staff members will significantly decrease revenues generated by the Clerk of Court's Office, the Court may incur additional costs in hiring administrative staff to support the hearing officers.

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2. Problem - The Clerk of Court is not simultaneously setting matters on the dockets of the domestic commissioner and the district court as required by Local Rules of Court, Rule

24(A)(2)(a). Apparently, the matters are being set on the dockets of the domestic commissioners but are not being set on the dockets of the district court at all. To get relief before the district court after a matter is heard by the domestic commissioner, lawyers complain that parties have to incur additional expense and file a motion to set the matter before the district court. Local Rule of Court, Rule 24(A)(2)(a) requires the hearing before the domestic commissioner to be set not less than thirty (30) nor more than thirty-five (35) days of the filing of the original pleading in question, and Local Rule of Court, Rule 24(A)(2)(b) requires the hearing before the district court to be set not less than forty (40) nor more than fifty-five (55) days of the filing of the original pleading in question.

Solution - To comply with the local rules of court, the Clerk of Court should schedule the matters on the dockets of the district court at the same time the matter is set before the domestic commissioners.

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3. Problem - A few lawyers commented that it appears that prevailing domestic litigants are actually being penalized when the plight of these litigants is compared to non-domestic litigants. For example, when a non-domestic litigant files a contempt of court proceeding, that litigant pays a smaller filing fee and can be heard by a district judge shortly after the pleading is filed. Thus, the lawyer only has to prepare for one hearing. On the other hand, when the domestic litigant files a contempt of court proceeding, that litigant has to pay a filing fee that is twice that paid by non-domestic litigants, has to pay a lawyer to appear at the HOC where the hearing officer can only issue a recommendation including the penalty in attorney's fees, and then has to pay the lawyer to prepare for the hearing before the district judge. Thus, the domestic litigant pays more in filing fees and attorney's fees than does the non-domestic litigants in contempt of court matters.

Solution - The filing fee for a contempt of court proceeding in a domestic case is actually twice that required for non-domestic contempt of court matters; the deposit for a domestic filing being $200.00 while the deposit for a contempt of court proceeding in a non-domestic case is $100.00, according to the filing fees published by the Jefferson Parish Clerk of Court's Office. A representative of the Jefferson Parish Clerk of Court's Office commented that this increased deposit results from that fact that the domestic contempt of court matters are routed to the hearing officers first before they are heard by the district judges. Matters heard first by the hearing officers cause additional documents to be filed in the Clerk of Court's Office, thereby increasing the amount of filing fees.

With reference to the assertion that domestic litigants who file contempt proceedings are being forced to pay hundreds of dollars more than non-domestic litigants, lawyers commented that these

problems can be remedied by having contempt of court matters in domestic cases heard directly by the district judge instead of being heard first by the hearing officers. While this solution may remedy the disparity in filing fees, it will increase the costs to litigants by increasing the number of court appearances, thereby increasing the amount of attorney's fees paid by litigants.

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4. Problem - Lawyers argue that motions to continue are a problem. The lawyer contended that when a party wants a continuance, he or she has to file a motion to continue which is heard by the domestic commissioner, not the hearing officers. This motion adds additional costs in the form of filing fees, minute entries, and attorney's fees. With service of the motion by the sheriff, the deposit required for a routine motion to continue could be as much as one hundred twenty dollars ($120.00). The filing fee for a motion to continue is forty dollars ($40.00) for the first page with no service and four dollars ($4.00) for each additional page. The sheriff's service fee is seventy-five dollars ($75.00) for each service. Apparently many lawyers choose to have the motion to continue served by the sheriff because the service of process is much more successful by this method than by certified mail, which is allowed by the Louisiana Code of Civil Procedure. Some lawyers contend that service by certified mail is unsuccessful in many instances because lawyers or parties refuse to accept the certified mail. Generally, the sheriff has much more success in serving parties than do lawyers utilizing certified mail. Lawyers believe that motions to continue should be initially heard by the domestic hearing officers, not the commissioners, while some of the domestic hearing officers and domestic commissioners believe that motions to continue should be heard by the domestic commissioners.

Solution -Because of the costs associated with filing an opposed motion to continue in the Clerk of Court's Office, the hearing officers should continue to make every effort to accommodate the parties and their attorneys.

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5. Problem - When custody evaluations are completed, copies are sent to the parties and the hearing officers. Then a copy of the custody evaluation is filed in the official record in the Clerk of Court's Office. As a result, the parties' very personal, sensitive, and private information becomes public for all to see. Additionally, because the Clerk of Court charges at least four to five dollars ($4.00- $5.00) for every page filed in the record, the parties are assessed additional fees for the filing of the custody evaluation in the record. Thus, the filing fees of a fifteen (15) page custody evaluation will cost the parties an additional seventy-five dollars ($75.00).

Solution - After the custody evaluation is completed, if the parties have not settled, they will usually appear at a second HOC. Most cases will settle before, during, or shortly after the second HOC. Thus, for most cases, there is no need for the custody evaluation report to be filed in the record at this stage of the litigation. If the parties proceed to a hearing with the district judge after an objection to the HOC has been filed, then the report can be introduced into evidence by one of the parties if necessary. This practice will prevent the disclosure of personal, sensitive, and private information into the court record as well as result in savings to the parties in the form of reduced court costs and filing fees. Alternatively, if the custody evaluation must be filed in the official record, it should perhaps be filed under seal.

VI. AN ANALYSIS OF THE RESULTS OF HEARING OFFICER CONFERENCES IN THE 24TH JDC

To determine the results of HOCs in the 24th JDC, I analyzed one thousand three (1,003) HOCs from calendar year 2008 to determine the outcomes of the HOCs. There are four hearing officers in the 24th JDC. The four hearing officers and their divisions of court are: Carol Accardo, Divisions B, G, O, & P; Karl Hansen, Divisions, C, H, I, & K; Paul Fiasconaro, Divisions A, D, E, & M; and Paul Weidig, Divisions F, J, L, & M.

In analyzing the results of the HOCs, I noticed that in many instances there were multiple HOCs in the same case. In many cases, the defendant in rule would file a reconventional demand requesting the same relief as the plaintiff in rule. Also, there were instances where apparently additional HOCs were scheduled because the case had a large number of issues that could not be addressed in the typical one and one-half (1 ½ hour) HOC. Thus, I decided to track the results of the HOCs by case instead of by HOC.

The results produced a lower settlement rate than a similar analysis in 2006 that was performed on one thousand thirteen (1,013) cases that were heard by the hearing officers. The analysis of results from HOCs during calendar year 2008 revealed the HOCs resolved approximately 84.75% of the cases with only 15.25% of the cases being decided by the trial judges after objections were filed by one of the parties. Thus, 84.75% of the cases heard by hearing officers in 2008 were resolved either before, during, or after the HOCs.

A detailed analysis of the one thousand three (1,003) cases that were analyzed for calendar year

2008 entitled, *Twenty-Fourth Judicial Court Domestic Hearing Officer Program Consolidated Case Review of Disposition of Cases,* is attached as Exhibit 1 to this report. An analysis performed in 2006 of one thousand thirteen (1,013) cases scheduled for HOCs revealed that only 4.6% of the cases that were heard by the hearing officers were actually decided by the trial judges. Thus, 95.4% of the cases in the 2006 analysis were resolved either before, during, or after the HOCs. However, the 2006 study analyzed the results of each HOC, not the result of each case that was actually heard at a HOC. The analysis performed on the 2008 cases produces a more valid assessment of the cases heard by hearing officers because it assesses the result of each case as opposed to assessing the result of each HOC.

The following table shows the percentage of cases decided by district judges for each of the hearing officers:

Table 1: Percentage of Cases Heard by Hearing Officers in 2008 That Were Heard by District Judges

Hearing Officer	% ending in Judgment
Accardo	18%
Hansen	12%
Fiasconaro	12%
Weidig	19%

VII. A COMPARISON OF FILING FEES IN THE 24TH JDC, 16TH JDC AND CDC

A. Court Filing Fees in Domestic Cases in the 24th JDC

One complaint made by a large percentage of the lawyers interviewed was the excessive filing fees associated with filing domestic cases and pleadings in Jefferson Parish. To obtain a perspective on the amount of filing fees litigants are paying to the Clerk of Court in the 24th JDC, I examined the actual filing fees paid by the plaintiff, the defendant, and the total filing fees in fifty (50) cases that were heard by hearing officers in 2008 in the 24th JDC. This analysis of the filing fees is found in Table 2 below.

I also analyzed the court filing fees in a random sample of domestic cases in the 16th JDC (St. Mary, St. Martin, and Iberia Parishes) (20 cases) and a random sample of domestic cases in the

Civil District Court for the Parish of Orleans (44 cases). The analysis of the filing fees in the 16th JDC is detailed in Table 3 of this report while the analysis of the filing fees in domestic cases in CDC is found in Table 4.

The Judges of the 16th JDC utilize three domestic hearing officers to assist them in the processing of domestic cases while CDC uses three district judges to process cases. CDC does not employ domestic commissioners or domestic hearing officers to process domestic cases.

There are certain additional filing fees that are collected by the Clerk of Court's Office and transmitted to other sources for every petition for divorce that is filed in the 24th JDC. Those amounts are: Jefferson Parish Sheriff's Office (service of process fees); Court Reporter Fee ($50.00); Jefferson Parish Building Fee Fund ($49.00); Louisiana State Treasurer ($20.50); Clerk of Court/Initialization Fee ($20.00); and Judicial Expense Fund ($15.00). Additionally a Domestic Fund fee of $35 is collected on every petition, motion or rule filed wherein support or enforcement of support is demanded. A summary of the average filing fees in the 24th JDC is detailed below:

Table 2 - Average Filing Fees of Fifty Cases in the 24th JDC
That Were Heard by Hearing Officers in 2008

Average Total Filing Fees P & D	Average Total Filing Fees Paid by Ps	Average Total Filing Fees Paid by Ds	Average Total Fees to Clerk of Court	Average Filing Fees of Ps Retained By Clerk of Court	Average Filing Fees of Ds Paid to Clerk of Court
$1,500.03	$993.50	$506.53	$1,099.95	$706.02	$393.93

B. Court Filing Fees in Domestic Cases in CDC

The basic court filing fees for domestic matters in CDC are for filing of Petitions, Motions, and Rules to Show Cause that require the court to schedule a matter before the district judge. For many documents that are filed in the official record of a case, there are no filing fees. In CDC, there are no filing fees for uncontested or ex parte matters such as Motions to Enroll or Withdraw Attorneys of Record, Motions for Extensions of Time, Pauper Motions, Temporary Restraining Orders, and Consent Judgments. Additionally, there are no filing fees for minute entries, orders of the court, exhibits, depositions, custody evaluations, returns on service of process, answers to reconventional demands, or other miscellaneous documents. These documents become a part of

the official records without any additional costs to litigants. Also, CDC has a pay-as-you go system. Advance deposits are not required. Parties are allowed to pay the filing fees after pleadings have been filed.

The Clerk of Court's Office in CDC collects additional assessments that are distributed to the court's judicial fund and to a domestic violence organization. The additional fees that are collected by the Clerk's Office are $10.00 for the Act 963 Fund, $10.00 for the Indigent Legal Fee, and $20.00 for the JSC Fund. The Clerk's Office does not collect fees for service of process since the Orleans Parish Civil Sheriff has direct contact with litigants and collects the sheriff's service fees directly from litigants.

Table 3 - Average Filing fees of Forty-Four Domestic Cases That Were Heard by Judges in the CDC in 2008-2009[17]

Average Total Filing Fees P & D	Average Total Filing Fees Paid by Ps	Average Total Filing Fees Paid by Ds	Total Filing Fees Retained by Clerk of Court	Average Filing Fees of Ps Retained By Clerk of Court	Average Filing Fees of Ds Retained By Clerk of Court
$523.11	$300.57	$222.54	$468.78	$258.49	$210.30

C. Court Filing Fees in Domestic Cases in the 16th JDC

In the 16th JDC, the basic fees for domestic matters are for the filing of Petitions, Motions, and Rules to Show Cause. When a matter is set before domestic hearing office in the 16th JDC, a separate file is opened by the hearing officer's secretary for each case. All pleadings are scanned electronically. When the program was created in the 16th JDC, the Court wanted to create a program that did not result in any extra costs to litigants. As a result, documents that are filed with the hearing officers are not filed in the Clerk of Court's Office. Only the pleadings, the Hearing Officer Conference Order, the Hearing Officer Conference Report, the Consent

[17]Summaries of court filing fees in CDC are not available from the Clerk of Court's Office as the office does not keep summaries of filing fees in each case. I obtained the information on filing fees in CDC by visiting the Clerk of Court's Office, searching through the files, and obtaining the filing fees from receipts of filing fees paid that are stamped on the first page of each pleading.

Judgment, the Hearing Officer Information Sheet, and the Objection to Hearing Officer Conference Report are filed in the Clerk of Court's Office. No minute entries result from the HOCs. All occurrences in the HOCs are recorded on the Hearing Officer Information Sheet that is prepared by the Hearing Officer's secretary.

Table 4 - Average Filing Fees of Twenty Cases in the 16th JDC That Were Heard by Hearing Officers in 2008 and 2009[18]

Average Total Filing Fees P & D	Average Total Filing Fees Paid by Ps	Average Total Filing Fees Paid by Ds	Average Total Fees to Clerk of Court
$707.26	$409.80	$209.46	$548.56

D. A Comparison of Filing Fees in Domestic Cases in the 24th JDC, 16th JDC, and CDC

The analysis reveals that the average total court filing fees paid by both plaintiffs and defendants in the 24th JDC were $1,500.03. This amount should be contrasted with the average total filing fees paid by litigants in CDC which is $523.11 and in the16th JDC which is $707.26 .

The average total filing fees paid by plaintiffs in the 24th JDC were $993.50 while the average total filing fees paid by plaintiffs in CDC were $300.57 and in the 16th JDC were $409.80. The average total filing fees paid by defendants in the three judicial districts were: $506.53 - 24th JDC; $222.54 - CDC; and $209.46 - 16th JDC.

The average total filing fees that were retained by the Clerk of Court's Office in the respective judicial districts are: 24th JDC - $1,099.95; $468.78 - CDC; and 16th JDC - $548.56.

From the analysis of the data from the Clerk of Court's Offices in the 24th JDC, the 16th JDC, and CDC, it appears that the court filing fees paid by litigants in the 24th JDC are significantly higher than the amounts paid by litigants in the 16th JDC and in CDC. This conclusion confirms the

[18]The number of routine cases from the 16th JDC that were heard by domestic hearing officers is twenty (20) because that was the number sent to me by the Clerk of Court's Office. Although I requested filing fees for fifty (50) routine cases, I was only sent a sample of twenty (20) cases.

assertions made by lawyers that filing fees in the Domestic Triage Program are much higher than those in CDC. Moreover, the amounts of filing fees retained by the Clerk of Court's Office in the 24th JDC is significantly higher than those retained by Clerks of Court's Office in the 16th JDC and in CDC.

VIII. A COMPARISON OF THE PROCEDURES IN THE DOMESTIC TRIAGE PROGRAM IN THE 24TH JDC WITH PROCEDURES IN DOMESTIC COURT IN THE CDC

During my interviews with lawyers who represent domestic litigants in the 24th JDC, I encountered about five (5) lawyers who disliked the Domestic Triage Program, thought it should be eliminated, and felt that domestic commissioners and hearing officers should not be used at all in the 24th JDC. These lawyers commented that practicing in CDC was much better than practicing in the 24th JDC. Additionally, the lawyers commented that it takes only thirty (30) days to get an initial court date with the trial judge in CDC. The real benefit of practicing law in CDC, according to these lawyers, is the ability to see a trial judge within thirty (30) days of the filing of a request for relief. According to these lawyers, it is much better to appear before a trial judge, the final decision-maker, within thirty (30) days than it is to appear before a domestic hearing officer in the same period of time, as a hearing officer is an official who does not have much power over the parties.

These lawyers, as did almost all other lawyers, also commented that the filing fees in CDC were much less than the filing fees in the 24th JDC. To compare the procedures in the two courts and to obtain a better understanding of procedures in CDC, I visited CDC, observed hearings, talked to lawyers, law clerks, and employees in the Clerk of Court's Office, and reviewed domestic case filings.

My impression of the procedures used in CDC in domestic cases is that it is much less efficient than the procedures used in the 24th JDC to process domestic cases. When I visited CDC, I observed a large number of domestic litigants and lawyers sitting and waiting for the trial judge to begin court proceedings. As attorneys and unrepresented litigants arrived, they signed the docket sheet to signify their appearances for the day. After the judge began to call the cases, litigants and/or their lawyers were called to the bench one case at a time. Other lawyers and litigants had to wait their turn. Lawyers who spoke to me explained that it is not unusual for them to wait numerous hours for contested matters to be initially heard by the trial judge. Then when parties approach the bench, the judge will spend a few minutes hearing their arguments in an attempt to broker a settlement. If the parties did not settle the case at that point and wished to present the testimony of witnesses under oath, the parties had to come back another day. The next hearing

date could be scheduled to be held a few days, weeks, or even months later, depending on the court's schedule, the lawyers' schedules, and the litigants' schedules. Lawyers who were present in CDC during my visits informed me that the hearings in CDC lack sufficient docket time for a true examination of the issues. In CDC, litigants can expect to return to court repeatedly and remain in litigation for months because of the inability of the judges to have the time to sufficiently hear the cases. Thus, if the parties do not settle their cases, it could be weeks or months before the trial judge can hold a real hearing on the merits, particularly if the hearing will take several hours or days of hearing time. I was informed by the lawyers present in CDC during my visits that a more frequent occurrence is that the trial judge could give the parties a special docket setting within days or weeks for an extended settlement conference, but that trials or hearings on the merits may take a much longer period of time to be heard.

The docket clerks informed me that on days that the judges in CDC schedule "state rule days" or days where the State of Louisiana is a party in domestic cases, it is likely that a docket could consist of fifty (50) to sixty (60) different cases with multiple issues, and the parties can expect to wait in court for most of the day on those days. The system in CDC, when compared to the Domestic Triage Program in the 24th JDC, which has scheduled HOCs for the lawyers and litigants to appear at a designated time, does not appear to me to be a much more efficient system for litigants. One consequence of the CDC procedure is that lawyers who handle domestic cases in CDC should be able to charge their clients much more money than they can charge clients in the Domestic Triage Program because the lawyers in CDC could end up being in court several hours at a time on multiple occasions as opposed to being in a one and one-half (1 1/2) hour HOC in the 24th JDC on one or more occasions.

Thus, in my opinion, the family court in Orleans Parish operates in a style where litigants can expect multiple, routine "adjournments" of many of the cases set on the docket. When a hearing has to be adjourned to a future date, that date is not necessarily the next day or the next week. The subsequent hearing date can be weeks or months later. Even those hearings which can take one or more days to complete are not necessarily scheduled on consecutive days, but many times they are heard gradually over a few hours or weeks at a time, which could be days, weeks or months apart, thereby causing multiple court appearances.

The lawyers who discussed the CDC procedures with me during my visits to CDC were very critical of CDC and highly praised the Domestic Triage Program in the 24th JDC. This was quite a contrast from those lawyers who initially praised the CDC procedures as being better than those in the 24th JDC.

One assertion I found to be true was the assertion that the court filing fees in CDC were

significantly less than those in the Domestic Triage Program in the 24th JDC. This fact is true as can be seen from Tables 2 and 3 of this report which show that the average total filing fees paid by litigants in domestic cases in CDC are $523.11 while the average total filing fees paid by litigants in the Domestic Triage Program in the 24th JDC are $1,500.03. Filing fees are much more expensive in the 24th JDC for the reasons stated in Sections VI (E) and VII of this report. However, if the Court implements the changes recommended in this report, the filing fees for domestic litigants in the 24th JDC will be reduced significantly.

Contrary to the critical comments made by lawyers that litigants in the Domestic Triage Program in the 24th JDC often settle because the program results in a "beating down of parents" such that they feel forced to settle because of their inability to be heard by the trial judge, I question whether this is not actually the result of the many adjournments and continuances in CDC. When domestic litigants appear in court over and over again after long waits before seeing the trial judge, only to be told to return on a later date in a few weeks or a few months, that is a clear message that significant time and money can be saved by resolving the case by settlement.

IX. CONCLUSION

The Domestic Triage Program in the 24th Judicial District Court is a very effective and efficient program for the administration of the Court's domestic relations cases. The Program provides a forum where domestic litigants can be heard by experienced domestic hearing officers and domestic commissioners within a month of the initial prayer for relief. Hearing officer conferences in the 24th JDC give litigants an opportunity to appear before quasi-judicial officers of the court in an informal setting in order to voice their concerns, needs, and interests. Litigants in hearing officer conferences are allowed to participate in the conferences in a meaningful way with the assistance of their attorneys. As a result of the hearing officer conferences, approximately 85% of the cases in the Domestic Triage Program are effectively resolved either before, during, or shortly after the schedule hearing officer conference.

This report was designed to increase the effectiveness and efficiency of the Domestic Triage Program. Highlighted in this report are suggestions and improvements that, if incorporated by the Court, will make the Domestic Triage Program less expensive and more user friendly to lawyers who practice in the 24th JDC and to litigants whose cases are heard in the 24th JDC.