

**Efficiency Study of Court Commissioners**

**Twenty-Fourth Judicial District Court for  
the Parish of Jefferson**

**“How Can the Court Serve the Public  
Through the Use of Commissioners?”**

**July 31, 2002**

**Twenty-Fourth Judicial District Court for the Parish of Jefferson Efficiency Study  
How Can the Court Serve The Public Through the Use of Commissioners?**

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**TO STUDY .....47**

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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 Annex Building in Gretna, Louisiana 70053. The Court consists of Divisions A through P. Additionally, the judges are assisted by three (3) Commissioners, two (2) criminal and one (1) domestic, as governed by LRS § 13:717. The Commissioners Courts are located at 802 Second Street in Gretna, Louisiana a few blocks from the Courthouse Annex Building.

The purpose of this study was two-fold: (1) to gather data and information about how the commissioner courts functions have evolved since their inceptions, and (2) to make recommendations to the Judges about how to improve the efficiency of the commissioner system to better serve the public.

This report was drafted by Bobby Marzine Harges, a Professor of Law at Loyola University New Orleans School of Law and a member of the Louisiana Bar and Deirdre Fuller, Attorney at Law, also a member of the Louisiana Bar.

### **A. Goals and Objectives**

This study addresses the following issues:

1. What tasks do the Commissioners perform?
2. What are the roles of the Commissioners?
3. How much power should be vested in Commissioners who, unlike judges, are not elected by the people whose lives their decisions effect?
4. How can the Judges of the 24th JDC use the Commissioners to better serve the public?
5. What specific recommendations can be made to answer these questions?

### **B. Preliminary Background Research**

Bobby Harges initially met with Judges Robert M. Murphy, Martha E. Sassone and Henry G. Sullivan on September 10, 2001. He then met with Criminal Commissioner Carol Kiff and Domestic Commissioner Craig Cimo to get a better understanding of their roles and responsibilities. The Commissioners provided us with all reports that they submitted to the Court evaluating their performance for calendar years 1999 and 2000.<sup>1</sup> The reports from Commissioner Cimo were data sheets with totals of the number of tasks he performed during those years. Commissioner Kiff provided us with detailed narrative reports entitled, "Criminal Commissioners' Report to the Judges

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<sup>1</sup> We later received the reports for calendar year 2001 from the Criminal Commissioners.

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of the 24th JDC” for calendar years 1999 and 2000. Both Commissioners Cimo and Kiff were very helpful in explaining to us what occurred on a daily basis in their courts.

Additionally, we searched for articles, journals, and reports from other court systems in order to find studies that have been performed of courts and their use of commissioners. During this search, we discovered that studies of commissioners and magistrates used in family courts and federal district courts were usually done by either university or law professors, or by task forces and advisory committees that were established by state supreme courts or the individual courts, that the studies usually took several months or even years and that each study was published with specific recommendations to the courts. Therefore, this study is consistent with the norm.

### **C. How the Study Was Conducted**

1. We studied how the Court uses both the Criminal and Domestic Commissioners by reading all reports and summaries that have been issued by the commissioners to the Court;
2. We interviewed all three (3) Commissioners to get a thorough understanding of the internal operating procedures used by each commissioner and to determine how each commissioner processes cases;
3. We interviewed both domestic Hearing Officers who hear support and support related matters to get a thorough understanding of the internal operating procedures they use, how they process cases and how they assist the Court and the Domestic Commissioner;
4. We interviewed all Judges of the Court who volunteered to be interviewed to get their views on the roles of the Commissioners and how the Commissioners can be used to assist the Judges in performing their duties;
5. We observed each Commissioner in practice on one or more occasions to see how their “real world” tasks and responsibilities comport with the duties reported to the Judges of the Court;
6. We observed each Domestic Hearing Officer in practice on one or more occasions to see how their “real world” tasks and responsibilities comport with the duties reported to the Court;
7. We interviewed twenty (20) lawyers who practice before the Commissioners in the 24th JDC to obtain their views on how the Court can most efficiently use the Commissioners to serve the public; and
8. We obtained data from the Clerk of Court’s office on the estimated number of domestic cases filed in the Court over a ten (10) year period, from 1992 to 2001 and on the estimated number of litigants who are self-represented, that is not represented by attorneys.

### **D. Length of Time for Study**

The study took seven and one-half (7 ½) months, from November 1, 2001 to July 18, 2002.

### **E. Possible Use of Court-Ordered Mediation in Custody and Visitation Cases**

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We explored whether the Court can benefit from utilizing La. Rev. Stat. § 9:332, which allows any trial judge in a custody or visitation proceeding in Louisiana to order the disputing parties to mediate their disputes. This statute was examined in an effort to determine whether the Court can benefit from utilizing family mediation in the large number of custody and visitation cases that come before the Court.

### **F. Domestic Relations Sections**

Prior to the statutorily created position of Domestic Commissioner in 1997, there were either two (2) or three (3) domestic relations sections (DRS) where the Judges in those sections heard “all domestic matters including paternity suits, divorce, separation from bed and board, annulment, partition of community property, adoption, and all rules relative to alimony, child support, custody, and all matters related to or incidental to domestic or family matters.”<sup>2</sup> By local court rule, only domestic relations cases were allotted to the domestic relations sections.

On December 1, 1996, by order of Judge Charles Cusimano, the Court abolished the designations DRS I, II and III. Divisions A, C, and H maintained their existing domestic filings and commenced receipt of new civil filings. Additionally, Divisions A, C, and H were not allotted new domestic relations filings until July 1, 2000. These actions converted the Court from a court with three (3) domestic relations sections to a court with sixteen (16) domestic relations sections. The temporary moratorium on cases being assigned to Divisions A, C, and H allowed the thirteen (13) divisions with no domestic relations cases to build up dockets with domestic relations cases. It appears that the Court believed that three and one-half (3 ½) years (from December 1, 1996 to July 1, 2000) would be a sufficient amount of time for the dockets of the thirteen (13) divisions to catch-up with the three (3) former DRS sections.

## **II. THE OFFICE OF THE DOMESTIC COMMISSIONER**

The use of a Domestic Commissioner in the 24th JDC is authorized by LRS 13:717(A) which states, “There are hereby created three offices of commissioner for the Twenty-Fourth Judicial District Court...” and by LRS 13:717(C), which states, “One of the commissioners shall have jurisdiction over civil matters involving domestic relations and family law only and two of the commissioners shall have jurisdiction over criminal matters. The commissioners shall have a minimum of five years of experience in handling matters within their respective jurisdiction.” “The purpose of the Domestic Commissioner is to facilitate the orderly process of routine and recurring issues and emergency

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<sup>2</sup>Domestic Relations Section Rules, Rule I(A), Local Rules of the Twenty-Fourth Judicial District (1998).

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issues which are presented to the court.”<sup>3</sup>

Doug Allen was appointed Domestic Commissioner in 1997 when the enabling statute became effective. Prior to becoming a Commissioner, Allen served as Judge Pro Tempore in the 24th JDC and First and Second Parish Courts, Judge in the Second Parish Court as well as President of Jefferson Parish. Allen served as Domestic Commissioner from 1997 to February, 2000. Prior to Allen’s tenure, retired Judges served as Judge Pro Tempore in domestic relations cases in the 24th JDC.

The current Domestic Commissioner, who has served since February, 2000, is Craig Cimo, an attorney who practiced law in Jefferson Parish for over thirty (30) years before becoming a Commissioner. Cimo is also a former assistant parish attorney and former Harahan magistrate. The duties of the Domestic Commissioner are enumerated in LRS 13:717(F) which states:

*F. The powers of the commissioner hearing domestic matters shall include but not be limited to the power to:*

- (1) Administer oaths and affidavits.*
- (2) Render and sign judgments and orders confirming judgments by default in accordance with the general provisions of law, including the requirement of introducing proof sufficient to establish a prima facie case.*
- (3) Grant uncontested divorces.*
- (4) Implement interim child support and custody orders, as follows:*

*(a) A certified copy of such orders will be provided to the parties at the time of the court's ruling. If no objection is filed in writing with the district court judge having jurisdiction over the case, within three days of rendition and notification either by the commissioner or through service by the clerk of court, exclusive of weekends and holidays, the order shall become a final judgment of the court and shall be signed by a judge of the Twenty-Fourth Judicial District Court and is appealable as any other final judgment.*

*(b) Any party who disagrees with a judgment or ruling of a commissioner may file a written objection thereto. The objection shall be filed within three days of the judgment or ruling being received by the party either from the commissioner or by service through the clerk of court and shall be filed in accordance with the rules of the Twenty-Fourth Judicial District Court. The objection*

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<sup>3</sup> Domestic Relations Section Rules, Rule IV, Section 3. Purpose, Local Rules of the Twenty-Fourth Judicial District (1998).

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*shall be heard by the judge of the Twenty-Fourth Judicial District Court to whom the matter was originally allotted.*

*(c) The judge may decide the objection based on the record of the proceedings before the commissioner or may receive further evidence and rule based on that evidence, together with the prior evidence, or may recommit the matter to the commissioner with instructions.*

*(d) Every order given to the parties by the commissioner or served upon the parties by the clerk of court shall contain the following notice:*

**IMPORTANT NOTICE**

***This order, if not contested in writing within three days of receipt from the commissioner or through service by the clerk of court, exclusive of weekends and holidays, will be signed by a judge of the Twenty-Fourth Judicial District Court and will become a final judgment of the court. (Emphasis original).***

*(5) Approve consent judgments.*

*(6) Sign ex parte and emergency orders.*

*(7) Find and punish for contempt of court in the same manner as a district court judge.*

*(8) Handle preliminary disputes concerning discovery or the issuance of subpoenas.*

*(9) Adjudicate any other domestic matter not specifically excluded in Subsection G.*

*G. 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*

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*same manner as any other judgment entered by a district court.*

Our research on how district courts, both federal and state, use commissioners<sup>4</sup> in the United States revealed that commissioners are used in three (3) primary ways: 1) as “team players” whose primary responsibilities are to engage in the early and ongoing control of the pretrial process performing such tasks as conducting pretrial conferences and discovery proceedings by designation of the district judge; 2) as specialists who specialize in alternative dispute resolution and specific aspects of case managements such as judicially hosted settlement conferences; and 3) as additional judges who have the authority to try certain cases with party consent.<sup>5</sup> We found that Commissioner Cimo’s responsibilities included those described in numbers 2 and 3 above. To a large extent, Commissioner Cimo mediates many of his cases from the bench receiving settlement in a significant number of cases. Additionally, Commissioner Cimo was used as an additional judge during the latter part of 2001 (when this study began) as he was trying many cases with party consent that were traditionally tried by the District Judges. These trials took up a large amount of his time. However, in 2002, the Court limited the types of matters heard by Commissioner Cimo. In January, 2002, the Court prevented Commissioner Cimo from presiding over trials with party consent. His role has now been largely limited to interim and emergency matters as originally intended when the system was designed in 1997.

When Commissioner Allen took office in 1997 after LRS 13:717 was enacted, he heard primarily three (3) types of cases: 1) ex parte and emergency matters (including domestic abuse petitions); 2) interim custody and support issues (spousal and child); and 3) uncontested divorces. Apparently Commissioner Allen was not given much guidance from the Judges of the 24th JDC about how to organize and implement the system. This system was inherited from the previous Judges who served in ad hoc capacities. Our impression is that the Judges Pro Tempore were also not given much guidance from the Judges of the 24th JDC and they were allowed to administer cases in any way that they saw fit. This is to be contrasted with the commissioner system that exists in criminal cases, which appears to have been much more carefully planned.

It is our understanding that Commissioner Allen initially received cases after they had been placed on the docket of the Division to which they had been allotted. Individual judges would send specific cases to Commissioner Allen for hearings. This system changed in April, 1999 with Domestic

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<sup>4</sup> We found that courts around the country have used the term magistrate and commissioner interchangeably. In this report, we will use the term commissioner to refer to non-elected quasi-judicial officers whose primary responsibility is to assist district judges in processing cases.

<sup>5</sup> See e.g., R. Lawrence Dessem, *The Role of the Federal Magistrate Judge in Civil Justice Reform*, 67 St. John’s L.Rev. 799 (1993).

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Relations Case Rule II, Section 2, Designation of Records which stated, “All matters designated as Domestic shall initially be placed on the docket of the Domestic Commissioner and not on the docket of the Division to which the matter is allotted.” Domestic Relations Case Rule II, Sections 2 and 3, Designation of Records read as follows:

**Section 3.** The Domestic Commissioner shall assign dates for hearing on all aspects of a Domestic matter unless a matter has been sent back to a Division by the Domestic Commissioner. Attorneys and litigants are to be directed to the Domestic Commissioner in order to obtain said hearing dates.

**Section 4.** No Domestic matter will be addressed by the Division to whom the matter is allotted until attorneys and litigants have first appeared before the Domestic Commissioner.

The effect of the April, 1999 amendments to the Domestic Relations Case Rules was to place almost every domestic relation case on the docket of the Domestic Commissioner. The amendments were effective approximately ten (10) months before Commissioner Cimo replaced Commissioner Allen. Before the April 1, 1999 amendments, Judges had begun to send more and more cases to the Domestic Commissioner. As the number of cases that were assigned to the Domestic Commissioner increased, delays and backlog began. Our research found that the backlog and delays became apparent to attorneys in late 1999 while Commissioner Allen was still hearing cases. The backlog continued when Commissioner Cimo took office in February, 2000 even though he was hearing more cases than Commissioner Allen heard. It is apparent from all people we interviewed that Commissioner Cimo processes many more cases than Commissioner Allen did.

However, it is difficult to compare the number of tasks performed by one Domestic Commissioner with those performed by the other because Commissioner Cimo’s record-keeping system is different from that of Commissioner Allen’s. The yearly statistics kept by each Domestic Commissioner ostensibly showed the number of monthly and yearly tasks performed by each commissioner such as number of trials presided over, divorces granted, signings, domestic abuse petitions issued, etc. However, we found each Domestic Commissioner counted these tasks in dissimilar ways. For example, we were told that Commissioner Allen held one (1) trial or evidentiary hearing per day, usually in the afternoon. Thus, the number of trials for a particular week would total no more than five (5). Commissioner Cimo initially counted the number of trials he presided over in the same way that Commissioner Allen did. However, later Commissioner Cimo began to count as a trial any hearing where a witness was sworn in, even if the trials lasted a few minutes. This method of counting trials significantly increased the number of trials presided over by Commissioner Cimo. Therefore it appeared from the yearly statistics sheet that Commissioner Cimo was conducting five (5) times more trials than his predecessor. This was not true. It appears from the statistics sheet that the different accounting system began in April, 2000 when the number of trials appears to have increased from twenty-nine (29) in April to eighty-three (83) in May.

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When this study began in November, 2001, Commissioner Cimo was setting approximately fifteen (15) rules per day. The Office of the Clerk of Court was unable to provide us with data on the number of rules set per day by Commissioner Allen.

Almost everyone interviewed for the report stated that Commissioner Cimo is hearing many more domestic abuse petitions than did Commissioner Allen. Data is not available on the exact numbers heard by Commissioner Allen.

### **A. The Hearing Officers for Support and Support Related Matters**

In addition to the Domestic Commissioner, the Court has established the position of Hearing Officer for the 24th JDC to hear support and support related matters. The Hearing Officers provide an expedited process for the establishment, modification and enforcement of support obligations.<sup>6</sup> Currently there are two (2) Hearing Officers, Karl Hansen, who works part-time, and Carol Accardo, who is a full-time Hearing Officer. The Hearing Officers act as a finders of fact and make recommendations to the Domestic Commissioner or to the District Court concerning the following matters:

- A. Establishment and Modification of Support;
- B. Method of Collection of Support; and
- C. Enforcement of Support.<sup>7</sup>

We found that the Hearing Officers are highly effective in handling the large number of support issues that come before the Court. It appears that the Hearing Officers are hearing virtually all of the child and spousal support matters coming before the Court. After the Hearing Officers make findings of fact and recommendations on the proper amount of support, then the matter is set for hearing before the Domestic Commissioner for an interim order. Should either party disagree with the interim order signed by the Domestic Commissioner, that party shall object and set the matter for hearing before the District Judge to whom the case is allotted. Additionally it appears that most<sup>8</sup> of the recommendations on child and spousal support made by the Hearing Officers which become interim orders of the Domestic Commissioner are not objected to by the litigants and therefore the recommendations of the Hearing Officers effectively become final judgments and are appealable to

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<sup>6</sup> See LRS 46:236.5

<sup>7</sup> Rule V, Section 4 of the Domestic Relations Case Rules of the Twenty-Fourth Judicial District Court.

<sup>8</sup> According to Commissioner Cimo, only about twenty percent (20%) of the orders issued by the Domestic Commissioner are appealed to the district court.

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the Louisiana Fifth Circuit Court of Appeal.<sup>9</sup>

When a demand is made for child support, interim or final spousal support, litigants are now able to schedule a hearing before a Hearing Officer within thirty (30) days of the filing of the support demand if a separate order is submitted with the demand. This is a recent development. Attorneys applauded this development as a positive one that should be continued. However, not all attorneys know that by filing a separate order with the demand for support, they can get such a quick hearing. Perhaps the Court should publicize this fact.

However, we believe that the Hearing Officers could be better utilized by the Court. First, Carol Accardo, the full time Hearing Officer is usually finished with her docket by noon of each day. In the afternoons, she answers letters from litigants who write to the Hearing Officers and the Domestic Commissioner. We were told that a significant portion of her afternoons are spent responding to letters from litigants. While this service is perhaps an excellent public relations move by the court, it may be better performed by an Administrator/Intake Clerk as described in Section II(E)(I). Furthermore, this practice may be unethical and may violate the Louisiana Code of Professional Conduct since it invariably involves ex parte contact between a Hearing Officer and particular litigants who appear before the Hearing Officer. Moreover, we believe that the time of the Hearing Officers can be better spent performing other tasks that would better serve the Court as described in Section II(E)(I). Hearing Officer Accardo also spends her afternoons setting up contempt rules, and reevaluating the fairness of her recommendations to the Domestic Commissioner.

Karl Hansen, the part-time Hearing Officer, usually completes his docket before noon of each day. The Court could significantly reduce the burden on the Domestic Commissioner by either hiring another part-time Hearing Officer to assist Hansen or by converting the part-time Hearing Officer position to a full-time position. Giving the full time Hearing Officer more responsibilities as described in Section II(E)(I) would remarkably increase the efficiency of the Court.

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<sup>9</sup> See LRS 46:236.5(B)(6 & 7).

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**B. The Use of Mediation in Child Custody and Visitation Cases**

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.<sup>10</sup> The use of mediation to resolve child custody and visitation disputes has grown tremendously in recent years. Most courts, including Louisiana, resolve custody and visitation disputes according to the best interests of the child. The parents in most cases, not a judge, commissioner, or 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 in custody and visitation disputes in Louisiana have the authority under LRS § 9:332 to send these disputes to a mediator who will assist the disputants in resolving their disputes. Mediators in custody and visitation disputes are attorneys, psychiatrists, psychologists, social workers, marriage and family counselors, professional counselors, or clergymen who have received general and specialized training in the mediation of child custody and visitation disputes.<sup>11</sup>

Several studies have been conducted on the benefits of mediation to litigants and the court system. These studies have shown the following relative to mediation of child custody and benefits when mediation is compared to litigation:

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.
5. Parents were more satisfied with decisions made, how they were made, and with the win-win outcomes.<sup>12</sup>

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<sup>10</sup> See Bobby Marzine Harges, *Mediator Qualifications: The Trend Toward Professionalization*, 1997 B.Y.U.L. Rev. 687 (1997).

<sup>11</sup> See LRS 9:334 (mediator qualifications in child custody and visitation cases).

<sup>12</sup> 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

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In February, 2002, Commissioner Cimo began to order certain litigants to mediate their child custody and visitation disputes. In April and May, 2002, several attorneys we interviewed for this study commented favorably about the benefits of mediation to their clients, especially in saving time and money. One attorney commented that at least two (2) of her clients who had gone to mediation were very skeptical about the process after the first sessions. After she suggested that they should go back to the mediation process with open minds, both cases settled even though neither she nor the clients were optimistic initially about the chances of the cases being settled.

Because of the benefits of mediation in child custody and visitation disputes, we recommend that the Court should consider mediation of these disputes early in the process. We recognize that all cases are not appropriate for mediation and are not suggesting that all child custody and visitation disputes be sent to mediation. However, we do recommend that the Domestic Commissioner and Judges consider the use of mediation in all child custody and visitation disputes.

### **C. Findings**

The Domestic Commissioner deals with a case load that is astonishing in volume. An average of three thousand six hundred sixty-eight (3,668) new domestic relations cases are filed each year with the Court. According to the records clerks in the Office of the Clerk of Court, approximately eighty percent (80%) of these cases (two thousand nine hundred thirty-four (2,934) cases per year) end up before Commissioner Cimo.

The Domestic Commissioner should be hearing interim matters and those cases of average complexity that do not take much judicial time. Examples of such cases include those involving interim child support orders calculated according to the Louisiana Child Support Guidelines and interim custody orders. The Domestic Commissioner, working in conjunction with the two (2) Hearing Officers who hear child and spousal support rules,<sup>13</sup> work very well in disposing of the vast majority of support issues that come before the Court.

The Domestic Commissioner should be handling interim custody and visitation orders, as well as default judgments, consent judgments, uncontested divorces, domestic abuse petitions (which are by law of an emergency nature), hearings on ex parte orders from authorized divisions of court and hearings on contempt of the Commissioner's orders. After temporary restraining orders in alleged domestic abuse cases are issued in ex parte proceedings, the rules to show cause why protective orders should not be issued are currently being scheduled within thirty (30) days. The quick setting of these matters take up a significant amount of Commissioner Cimo's docket time.

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Service Models. *Family and Conciliation Courts Review*, 31, 306-325.

<sup>13</sup> The Hearing Officer procedure is authorized by LRS 46-236.5.

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Currently, the Domestic Commissioner's schedules the followings types of hearings on a daily basis (see Chart 1, attached):

1. Domestic abuse rules to show cause (between seven (7) and ten (10) per day) ;
2. Ten (10) non-support rules per day;
3. Between ten (10) and fifteen (15) support cases from the Hearing Officer's docket;
4. Cases assigned to the Commissioner from the District Judges;
5. Paternity and support cases brought by the Department of Social Services through its own staff attorney (cases that are brought by the district attorney are heard in the Jefferson Parish Juvenile Court). These cases are heard infrequently by the Domestic Commissioner;
6. On Fridays, the Domestic Commissioner hears divorces and purges of contempt of court;
7. The Domestic Commissioner has one (1) day per month where he holds evidentiary hearings on matters that are considered of an emergency nature,;
8. Numerous signings of ex parte motions such as motions to enroll and withdraw as counsel of record and motions for extension of time. (According to Commissioner Cimo, signings take from two (2) to two and a half (2 1/2) hours per day.);
9. Signing of approximately three (3) ex parte domestic abuse temporary restraining orders pursuant to LRS 46:2135 per day.
10. Additionally, the Domestic Commissioner spends a significant part of each day preparing for upcoming hearings.

### **D. Results of Interviews With Attorneys Who Practice Before the Domestic Commissioner**

We found that the Domestic Commissioner processes a large number of cases. However, he cannot possibly process all of the cases in a timely fashion because of the increase in the number of cases that are being assigned to him. Several attorneys stated that Commissioner Cimo is processing as many cases as the three (3) Judges on the domestic relations docket processed before the system changed in 1997.

However, one criticism of Commissioner Cimo that was made by almost all attorneys interviewed was the fact that he spends too much time on the bench "lecturing to lawyers and clients alike." We received such comments as he "runs on at the mouth" and "the transcripts for his hearings are much thicker than those of Commissioner Allen's." In other words, most attorneys who practice before Commissioner Cimo believe that he could be more efficient if he did not spend so much time trying to protect the record. Almost everything he does on the bench takes too much time, according to these attorneys.

Lawyers commented that Commissioner Allen never checked any document before he signed it; he would simply sign the document without checking it to see if it was legally appropriate. On the other hand, Commissioner Cimo is meticulous in checking everything. It is Commissioner Cimo's belief

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that this extra time is warranted in order to protect the record. His belief is based in part on the fact that the Fifth Circuit Court of Appeal returned several cases to him due to procedural errors that occurred during Commissioner Allen's tenure. The Court should communicate to Commissioner Cimo what it considers the appropriate amount of time he should be spending on the bench on matters that come before him. This would help expedite things in the Domestic Commissioner's Court.

### **E. Recommendations to Make the Domestic Commissioner Court Function More Efficiently**

Other than domestic abuse petitions, matters that are truly of an emergency nature<sup>14</sup> and support issues that are heard by the Hearing Officers, it takes over three (3) months to get a hearing in a matter on the docket of the Domestic Commissioner. Attorneys and litigants are now complaining about the delay associated with setting a matter before Commissioner Cimo. They recognize that Commissioner Cimo is literally swamped with work and needs some assistance. The following is a list of recommendations to the Court that should reduce the delay associated with scheduling a hearing before the Domestic Commissioner. The first group of recommendations affect the personnel in the Domestic Commissioner's Court and would require the Court to expend additional sums of money. The second group consists of administrative changes that the court could implement with little effort that could significantly improve the efficiency in the 24th JDC.

#### **i. Personnel Related Recommendations**

##### **1. Add an Administrator/Intake Clerk to commissioner's building.**

This Administrator/Intake Clerk could be a valuable resource for self-represented litigants and persons seeking information about domestic relations and family issues.<sup>15</sup> Although this person will be used as a resource person primarily for self-represented litigants, attorneys may refer clients to the intake clerk for information about court processes and programs, and for referral to appropriate resources. This assistance should be available whether or not the prospective litigant actually files

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<sup>14</sup> Commissioner Cimo hears emergency matters one (1) day per month.

<sup>15</sup> Although the exact number of self-represented litigants in the 24th JDC in family matters is not known, we estimate that well over one-third (1/3) of litigants who appear before the Court initially are unrepresented by counsel. The Clerk of Court's Office was unable to provide us with data on the number of self-represented litigants. However, the Clerk of Court's Office was able to provide us with a list of litigants and their attorneys at the initial filings over a ten (10) year period. A random counting of several years indicated to us that approximately forty-five percent (45%) of litigants at the initial filings of petitions and answers were not represented by attorneys.

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a lawsuit. For example, a prospective litigant may want a list of attorneys who are certified family law specialists, a list of qualified family law mediators who provide pre-filing mediation, or parents may want to attend a class for separating or divorcing parents before deciding to file for dissolution of their marriage. The Administrator/Intake Specialist will help fulfill the Court's responsibility to make the Commissioner Court accessible and to provide information at the initial point of entry that will empower families to select processes that are suitable for resolving their legal and social problems.<sup>16</sup> This employee could also respond to the many letters received daily by the Hearing Officers and Domestic Commissioner. This service is currently being performed by Hearing Officer Carol Accardo.<sup>17</sup>

The Administrator/Intake Clerk should be a lawyer with substantial training, experience, and practice in domestic relations matters. A lawyer will have a better feel than a non-lawyer for the substantive, procedural, tactical, and professional issues at work in various domestic relations disputes.

The Administrator/Intake Clerk could also serve as an overseer and administrator of the occurrences in the Domestic Commissioner's court and act as a liaison between the Commissioner's Court and the District Court.

### **2. Add another Domestic Commissioner.**

If the Court is unable to "take back" some of the domestic relations matters that are currently on Commissioner Cimo's docket, the Court should add another Domestic Commissioner to assist Commissioner Cimo. However, if this happens, subsequent filings in the same case should remain with the same Domestic Commissioner. This will promote continuity and prevent parties from Commissioner shopping and retrying issues that were previously decided by an earlier Domestic Commissioner.

Alternatively another Commissioner could be hired to hear primarily Articles 102 (by affidavit) and Article 103(1) divorces (by default) and domestic abuse petitions. This would provide significant relief to Commissioner Cimo and reduce drastically the time that it takes to schedule a matter before a Domestic Commissioner.

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<sup>16</sup> A number of courts around the country have either implemented or recommended this concept, including Florida and Arizona. See Russell Engler, *And Justice for All - Including the Unrepresented Poor: Revisiting the Role of Judges, Mediators, and Clerks*, 67 Fordham L. Rev. 1987 (1999) and *In the Supreme Court of Florida, In Re Report of the Family Court Steering Committee*, Case No. SC00-1410 available at [www.flcourts.org](http://www.flcourts.org).

<sup>17</sup> See Section II(A), *supra*.

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**3. Give the current Hearing Officers more responsibilities.**

If the Court does not wish to hire another judicial officer to assist Commissioner Cimo, the Court should consider giving the Hearing Officers the power to hold pretrial conferences and make recommendations in non-support matters.

There is precedent for Hearing Officers hearing issues other than support matters. In the Sixteenth Judicial District Court (16th JDC) (Parishes of Iberia, St. Martin and St. Mary), pre-trial conferences, which are also known as Hearing Officer Conferences (HOC) are scheduled before Hearing Officers on all issues.<sup>18</sup> The HOCs in the 16th JDC are scheduled for two (2) hour blocks of time. In the 16th JDC, HOCs are currently being scheduled within twenty-one (21) days of the filing of the initial petition. The HOCs are scheduled after a request for relief on an ancillary issue is filed in a domestic proceeding (rule to show cause or on the merits). During the HOCs, the Hearing Officers act as quasi-mediators who conduct 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 that is sent directly to the District Judge for his or her signature. Additionally, many of the matters that are not resolved during the HOCs, which are scheduled for hearings before the District Judges, are actually not being heard by the District Judge. The District Judges in the 16th JDC assume that most of these matters settle after the HOC.

If the matter is not resolved during the HOC, the Hearing Officer generates a *Hearing Officer Conference Report* which will summarize the HOC and makes specific recommendations regarding the unresolved issues. If any party objects to any recommendation, he must file an *Objection to Hearing Officer Recommendation* within three (3) days of the HOC. If an *Objection* is timely filed, then the *Recommendation* becomes an *Interim Order* of the Court pending the final disposition of the claims by the Court, upon preparation and presentation of same by counsel by either party.

While LRS § 46:236.5 allows Hearing Officers to make recommendations on support related issues, there is no legislative authority for Hearing Officers to make recommendations on non-support related issues. The Hearing Officers make recommendations on the non-support related issues pursuant to the inherent power of the Court. The constitutionality of this issue has not been challenged or decided by the Louisiana Supreme Court.

The HOCs in the 16th JDC are used by the Court to resolve close to ninety percent 90% of domestic

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<sup>18</sup> Hearing Officer Conferences are also held in the Fifteenth Judicial District Court (Parishes of Acadia, Lafayette and Vermillion). These conferences are scheduled one (1) hour apart with the attorneys only, not the clients, attending the conferences.

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relations cases.<sup>19</sup> While the 16th JDC does not use Domestic Commissioners, the Hearing Officers serve in a similar capacity as Commissioner Cimo. More importantly, the Hearing Officers in the 16th JDC appear to have powers that are broader than those of the Domestic Commissioner in the 24th JDC because the 16th JDC Hearing Officers hear all domestic relations issues including community property matters, child custody and visitation issues, domestic abuse protective orders,<sup>20</sup> and support issues.

If the 24th JDC granted the current Hearing Officers broader powers to hear non-support issues, it may wish to consider making both of the Hearing Officers full time employees or hire another part-time Hearing Officer. Then the Court would have the equivalent of three (3) full time judicial officers assisting the Judges of the 24th JDC.

An alternative recommendation to the one above is to have the Hearing Officers pretry or mediate all matters that are set on the Domestic Commissioner's docket. For cases that do not settle, the Hearing Officers could make recommendations directly to the Domestic Commissioner who would actually rule on the matter. Any objections to a ruling of the Domestic Commissioner would have to be filed in writing with the District Judge within three (3) days of the Domestic Commissioner's ruling as required in LRS § 13:717(F)(4)(b). This alternative recommendation would alleviate any concerns that the Hearing Officers would be making recommendations directly to the District Judges without legislative authority.

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<sup>19</sup> As far as the volume of cases in the 16th JDC, according to Judge Edward Leonard, Jr., Iberia Parish has approximately one thousand (1000) new domestic relations filings per year while St. Mary Parish has approximately six hundred (600) and St. Martin has approximately five hundred (500), for a total of two thousand one hundred (2,100) new domestic relations cases. The 16th JDC has two (2) Hearing Officers. By contrast, the 24th JDC has had over the last ten (10) years an average of three thousand six hundred sixty-eight (3,668) new domestic relations cases filed each year. The 24th JDC has one (1) full time Domestic Commissioner, one (1) full time Hearing Officer and one (1) part-time Hearing Officer.

<sup>20</sup> See LRS § 46:2135(I), which states in part, "The initial rule to show cause hearing required pursuant to Subsection B or D may be conducted by a hearing officer who is qualified and selected in the same manner provided in R.S. 46:236.5(C). The hearing officer shall be subject to the applicable limitations and shall follow the applicable procedures provided in R.S. 46:236.5(C). The hearing officer shall make recommendations to the court as to the action that should be taken in the matter."

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**4. Add new Hearing Officers to hear non-support issues.**

If the Court chooses not to expand the duties of the current Hearing Officers, the Court should consider hiring new Hearing Officers and giving them the power to schedule Hearing Officer Conferences (HOCs) on non-support issues. This way, the responsibilities of the Hearing Officers would be separated into two (2) areas - those hearing support issues and those hearing non-support issues. The system would be similar to the Hearing Officer system in the 16th JDC, mentioned above in Recommendation Number 3, except that these hearing officers would be restricted to scheduling conferences on non-support issues.

**5. Allow Hearing Officers to grant domestic abuse protective orders.**

LRS § 46:2135(I) allows Hearing Officers who are appointed pursuant to R.S. 46:236.5(C) to issue protective orders. This would free up at least half of Commissioner Cimo's docket time each day since he is currently hearing between seven (7) and ten (10) domestic abuse rules to show cause daily. The domestic abuse laws and rules in Louisiana have significantly added to the increasing caseload experienced by the Domestic Commissioner in recent years.

**6. Hire Custody Hearing Officers as independent contractors to hear interim child custody and visitation issues.**

If the Court chose not to employ full time judicial officers, it could hire lawyers or social workers to act as Custody/Visitation Hearing Officers to pretry/mediate all custody and visitation rules or motions that are scheduled before the Domestic Commissioner. From 1987 to 1994, the Court actually used two (2) social workers, Elliott Levin and Philip Bein, as Custody Hearing Officers. Judge Karno instituted this practice. The Custody Hearing Officers served as independent contractors who mediated cases in the Courthouse Annex Building from 9:00 a.m. to 1:00 p.m. each day that the District Judge heard custody and visitation issues. The domestic relations days were either two (2) or three (3) days per week, either on Monday, Wednesday, and Friday or on Tuesday and Thursday. The Custody Hearing Officers would meet with the litigants and their lawyers to help them resolve the custody and visitation issues that were scheduled for hearing that day. Most cases heard by the Custody Hearing Officers settled on the day of the hearing. For those cases that reached an impasse, the Custody Hearing Officers would make a handwritten recommendation to the District Judge who would then decide the case later that day.

Each litigant was required to pay twenty dollars (\$20.00) which was deposited into the Court's discretionary fund. Each Custody Hearing Officer was paid for four (4) hours of his time each day he heard cases at the rate of fifty dollars (\$50.00) per hour. The Custody Hearing Officers were paid for four (4) hours each day regardless of whether they heard one (1) case or ten (10) cases. This

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system reduced the work of the District Judge significantly according to Elliott Levin.<sup>21</sup> According to Mr. Levin, the Custody Hearing Officers were terminated in 1994 because of the Court's concerns that (1) the Custody Hearing Officers, as non-elected officials, had too much power; (2) they were sometimes getting paid for hours that they were not actually working; and (3) they were the result of a patronage system. However, the Custody Hearing Officers felt that they were entitled to four (4) hours of pay each day because they were not able to counsel their regular clients from 9:00 a.m. to 1:00 each day because of their commitments to the Court.

Mr. Levin stated that the system worked so well because the time that the litigants spent with the Custody Hearing Officer allowed them their day in court which in turn allowed them to release some tension. When the Custody Hearing Officer made a recommendation to the District Judge on the cases that reached an impasse, the parties had another scapegoat, other than his or her spouse, at which to vent their anger. That scapegoat was either the Custody Hearing Officer or the District Judge.

The Custody Hearing Officers also had the authority to send the cases to custody evaluators or mediators as needed. Additionally, the parties were required to attend a parenting seminar before the session with the Custody Hearing Officer.

### **7. Assign a Duty Judge or Duty Commissioner to sign consent judgments.**

Many attorneys complained of sitting around for hours waiting to get a consent judgment signed by the Domestic Commissioner.

### **8. Hire another court reporter to make a record of the consent judgment.**

For consent judgments - if the court does not assign a duty judge, then it should hire another court reporter to make a record of the consent judgment. The parties could waive the presence of the judge and create a record. This is done in other parishes according to one of the attorneys we interviewed.

### **9. The Domestic Commissioner should use a staff attorney or law clerk to review motions and pro se correspondence, research legal issues and prepare written orders under the direction of the Domestic Commissioner.**

One of the most precious resources in the Commissioner's Court is docket time. A staff attorney/law clerk could be used to manage a motion calendar, so that the Domestic Commissioner can rule on issues without a hearing when it is unnecessary to take testimony. This lawyer could also assist the Domestic Commissioner with Civil Code Articles 102 and 103(1) uncontested divorces by using

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<sup>21</sup> Telephone conversation with Elliott Levin on June 14, 2002.

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checklists to ensure that the proper affidavits and documents have been filed with the court in compliance with the Louisiana Civil Code and the Louisiana Code of Civil Procedure. The duties of this staff attorney/law clerk could be coordinated or merged with those of the Administrator/Intake Clerk described in Section II(E)(i)(1) above.

**10. The Commissioners should receive pay raises.**

In our opinion, all Commissioners should be given a raise because they are severely underpaid. They provide valuable services to the court and deserve more compensation. The Commissioners are currently being paid sixty-five thousand dollars (\$65,000.00) per annum.<sup>22</sup> This amount is insufficient for the quality and caliber of individuals who serve as Commissioners in the 24th JDC.

**ii. Non-Personnel Related Recommendations.**

**1. The types of matters that are set before the Domestic Commissioner should be limited to the following issues:**

- a. Uncontested Divorces
- b. Default Judgments;
- c. Interim Child and/or Spousal Support;
- d. Interim Custody and Visitation;
- e. Domestic Abuse Petitions within the legal time limits;
- g. Ex Parte Emergency Orders from authorized divisions of Court only under exceptional circumstances; and
- f. Hearings on Contempt of the Commissioner's Orders only (not Judges' Orders).

In our opinion, the Domestic Commissioner should be there to assist the Judges of the 24th JDC in handling matters that are truly interim, routine or perfunctory. The Domestic Commissioner should also hear emergency matters. The Duty Judge or the Judge to whose division the matter is assigned should not hear emergency matters unless the Domestic Commissioner is unable to do so. Generally, the Domestic Commissioner should not be hearing matters that take testimony from witnesses. Exceptions to this rule would include hearings on contempt of the Commissioner's orders and domestic abuse petitions.

If the Court limited the type and number of cases that are placed on the Domestic Commissioner's docket, this would reduce the number of cases on his docket and reduce the delay considerably. Of course, this assumes that individual Judges would set domestic relations matters in a timely manner.

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<sup>22</sup> LRS § 13:718(B).

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**2. Allow Louisiana Civil Code Article 102 divorces (Article 102 divorces) to be done by affidavit.**

In other words, eliminate the hearings in divorces obtained under Article 102. This development could significantly reduce the Court's caseload. According to Judge Edward Leonard, Jr. of the 16th JDC, Article 102 divorces are obtained in the 16th JDC with no problems.<sup>23</sup> The typical Article 102 hearing in Commissioner Cimo's court lasts twelve (12) minutes, and one (1) of the parties - the only party that must attend simply parrots the petition. Since there is no contest, there is nothing to decide.

According to Louisiana family law experts, Kenneth Rigby<sup>24</sup> and Katherine Shaw Spaht<sup>25</sup> the Article 102 divorce by affidavit practice is constitutional. According to Rigby and Shaw:

For this second procedure [the Article 102 divorce by affidavit procedure], three affidavits are required. One is the affidavit of the original petitioner for divorce verifying the allegations of that initial petition. The second is the affidavit of the mover in the rule to show cause for divorce verifying the allegations of the rule to show cause. The third is the affidavit of the mover in the rule to show cause that the parties have lived separate and apart continuously since the filing of the original petition and that the mover desires to be divorced. This third affidavit is required to invoke the provisions of Louisiana Code of Civil Procedure article 3956 permitting proof by affidavit. It must be executed by the mover after the filing of the rule to show cause required by Louisiana Code of Civil Procedure article 3952. All of these affidavits must be personally executed by the spouse filing the original petition or the motion for divorce, respectively; the affidavit of the spouse's attorney is insufficient.<sup>26</sup>

Eliminating the Article 102 divorce hearing will free at least one (1) day a week of the Commissioner Cimo's docket time. Since Commissioner Cimo now hears divorces only on Friday

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<sup>23</sup> Telephone conversation with Judge Edward Leonard, Jr. on July 3, 2002.

<sup>24</sup> Attorney at Law, Shreveport, Louisiana; Adjunct Professor, LSU Law Center; member of Persons Committee, Louisiana State Law Institute.

<sup>25</sup> Jules F. and Frances L. Landry Professor of Law, LSU Law Center; and Reporter for the Persons Committee, Louisiana State Law Institute.

<sup>26</sup> Kenneth Rigby and Katherine Shaw Spaht, *Louisiana's New Divorce Legislation: Background and Commentary*, 54 La. L. Rev. 19, 70-71 (1993) [footnotes omitted].

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of each week, along with purges of contempt of court, he would be available on Fridays to hear other matters.

**3. Continue the use of mediation in custody and visitation cases.**

Because of the benefit of mediation in child custody and visitation mentioned earlier in Section II(B), the Court should continue the use of mediation in these cases. Attorneys who were interviewed also suggested that the Court should set hearing dates on these issues when mediation order is issued. If parties do not attend the mediation sessions as ordered, they should be held in contempt of court.

**4. Publicize the fact that litigants can see the Hearing Officer within thirty (30) days if they submit a separate order.**

We found that many attorneys are not aware of this fact.

**5. A docket clerk should be available at all times to schedule hearings before the commissioner.**

Many times, attorneys have to wait until the Domestic Commissioner's docket clerk leaves the courtroom to get a hearing date. Alternatively, this duty could be performed by the Administrator/Intake Clerk described in Section II(E) above.

**6. Notices of hearings should state whether cases are scheduled before the District Judge or Domestic Commissioner.**

The notice should identify the address of the Domestic Commissioner's courtroom for hearings that are scheduled there.

**7. Subpoenas issued by the Clerk of Court's office should be changed to include the physical addresses of the Jefferson Parish Courthouse and the Commissioner's Courtroom.**

Unrepresented litigants and attorneys who do not practice regularly in the 24th JDC may not know where the Courthouse and the Commissioner's Courtroom are.<sup>27</sup>

**8. If a hearing is set before the Domestic Commissioner, the file should be with the Domestic Commissioner.**

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<sup>27</sup> We met with John Geigenheimer, Clerk of Court in March, 2002 and he informed us that his office would implement this change as soon as possible.

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If a hearing is set before District Judge, the file should be with District Judge. Attorneys complained of having to go to the courthouse to get records on the day of the hearing. This is a waste of time.

**9. The Hearing Officer's stamp should be changed to reflect the address of the Commissioner's building.**

Currently, the stamp indicates that "A SUPPORT HEARING IS SET FOR THE \_\_\_\_\_ DAY OF \_\_\_\_\_ BEFORE THE HEARING OFFICER." Although repeat users of the Court know the location of the Hearing Officer's hearing rooms, unrepresented clients and first time attorneys do not necessarily know this. We were told of cases where litigants had gone to the district court and waited for hours only to be told that the hearing was scheduled for the Commissioner's building.

**10. Coordinate scheduling of hearing dates.**

Some attorneys had dual settings on the same day - one before the Domestic Commissioner and one before a District Judge. If an attorney is late for the hearing of either the Domestic Commissioner or District Judge, the judicial officer is irritated with the attorney. However, it is not the attorney's fault. Also, if the attorney is on time for the Domestic Commissioner and has to go to the courthouse, he or she loses her place in line before the Domestic Commissioner when he/she returns.

**11. When an attorney objects to the Domestic Commissioner hearing a case, the case should be set before the District Judge.**

Some attorneys we interviewed stated that even if the parties object to matters being heard by the Domestic Commissioner, the District Judge or the Judge's docket clerk would send the case back to the Domestic Commissioner. The perception is that some District Judges simply do not want to hear domestic relations cases. Likewise, if attorneys complain to the District Judge's docket clerks about a hearing before the Domestic Commissioner being set too far into the future, the perception is that the District Judge's docket clerk, in an effort to aid the Judge's unwillingness to hear the domestic relations matter, will schedule a hearing date that is much later than the date set before the Domestic Commissioner. For example, if the hearing before the Domestic Commissioner is set three (3) months into the future and an attorney complains to the District Judge's docket clerk, some attorneys informed us that the docket clerk would schedule the hearing before the District Judge three and one-half (3 1/2) months into the future. This purposely discourages parties from scheduling cases before the District Judges.

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**12. Simple uncontested matters, such as motions to enroll or withdraw, motions for extensions of time, pauper motions, temporary restraining orders and consent judgments, should be signed by the District Judges, not the Domestic Commissioner.**

These motions, also known as “daily work”, take up two (2) to two and one-half (2 1/2) hours of Commissioner Cimo’s time each day. We found that at least six (6) Judges send their daily work to Commissioner Cimo (see Table 2). The Judges should handle their own daily work. Alternatively, the daily work could be assigned to the Magistrate Judge.

**13. Resolve service of process problem with defendants in domestic abuse cases.**

Many cases that are set for a motion for a protective order are rescheduled several times because of difficulty with service of process on the defendant. We were told that on many occasions after the ex parte temporary restraining order is obtained, the district attorney’s office has a difficult time locating the abused plaintiff before the hearing. This prevents the district attorney’s office from obtaining up-to-date information on the whereabouts of the defendant for service of process purposes. Additionally, many defendants avoid service of process. Consequently, the hearings on the rules to show cause for protective orders have to be reset several times. These occurrences take up the Domestic Commissioner’s valuable docket time. Every time there is a continuance, a new subpoena has to be issued by the district attorney’s office along with an attempt to serve the defendant by the sheriff’s office, many times with the same incorrect address. Finally, the sheriff has to return proof of the failed service of process to the clerk’s office. If funds were available, special process servers could be hired to avoid this problem. However, the question of who pays for the process servers is an issue.

**14. The Court needs to adopt a consistent system for handling a case once it is assigned to a particular division.**

This could be coordinated with the Domestic Commissioner. Currently, there is no consistent system. Judges have their own systems and there is very little knowledge among the Judges as to how the other Judges process cases.

**15. The Domestic Commissioner should not attempt to mediate cases from the bench.**

When the Domestic Commissioner adopts the recommendation of the Hearing Officer and enters it as an interim order, he should not try to mediate or dispose of matters that are not set on the docket. One attorney we interviewed says mediating or pretrying things from the bench takes up too much of the Commissioner’s time.

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**16. The Court should be consistent in its use of the Domestic Commissioner.**

Some Judges use the Domestic Commissioner; other do not. The Court should decide whether all of the Judges will use the Domestic Commissioner or none of them will. This will bring consistency to the Court. Some lawyers complained about the lack of consistency among the Judges in their use of the Domestic Commissioner. (See Tables 2 and 3 for a description of how the Court utilizes its Domestic Commissioner).

**III. THE OFFICE OF THE CRIMINAL COMMISSIONER**

The use of Criminal Commissioners in the 24th JDC is authorized by LRS 13:717(A) which states, “There are hereby created three offices of commissioner for the Twenty-Fourth Judicial District Court and by LRS 13:717(C), which states, “One of the commissioners shall have jurisdiction over civil matters involving domestic relations and family law only and two of the commissioners shall have jurisdiction over criminal matters. The commissioners shall have a minimum of five years of experience in handling matters within their respective jurisdiction.”

There are two (2) Criminal Commissioners, Jeff Hand and Carol Kiff. Prior to becoming a Commissioner, Hand served as an assistant district attorney for twelve (12) years, first in the Orleans Parish District Attorney’s Office and later in the Jefferson Parish District Attorney’s Office.<sup>28</sup> Commissioner Kiff is an attorney who served for twelve (12) years in the Jefferson Parish Indigent Defender Board before becoming a Commissioner.

The current statutory scheme in the 24th JDC has existed since July, 1997 when the enabling statute became effective. Commissioners Hand and Kiff have served since the scheme was implemented.

The duties of the Criminal Commissioners are enumerated in LRS 13:717(D) & (E) which state:<sup>29</sup>

- (2) The powers of the commissioners hearing criminal matters shall include but shall not be limited to the power to:*
  - (a) Administer oaths and affirmations.*
  - (b) Take acknowledgments, affidavits, and depositions.*
  - (c) Sign orders.*
  - (d) Act on felony charges through arraignment; however, commissioners shall not*

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<sup>28</sup> Commissioner Hand resigned from his position as Criminal Commissioner during the week of July 8, 2002.

<sup>29</sup> The powers of the Criminal Commissioners are also listed in Rule XXII, Sections 1-4 of the Criminal Rules of the Twenty-Fourth Judicial District Court.

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*accept pleas of guilty on felony charges.*

*(e) Act on misdemeanor charges including accepting pleas in misdemeanor cases preliminary to trial on the merits and conduct evidentiary hearings of misdemeanor cases. A trial on the merits in a misdemeanor case shall be tried by the commissioner only upon the written consent of the defendant and the expressed waiver of the defendant's right to have his case heard by a district court judge.*

*(f) Hear preliminary motions prior to filing the bill of information or indictment.*

*(g) Fix bail.*

*(h) Sign and issue search and arrest warrants in accordance with the general provisions of law, including the requirement of the showing of probable cause.*

*(I) Find and punish for contempt of court as a district court judge.*

*(3) No party shall be ordered to appear before the commissioner for arraignment more than twice prior to the filing of a bill of information or indictment against that party. Nothing in this Paragraph shall restrict the authority of the commissioner to subpoena a party to appear for arraignment after a bill of information or indictment has been filed against that party.*

*E. (1) When a misdemeanor case, with the written consent of the defendant and the expressed waiver of the defendant's right to have his case heard by a district court judge, is referred to a criminal commissioner by rule of court or assigned to a criminal commissioner by a judge of the Twenty-Fourth Judicial District Court, the criminal commissioner shall receive all evidence and prepare a written report of his findings which shall contain the following elements:*

*(a) A statement of the pleadings.*

*(b) A statement of the facts as found by the commissioner.*

*(c) An opinion based on the pleadings and facts.*

*(d) A judgment as he determines should be rendered with the recommendation to the judge that it be made the judgment of the court.*

*(2) In such a case, the criminal commissioner shall file a report containing proposed findings and recommendations with the court, and a copy shall immediately be mailed, postage prepaid, to all parties or their counsel of record.*

*(3) Any party, within ten days after filing the report, may traverse such findings or recommendations in writing in such manner as shall be specified by the rules of the district court.*

*(4) If exceptions to the report are timely filed within ten days, the judge may set the exceptions for hearing within thirty days, may hear argument on the*

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*exceptions but decide the exceptions on the record and evidence previously made before the criminal commissioner.*

*(5) The judge may accept, reject, or modify in whole or in part the findings or recommendations made by the criminal commissioner and may also receive further evidence or recommit the matter to the criminal commissioner with instructions.*

We found that the Criminal Commissioners served as “team players” whose primary responsibilities are to engage in the early and ongoing control of the pretrial process and to serve as “additional judges” who have the responsibility to try certain cases with party consent. The Criminal Commissioners serve as team players by performing such tasks as signing search and arrest warrants, handling arraignments and setting bonds in the early stage of a case. They serve as additional judges by hearing misdemeanor cases with the written consent of the defendant and the expressed waiver of the defendant’s right to have his case heard by the district judge.

### **A. Purpose**

The Court Commissioners were created to help alleviate crowded dockets in criminal cases and to help expedite cases. More specifically, the criminal commissioner system was designed in part to eliminate the delay and service of process problems in the criminal justice system in Jefferson Parish. Before the system was implemented, an average of sixty-five (65) days passed between a defendant’s arrest and his arraignment. The system prior to the Criminal Commissioners was perceived as moving too slowly. Under the prior system, two (2) problems existed: (1) too much time passed from the point that the Sheriff’s Office prepared the arrest report and sent it to the District Attorney’s Office for the screening decision by the District Attorney for a determination of whether the evidence was good enough for the filing of the Bill of Information. Only after the Information was filed with the Clerk of Court’s Office and allotted to a particular division of court could the arraignment be scheduled under the prior system, and (2) when the arrestees left jail, they were not given a court date for their arraignment. When the arraignment was finally set, the defendants had to be located and served with a subpoena notifying them of the arraignment. Many defendants could not be located or simply ignored the subpoena.

Under the current system, each arrestee who is released from jail is personally served with a notice to appear in court, that is, given a written notice to appear before a criminal commissioner to learn the status of his case forty-five (45) days after his release from jail. At the status hearing, if the District Attorney has refused the charges against the arrestee, he is informed of the refusal and the sureties are released of the bond obligations. If the District Attorney has accepted any charges against the arrestee, the arrestee is arraigned on that date, informed of the division that will hear his case and given the date of any pretrial hearings. If the District Attorney has not made a screening decision, the matter is reset before the Criminal Commissioner for a status hearing. LRS

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13:717(D)(3) permits only one (1) resetting.

The Criminal Commissioner system was also designed to administer the Active Misdemeanor Probation Program, a program for people who plead guilty or are convicted of misdemeanors.

### **B. Findings**

We found that the two (2) Criminal Commissioners are very effective in carrying out the responsibilities given to them by the Court. Both are very professional, highly capable and knowledge lawyers who are assets to the 24th JDC. However, we find that the Criminal Commissioners are performing many tasks that can be better performed by other employees.

### **C. Day to Day Responsibilities of Criminal Commissioners**

In this section, we describe the duties of the Criminal Commissioners as we understand them from our observations and interviews with both of them on one or more occasions. The two (2) Criminal Commissioners serve on alternating weeks as Sitting Commissioner and Duty Commissioner (see Charts 1 and 2, attached).<sup>30</sup> The Criminal Commissioners set bonds and sign arrest, seizure, and search warrants during Court hours Monday through Friday when the court is in session and on all holidays.

#### **i. Sitting Commissioner**

The Sitting Commissioner works from 8:30 a.m. 4:30 p.m. each day. From 8:30 a.m. until 10:00 a.m., the Sitting Commissioner works in his or her office issuing search, seizure, and arrest warrants to law enforcement officers, sets bonds and reviews the paper work for property bonds. The Sitting Commissioner, in this capacity, serves as the Duty Commissioner while the Duty Commissioner reviews probable cause affidavits, handles arraignments and pre-filing motions for accuseds in the Jefferson Parish Correctional Center (JPCC). The Sitting Commissioner acts as Duty Commissioner and is accessible to members of the public and to law enforcement officers because access to the Duty Commissioner, while he or she is in the JPCC, is limited. Between the hours of 8:30 a.m. and 10:00 a.m., the Sitting Commissioner has a large amount of contact with members of the public and commercial sureties who are there to get bonds set for the release of people who have been accused

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<sup>30</sup> The term “Sitting Commissioner” refers to the Criminal Commissioner who conducts status hearings and arraignments in the Criminal Commissioner’s Court, while the term “Duty Commissioner” is used to refer to the Criminal Commissioner who is available daily to set bonds for personal and commercial sureties and issues search, seizure, and arrest warrants to law enforcement officers.

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of crimes.

From 10:00 a.m. to 12:00 p.m. daily, the Sitting Commissioner takes the bench at the Criminal Commissioner's Court and conducts status hearings for all individuals who have been arrested and released from the JPCC as described more thoroughly in the previous section. This responsibility is a significant benefit to the Court in three (3) ways:

First, because the arrestee is personally served with a notice (subpoena) at the time of his release from jail to appear before a Criminal Commissioner, it is not necessary for the Sheriff to expend manpower serving a subpoena for the arrestee to appear in court. Personal service also eliminates the use of resources in trying to "track down" the arrestee because he gave the wrong address or has moved since his release from jail. Additionally, at the status hearing, the arrestees are personally served to appear in the allotted divisions after they have been arraigned or if they need to return to the Criminal Commissioner for an additional status hearing.

Second, in addition to the defendant receiving personal service, the surety is also personally served at the time of the defendant's release. A signed copy of the defendant's notice and the surety's notice is attached to the bond (and power of attorney, if required), which are then placed in the court's file. Should the defendant fail to appear, the court has the necessary documentation to forfeit the bond against the sureties.

Third, if the District Attorney has accepted the charge and a bill of information has been filed by the time of the defendant's status hearing (45 days after arrest), the defendant is immediately arraigned. There is no need to wait until the division to which the case is allotted has scheduled a criminal hearing day and the defendant has been subpoenaed. These benefits show that one of the initial purposes of the Criminal Commissioner System has been served.

In addition to the status hearings and arraignments, from 10:00 a.m. to 12:00 p.m., the Sitting Commissioner also takes guilty pleas and conducts trials and hearings on motions to suppress in misdemeanor cases that the District Attorney has filed in the 24th JDC. These cases include marijuana possession, child desertion, driving while intoxicated cases that are linked with marijuana possession cases, prostitution, gambling and simple battery cases involving domestic violence. Also included in this list are cases of the following types: disturbing the peace; resisting arrest; false swearing; falsification of a drug test; attempted theft of goods; threatening phone calls; false imprisonment; fraud/access device under one hundred dollars (\$100.00); possession of an alcoholic beverage by a person under twenty-one (21) years of age; illegal carrying of weapons; unlawful practice of law without a license; simple criminal damage to property under five hundred dollars

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(\$500.00) and negligent injuring cases.

From 12:00 p.m. to 1:00 p.m., the Sitting Commissioner usually takes a break for lunch. In the afternoon, the Sitting Commissioner does the Findings of Fact and Recommendations on the guilty pleas that were conducted that morning.<sup>31</sup> Additionally, the Sitting Commissioner completes the Findings of Fact and Recommendations on the criminal trials that were conducted with the consent of the defendant.<sup>32</sup>

Further, on Tuesday of each week, the Sitting Commissioner arraigns all defendants who have been “direct billed” and charged with issuing worthless checks (LRS 14:71).<sup>33</sup> All check offenses, felonies and associated misdemeanors, are assigned to a special court, Division “W,” in the 24th JDC and not to the originally allotted division. After the Sitting Commissioner arraigns these defendants, he or she then transfers the felony cases back to the originating division for trial.<sup>34</sup> These arraignments

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<sup>31</sup> According to data provided by the Jefferson Parish District Attorney’s Office entitled *Division 1 Case Analysis, 24th Judicial District Court*, Commissioner Hand accepted the following number of guilty pleas in misdemeanor cases: calendar year 2000 - one hundred eight (108) ; calendar year 2001 - one hundred thirty-one (131); and the first six (6) months of calendar year 2002 - one hundred five(105). The *Division 2 Cases Analysis, 24th Judicial District Court*, shows that Commissioner Kiff accepted the following number of guilty pleas in misdemeanor cases: calendar year 2000 - ninety-six (96); calendar year 2001 - one hundred forty two (142) and the first six (6) months of calendar year 2002 - ninety-eight (98).

<sup>32</sup> According to data provided by the Jefferson Parish District Attorney’s Office entitled *Division 1 Case Analysis, 24th Judicial District Court*, Commissioner Hand presided over the accepted the following number of trials in misdemeanor cases: calendar year 2000 - four (4); calendar year 2001 - one (1); and the first six (6) months of calendar year 2002 - four (4). The *Division 2 Cases Analysis, 24th Judicial District Court* shows that Commissioner Kiff presided over the following number of trials in misdemeanor cases: calendar year 2000 - two (2); calendar year 2001 - six (6) and the first six (6) months of calendar year 2002 - five (5).

<sup>33</sup> Direct billed refers to the fact that the bill of information is filed before the person is arrested.

<sup>34</sup> During 2002, the Criminal Commissioners arraigned one hundred twenty-four (124) defendants in this court and issued two hundred eighty-three (283) attachments for offenders who did not come to court in response to a notice or a subpoena. The Economic Crime Unit (ECU) of the Jefferson Parish District Attorney’s Office dismissed two hundred eighty-five (285) cases because the offender paid the check amount, the NSF fees, and the District Attorney’s fees in full. ECU also dismissed six hundred forty-three (643) cases with the intent to

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usually last from one-half (½) hour to one (1) hour.

Additionally, as requested by Robert Heindel, the misdemeanor probation and collections officer, and as needed, on alternate Tuesdays of each week, from 4:00 p.m. to 6:30 p.m. (sometimes to 8:00 p.m.), the Sitting Commissioner supervises and assists with the Active Misdemeanor Probation Program for people who plead guilty to or are convicted of misdemeanors. If a defendant is on active probation, he is required to appear before the Sitting Commissioner once a month and made to show that he is working or in school or actively seeking a job. If the defendant doesn't, he could be put in jail for a few days.

In summary, the Sitting Commissioner performs the following tasks daily:

1. Signs search and arrest warrants and subpoenas duces tecum for law enforcement officers; for members of the public and commercial sureties, issues property bonds and handles other bond related matters; and acts as the Duty Commissioner when the other Criminal Commissioner is in court;
2. During Criminal Commissioner's Court he or she conducts status hearings, arraignments, take guilty pleas, hold evidentiary hearings and trials in misdemeanor cases based on the defendant's consent;
3. Conducts hearings on motions to suppress in misdemeanor cases that the District Attorney has filed in the 24th JDC;
4. Drafts Findings of Fact and Recommendations on the guilty pleas, motions to suppress and criminal trials that were conducted with the consent of the defendant;
5. Supervises and assists the misdemeanor probation officer with the Active Misdemeanor Probation Program for people who plead guilty to or are convicted of misdemeanors;
6. On alternate Tuesdays of each week, arraigns all defendants who have been direct billed and charged with issuing worthless checks; and
7. Commissioner Kiff spends time each day handling the accounting and deposits of the money generated by several revenue sources.

### **ii. Duty Commissioner**

The Duty Commissioner works from 7:30 a.m. or 8:00 a.m. until 4:00 p.m. each day. He or she

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seek a warrant for the individual's arrest. Twenty-two (22) cases were dismissed by ECU due to forgery and theft of identify. Cases were reset six hundred thirty-five (635) times for a variety of reasons: a subpoena was issued by the clerk but there was no return from the sheriff's office in the record; a subpoena was issued by the clerk but the return came back indicating that numerous attempts to serve the defendant at the given address were unsuccessful; the defendant's attorney indicated that the defendant was willing to pay the check but needed more time to do so.

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begins each day in the JPCC by reviewing probable cause affidavits, acting as committing magistrates for individuals accused of capital offenses for the purpose of appointment of counsel as well as conducting first appearances for those accused of offenses which carry a penalty of imprisonment at hard labor.<sup>35</sup>

Louisiana Code of Criminal Procedure, Article 230.2 entitles persons arrested without a warrant to a determination of probable cause by a magistrate within forty-eight (48) hours of arrest. If a probable cause determination is not timely made by a magistrate, the arrested person is released on his own recognizance. However, the accused is given an arraignment/status notice to appear before one of the Criminal Commissioners. The Criminal Commissioners make an average of fifteen hundred (1500) probable cause determinations on felony arrests per month.

The Duty Commissioner also issues Criminal Stay Away Orders (Stay Away Orders) in the JPCC as a condition of bail to persons who have been arrested for domestic violence or stalking. The Stay Away Orders are issued pursuant to LRS § 46:2136.2 and are filed with the Louisiana Protective Order Registry administered by the Judicial Administrator's Office of the Louisiana Supreme Court. During 2001, the Criminal Commissioners issued one thousand five hundred ninety-one (1,591) Stay Away Orders.

At 9:00 a.m., Monday through Friday, the Duty Commissioner handles arraignments and pre-filing motions<sup>36</sup> for accuseds who are incarcerated in the JPCC. The arraignments and motions are held in the Lineup Room/Hearing Room located next to the Administration Lobby at the JPCC, 100 Dolhonde Street in Gretna. There are several advantages to this arrangement: (1) Security. There is no need to transport prisoners from a secure location at JPCC to less secure locations in the Courthouse Annex. When prisoners are transported to the various court divisions, they walk in the public hallways, thus, possibly mingling with family and friends. In the "lineup" room, there is a glass partition between the defendants and court staff and witnesses. Court staff and defendants can see one another and can communicate the Court's business during arraignments and hearings. At the same time, the defendants' chances of escape are practically nil. (2) Speed. As soon as a bill of information or indictment is filed or allotted, the record is given to the minute clerk who sets the arraignment for the next day. As a general rule, the defendant is presently being arraigned within

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<sup>35</sup> Justice of the Peace, Vernon Wilty, generally acts as committing magistrate for the 24th JDC. He conducts first appearances at 11:00 a.m. in the JPCC for those accused of offenses that do not carry a penalty of imprisonment at hard labor, and if bail has not been set for those individuals, he then determines bail.

<sup>36</sup> These motions include Motions to Reduce Bond, Writs of Habeas Corpus, Speedy Trial Motions, Discovery Motions, and Motions for Bond Forfeiture and Motions to Quash.

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thirty (30) days of arrest.<sup>37</sup>

After the Duty Commissioner leaves the jail between 11:30 a.m. and 12:00 p.m. each day, he or she sets bonds for personal and commercial sureties and issues search, seizure, and arrest warrants to law enforcement officers for the remainder of the day.<sup>38</sup> Additionally, the Duty Commissioner reviews the paper work for property bonds. The Duty Commissioner is on duty from 8:00 a.m. to 4:30 p.m. Monday through Friday.<sup>39</sup> This benefits the District Judges by not interrupting their daily schedule, which allows them to handle more important civil and criminal matters. An additional benefit to the jail and the general public is that there are immediate bond settings without interrupting the judge or waiting for the Judge to leave the bench. Law enforcement officers are benefitted by having a known readily available place where they can find a Criminal Commissioner on duty. In setting bonds, the Criminal Commissioners use a bond range chart to set bonds. This results in consistency in the setting of bonds, taking into consideration the nature of the charge and the criminal history of the defendant. The Commissioner's Office is located within walking distance of the JPCC should it be necessary to go to the JPCC to gather relevant information about the accused upon which to base a sound bond decision. While on duty, the Duty Commissioner has a large amount of contact with members of the public and commercial sureties who are there to get bonds set for the release of people who have been accused of crimes. The Duty Commissioner also answers many telephone calls from personal sureties who are inquiring about such things as collateral mortgages, the amount of equity they have in their homes, and how to obtain bonds. Apparently most inquiries about these matters are directed to the Criminal Commissioners. Members of the public now know that there is a central location they can go to in order to have such matters resolved.

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During 2001, the Criminal Commissioners arraigned two thousand forty-eight (2048) incarcerated defendants, satisfied sixty-one (61) Preliminary Examinations, heard ninety-five (95) Motions to Reduce Bond, acted on twelve (12) Writs of Habeas Corpus, and heard sixty-four (64) "Speedy Trial" or "701" motions. Motions to Reduce Bonds, Writs of Habeas Corpus, and "701" Motions are set and heard within twenty-four (24) to forty-eight (48) hours after filing. Motions for Preliminary Examinations are set and heard as promptly as service of process on the witness will permit, usually within two (2) weeks of filing.

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During, 2001, the Criminal Commissioners reviewed and either signed or denied the following number of warrants: arrest, four hundred three (403); seizure, fifty-five (55); and search, two hundred seventy-one (271).

<sup>39</sup> The District Court Judge serving as magistrate takes the duty from 4:00 p.m. to 10:00 p.m. and on the weekends.

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In summary, the Duty Commissioner performs the following tasks daily:

1. Reviews probable cause affidavits under La. C.Cr.Proc., Art. 230.2, issues Criminal Stay Away Orders, and handles arraignments and pre-filing motions for accuseds who are incarcerated in the JPCC (usually from 8:00 a.m. to 12:00 p.m.) -- all of these tasks are performed in the Lineup Room/Hearing room located in the JPCC ;
2. Sets bonds for personal and commercial sureties and issues search and arrest warrants and subpoenas duces tecum to law enforcement officers every morning and at all times during the day. Additionally, the Duty Commissioner reviews the paper work for property bonds (usually from 12:00 p.m. to 4:00 p.m.); and
3. Drafts Findings of Fact and Recommendations on the guilty pleas, motions to suppress and criminal trials that were conducted with the consent of the defendant.

**D. Additional Duties Performed by Criminal Commissioners**

1. Occasionally, Commissioner Kiff assists Ann Delfreres, the en banc law clerk who handles post conviction requests by prisoners who are incarcerated in the Louisiana Department of Corrections (LDOC). Many of the prisoners are attempting to get outstanding detainers that have been placed on them set aside. These detainers, which have been placed on prisoners by law enforcement authorities in Jefferson Parish, have been sentenced to the LDOC by the Judges of the 24th JDC. Commissioner Kiff works with Ann Dalfreres in getting the detainers set aside. During some weeks, Commissioner Kiff spends no time at all on detainers. During other weeks, she may spend up to five (5) hours on detainers. The time she spends on detainers saves the Judges of the 24th JDC considerable time because these petitions are resolved in the Commissioners Office, never reaching the specific divisions of court. Consequently, no docket number is assigned to these matters because Commissioner Kiff has resolved them. Prisoners usually file applications for post conviction relief to set aside detainers because detainers adversely affect their incarceration and deprive them of rights in the Department of Corrections. Such rights include being denied the opportunity of attaining trustee status, a higher prison classification, preferred work assignments, work release and similar rehabilitative programs of the Louisiana Department of Corrections.

However, this aspect of the Commissioners work does not appear to be within their statutory duties.

2. Commissioner Kiff spends approximately one (1) hour per day handling the accounting of the money generated by the following revenue sources:

1. The Commissioner Fee that is imposed on every defendant who is convicted in the

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24th JDC of a felony or a misdemeanor offense.<sup>40</sup>

2. The Active Misdemeanor Probation Program;<sup>41</sup> and

3. The premiums for all surety underwriters who write criminal bonds in the 24th JDC.<sup>42</sup>

3. Commissioner Kiff acts as a courier who actually goes to Hibernia National Bank and makes daily bank deposits. Until recently, there was a branch bank near the Commissioner's Court. Since that branch bank has closed, Commissioner Kiff has to go to a branch bank further away on the Westbank Expressway. These tasks do not appear to be within the statutory duties of the Commissioners.

4. Commissioner Kiff performs other administrative tasks such as acting as Plan Administrator for the ten (10) employees employed by the Commissioners' offices.<sup>43</sup> She performs this task because the Judicial Administrator's office has refused to take on this responsibility. In this role, Commissioner Kiff handles the paperwork for and educates these employees about their benefits under the Court's benefits plan as well as handles the benefits and other paperwork for those departing employees. Most recently, Commissioner Kiff spent a considerable amount of time handling some aspect of the benefits package for the late Calvin Hotard, former Second Parish Court Judge. Commissioner Kiff spends approximately two (2) hours per week working on this task.

5. The Commissioners also spend time each week finding defendants who are direct billed by the District Attorney's Office. This is done because of various aliases used by these defendants.

6 Commissioner Kiff also serves on the Umbrella Computer Committee.

7. Commissioner Kiff orders equipment and supplies for the Commissioners' Office as well as prepares the budget.

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<sup>40</sup> The Court has set the fee at one hundred dollars (\$100.00) pursuant to LRS 13:718(I)(1).

<sup>41</sup> The following probation fees have been set: a one-time probation administration fee of one hundred dollars (\$100) and twenty-five dollars (\$25) per month probation supervision fee (which includes the cost of the drug testing kit).

<sup>42</sup> This fee is equal to fifty dollars (\$50.00) for each ten thousand dollars (\$10,000) worth of liability underwritten by the surety.

<sup>43</sup> Those employees are the three (3) Commissioners, three (3) probation and collections employees, two (2) court reporters, two (2) secretaries and the en banc law clerk.

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8. The Criminal Commissioners prepare Stay Away Orders for arrestees who are charged in First and Second Parish Courts with simple battery. For some reason, the system has developed where the Criminal Commissioners are called on to prepare criminal stay away orders for all persons who have been arrested because of alleged domestic violence or alleged stalking.

The Criminal Commissioners substitute for the Misdemeanor Probation Officer on Tuesday evenings when he is absent because of vacation, personal, or sick leave.

### **E. Results of Interviews with Attorneys Who Practice in Criminal Commissioner Court**

We interviewed fifteen (15) attorneys who practice regularly in Criminal Commissioner's Court. Almost all attorneys were very happy with the current system and complimented the Commissioners on how they performed their duties. The attorneys stated that the Commissioners allowed the attorneys to go first on the docket, are timely, professional, fair, intelligent and knowledgeable of the law. They also stated that the system saves time and it works well. The members of the Commissioners support staff are extraordinarily helpful according to those attorneys we interviewed.

One criticism was made by a few of the attorneys interviewed. Some attorneys commented that they had experienced problems with the Commissioners setting extremely high bonds and refusing to split bonds. We received conflicting evidence from the attorneys about which Criminal Commissioner was setting high bonds and refusing to split them: some attorneys named Commissioner Kiff; other named Commissioner Hand. Attorneys commented that the Judges of the 24th JDC must remember that the Commissioners work for them and the practice of the Commissioners in setting high bonds and refusing to split bonds will come back to haunt the judges politically when an accused, who is released after a Judge lowers a bond previously set by one of the Commissioners, commits an additional crime that makes the local news headlines. The attorneys stated that this potential problem can be eliminated if the Judges gave guidelines to the Criminal Commissioners on how the Judges want them to set bonds. Several attorneys believe that if the Judges gave the Criminal Commissioners specific guidelines on the setting of bonds, this would decrease the number of lawyers and commercial sureties who rush to the Magistrate Judge at 4:00 p.m. to get bonds split or reduced, after the Duty Commissioners is off duty. According to these attorneys, if the Criminal Commissioners were splitting bonds and setting reasonable bonds, the commercial sureties and lawyers would not seek to have the Magistrate Judge lower or split bonds, thereby freeing up time for the Magistrate Judge.<sup>44</sup>

During the Study, we learned that the Court had approved a bond schedule for use by the Judges and the Criminal Commissioners. This bond schedule was a result of a Study Of Bond Settings

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<sup>44</sup> The District Court Judge serving as Magistrate Judge takes the duty from 4:00 p.m. to 10:00 p.m. and on the weekends.

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performed by the Criminal Commissioners of all bonds set by the Judges of the 24th JDC, Justice of the Peace Vernon Wilty, New Orleans Bond Setting and Louisiana Revised Statutes.

Since the Criminal Commissioners are setting bonds according to this schedule, they do not believe that they are setting unreasonable bonds. After we reported concern about splitting bonds to Commissioner Hand, he spoke to several Judges of the 24th JDC and his impression was that they wanted the Criminal Commissioners to split bonds. Consequently, Commissioner Hand has begun to split bonds again because of the recent jail overcrowding and the fact the Sheriff would be releasing arrestees because of jail overcrowding.

Another criticism was that some judges refuse to use the Criminal Commissioners resulting in a hybrid system. Occasionally, the Criminal Commissioners will set bonds for an accused and if the case is allotted to a particular division, the bond has to be withdrawn resulting in unnecessary work on behalf of the Commissioner.

One attorney commented that the system is flawed because it constitutes a superfluous layer that costs Jefferson Parish unnecessary money. Although the system ostensibly saves time, it actually causes delays and imposes unnecessary time and costs on attorneys and their clients. According to this attorney, the Criminal Commissioner Court imposes two (2) layers of cost for paying clients. The first layer results when a person who was incarcerated in the JPCC is required to appear before a Criminal Commissioner to learn the status of his case forty-five (45) days after his release. The surety is also personally served and the personal surety is required to attend the hearing. On many occasions the matter is reset before the Commissioners for status because the District Attorney has not made a screening decision. Since LRS 13:717 permits only one resetting, lawyers, clients and their sureties have to appear twice before the Criminal Commissioners. This results in wasted time and money for the clients and their family members, who are usually the personal sureties, because they have to take off work at least twice and appear before the Criminal Commissioners. The system, according to this attorney, also costs clients additional money because it is more time consuming which results in some attorneys charging hourly rates. Even if the attorney does not charge the client hourly, it is more costly to the client because of the added attorney time involved.

The current system is also less efficient because the Assistant District Attorney in the Commissioner Court has no power to negotiate a plea bargain at the time of arraignment. Under the old system, the Assistant District Attorney who was assigned to the specific division would usually negotiate with the defense attorney at the time of the arraignment based on the strength of the evidence known to the attorneys. Because most Assistant District Attorneys allow "open file discovery," real motion hearings based on discovery disputes do not really take place. Consequently, many more plea bargains occurred earlier in the process which was beneficial to the defendants and their clients, according to this lawyer. On a final note, this attorney commented that the Commissioners' building is horribly cramped and mis-designed.

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A few attorneys commented that they had problems with non-elected officials such as Commissioners being given so much power.

One attorney who worked as an Arraignment District Attorney in the Criminal Commissioner Court saw two (2) problems with the current system: (1) misdemeanor trials slow down the system because the detailed findings of fact prepared by the Commissioners must be sent to the District Judge for approval before the defendant can be sentenced by the Commissioner, thus sentencing takes longer; and 2) Commissioners are prohibited from hearing misdemeanor trials absent the defendants' consent. This allows the defendant to forum shop between the Criminal Commissioner assigned to the case and the Judge to whose division the case has been assigned. Since some divisions of court are viewed as being more lenient than others, defendants are allowed to choose between the Commissioners and the Judges.

### **F. The Use of Attorneys as Part-Time Criminal Commissioners or Magistrates**

We interviewed thirteen (13) of the sixteen (16) judges of the 24th JDC. Several judges expressed interest in the Criminal Commissioners taking the duties of Magistrate during the nights and on the weekends. This is a policy decision, not an efficiency issue, that must be made by the Court. Thus, we have no recommendation on this issue.

However, the Court may want to explore using attorneys as part-time Criminal Commissioners/Magistrates who fill in for the Judges in the evenings and during vacations and holidays. This practice occurs quite extensively in the state of Tennessee. Hamilton County, Tennessee (Chattanooga) uses three (3) part-time Judicial Commissioners who work nights and weekends at the Hamilton County jail, setting bonds and issuing search and arrest warrants. "The positions were created to ease jail overcrowding by helping people who are arrested have their bonds set quickly. The substitute magistrates fill in when the three (3) full-time magistrates are ill, on vacation or taking a holiday."<sup>45</sup> The Judicial Commissioners in Hamilton County, Tennessee are paid twenty five dollars (\$25.00) per hour.<sup>46</sup> Shelby County, Tennessee (Memphis) uses three (3) part-time Judicial Commissioners. Recently, the Shelby County Commission appointed three (3) part-time Judicial Commissioners to take over the job of the full-time Judicial Commissioner who resigned on April 30, 2002.<sup>47</sup> Judicial Commissioners in Tennessee are generally appointed by the

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<sup>45</sup> Judy Walton, *Fill-In Magistrates Get Chilly Reception to Raise Request*, Chattanooga Times/Chattanooga Free Press, Jan. 5, 2002, at B1.

<sup>46</sup> *Id.*

<sup>47</sup> Michael Erskine, *Three to Set Bail, Issue Warrants Part Time*, The Commercial Appeal, April 23, 2002, at B2, 2002 WL 19235984.

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County Commission pursuant to Tennessee Statutory Law.<sup>48</sup> However, the presiding General Sessions Criminal Judge of a county may appoint a temporary, or part-time, Judicial Commissioner to serve at the pleasure of the presiding Judge in case of absence, emergency or other need.<sup>49</sup>

In Knox County, Tennessee (Knoxville), at least one (1) Judicial Commissioner is on duty every hour of every day to set bonds for the people arrested in Knox County.<sup>50</sup>

Before lawyers can be appointed as part-time Criminal Commissioners, we believe that the Louisiana Legislature would have to enact a statute allowing this practice to occur.

### **G. Recommendations to Make the Criminal Commissioner Court Function More Efficiently**

#### **1. Judges should retain their misdemeanor cases.**

If the Court wants the Criminal Commissioners to have additional responsibilities, then Judges should not send their misdemeanor cases to the Criminal Commissioners because these cases take up an increasing amount of time. However, the negative aspect of implementing this recommendation is that the Criminal Commissioners enjoy handling these cases. Taking the misdemeanor cases away from the Criminal Commissioners would probably decrease their job satisfaction.

#### **2. The Court should explore hiring part-time Criminal Commissioners to handle evening and night magistrate duty as well as during vacation and holiday times.**

As explained in Section III(F), this practice is used quite extensively in the state of Tennessee and can be implemented in Louisiana with a legislative enactment. The part-time Criminal Commissioners could be compensated on an hourly basis and could work nights and weekends, setting bonds and issuing search, seizure, and arrest warrants. This practice would assist the Court and the full time Criminal Commissioners in performing their duties and ease jail overcrowding by helping arrestees having their bonds set quickly. However, as mentioned earlier in Section III(F), a legislative change is necessary before this practice can be implemented.

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<sup>48</sup> See Tenn. Code Ann. §40-1-111.

<sup>49</sup> See Tenn. Code Ann. §40-1-111(a)(1)(B)(ii).

<sup>50</sup> Randy Kenner, *Controversy Follows Bearden Student's Arrest, Suspension*, Knoxville News-Sentinel, May 21, 2001, at A1, 2001 WL 8502504.

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However, another recommendation could be implemented immediately without a change to Louisiana statutory laws - using attorneys during nights and weekends to screen the bond requests for the Magistrate Judge. Attorneys could take telephone calls and analyze the bond requests made to the Court during this time. At designated times, the attorneys could summarize the bond requests and send to the Magistrate Judge by facsimile or other electronic transmission the pertinent information with recommendations regarding the requests.

### **3. The Court should assign another person to perform the additional tasks currently performed by Commissioner Kiff.**

Commissioner Kiff spends a considerable amount of time performing tasks that could be better performed by other employees or that are not within the Criminal Commissioner's statutory duties. Among these tasks are:

1. Assisting the en banc law clerk with post conviction relief requests filed by prisoners in the Louisiana Department of Corrections;
2. Performing accounting tasks for the fees collected by the misdemeanor probation and collections officer;
3. Acting as a bank courier who makes daily bank deposits;
4. Serving as plan administrator for the ten (10) employees employed by the Commissioner's offices;
5. Spending time finding defendants who are direct billed by the District Attorney's Office;
6. Serving on the Umbrella Computer Committee; and
7. Ordering equipment and supplies for the Commissioners' offices.

Moreover, both Criminal Commissioners prepare Domestic Abuse Stay Away Orders for arrestees who are charged in Second Parish Court with simple battery. Furthermore, both Criminal Commissioners substitute for the Misdemeanor Probation Officer when he is absent because of vacation, personal or sick leave.

The elimination of these tasks from the Criminal Commissioners would free up a large amount of their time so that they could perform other tasks.

### **4. Give the Sitting Criminal Commissioner an afternoon docket of domestic relations cases.**

If the Court adopts Recommendation Number 3 above, then the Sitting Criminal Commissioner should be freed up to perform other judicial duties such as handling an afternoon docket of domestic relations cases. This move would considerably lighten the load on the Domestic Commissioner who is currently over-burdened with cases.

## **Twenty-Fourth Judicial District Court for the Parish of Jefferson Efficiency Study How Can the Court Serve the Public Through the Use of Commissioners?**

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To implement this recommendation, the Criminal Commissioners would have to attend Continuing Legal Education classes in order to learn the nuances of domestic relations law. Additionally, since the Court will soon be hiring another Commissioner because of Criminal Commissioner Jeff Hand's resignation, the Court may wish to hire a Commissioner with experience handling criminal as well as domestic relations cases.

Moreover, the Court will have to hire a court reporter and a minute clerk to assist the Criminal Commissioner with the afternoon docket. Finally, LRS § 13:717, the statute creating the Commissioners in the 24th JDC, will have to be amended to expand the duties and powers of the Criminal Commissioners. This is necessary because the statute currently states that one (1) of the Commissioner shall have jurisdiction over domestic relations and family law matters and two (2) shall have jurisdiction over criminal matters.

### **5. The Court should be consistent in its use of the Criminal Commissioners.**

Some Judges use the Criminal Commissioners; other do not. The Court should decide whether all of the Judges will use the Criminal Commissioners or none of them will. This will bring consistency to the Court. Some lawyers complained about the lack of consistency among the Judges in their use of the Criminal Commissioners (See Table 1 for a description of how the Court utilizes its Criminal Commissioners).

### **6. Add another collections officer.**

Robert Heindel, the misdemeanor probation and collections officer, states that he needs another collections officer. The fees collected would more than pay for the persons salary and benefits according to Mr. Heindel.

### **7. The Commissioners should receive pay raises.**

In our opinion, all Commissioners should be given a raise because they are severely underpaid. They provide valuable services to the court and deserve more compensation. The Commissioners are currently being paid sixty-five thousand dollars (\$65,000.00) per annum.<sup>51</sup> This amount is insufficient for the quality and caliber of individuals who serve as Commissioners in the 24th JDC.

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<sup>51</sup> LRS § 13:718(B).