

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

**Efficiency Study of Court Commissioners  
and Domestic Hearing Officers**

**An Analysis of the Domestic Early  
Intervention Triage Program**

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**I. INTRODUCTION**

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

The purpose of this study was three-fold: (1) to evaluate the Domestic Early Intervention Triage Program,<sup>1</sup> (2) to gather data and information about how the commissioners' and domestic hearing officers' functions have evolved since their inception, and (3) to make recommendations to the Court about how to improve the efficiency of the commissioner and hearing officer systems to better serve the public.

This report was drafted by Bobby Marzine Harges, the Adams and Reese Distinguished Professor of Law II at Loyola University New Orleans College of Law and a member of the Louisiana Bar.

**A. Goals and Objectives**

This study addresses the following issues:

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

**B. Preliminary Background Research**

I initially met with Judge Robert M. Murphy on March 24, 2005. He explained that the Court wanted me to conduct a study of the commissioners and domestic hearing officers who were currently employed by the Court. At that time, Hearing Officer Carol Accardo, a full-time court

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<sup>1</sup>LA. R. 24TH DIST. CT. RULES 22-25 (effective May 25, 2005).

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employee, was conducting hearing officer conferences (HOCS) under a pilot program in four of the sixteen court divisions. She was hearing all issues ancillary to a divorce. On the other hand, Hearing Officer Karl Hansen, then a part-time court employee, was hearing financial issues (support and support-related matters) in the remaining twelve divisions of court. The pilot program began on May 15, 2004, and the Court had plans to hire two additional domestic hearing officers. Later in 2005, the Court hired two additional domestic hearing officers, Paul Fiasconaro and Paul Weidig. The three commissioners who are assisting the Court to process cases are Criminal Commissioner Carol Kiff, Domestic Commissioner Ruben J. Bailey and Commissioner Patricia Joyce, who has jurisdiction over criminal, family law, and domestic cases.

The goal of the study was to address how the court can better serve the public through the use of the commissioners and hearing officers. I then met with each of the commissioners and domestic hearing officers to get a better understanding of their roles and responsibilities. The commissioners later provided me with the annual reports that they submitted to the Court each year. The reports were a series of data sheets with totals of the number of tasks performed by the commissioners each year during those years. All commissioners and domestic hearing officers were very helpful in explaining what occurred on a daily basis in their courts and hearing rooms.

An earlier study of the Court's use of commissioners and hearing officers was conducted by Bobby Marzine Harges and Deirdre Fuller and completed on July 31, 2002. That study was entitled, "Twenty-Fourth Judicial District Court for the Parish of Jefferson Study - How Can the Court Serve the Public Through the Use of Commissioners?" (hereinafter Harges and Fuller First Efficiency Study).

**C. How the Study Was Conducted**

1. I 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. I 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. I interviewed all domestic hearing officers 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 commissioners;
4. I observed each commissioner and domestic hearing officer in practice to see how their "real world" tasks and responsibilities comport with the duties reported to the Court;
5. I interviewed twenty (25) lawyers who practice frequently before the commissioners and domestic hearing officers in the 24th JDC to obtain their views on how the Court can most efficiently use the commissioners and domestic hearing officers to serve the public; and
6. I used the 24th JDC JeffNet, the online records database of the records filed in the 24th JDC, to

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survey a sample of 1013 cases that were heard by the domestic hearing officers to determine the percentage of cases that reached the district judges.

**D. Length of Time for Study**

The study began in April, 2005 and ended in July, 2006. The study was discontinued for five months as a result of Hurricane Katrina (from September 2005 to January 2006). Thus, the study took twelve months to complete.

**II. THE OFFICE OF COMMISSIONER**

Presently, there are three offices of commissioner for the Twenty-Fourth Judicial District Court. The language of LRS 13:717 states:

*A. There are hereby created three offices of commissioner for the Twenty-Fourth Judicial District Court.*

*B. The commissioners shall be selected by a majority of the judges of the Twenty-Fourth Judicial District and may be removed from office by a majority of those judges.*

*C. One of the commissioners shall have jurisdiction over civil matters involving domestic relations and family law only, one commissioner shall have jurisdiction over criminal matters only, and one commissioner shall have jurisdiction over domestic relations, family law, and criminal matters.*

The commissioner who has jurisdiction over civil matters involving domestic relations and family law only is Commissioner Ruben J. Bailey. Commissioner Carol Kiff has jurisdiction over criminal matters only, and Commissioner Patty Joyce has jurisdiction over domestic relations, family law, and criminal matters.

**A. Research Performed:** In April and May of 2005, I met with Criminal Commissioners Patty Joyce and Carol Kiff and with Justice of the Peace Vernon Wilty.<sup>2</sup> I have also observed each of them perform their duties on one or more occasions. I also reviewed the Harges and Fuller First Efficiency Study that was performed for the Court dated July 31, 2002, as well as reviewed the 2003, 2004, and 2005 Criminal Commissioners Reports. Further, I interviewed and observed Commissioner Harry Cantrell, one of the five Criminal Commissioners/Magistrates for the Criminal

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<sup>2</sup>Justice of the Peace Vernon Wilty generally serves as committing magistrate for the 24th JDC. He conducts first appearances in the Jefferson Parish Correctional Center for those persons 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.

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District Court for the Parish of Orleans. I also met with Judges Robert Murphy and Frederica Wicker to gather additional information about the needs of the Court.

**B. Recommendations for Criminal Commissioners:** After performing the tasks mentioned above, I made the following interim recommendations to the Court in April 2005:

1. Both the criminal and the domestic commissioners should have a schedule for "duty weeks". The criminal commissioners currently alternate weeks of duty. During duty week, the criminal commissioner is physically present at the court house/jail from 8 a.m. to 4 p.m. Currently the domestic commissioners do not have a duty schedule.

2. The following recommendations are made relative to the criminal commissioners' duty week:

- A. There should be a rotating weekly schedule for the criminal commissioners. One commissioner is the "duty commissioner" and the other is "off duty". Essentially the criminal commissioners will work one week on / one week off.
- B. During the "duty week", the duty commissioner is on duty 7 days/24 hours. The criminal commissioner will be present on the weekdays at court/jail and is on call nights, weekends, and holidays. The duty commissioner will handle both the jail docket and the court docket. This change will eliminate the night, weekend, and holiday duty for the district judges.
- C. On the weekends/holidays, the duty commissioner will go into the jail to issue domestic stay away orders and handle other jail matters. The duty commissioner will also handle the probable cause matters, bonds, and warrants from his or her home.
- D. On week nights, the duty commissioner will be on-call for warrants. Again, the district judges will no longer have weeknight duty.
- E. The criminal commissioners will co-ordinate with each other to cover for each other's vacation and other off-time. It is anticipated that when the recommended schedule is implemented, the need for further back-up would be remote. In that unlikely situation, the duty judge would handle the duties of the duty commissioner.
- F. The criminal commissioners will need laptop computers with access to Armms and CDims. The criminal commissioners already have facsimile machines at their homes.

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**C. Recommendations for Civil Commissioners:**

1. The current system of one full-time and one dual commissioner should remain. The criminal/domestic commissioner's domestic duties should be reduced as outlined below. According to Commissioner Patty Joyce, the job of the domestic commissioner has changed substantially with the implementation of the pilot program (for domestic issues). Most of the non-abuse rules that the domestic commissioner previously heard are now being handled by the domestic hearing officers.
2. The domestic commissioners should adopt the "duty week" concept so that during regular business hours, there is always one domestic commissioner on site at the courthouse. The duty weeks for the criminal/domestic commissioner should be the same weeks as her criminal duty weeks.
3. The criminal/domestic commissioner will be on duty for domestic cases the same week that she is on duty for criminal cases.
4. The criminal/domestic commissioner's domestic duties will be reduced from its current work load. The domestic duties will include being available to sign hearing officer stipulations and recommendations, emergency orders and temporary restraining orders (TROs). The domestic docket of the criminal/domestic commissioner will be greatly reduced or even eliminated. The criminal/domestic commissioner would also be back-up for the domestic commissioner when that commissioner is unavailable.

It is my understanding that the recommendations above for the criminal and domestic commissioners were implemented in 2005 prior to Hurricane Katrina.<sup>3</sup> At the time that these recommendations were made in April 2005 the two permanent commissioners, Commissioners Patty Joyce and Carol Kiff agreed completely with these recommendations. Domestic Commissioner Ruben J. Bailey had not yet been hired by the Court and Domestic Commissioner Pro Tempore Michelle Bennet was serving as the domestic commissioner.

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<sup>3</sup>Hurricane Katrina struck the New Orleans metropolitan area on August 29, 2005 and shut down the court systems in the New Orleans metropolitan area for several weeks.

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**III. THE OFFICE OF DOMESTIC HEARING OFFICER**

**A. Domestic Hearing Officers Around the State of Louisiana**

Domestic hearing officers in domestic relations cases in Louisiana have been authorized by title 46, section 236.5 of the Louisiana Revised Statutes since 1986 (hereafter title 46, section 236.5).<sup>4</sup> These quasi-judicial officers were initially part of an expedited process for the establishment of child support obligations. The State of Louisiana established an expedited process for the establishment of support obligations in order to be eligible to receive federal Aid to Families with Dependent Children (AFDC) funds.<sup>5</sup> This expedited process was created through title 46, section 236.5, requiring judges of the appropriate court for the establishment and enforcement of support<sup>6</sup> to appoint one or more domestic hearing officers to hear support and support-related matters.<sup>7</sup> The

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<sup>4</sup>LA. REV. STAT. ANN. § 46:236.5 (1986) was added by 1986 La. Acts No. 517.

<sup>5</sup>“Title IV-D of the Social Security Act, 42 U.S.C. §§ 651-669b, 602(a)(2) and 652 (a)(3) (2000)), provides that in order for a state to be eligible to receive federal Aid to Families with Dependent Children funds, the state must ‘certify that it will operate a child support enforcement program that conforms with the numerous requirements set forth [therein]...and will do so pursuant to a detailed plan that has been approved by the Secretary of Health and Human Services.’” Sara J. Klein, *Protecting the Rights of Foster Children: Suing Under § 1983 To Enforce Federal Child Welfare Law*, 26 CARDOZO L. REV. 2611, 2639 n. 161 (2005). (citing 42 U.S.C. §§ 651-669b, 602(a)(2) and 652 (a)(3) (2000)). Title IV-D sets out the rules that states must adhere to in order to receive the funding. *Id.*

<sup>6</sup>The legislation also provided for the establishment of paternity and the domestic hearing officers heard these matters. LA. REV. STAT. ANN. § 46:236.5 (1986).

<sup>7</sup>La. Rev. Stat. 46:236.5 (1986). La. R.S. 46:236.1 et seq, were added by the legislature in 1975 in a cooperative effort with the federal government, following its amendment of the Social Security Act by adding Title IV-D, codified as 42 U.S.C. §§ 651-669b, to facilitate the enforcement of child support laws and obligations. Title IV-D requires each state to adopt a plan which must be in effect in all political subdivisions of the state. 42 U.S.C. § 654(1) (2006). To be in compliance, the state was required to establish a single Title IV-D agency which administered the plan uniformly throughout the state or supervised the administration of the plan by its political subdivisions. 45 C.F.R. § 305.21(a) (1994) (Now codified as 45 C.F.R. §§ 302.10, 302.12 (2006).) Under the plan, a state may enter into written cooperative arrangements with local courts and enforcement officials to assist the state IV-D agency in carrying out the child

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creation of this scheme as required by Title IV-D of the Social Security Act was part of the certification by the state of Louisiana to the Secretary of Health and Human Services that it will operate a child support enforcement program that conforms with the numerous requirements of the Social Security Act.

The domestic hearing officers under title 46, section 236.5 must be either full-time or part-time employees of the court and are required to be attorneys in good standing with any state bar association at least five years and had prior experience in child support cases.<sup>8</sup> In addition to hearing child support matters, the domestic hearing officer could also hear issues of spousal support and paternity cases in which an action was brought by the state on behalf and in the interest of any mother who is the recipient of state aid to families with dependent children or who is otherwise eligible under state law for such services.<sup>9</sup> In carrying out his duties, the domestic hearing officer acted as a finder of fact and made recommendations to the court on support and support-related matters and on state initiated paternity matters.<sup>10</sup>

To assist the parties to resolve a child support dispute, the domestic hearing officer, who is well

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support enforcement program. 42 U.S.C. § 654(7) (2006). The Louisiana Department of Social Services is the centralized agency for support enforcement. LA. REV. STAT. § 46:236.5. Section 46:236.5 authorizes the collection of a fee for support enforcement payable by the obligor "of not more than five percent of all existing and future support obligations to fund the administrative costs of a system for expedited process." LA. REV. STAT. § 46:236.11 "authorizes a cooperative agreement between the state agency and the courts to collect the support as well as the administrative costs for the expedited processes of support enforcement through a centralized collection process and to disburse the funds collected." State Dep't of Social Servs. *ex rel.* I. v. C.W., 01-1213 (La. App. 5 Cir. 3/26/02); 815 So. 2d 241, 243.

<sup>8</sup>LA. REV. STAT. ANN. § 46:236.5(C)(2) (1986).

<sup>9</sup>LA. REV. STAT. ANN. § 46:236.5(C)(3) (1986).

<sup>10</sup>*Id.* See also Lisa Rogers Trammell, *A Lawyer's Guide to Expedited Child Support Enforcement*, 44 LA. B.J., June 1996, at 20, 21 (stating that the hearing officer's role is to "hear support and paternity cases in an expeditious fashion, make detailed findings of fact and recommendations to the district court for judgment, and generally speed the process and take workload from the judges"). If the parties do not seek a rehearing within a certain time period, the officer's recommendations become final. *Id.*

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versed in the use of statutory child support guidelines,<sup>11</sup> actually sits down with the disputants at a conference table or other informal setting, armed with the child support guidelines and the parties' financial information, and computes the child support for the parties. This process usually results in an agreement between the parties on the appropriate amount of child support. If the parties cannot agree on the amount of child support, the domestic hearing officer then makes a recommendation to the court on the appropriate amount of the support obligation.<sup>12</sup> Thereafter any party within the time and manner established by local court rule, could file an exception to the findings of fact or law of the domestic hearing officer.<sup>13</sup> Although domestic hearing officers were initially allowed statutorily to hear paternity issues in cases where an action was brought by the State of Louisiana in cases involving mothers eligible for state aid and services, it appears that most domestic hearing officers were utilized to hear child support matters.<sup>14</sup>

It is important to note that domestic hearing officers who make recommendations on the support and paternity issues do not actually hold evidentiary hearings or hear testimony. There are no court reporters present at the hearing officer conferences and no witnesses are sworn. Thus the term "domestic hearing officer" can actually be misunderstood as indicating that domestic hearing officers who are processing domestic issues are actually holding evidentiary hearings. However, this is not the case.

In 2003, the statutory responsibilities of domestic hearing officers in domestic relations cases were expanded. In addition to hearing paternity cases brought by the State of Louisiana, support, and support-related matters, the 2003 amendment to title 46, section 236.5 allowed domestic hearing officers to hear any "domestic and family related matters."<sup>15</sup> The range of issues that domestic

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<sup>11</sup>*See generally* LA. REV. STAT. ANN. §§ 9:315-:315.47 (2006) (statutory guidelines used by domestic hearing officers to calculate child support).

<sup>12</sup>LA. REV. STAT. ANN. § 46:236.5(C)(3)(a) (2006).

<sup>13</sup>LA. REV. STAT. ANN. § 46:236.5(C)(6) (2006).

<sup>14</sup>*See generally* Trammell, *supra* note 10 (describing the responsibilities of a support enforcement domestic hearing officer in Louisiana).

<sup>15</sup>LA. REV. STAT. ANN. § 46:236.5(C)(1) (2006). The statute was amended to state that "Domestic and family matters shall include divorce and all issues ancillary to a divorce proceeding; all child-related issues such as paternity, filiation, custody, visitation, and support in non-marital cases; all protective orders filed in accordance with R.S. 46:2131 et seq., R.S. 46:2151 et seq., and the Children's Code and all injunctions filed in accordance with R.S. 9:361,

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hearing officers now hear include divorce and all issues ancillary to a divorce proceeding, all child-related issues such as paternity, filiation, custody, visitation, and support in non-marital cases; all protective orders and injunctions filed in domestic or family violence cases or that are brought under the Children’s Code.<sup>16</sup> The 24th Judicial District (Jefferson Parish) was one district that expanded the duties and responsibilities of its domestic hearing officers as a result of the 2003 change to title 46, section 236.5.<sup>17</sup>

Although the duties of domestic hearing officers expanded statutorily in 2003, this change simply reflected what domestic hearing officers in a few judicial district courts were already doing. For example, since 1994, the Fifteenth Judicial District Court (15th JDC) has allowed domestic hearing officers to hold Hearing Officer Conferences (HOC) in domestic relations cases.<sup>18</sup> During the HOC in the 15th JDC, the domestic hearing officer meets with the lawyers and clients in one-hour sessions in an attempt to explore resolution of all the issues that might be involved in a divorce proceeding, to generate settlement documents, and to secure approval and signatures by the parties and their attorneys prior to their departure from the HOC.<sup>19</sup> In the Sixteenth Judicial District Court (16th JDC), domestic hearing officers in domestic relations cases have been working with disputants since 2001 in one-hour to two-hour HOCS in an attempt to resolve disputed issues.<sup>20</sup> HOCS in the 16th

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371, and 372 and Code of Civil Procedure Articles 3601 et. seq., which involve person abuse terrorizing, stalking, or harassment; and enforcement of orders in any of these matters, including contempt of court.”

<sup>16</sup>*Id.*

<sup>17</sup>The Twenty-Fourth Judicial District Court Rules for the Domestic Early Intervention Program that were adopted and effective on May 25, 2005 reflected this change. LA. R. 24TH DIST. CT RULES 22-39 (2005). However, domestic commissioners, not domestic hearing officers, in the 24th JDC issue protective orders and injunctions filed in domestic or family violence cases or that are brought under the Children’s Code.

<sup>18</sup>Letter from Paul A. Landry, Domestic Hearing Officer for Sixteenth Judicial District Court, to Bobby Harges, Professor, Loyola University New Orleans School of Law (March 27, 2002) (explaining the HOC in the 15th and 16th Judicial District Courts).

<sup>19</sup>*Id.* See LA. R. 15TH DIST. CT. RULES 23, 35, 36.5, 37.2, and 38 (2005) (outlining the role of the Domestic Hearing Officer in the 15th CDC).

<sup>20</sup>Interview with Paul A. Landry, Domestic Hearing Officer for the Sixteenth Judicial District Court (Jan. 27, 2003).

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JDC are currently being scheduled within twenty-one (21) days following the rendition of the order scheduling a court hearing on the issues which should be considered in a HOC.<sup>21</sup> The HOCS, which are mandatory, 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 HOC, the domestic 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 domestic hearing officer during the conference that is sent directly to the district judge for his or her signature.<sup>22</sup> Additionally, many of the matters that are not resolved during the HOC, 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 HOCS.<sup>23</sup>

Again, it is important to note that domestic hearing officers who now have expanded duties as a result of the 2003 amendment to title 46, section 236.5 are also not holding evidentiary hearings or hearing testimony. The sessions are facilitative type sessions with the domestic hearing officer conducting something akin to mediation and rendering written recommendations at the end of the conferences if the parties cannot come to an agreement on the issues.<sup>24</sup>

While the procedures may differ from district to district, domestic hearing officers, who are lawyers with many years of experience in domestic relations cases, are being used to process a large number of these cases. Every effort is made in the HOC to reduce all agreements reached between the parties to a consent judgment prepared contemporaneously by the domestic hearing officer at the HOC while the parties and their attorneys are present before the domestic hearing officer.<sup>25</sup> This is

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<sup>21</sup>See LA. R. 16TH DIST. CT. RULE 27.1 (2005) (establishing the schedule for pre-trial status conferences in the 16th JDC).

<sup>22</sup>In those judicial districts where domestic commissioners are used, the *Joint Stipulation and Order* may also be signed by the domestic commissioner.

<sup>23</sup>Interview with Paul A. Landry, Domestic Hearing Officer for the Sixteenth Judicial District Court (Jan. 27, 2003). Additionally, as part of the Harges and Fuller First Efficiency Study, the author observed several HOCs in the Sixteenth Judicial District Court on December 11, 2002.

<sup>24</sup>The author has observed domestic hearing officer conferences in the 16th JDC and 24th JDC and talked to several domestic hearing officers in other districts to confirm this fact.

<sup>25</sup>See, e.g., LA. R. 15TH DIST. CT. RULE 35(C)(2) (explaining the procedure in the event the parties agree to the hearing officer's recommendations); LA. R. 16TH DIST. CT. RULE 28

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designed to prevent a party's regret or remorse and the collapse of settlement later in the day, or the next day, or before the final settlement documentation has been prepared.<sup>26</sup> The domestic hearing officer will then prepare a consent judgment for the parties during the HOC.<sup>27</sup> The consent judgment then becomes a final order after signature of the district judge or court commissioner.<sup>28</sup> If all issues are not resolved during the HOC, the domestic hearing officer generates a *Hearing Officer Conference Report* which will summarize the HOC and make specific recommendations to the district judge regarding the unresolved issues. If any party objects to any recommendation, the party must file a written objection to the domestic hearing officer recommendation within three (3) days of the HOC.<sup>29</sup> If a written objection is timely filed, then the recommendation becomes a temporary order of the court pending the final disposition of the claims by the district court. The district judge shall then hold a contradictory hearing on the matter, while having the discretion to accept, reject, or modify in whole or in part the findings and recommendations of the domestic hearing officer.<sup>30</sup>

## **B. Domestic Hearing Officers in the 24th Judicial District Court**

In the 24th JDC, the position of Domestic Hearing Officer was established pursuant to La. R.S.

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(same); LA. R. 24TH DIST. CT. RULE 24.1(B)(8) (same).

<sup>26</sup>Letter from Paul A. Landry, Domestic Hearing Officer for Sixteenth Judicial District Court, to Bobby Harges, Professor, Loyola University New Orleans School of Law (March 27, 2002) (explaining the HOC in the Fifteenth and Sixteenth Judicial District Courts).

<sup>27</sup>*See, e.g.*, LA. R. 15TH DIST. CT. RULE 35(C)(2); LA. R. 16TH DIST. CT. RULE 28; LA. R. 24TH DIST. CT. RULE 24.1(B)(8).

<sup>28</sup>*See, e.g.*, LA. R. 15TH DIST. CT. RULE 35(C)(2); LA. R. 16TH DIST. CT. RULE 28; LA. R. 24TH DIST. CT. RULE 24.1(B)(8).

<sup>29</sup>*See, e.g.*, LA. R. 15TH DIST. CT. RULE 35(C)(3) (stating the procedure in the event the parties do not agree with the hearing officer's recommendations); LA. R. 16TH DIST. CT. RULE 27.2 (same); LA. R. 24TH DIST. CT. RULE 24.1(B)(8) (same).

<sup>30</sup>*See, e.g.*, LA. R. 15TH DIST. CT. RULE 35(J); LA. R. 16TH DIST. CT. RULE 27.2 (stating the role of the District Judge when there is an objection to the hearing officer's recommendations); and LA. R. 24TH DIST. CT. RULE 24.1(B)(10) (same).

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46:236.5.<sup>31</sup> To be qualified to be a hearing officer in the 24th JDC, the person must be a full-time or part-time employee of the court and shall be a member in good standing of the Louisiana State Bar Association who has practiced law for a minimum of five (5) years in a practice in which at least fifty (50%) percent of his or her case load involved domestic cases.<sup>32</sup> Currently there are four domestic hearing officers in the 24th JDC, one assigned to handle cases from four (4) divisions of court. The hearing officer position was created to facilitate an expedited process for the handling of domestic matters including divorce and all issues ancillary to a divorce proceeding pursuant to La. R.S. 46:236.5.<sup>33</sup>

The domestic hearing officers act as finders of fact and make written recommendations to the Court concerning any domestic matters including but not limited to

*(1) all issues which are ancillary to a domestic proceeding, including but not limited to: (a) use and occupancy of movables and immovables; (b) establishment, modification and method of collection of spousal support; (c) injunctive relief, except domestic abuse issues; and (d) community property;*

*(2) all child related actions in marital and non-marital cases, except issues concerning emancipation of minor children, domestic abuse and non-emergency UCCJA<sup>34</sup>, including but not limited to: (a) establishment, modification and method of collection of child support; (b) hear all stand alone non-support matters; (c) establishment, modification and enforcement of child custody and visitation; contested and uncontested paternity issues; and*

*(3) contempt.<sup>35</sup>*

The procedures used by the domestic hearing officers are detailed in the Twenty-Fourth Judicial

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<sup>31</sup> LA. R. 24TH DIST. CT. Rule 23E.

<sup>32</sup>Id.

<sup>33</sup> LA. R. 24TH DIST. CT. Rule 23(E)(5).

<sup>34</sup>Uniform Child Custody Jurisdiction Act.

<sup>35</sup> LA. R. 24TH DIST. CT. Rule 23(E)(5). Domestic hearing officers are not allowed to hear issues concerning emancipation of minor children, domestic abuse issues and non-emergency Uniform Child Custody Jurisdiction Act (UCCJA) issues.

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District Court Rules - Domestic Early Intervention Triage Program.<sup>36</sup> Pre-trial conferences known as Hearing Officer Conferences (HOCS) are scheduled in not less than thirty (30) and not more than thirty-five (35) days of the date of filing of the initial pleading for relief.<sup>37</sup> The hearing or trial date before the court or domestic commissioner to whom the case is allotted is scheduled in not less than forty (40) and not more than fifty-five (55) days of the date of filing of the initial pleading for relief.<sup>38</sup>

The HOCS are scheduled for one and one-half (1 1/2) hours, unless a party or counsel makes a written request for a conference period of up to two hours.<sup>39</sup> Additionally, the hearing officer has the discretion to schedule additional conferences, hearings, rule dates or additional time if necessary.<sup>40</sup> The scheduling of HOCS throughout the day is in sharp contrast to the previous system with a general docket call at a specific time such as 9:00 a.m. where all lawyers and their clients appeared at the same scheduled time and waited for minutes or hours until the district judge or commissioner heard the case. During the HOCS, the domestic 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. Only five percent (5%) of the matters scheduled for HOCS are actually being heard by the district judges.<sup>41</sup>

Every effort is made in the HOCS to reduce all agreements reached between the parties to a written agreement entitled *Stipulations and/or Recommendations of Hearing Officer*. This form, which also summarizes the HOC and notes the hearing officer's specific recommendations regarding the unresolved issues, is prepared by the domestic hearing officer at the HOC while the parties and their attorneys are present before the domestic hearing officer. The domestic hearing officer signs the

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<sup>36</sup>LA. R. 24TH DIST. CT. RULES 22-25 (effective May 25, 2005).

<sup>37</sup> LA. R. 24TH DIST. CT. Rule 24(A)(3)(a).

<sup>38</sup> LA. R. 24TH DIST. CT. Rule 24(A)(3)(b).

<sup>39</sup> LA. R. 24TH DIST. CT. Rule 24.1(B)(2).

<sup>40</sup> LA. R. 24TH DIST. CT. Rule 24.1(B)(2-3).

<sup>41</sup>An analysis of 1,013 cases scheduled for HOCs revealed that only about 4.6% of the cases were actually decided by the trial judges. Thus about 95.4% of the cases are resolved either before, during, or after the HOCS.

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*Stipulations and/or Recommendations of Hearing Officer* form and takes it to the domestic commissioner for his or her signature. The domestic commissioner's signature on the documents becomes a *Judgment or Interim Judgment* of the court which implements the hearing officer's recommendations pending the filing of an objection and hearing before the district court. A copy of all written stipulations, recommendations, orders, rulings, or judgments resulting from the HOC is provided to the parties and their counsel at the time of the HOC. Any party who disagrees with a recommendation, order, ruling or judgment resulting from the HOC is allowed to file a written objection within three (3) days of receipt of the recommendation, order, ruling or judgment.

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

**C. Effectiveness of Hearing Officer Conferences in the 24th Judicial District Court**

I analyzed a sample of 1,013 cases scheduled for Hearing Officer Conferences (HOCS) to determine the percentage of cases that were actually heard by trial judges after the cases were scheduled for HOCS. This analysis revealed that only 4.6% of the cases were actually decided by the trial judges. Thus 95.4% of the cases are resolved either before, during, or after the HOCS. Of that 95.4% of cases, 41.66% of the cases resulted in consent judgments at the HOC, 24.09% of the cases resulted in recommendations by the domestic hearing officers, and 29.61% of the cases are either dismissed without a recommendation by the hearing officer or consent judgment or are still in the court system with no pending issues before the court. The HOCS in the 24th JDC effectively resolve over ninety-five percent (95%) of domestic issues that are presented to the domestic hearing officers.

A similar analysis of HOCS in the Sixteenth Judicial District in January 2002 revealed that ninety percent (90%) of domestic relations cases scheduled for HOCS never reach the trial judges.<sup>42</sup> Thus it appears that HOCS are very effective in disposing of the vast majority of the domestic issues that are filed in the 24th JDC.

**D. Results of Interviews With Domestic Lawyers Who Practice Frequently in the 24th JDC**

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<sup>42</sup>Telephone conversation with Judge Edward Leonard, Jr. of 16th JDC on July 3, 2002 and St. Mary Parish Hearing Officer Program Consolidated Case Review Statistical Tracking from January 2002.

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In order to obtain the impressions of lawyers who participate in the HOCS, I interviewed twenty-five (25) domestic lawyers who practice frequently before the domestic hearing officers in the 24th JDC. These interviews were conducted either in the courthouse on the days HOCS were scheduled or via the telephone. I informed all lawyers of my goals and asked them to give me their honest impressions of the new system in the 24th JDC that used domestic hearing officers to process cases. Additionally, in order to promote candor and honesty, I informed the lawyers that their names would be kept confidential.

**i) General Impressions of Most Lawyers Interviewed**

Most of the lawyers interviewed spoke positively about the domestic hearing officers and the HOCS. My general impression is that the overwhelming majority of the lawyers I spoke to think that the new system is a substantial improvement over the previous system. General comments received were that

1. The system is great.
2. It is quick and gives clients their day in court. People can talk.
3. It is better than the old system which was piecemeal where parties sat in court all day with many continuances. Much time and money were spent back then.
4. Now everything is heard in one hearing and the domestic hearing officers are timely, holding the hearings on time. If parties dislike the recommendations, they can object.
5. The domestic hearing officers are willing to spend extra time with the parties, if necessary.
6. Now clients are part of the process. This is good.
7. The domestic hearing officers listen to people. They treat people like human beings.
8. The required document exchange before the HOCS is good. This settles many cases.
9. There is consistency now that the case stays with the same hearing officer and judge.
10. The system is quicker. People are getting child support more quickly. Parents are seeing kids quicker. The order from the hearing officer conference makes people comply. The lawyer can say to the client, "You have an order, you must comply."

**ii) Critical Comments from Lawyers and Suggested Improvements on How the Court Can Improve the Efficiency of Commissioners and Domestic Hearing Officers**

Notwithstanding the favorable impressions of the HOCS, many of the lawyers made suggestions on how the system could be improved. While most lawyers focused their comments on the positive attributes of the system, some lawyers concentrated on what they perceived to be the negative

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aspects of the system.

1. For example, one lawyer talked to me for almost an hour to state his impressions of the system. He commented that the entire system that uses commissioners and domestic hearing officers in the 24th JDC is unconstitutional because the district judges do not have the final decision-making authority in the cases. The problem, according to this lawyer is that judges in the 24th JDC simply will not hear domestic cases. The judges send everything to the commissioners and domestic hearing officers and feel that they have no responsibility to hear domestic cases. The settlements that result from the HOCS are coerced. Parties enter into the settlements because they know they will never have a chance to argue the case before the district judges. The lawyer also commented that the Court has never followed La.Rev. Stat 13:717 which requires the Clerk of Court to notify the parties of their right to consent to jurisdiction by the domestic commissioners. Under La. Rev. Stat. 13:717, in order to have a case decided by a domestic commissioner, the parties must consent in writing to the jurisdiction of the domestic commissioner. According to this attorney, party consent is never obtained. Another problem with the use of domestic hearing officers, according to this attorney, is that there is no uniformity among the domestic hearing officers. Each hearing officer has his or her own “little system.” The domestic hearing officers are known to say, “This is the way I do it.” Another concern of this attorney is that there is no record in the HOCS because no witnesses are sworn. The lawyer sees this as problematic because the recommendations of the domestic hearing officers are based on the representations of lawyers and their clients who are not under oath. Because lawyers and their clients lie and misrepresent the facts, the domestic hearing officers’ recommendations many times are erroneous. Since the domestic hearing officers’ recommendations are in effect the final judgment in many of the cases, the lawyer argues that a system exists where there are no trials and no real testimony and the real decision-maker, the trial judge, never gets to make an adjudication in the case as required by the Louisiana Constitution. The lawyer also commented that the current system in the 24th JDC allows judges to work one-half (1/2) days. This conduct, according to the attorney, is counter to the oaths taken by the district judges. When they decided to run for the particular division of court, they knew that a large percentage of the cases was domestic cases and the district judges should be willing to hear these cases.

**Suggestion:** The Court should comply with La.Rev. Stat 13:717 by requiring the Clerk of Court to notify the parties of their right to consent to jurisdiction by the domestic commissioners. Then before a case is heard by the domestic commissioner, the parties should be required to consent in writing to the jurisdiction of the domestic commissioner. Additionally, judges should provide the parties an opportunity to be heard at a trial or hearing. If the case is not resolved at a HOC, the judge should hold a prompt and timely hearing on the matter.

2. Several lawyers commented that some domestic hearing officers do not conduct the HOCS with the clients’ involvement, and that the domestic hearing officers are not bringing clients into the

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HOCS until the end of the conference to ratify the agreements reached among the lawyers and the domestic hearing officer. These lawyers commented that a major benefit of the HOCS is having the clients participate in the discussions so that they can feel as though they participated in the negotiations and are being heard.

**Suggestion:** After a brief meeting with the lawyers to clarify the issues in dispute, the domestic hearing officers should conduct the hearings with the clients present and participating. One of the real benefits of the HOC is the ability of the clients to participate in the discussions and to be heard by the hearing officer.

3. One lawyer commented that domestic hearing officers are sometimes inquiring about matters that are not in issue, that is, about issues for which the parties are not requesting relief. These additional issues sometimes result in an impasse, causing more work for lawyers and conflicts between lawyers and clients. This conflict causes lawyers to increase their fees with clients after the HOCS because of the additional work or to perform additional work at no extra charge to the clients. For example, if child support is not an issue, the hearing officer should not inquire about child support. Inquiring about child support during a community issue partition will cause tension between lawyers and clients.

**Suggestion:** The domestic hearing officers should only consider the issues that are in dispute. They should not inquire into matters that are not raised by the parties.

4. The front page of the seven page *Hearing Officer Conference Affidavit*, which along with the one page *Monthly Income and Expense Sheet*, has to be completed by the parties at least five days before the HOC states that “All Questions Must Be Answered.” Some lawyers commented that parties should not have to complete all eight (8) pages of the documents particularly when some of the issues are not in dispute. Because the client has to answer all eight (8) pages, whether the issues are in dispute or not, this creates unnecessary work for the attorney and client.

**Suggestion:** The language should be modified to indicate that only the applicable portions of the documents need to be completed. Additionally, lawyers should inform their clients of this fact.

5. A few lawyers commented that the thirteen (13) page *Stipulations and/or Recommendations of Hearing Officer* form is too thick and too costly. When the form is completed by the hearing officer and signed by the domestic commissioner, one of the parties or a lawyer takes the document to the Clerk of Court’s office to be filed and for copies to be made. Because the Clerk’s Office began charging attorneys and litigants for copies on February 15, 2006 (\$1.00 per page for a conformed copy and \$2.00 per page for a certified copy), attorneys complained that these costs are unnecessary costs to their clients. Their complaint is that for over a year, the Clerk’s Office made the copies at

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no charge to attorney and litigants. Some lawyers also commented that they should not have to pay for the *Stipulations and/or Recommendations of Hearing Officer* form at all because this is a program that is required by the Court that is mandatory for the clients, and that it is unfair to the clients to force them to pay for this form.

**Suggestion:** The Court needs to determine if it will provide copies of the *Stipulations and/or Recommendations of Hearing Officer* form to the parties at no cost. If the Court does not provide free copies of the form to the parties, one solution to reduce the costs to parties is to provide computers and printers for the domestic hearing officers so that they can complete the *Stipulations and/or Recommendations of Hearing Officer* form on the computer and print out only the pages needed. Alternatively, the domestic hearing officers can reduce the costs to the party by omitting the pages of the thirteen (13) page pre-printed form that are blank, note on page 12 of the form which pages are omitted, thereby providing the parties with only the inscribed pages.

6. Some lawyers commented that the domestic hearing officers should require lawyers and their clients to come to the HOCS prepared. According to several lawyers, many of their opponents attend the HOCS without completing the *Hearing Officer Conference Affidavit and the Monthly Income and Expense Sheet* as they are ordered to do in the Hearing Officer Conference Order (HOC Order) that is provided to the parties prior to the HOC. Although the HOC Order states that the failure to comply with the Order may result in an order adverse to the party, the domestic hearing officers are holding the HOCS without imposing any adverse consequences on the noncompliant party. This results in an unproductive or inefficient administration of the cases by the domestic hearing officers. Some lawyers suggested that there should be negative consequences to the parties who do not comply with the HOC order. Several lawyers commented that the required completion of the *Hearing Officer Conference Affidavit* and the *Monthly Income and Expense Sheet* and the required exchange of these documents with opposing counsel really expedite the HOCS and promote settlement.

**Suggestion:** Preparation of lawyers and their clients is essential if the HOCS are to continue to be successful in the 24th JDC. The Court should provide guidance to the domestic hearing officers on the appropriate steps to be taken when parties attend the HOC without complying with the HOC Order.

7. A few lawyers stated that the three (3) day period of time to object to the recommendation of the domestic hearing officer is too short in many cases. In complicated cases, lawyers cannot prepare the objection sufficiently. To object within the three (3) day period, lawyers commented that they are hastily preparing the objection pleadings.

**Suggestion:** The domestic hearing officers have prepared a form entitled “*Objection to Hearing*

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*Officer's Recommendation(s) and/or Domestic Commissioner's Order and Order to Set Hearing Before the District Court.*" A party wishing to object can simply fill in the appropriate blanks on the form and file it with the court without much effort. However, this fill-in-the-blank motion does not assist the parties with Uniform District Court Rule 9.9 which requires parties filing an exception or motion to concurrently furnish the trial judge and serve on all other parties a supporting memorandum that cites both the relevant facts and applicable law. This memorandum must be served on all other parties so that it is received by the other parties at least fifteen (15) calendar days before the hearing, unless the court sets a shorter time.

It should also be noted that when commissioners were used in the Civil District Court for the Parish of Orleans (CDC), the parties had ten (10) days from the time that the commissioners' findings were filed with the clerk of court to file exceptions to the commissioners' findings. When commissioners were used in CDC from 1934 to 1991, commissioners were "limited to gathering facts and making recommendations to a trial judge who is vested with authority to decide the litigant's case."<sup>43</sup>

The Court needs to consider whether it wishes to extend the objection period beyond three (3) days from the time of the party's receipt of the recommendation, order, ruling or judgment resulting from the HOC.

8. Several lawyers commented that one district judge in the 24th JDC will not hold trials or hearings in domestic cases at all. This judge, who uses a domestic hearing officer for support issues only, will be referred to as Judge ABC. Among the comments made about Judge ABC were: Judge ABC is actually abusing litigants by not hearing domestic cases at all. After a HOC on the support issues that results in an impasse, Judge ABC will not hold a hearing in the matter - s/he will not give the parties their day in court. S/he will set a trial date, continue it, set it again, continue it, schedule it again, and continue it again. After each continuance, parties then have to file a motion to reset for trial. This costs money. When the parties go back to Judge ABC for the hearing or trial, s/he is either not present in the courthouse at the time and date the case is scheduled for hearing, or Judge ABC is presiding over a trial or hearing in another matter, and s/he may comment to the lawyers, "You have not settled this case yet. Go back to the hearing officer. I am not hearing this case. I like to hear real cases (referring to criminal cases)." Judge ABC simply will not hear any domestic cases, whether or not the issues are heard by a hearing officer. Judge ABC tells lawyers that she does not like hearing domestic cases. After repeated continuances and numerous trips to the hearing officer

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<sup>43</sup>See *Crespo v. Kohlman*, 573 So. 2d 1272, 1273 (La. App. 4th Cir. 1991), *Harleaux v. Wood*, 542 So. 2d 747, 750 (La. App. 4 Cir. 1989), *Whitney Nat'l Bank of New Orleans v. Derbes*, 436 So. 2d 1185, 1192 (La. App. 4th Cir. 1983) and *Quarles Drilling Corp. v. General Acc. Ins. Co.*, 520 So. 2d 475, 476 (La. App. 4 Cir. 1988).

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and to Judge ABC, parties are simply worn out and reluctantly settle the cases. Sometimes this may be six to eight months after an initial request for relief. The parties realize that their only options are to take the domestic hearing officer's recommendation or to settle the case. A trial or hearing with testimony in this division of court in a domestic matter is not an option.

One lawyer who spoke to me extensively about Judge ABC commented that Judge ABC actually threatened him/her with contempt of court and to send him/her to jail after his/her repeated requests for a trial or hearing in a domestic case. After Judge ABC threatened to put the lawyer in jail, the lawyer, who felt he/she was only advocating his/her client's position, decided to remain quiet. Then, according to the lawyer, Judge ABC issued a judgment in the case, based only on the domestic hearing officer's recommendation, without any witnesses being sworn or without any testimony being taken. The actions of Judge ABC, according to the lawyer, are very abusive and other lawyers who practice in the 24th JDC know that Judge ABC will not hold hearings or trials in domestic cases.

**Suggestion:** Judges should provide the parties an opportunity to be heard at a trial or hearing. If the case is not resolved at a HOC, the judge should hold a prompt and timely evidentiary hearing on the matter. The holding of a pre-trial conference does not satisfy due process requirements.

9. According to some lawyers, Judge ABC also makes rulings on issues without a record. Judge ABC simply follows the hearing officer's recommendations or makes judicial decisions based on lawyers' arguments in pre-trial conferences.

**Suggestion:** While it may be appropriate for a district judge to hold settlement conferences before a trial or hearing and to even indicate to the parties which way he or she is leaning, it is inappropriate to rule in a case without swearing witnesses and hearing testimony. Judges should give the litigants their day in court. The holding of a pre-trial conference does not satisfy due process requirements.

10. Several lawyers felt that parties should not be forced to go back to the hearing officer after a continuance with the trial judge or after a custody evaluation. They felt that if a party has attended a HOC once, the party should not have to return to a HOC. Their contention is that there should not be a second trip to the domestic hearing officer on the same issue. The lawyers argued that some clients want their day in court and should get it. Some clients want to win or lose. Many clients see a second HOC as a waste of time. For example, if the parties still disagree after a custody evaluation is submitted to the court, lawyers felt that parties should not be required to go back to the hearing officer. They should have the option of going directly to trial.

**Suggestion:** After this issue was presented to the domestic hearing officers, they reported to me that

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a large number of cases settle in the HOC after custody evaluations are completed. The Court should consider the propriety of parties being required to attend a second HOC after custody evaluations are completed or after continuances with the district judges.

11. Many of the HOCS are not heard at the initial settings and are continued until another date. As a result of the diaspora caused by Hurricane Katrina, many service of process problems have arisen. Because the HOCS are scheduled within thirty (30) to thirty-five (35) days of the date of filing of the initial pleading for relief, it is difficult to obtain adequate service of process on all parties. Thus many hearings are continued. One hearing officer commented that as many as fifty percent (50%) of the HOCS are continued and rescheduled. When this happens, both the HOC date and the hearing or trial date before the court or domestic commissioner to whom the case is allotted must also be rescheduled. Moreover a few lawyers commented that the thirty (30) day period of time is too soon to have a HOC after a petition for divorce is filed. This is in sharp contrast to years 2000 to 2002 before the 24th JDC began to use domestic hearing officers to conduct scheduled hearings on all issues ancillary to a divorce. The earlier Harges and Fuller First Efficiency Study that was commissioned by the Court and rendered on July 31, 2002 revealed that it took litigants over three (3) months from the initial filing of a petition for divorce to get a hearing before the Domestic Commissioner.<sup>44</sup> At that time, many lawyers complained that it took too long to get a hearing before the domestic commissioner. Now a few lawyers are complaining that the HOCS are scheduled too soon after a request for relief is filed.

**Suggestion:** It is better to give litigants an opportunity to be heard earlier than later.

12. One legal secretary I interviewed commented that the seven (7) page *Hearing Officer Conference Affidavit* and the one (1) page *Monthly Income and Expense Sheet Hearing Officer Conference Affidavit Monthly Income and Expense Sheet* should be provided to lawyers on a diskette. This will make it easier for lawyers and clients to complete the forms.

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<sup>44</sup>From 2000 to 2002, in addition to one domestic commissioner, the 24th JDC employed one full-time hearing officer and one part-time hearing officer who heard support and support related matters. The domestic hearing officers acted as finders of fact and made recommendations to the domestic commissioner or to the district court concerning the matters of establishment and modification of support, method of collection of support, and enforcement of support. Although the parties could appear before a domestic hearing officer under the previous system within thirty (30) days of the filing of the support demand if a separate order was submitted with the demand, that system provided only a piecemeal approach because the domestic hearing officers could not make recommendations on non-support issues.

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**Suggestion:** This sounds like an idea that should be implemented. The Sixteenth JDC provides litigants with a form diskette that contains all forms used in the HOCS.

**iii) Suggestions for Ensuring the Constitutionality of the Domestic Early Intervention Triage Program**

Hearing Officer Conferences (HOCS) in domestic cases in the 24th JDC have many benefits. The conferences benefit the litigants as well as the Louisiana judicial system. Perhaps one of the most important benefits of the HOCS is the speed within which litigants can now see a domestic hearing officer and have a realistic opportunity to resolve their disputes early in the litigation. Currently, in the 24th Judicial District Court, HOCS are being scheduled to be held within thirty (30) to thirty-five (35) days of the filing of a pleading in which an issue exists which is within the authority and responsibility of both the district court or the domestic commissioner and the domestic hearing officer and requiring a domestic hearing officer conference.<sup>45</sup> At the same time that the clerk of court sets the HOC in the 24th JDC, the clerk of court also schedules the hearing or trial date before the court to whom the case was allotted to be held in not less than forty or more than fifty-five days following the filing of the pleading.<sup>46</sup> The subsequent date that is scheduled on the district judge's docket allows the parties to have a quick date before the district judge in the event the case does not settle at the HOC and one or more of the parties disagrees with the recommendations of the domestic hearing officer.<sup>47</sup> Prior to the use of HOCS in the 24th JDC, litigants could appear before a support-only domestic hearing officer within thirty days of a demand for child support or interim or final spousal support.<sup>48</sup> However, it usually took over three months for litigants to get a hearing before a district judge or domestic commissioner for the other matters in a divorce to be heard by a judicial officer such as child custody, visitation, use of the family home and automobile and community property issues.<sup>49</sup>

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<sup>45</sup>LA. R. 24TH DIST. CT. RULE 24(A)(3)(a).

<sup>46</sup>LA. R. 24TH DIST. CT. RULE 24(A)(3)(b).

<sup>47</sup>In the 18th JDC, the HOC and the motion or rule date are not set by a docket clerk on the same day. If a party objects to the domestic hearing officer's recommendation.

<sup>48</sup> Harges and Fuller First Efficiency Study, page 9.

<sup>49</sup>Harges and Fuller First Efficiency Study, page 13. In the 18th JDC under the previous system, it took three to four months from the filing of a request for relief before the parties could appear before a judge for a hearing. Currently parties are appearing before the domestic hearing officer within twenty-one days of the filing of a request for relief. Interview with Paula Hartley

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A further benefit of the HOCS in the 24th JDC is that they are much less adversarial than a trial on the merits or a motion hearing. These conferences give litigants, who are normally parents going through a divorce and who are arguing over child custody, visitation, child support or spousal support, or community property issues,<sup>50</sup> an opportunity to appear before a quasi-judicial officer of the court in order to voice their concerns, needs, and interests. Because the conferences are usually one-and-one-half (1 ½) hours long, the HOCS allow the litigants sufficient time to state their views, all while not being subjected to direct or cross-examination by lawyers or the judge. The HOCS are informal mediation-type sessions that are conducted in private with the domestic hearing officer serving as the neutral third party. The parties are represented by their attorneys and are allowed to participate in the conferences in a meaningful way.<sup>51</sup> Because of the informality of the conferences and the lack of examinations by attorneys, litigants cannot help but feel as though they are given their “day in court” without the grilling that normally occurs in a courtroom environment. This environment is simply a more peaceful, more amicable method for resolving disputes between divorcing couples than is an adversarial trial or motion hearing where the attorneys usually do all of the speaking, with the clients playing a secondary role to the attorneys. In the HOCS, the litigants are allowed to speak freely without the rules of evidence being applicable. This freedom to speak is aided by the fact that HOCS are viewed as settlement conferences so that statements made by the

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Clayton, Domestic Hearing Officer, Eighteenth Judicial District Court (March 14, 2006).

<sup>50</sup>Other matters on the domestic docket include civil domestic protective orders, separation or annulment and all issues which are ancillary thereto. Domestic matters also include actions for paternity and adoption as well as post-judgment enforcement and modifications of any matter initially handled by a district judge. *See* LA. REV. STAT. ANN. § 46:236.5 (2006).

<sup>51</sup>In the 15th JDC, the HOCS may be conducted with the lawyers alone without the clients being present inside the conference room. In these instances, the attorneys conduct the negotiations with the clients participating as needed or simply to ratify the agreements reached by the attorneys. Interview with Vanessa Randle, Domestic Hearing Officer, Fifteenth Judicial District Court (March 14, 2006). In the 18th JDC, the domestic hearing officer has a general docket call where multiple cases are set for a specific time, for example, at 9:00 a.m., where all attorneys and clients in various cases appear at the designated time. Here, the domestic hearing officer hears each case in succession until all scheduled cases are heard. The negotiations may take place with the lawyers alone or with the clients participating as dictated by the domestic hearing officer. Interview with Paula Hartley Clayton, Domestic Hearing Officer, Eighteenth Judicial District Court (March 14, 2006).

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parties or legal representatives are not admissible in later trials or hearings.<sup>52</sup>

Another benefit to the use of HOCS in domestic cases in the 24th JDC is the assistance the domestic hearing officers provide to district court judges in the processing of cases. It is envisioned that most cases that appear on the domestic hearing officers' dockets will settle,<sup>53</sup> resulting in a significant amount of judicial time being freed up for the court to handle other matters on its docket. The HOCS also provide a financial benefit to litigants who have retained counsel to assist them during the process of divorce. The benefits to this class of litigants come in the form of decreased attorney time and effort, thereby resulting in less costs to the clients.

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

Notwithstanding the substantial benefits of the domestic hearing officer system, there are criticisms. Some lawyers I interviewed commented that domestic hearing officers are lesser functionaries who are not judges. As a result, parties feel that they are being heard by individuals functioning in some subordinate role. However, this criticism is without merit when one considers that a party can always object to the recommendation of a domestic hearing officer if he is unhappy with the outcome and have the case heard by a district judge at a contradictory hearing.<sup>54</sup> If the trial judge has the

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<sup>52</sup>Article 408 of the Louisiana Code of Evidence states that “evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, anything of value in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount.” LA. CODE EVID. ANN. art. 408 (2006).

<sup>53</sup>The HOCs in the 24th effectively resolve over ninety-five percent 95% of domestic issues that are heard by the domestic hearing officers.

<sup>54</sup>*See* LA. REV. STAT. ANN. § 46:236.5(C)(6) (2006) (stating: “Upon filing of the objection, the court shall schedule a contradictory hearing where the trial judge shall accept, reject, or modify in whole or in part the findings of the hearing officer. If the judge in his

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responsibility of scheduling a contradictory evidentiary hearing after a written objection by one of the parties to the domestic hearing officer's recommendation, a party is ensured of his right to have the case heard by a judge. Where a contradictory evidentiary hearing is not scheduled after the objection to the domestic hearing officer's recommendations is filed, then a party may argue that by being required to go before a domestic hearing officer who will make a written recommendation to the trial judge without taking testimony, the domestic hearing officer is exercising judicial power in violation of the Louisiana Constitution. This argument may have merit if trial judges are "rubber stamping" the domestic hearing officers recommendations or are not scheduling contradictory evidentiary hearings on the merits, but rather are giving substantial deference to the recommendations of domestic hearing officers and ruling on the domestic hearing officers' recommendations without the taking of testimony. Because the domestic hearing officers in the domestic hearing officer conferences are not taking testimony, as no witnesses are sworn, and because the hearing officer conferences resemble mediation conferences more than trials on the merits, it is important for judges in the 24th JDC to hold contradictory evidentiary hearings on the merits after a party files a written objection to the domestic hearing officer's recommendations. Otherwise, litigants may successfully challenge the constitutionality of the domestic hearing officer system by advocating that they have been denied due process of law because the trial judge ruled in their case without actually taking testimony at a contradictory hearing.

Additionally, the domestic hearing officer's recommendations should be reviewed de novo. A trial de novo means a trial anew or from the beginning.<sup>55</sup> If litigants are granted a hearing de novo after an objection has been filed to the domestic hearing officer's recommendations, then litigants are granted their right to a decision by an elected judge as is guaranteed by article V, section 22 of the Louisiana Constitution.<sup>56</sup> Where the recommendations of a non-elected court official such as a domestic hearing officer or court commissioner are not reviewed de novo by a district judge, then the judgment of the court may be reversed.<sup>57</sup>

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discretion determines that additional information is needed, he may receive evidence at the hearing or remand the proceeding to the hearing officer.")

<sup>55</sup>Pardue v. Stephens, 558 So. 2d at, 1149, 1159 (La. App. 1 Cir. 1989).

<sup>56</sup>See Duroncelet v. Doley, 530 So. 2d 653, 654-55 (La. App. 4 Cir. 1988) (reversing the decision of trial court because it did not hold a hearing de novo after a party objected to the recommendation of a non-elected civil court commissioner).

<sup>57</sup>*Id.* See also State v. O'Reilly, 00-2865, p.7 (La. 05/15/01); 785 So. 2d 768, 773-74 (citing *Bordelon*, 398 So. 2d 1103 to strike down a statute authorizing the court commissioner in the Twenty Second Judicial District Court to conduct trials, accept pleas, and impose sentences

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A few attorneys I interviewed commented that the use of domestic commissioners and domestic hearing officers in the 24th JDC is unconstitutional. The argument is that La. Rev. Stat. 13:717, the enabling statute for commissioners in the 24th JDC, is constitutionally invalid as applied because the Court has given the domestic commissioner and the domestic hearing officers authority that is not provided by the statute, and as a result, the Court is failing to comply with La. Rev. Stat. 13:717. The additional authority granted to domestic commissioners is the ability to sign interim judgments that result from recommendations of the domestic hearing officers and stipulations of the parties in the HOCS. La. Rev. Stat. 13:717 does not grant domestic commissioners this authority. Although Rule 24.1(A)(8)(a)(iii) of the Twenty-Fourth Judicial District Court Rules - Domestic Early Intervention Triage Program grants the domestic commissioner the power to sign consent judgments reached by the parties at the HOCS, La. Rev. Stat. 13:717 does not grant the domestic commissioner this power. Since a local rule of court may not modify a state statute,<sup>58</sup> it is alleged that this practice is unconstitutional. Thus, the argument continues, interim judgments of the domestic commissioners resulting from the HOCS are invalid.

Additionally, a few lawyers asserted that La. Rev. Stat. 13:717 does not authorize the Court to make domestic hearing officers subordinate to the domestic commissioner as allowed by Rule 24.1(A)(8)(a)(iii) of the Twenty-Fourth Judicial District Court Rules - Domestic Early Intervention Triage Program. Since the Court's current practice is for the domestic hearing officers to make their recommendations to the domestic commissioner, an authority not granted by La. Rev. Stat. 13:717 or by La. Rev. Stat 46:236.5, this practice, it is argued, is also invalid. These alleged irregularities can easily be remedied in one of two ways. First, the enabling statute for commissioners and domestic hearing officers, La. Rev. Stat. 13:717 and La. Rev. Stat 46:236.5, can be amended to reflect the Court's current practices. Alternatively, the *Stipulations and/or Recommendations of Hearing Officer* form can be signed by the Court's Duty Judge at the conclusion of HOCS. The stipulations and/or recommendations then become an interim judgment upon the district judge's signature. Then if no objection is filed with the clerk of court within three days of receipt of the interim judgment, it becomes a final judgment of the court and shall be signed by a district judge and appealable as a final judgment. If an objection is filed within the three day period, the parties are then objecting to the interim judgment of the trial judge, not that of the commissioner.

**IV. SUMMARY OF RECOMMENDATIONS TO MAKE THE DOMESTIC EARLY  
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in misdemeanor cases).

<sup>58</sup>Piccione v. Piccione, 01-1086 (La. App. 3 Cir. 05/22/02); 824 So. 2d 427, 430.

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**FRIENDLY TO LAWYERS AND CLIENTS**

A. The Court should comply with La.Rev. Stat 13:717 by requiring the Clerk of Court to notify the parties of their right to consent to jurisdiction by the domestic commissioners. Then, before a case is heard by the domestic commissioner, the parties should be required to consent in writing to the jurisdiction of the domestic commissioner. Additionally, judges should provide the parties an opportunity to be heard at a trial or hearing. If the case is not resolved at a HOC, the judge should hold a prompt and timely hearing on the matter.

B. Domestic hearing officers should allow the clients to participate in the HOCS. After a brief meeting with the lawyers to clarify the issues in dispute, the domestic hearing officers should conduct the hearings with the clients present and participating. One of the real benefits of the HOC is the ability of the clients to participate in the discussions and to be heard by the hearing officer.

C. The domestic hearing officers should only consider the issues that are in dispute. They should not inquire into matters that are not raised by the parties.

D. The language in the seven (7) page *Hearing Officer Conference Affidavit*, which along with the one page *Monthly Income and Expense Sheet* should be modified to indicate that only the applicable portions of the documents need to be completed. Additionally, lawyers should inform their clients of this fact.

E. The Court needs to determine if it will provide copies of the *Stipulations and/or Recommendations of Hearing Officer* form to the parties at no cost. If the Court does not provide free copies of the form to the parties, one solution to reduce the costs to parties is to provide computers and printers for the domestic hearing officers so that they can complete the *Stipulations and/or Recommendations of Hearing Officer* form on the computer and print out only the pages needed. Alternatively, the domestic hearing officers can reduce the costs to the party by omitting the pages of the thirteen (13) page pre-printed form that are blank, note on page 12 of the form which pages are omitted, thereby providing the parties with only the applicable pages.

F. Advance preparation of lawyers and their clients is essential if the HOCS are to continue to be successful in the 24th JDC. The Court should provide guidance to the domestic hearing officers on the appropriate steps to be taken when parties attend the HOC without complying with the HOC Order.

G. The Court needs to consider whether it wishes to extend the objection period beyond three days from the time of the party's receipt of the recommendation, order, ruling or judgment resulting from the HOC.

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H. Judges should provide the parties an opportunity to be heard at a trial or hearing. If the case is not resolved at a HOC, the judge should hold a prompt and timely hearing on the matter.

I. While it may be appropriate for a trial judge to hold settlement conferences before a trial or hearing and to even indicate to the parties which way he or she is leaning, it is inappropriate to rule in a case without swearing witness and hearing testimony. Judges should give the litigants their day in court.

J. The seven (7) page *Hearing Officer Conference Affidavit* and the one (1) page *Monthly Income and Expense Sheet* should be provided to lawyers and clients on a diskette or in other computerized form.

K. Judges in the 24th JDC should hold contradictory evidentiary hearings on the merits after a party files a written objection to the domestic hearing officer's recommendations. Additionally, the domestic hearing officer's recommendations should be reviewed de novo.

L. The enabling statutes for commissioners and domestic hearing officers, La. Rev. Stat. 13:717 and La. Rev. Stat 46:236.5, should be amended to reflect the Court's current practices. Alternatively, the *Stipulations and/or Recommendations of Hearing Officer* form can be signed by the Court's Duty Judge at the conclusion of HOCS. The stipulations and/or recommendations then become an interim judgment upon the district judge's signature. Then if no objection is filed with the clerk of court within three days of receipt of the interim judgment, it shall become a final judgment of the court and shall be signed by a district judge and appealable as a final judgment. If an objection is filed within the three day period, the parties are then objecting to the interim judgment of the trial judge, not that of the commissioner.

## V. CONCLUSION

Court commissioners and domestic hearing officers in the 24th JDC are being used with overwhelming success in the processing of domestic cases. These "quasi-judicial officers" are specialists in the domestic area who are giving litigants the opportunity to appear before individuals who are experienced and knowledgeable in the subject matter. Because these officials are not elected, as judges must be under the Louisiana Constitution, the 24th JDC must design its procedures with the Louisiana Constitution in mind.