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**Article**

**\*1 APPROPRIATE DISPUTE RESOLUTION INSIDE THE STATE COURTS - A CLOSER  
LOOK AT  
THE POWER, DUTIES, AND RESPONSIBILITIES OF COURT COMMISSIONERS AND  
HEARING  
OFFICERS IN DOMESTIC CASES**  
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**I. INTRODUCTION**

Courts are continually experimenting with ways to handle and process divorce and child custody cases. [\[FN1\]](#) These types of cases are highly adversarial and emotional resulting in enormous costs to the parties and significant judicial time and resources. When disputes in the typical civil case end, parties will get their judgments, and then continue on with their lives. For example, in a personal injury case, the injured litigant will either win or lose and then proceed on with her life. Also, the litigant in a construction case, after being labeled the winner or loser at a trial, will receive closure and cease contact with her opponent. On the other hand, the lifetime of a family law dispute, especially those involving child custody and visitation issues, is different than that of a typical civil case where litigants obtain closure and are able to enter the next phase of their lives. Instead, litigants in child custody cases are in contact with each other many years after the divorce is granted. [\[FN2\]](#) For instance, parties in cases with parenting issues are continually filing motions to modify custody, visitation, \*2 and child support orders, as well as, actions for contempt because of a parent's alleged non-compliance with a judge's order, and various other miscellaneous motions. This constant contact between parents is a breeding ground for renewed disputes, protracted litigation, and never-ending disagreements, and has resulted in continuous experimenting by the courts to determine the appropriate methods to process these family law cases.

The methods used to process family law cases include alternative dispute resolution procedures (ADR), [\[FN3\]](#) such as mediation and arbitration, as well as, the use of quasi-judicial officers, such as, court commissioners, divorce masters, special masters, and support hearing officers. [\[FN4\]](#) These quasi-judicial officers are increasingly being utilized as the sizes of caseloads increase, dockets become more crowded, and court backlogs and delays intensify.

This article will analyze how a state district court in Louisiana, the Twenty-Fourth Judicial District Court for the Parish of Jefferson (24th JDC), has used judicial alternatives such as court commissioners and hearing officers to promote the efficient management of domestic cases. [\[FN5\]](#) In recent years, the 24th JDC has experimented with the duties and responsibilities given to these officials. After two efficiency studies \*3 commissioned by the Court in 2001 and in 2005, [\[FN6\]](#) which resulted in the Court's restructuring of its local rules to establish its Domestic Early Intervention Triage Program, [\[FN7\]](#) the Court appears to have established a very effective and efficient program for the administration of its domestic relations cases.

Thus, this article will examine the Domestic Early Intervention Triage Program implemented by the 24th JDC. The benefits of the program will be analyzed as well as the criticisms and concerns. The article will conclude by addressing the proper roles that domestic commissioners and domestic hearing officers should play in the processing and administration of domestic relations cases in Louisiana.

## II. AN EXAMINATION OF THE USE OF COURT COMMISSIONERS IN STATE COURTS IN THE USA

Court commissioners have been used in this country since at least the Nineteenth Century. [\[FN8\]](#) Although the term "court commissioner" may have many meanings, [\[FN9\]](#) in this article the term refers to lawyers who work part-time or full-time in assisting district or trial level state court judges in the processing of cases. [\[FN10\]](#) Essentially, court commissioners are legally trained officers of the court who perform limited judicial and quasi-judicial \*4 functions under the direction of the judges of a particular judicial district. [\[FN11\]](#) The types of matters handled by court commissioners include family, [\[FN12\]](#) probate, [\[FN13\]](#) criminal, [\[FN14\]](#) and juvenile matters. [\[FN15\]](#)

Magistrate judges in federal district courts serve the same or similar functions as court commissioners. In federal district courts, magistrate judges are used in one of three ways: (1) as "team players" whose primary responsibilities are to engage in the early and ongoing control of the pretrial process by performing such tasks as conducting pretrial conferences and discovery proceedings by designation of the district court; (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. [\[FN16\]](#) Likewise, a survey of the various statutes around the country reveals that court commissioners in state district courts serve as specialists who assist in settling cases by holding judicial settlement conferences or mediating from the bench, and serve as additional judges with the authority to try certain cases with party consent.

Court commissioners are used when increasing case loads and delays become a problem for state court judges. By utilizing court commissioners, state trial courts are able to effectively manage court backlogs without a significant increase in the expenditure of court resources. This is because court commissioners perform judicial functions and duties, as well as, conduct procedures that would otherwise come before the courts and consume significant judicial time. [\[FN17\]](#) Many courts in this country use court commissioners to handle matters that are interim, routine, ministerial, perfunctory, or of an emergency nature. The efforts of court commissioners reduce the number of judicial trials, lessen the number of trials heard by judges, and shorten the time required to dispose of high volume routine \*5 matters. [\[FN18\]](#)

The duties of court commissioners vary significantly depending on the types of cases they preside over and whether they are part-time or full-time employees. The utilization of court commissioners may range from those who are part-time employees, who hear one or two small claim cases a year or perform occasional weddings, to those who are full-time employees that handle a large number of traffic, small claims, juvenile, probate, or criminal matters each month. In criminal matters, the duties of court commissioners may include issuing summonses; issuing arrest or search warrants; determining probable cause to support a warrantless arrest; setting bail; administering oaths and affirmations; conducting preliminary examinations and arraignments; accepting guilty pleas; taking acknowledgments, affidavits, and depositions; signing orders; acting on felony charges through arraignment; and acting on misdemeanor charges including accepting pleas and conducting trials. [\[FN19\]](#) Court commissioners in family law cases may administer oaths and affidavits; render and sign judgments confirming default judgments; grant uncontested divorces; implement child support and custody orders; approve consent judgments; sign ex parte and emergency orders; handle contempt matters; and make discovery rulings. [\[FN20\]](#) In traffic court cases, court commissioners may conduct initial appearances [\[FN21\]](#) and hearings, and make recommendations to the state court judge regarding the merits and defenses of traffic violations and offenses. [\[FN22\]](#) Court commissioners who sit in probate matters may issue subpoenas for the attendance of witnesses or production of documents; [\[FN23\]](#) examine and approve the bonds filed by the personal representatives; examine any inventory, sale bill, account current, or the condition of an estate generally; [\[FN24\]](#) conduct non-contested probate proceedings; [\[FN25\]](#) administer oaths; take depositions and \*6 testimony; "certify and report depositions, and testimony; take and certify acknowledgments; allow accounts; and fix the amount and approve the sufficiency of bonds." [\[FN26\]](#) In juvenile court matters, court commissioners may issue summonses and warrants; order the release or detention of children or expectant mothers of unborn children taken into custody; conduct detention and shelter care hearings; conduct preliminary appearances; conduct uncontested proceedings; and enter into consent decrees. [\[FN27\]](#)

Just as the duties of court commissioners vary widely depending on the types of cases they hear, the requisite qualifications of court commissioners also differ significantly. In some states, court commissioners are required to have the same qualifications as those possessed by a trial court judge, [\[FN28\]](#) while in other states court commissioners must simply have a high school education. [\[FN29\]](#)

In many states, however, court commissioners are required to be licensed to practice law in that state for a few years. [\[FN30\]](#) In other states, court commissioners are simply required to be admitted to the practice of law in that state without any particular prior experience required. [\[FN31\]](#)

A court commissioner is similar to a magistrate, a term frequently used to refer to a quasi-judicial officer who assists judges in criminal cases to perform pretrial functions such as issuing search and arrest warrants, and conducting initial appearances and arraignments. Magistrates in state courts who perform these functions may or may not be lawyers, and may not have obtained formal legal training. [\[FN32\]](#) For example, in Michigan, magistrates \*7 who issue search and arrest warrants in criminal cases need not have formal legal training. [\[FN33\]](#) These magistrates are only required to be a registered elector in the district in which they serve. [\[FN34\]](#) Legal training is not necessary for magistrates in criminal cases because the Fourth Amendment to the United States Constitution [\[FN35\]](#) only requires that magistrates be neutral, detached and capable of determining whether probable cause exists for an arrest or search. [\[FN36\]](#)

In domestic relations cases, the terms used to refer to quasi-judicial officials who process cases include commissioners, [\[FN37\]](#) general magistrates, [\[FN38\]](#) divorce masters, [\[FN39\]](#) special masters, [\[FN40\]](#) mediators, [\[FN41\]](#) parenting coordinators, [\[FN42\]](#) \*8 and support enforcement hearing officers. [\[FN43\]](#) These quasi-judicial officials are selected by the judges who employ them or by elected local government officials, and thus are not elected by the citizens they serve, appointed by a governor, or other high ranking state official. Therefore, their rulings are always subject to review by a judge, on request of a party. The right of a litigant to have these rulings heard by a judge ensures that state constitutional provisions requiring that final determinations be made by people who are part of the judiciary are not violated. [\[FN44\]](#) The remainder of this article will address the use of these domestic commissioners and domestic hearing officers, and analyze how Louisiana courts have treated the issues of judicial power and the delegation of power to these lesser functionaries.

### III. COURT COMMISSIONERS IN LOUISIANA DISTRICT COURTS

The office of Court Commissioner was first utilized in Louisiana in 1934 in the Civil District Court for the Parish of Orleans (CDC). [\[FN45\]](#) To serve as a court commissioner, the individual was required to have practiced law in Orleans Parish for five years. [\[FN46\]](#) Under the system initially utilized in Orleans Parish, any one of the district judges could transfer any case to the court commissioner that the district judge had reason to believe would require more than six days to try and dispose of. [\[FN47\]](#) Thus, it appears that early court commissioners in Orleans Parish could hear any type of civil matter, not just domestic relations matters. Further, the court commissioner was not empowered to just hear simple preliminary matters, but actually presided over lengthy trials. These trials involved the taking of testimony \*9 of witnesses under oath with direct and cross examination. [\[FN48\]](#) After the trial ended, the court commissioner was required to submit a written report of his findings, together with a recommendation to the district judge that transferred the case to the court

commissioner, about how he thought the case should be decided. [\[FN49\]](#) After the court commissioner's report was filed with the clerk of court, who had a duty to provide written notice to counsel of record, the parties had ten days from such notice to file exceptions to the report. [\[FN50\]](#) If no exceptions were filed, the report became final and the district judge was required, on request of any party in interest, to render the judgment recommended by the court commissioner. In the event that exceptions were filed to the court commissioner's report within ten days, the matter was set for hearing before the referring district judge who would then decide the exceptions on the record as made up before the court commissioner. [\[FN51\]](#)

From the early history of court commissioners in Louisiana, it appears that court commissioners were used during civil trials as quasi-judicial finders of fact to hear the evidence and render written reports on their findings to the district judge who was vested with authority to decide the litigants' case. [\[FN52\]](#) Thereafter, the recommendations of the court commissioners became final if one of the parties to the litigation did not object to the recommendations within ten days of notice of the recommendations from the appropriate clerk of court.

Court commissioners were utilized in CDC from 1934 until 1991 when the enabling statute, title 13, section 1171 of the Louisiana Revised Statutes, was repealed. [\[FN53\]](#) In 1991, prior to the elimination of civil court commissioners in CDC, four court commissioners were empowered to hear cases. [\[FN54\]](#) When section 1171 was repealed, the number of divisions of court \*10 increased from twelve to fourteen. [\[FN55\]](#) Apparently, two additional judges were added to replace the four court commissioners who were serving in the CDC.

In other Louisiana parishes, court commissioners in civil cases play a more active role and have more power than did the civil court commissioners in the CDC. For example in the Nineteenth Judicial District Court (19th JDC), where court commissioners have both civil and criminal responsibilities, [\[FN56\]](#) the court commissioners in civil cases generally have all powers of a district judge not inconsistent with the constitution, the laws of the state of Louisiana, and the United States. The assigned duties of these court commissioners include but are not limited to hearing and making a recommendation of disposition of any civil matter which may be assigned by rule of court or by any judge of the 19th JDC, and hearing and making a recommendation of disposition of civil proceedings arising out of the incarceration of state prisoners. [\[FN57\]](#) Court commissioners in civil cases in the 19th JDC also have "the power to administer oaths and affirmations, take acknowledgments, affidavits and depositions, sign orders," punish persons for contempt of court, and hear preliminary motions. [\[FN58\]](#)

For any case in the 19th JDC that is submitted to a court commissioner, the court commissioner is required to submit a written report of his findings, together with a recommendation to the district judge that transferred the case to the court commissioner about how he thinks the case should be

decided. [\[FN59\]](#) Thereafter, any party, within ten days of receipt of the court commissioner's findings and recommendations, may object to such findings or recommendations in writing. [\[FN60\]](#) The district judge may then accept, reject, or modify in whole or in part the findings or recommendations made by the court commissioner. [\[FN61\]](#)

In addition to the duties described in the previous paragraph, court commissioners in civil cases in the 19th JDC also serve as additional judges \*11 who have the authority to try certain cases with party consent. Court commissioners may conduct any and all proceedings on any matter pending before the 19th JDC and order the entry of judgment in any case where the parties consent to the matter being heard and adjudicated by the court commissioner. [\[FN62\]](#) All judgments entered by a court commissioner shall then be signed by a judge of the district, [\[FN63\]](#) and an aggrieved party may appeal the court commissioner's judgment in the same manner as an appeal from any other judgment of a district court. [\[FN64\]](#)

In other Louisiana parishes, the powers of court commissioners in civil cases are similar to court commissioners in civil cases in the 19th JDC. [\[FN65\]](#) It appears that court commissioners in civil cases in Louisiana serve as "team players" whose primary responsibilities are to engage in the early and ongoing control of the pretrial process by performing such tasks as conducting pretrial conferences and discovery proceedings by designation of the district judge, and act as additional judges by either holding evidentiary hearings and making recommendations to district judges in civil matters or by trying certain cases with party consent. [\[FN66\]](#) The performance of these functions can be a valuable asset to district judges who have large dockets or who have complex or time-consuming cases that may take up much of the court's judicial time. The court commissioners, by performing these functions for the district court, are then able to free up time for the district judges to process others matters on their dockets. [\[FN67\]](#)

\*12 As quasi-judicial officials, court commissioners and domestic hearing officers are governed by the Code of Judicial Conduct. [\[FN68\]](#) Consequently, the same ethical rules and limitations that apply to judges also apply to court commissioners.

#### IV. DOMESTIC HEARING OFFICERS IN LOUISIANA DISTRICT COURTS

Hearing officers [\[FN69\]](#) in domestic relations cases in Louisiana have been \*13 authorized by title 46, section 236.5 of the Louisiana Revised Statutes since 1986. [\[FN70\]](#) These quasi-judicial officers were initially part of an expedited process for the establishment of child support obligations. The State of Louisiana established this expedited process so that it would be eligible to receive federal Aid to Families with Dependent Children (AFDC) funds. [\[FN71\]](#) The expedited process was created through section 236.5 which requires judges of the appropriate court for the establishment and enforcement of support [\[FN72\]](#) to appoint one or more domestic hearing officers to hear support and support-related matters. [\[FN73\]](#) The creation of this scheme as required by \*14 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 Louisiana would operate a child support enforcement program that conforms to the numerous requirements of the Social Security Act. [\[FN74\]](#) In addition to hearing child support matters, the domestic hearing officer was also empowered under the statute to hear issues of spousal support, and "[c]ontested and uncontested paternity cases in which an action was brought by the state [of Louisiana] 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." [\[FN75\]](#)

To assist the parties to resolve a child support dispute, the domestic hearing officer, who is well versed in the use of statutory child support guidelines, [\[FN76\]](#) 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 as to the appropriate amount of the support obligation. [\[FN77\]](#) 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. [\[FN78\]](#) Although domestic hearing officers were also statutorily permitted to hear paternity issues in cases where the State of Louisiana brought an action involving a mother's eligibility to receive state aid and services, it appears that most domestic hearing officers were utilized to hear only child support matters. [\[FN79\]](#)

**\*15** 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. No court reporters appear at the hearing officer conferences, and no witnesses are sworn. [\[FN80\]](#) Although the term "domestic hearing officer" can actually be misunderstood as indicating that the domestic hearing officers who are processing domestic issues are actually holding evidentiary hearings that is incorrect.

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 section 236.5 allowed domestic hearing officers to hear all "domestic and family related matters." [\[FN81\]](#) Now, the range of issues that domestic hearing officers are empowered to 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; as well as all protective orders and injunctions filed in domestic or family violence cases or that are brought under the Children's Code. [\[FN82\]](#)

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 (HOCs) in domestic relations cases. [\[FN83\]](#) During the HOCs in the 15th JDC, the domestic hearing officer meets with the lawyers and clients in one hour sessions in an attempt to explore a 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. [\[FN84\]](#) Also, in the Sixteenth Judicial District Court (16th JDC), domestic hearing officers in domestic relations cases have been working with \*16 disputants since 2001 in one to two hour HOCs in an attempt to resolve disputed issues. [\[FN85\]](#) HOCs in the 16th 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. [\[FN86\]](#) 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 which is then sent directly to the District Judge for his or her signature. [\[FN87\]](#) Additionally, many of the matters that are not resolved during the HOCs, which are scheduled for hearings before district judges, are actually not even being heard by the district judge. The district judges in the 16th JDC assume that this results from most of these matters settling after the HOCs and before the hearings with the district judges. [\[FN88\]](#)

Again, it is important to note that domestic hearing officers who now have expanded duties as a result of the 2003 amendment to section 236.5 are not holding evidentiary hearings or hearing testimony. Rather, the sessions are facilitative type sessions with the domestic hearing officer conducting something akin to mediation and rendering a written recommendation at the end of the conference if the parties can not reach an agreement on the issues. [\[FN89\]](#)

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. [\[FN90\]](#) This is designed to prevent a party's regret or \*17 remorse and the collapse of settlement later in the day, or the next day, or before the settlement documentation has been prepared. [\[FN91\]](#) Thus, the domestic hearing officer will prepare a consent judgment for the parties during the HOC. [\[FN92\]](#) The consent judgment then becomes a final order after signature of the district judge or court commissioner. [\[FN93\]](#) If all issues are not resolved during the HOC, the domestic hearing officer generates a Hearing Officer Conference Report which summarizes the HOC, and makes specific recommendations to the district judge regarding the unresolved issues. If a party objects to any of the recommendations, the party must file a written objection to the domestic hearing officer's recommendations within three (3) days

of the recommendations. [\[FN94\]](#) 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 retaining the discretion to accept, reject, or modify in whole or in part the findings and recommendations of the domestic hearing officer. [\[FN95\]](#)

## V. THE TWENTY-FOURTH JUDICIAL DISTRICT COURT

### A. General

Jefferson Parish is now Louisiana's largest parish. [\[FN96\]](#) The Twenty-Fourth Judicial District Court for the Parish of Jefferson (24th JDC or the Court) has original jurisdiction of all civil and criminal matters in Jefferson Parish, except for certain juvenile matters. [\[FN97\]](#) The Court also has appellate jurisdiction of all appeals that come from First Parish Court, Second Parish Court, and all the city courts in Jefferson Parish. [\[FN98\]](#) "There are 16 elected \*18 divisions of court in the District Court system." [\[FN99\]](#) Additionally, as governed by [La. Rev. Stat. § 13:717](#), the judges are assisted by three Commissioners: one with jurisdiction over criminal cases; one with jurisdiction over domestic relations and family law cases; and one with jurisdiction over criminal, domestic relations, and family law cases. The judges are also assisted by four domestic hearing officers as governed by [La. Rev. Stat. § 46:236.5](#).

In experimenting with alternative systems to process the domestic relations cases in the 24th JDC, the Court has tried many procedures. Prior to using domestic commissioners and domestic hearing officers in the processing of cases, [\[FN100\]](#) the court used a version of family court where at least two and sometimes three of the sixteen judges of general jurisdiction were assigned by local rule to hear only domestic relations cases. [\[FN101\]](#) At other times, two mediators with backgrounds in social work were hired by the court to mediate child custody and visitation cases and to make recommendations to the judges when the mediations resulted in impasse. [\[FN102\]](#) During other times, when the family court concept was no longer used, the Court experimented with the use of a retired judge acting as a commissioner or family court magistrate to assist the judges in the processing of cases. [\[FN103\]](#) Moreover, since 1987, the Court has at all times used support hearing officers as part of an expedited process for the establishment of child support obligations. [\[FN104\]](#) Thus, for the past nineteen years, the Court has been assisted by social worker mediators, family court magistrates, commissioners, or retired judges in the processing of the custody and visitation issues that come before the 24th JDC. Additionally, the Court has utilized support hearing officers to assist in the processing of child support and spousal support issues.

### B. The Office of Domestic Commissioner in the 24th JDC

The use of a domestic commissioner in the Twenty-Fourth Judicial District Court for the Parish of Jefferson (24th JDC) has been authorized \*19 since 1997. [FN105] Only one domestic commissioner was authorized by the enabling legislation. [FN106] When the domestic commissioner took office in 1997 after [Louisiana Revised Statute § 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. In 1997, the domestic commissioner 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 the domestic commissioner for hearings.

This system changed in April 1999 with Domestic 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. [FN107]

The effect of the April 1999 amendments to the Domestic Relations Case Rules was to place almost every domestic relation case on the domestic commissioner's docket instead of the dockets of the sixteen judges of the Court. As the number of cases that were assigned to the Domestic Commissioner increased, there began to be delays and backlog. Because of these delays, the Court commissioned a study to examine how it could best use domestic commissioners and hearing officers. [FN108] As a result of changes made by the court based on recommendations in the first efficiency study, the court increased the number of domestic commissioners from one to one and one-half, [FN109] expanded the duties of the support-only \*20 hearing officers so that they could now hear all issues ancillary to a divorce, [FN110] and increased the number of hearing officers from two to four. [FN111]

The commissioners in the 24th JDC are required to have a minimum of five years of experience in handling matters within their respective jurisdiction. [FN112] The office of domestic commissioner is designed to facilitate the orderly process of routine and recurring issues and emergency issues which are presented to the court. [FN113] The duties of the Domestic Commissioner are enumerated in [§13:717\(F\)-\(G\)](#) 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.

**\*21** (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 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 in 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.

**\*22** 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 same manner as any other judgment entered by a district court.

My research during the efficiency studies [\[FN114\]](#) revealed that from 1997 to 2002, to a large extent, the domestic commissioner in the 24th JDC mediated many of the cases from the bench receiving settlement in a significant number of cases. Additionally, the domestic commissioner in the 24th JDC was used as an additional judge who tried many cases with party consent. These trials took up a significant amount of the domestic commissioner's time. Consequently, in 2002, the Court limited the types of matters heard by the domestic commissioner. In January 2002, the Court prevented the domestic commissioner from presiding over trials with party consent. The domestic commissioners' role in the 24th JDC since 2002 has been largely limited to interim and emergency matters as originally intended when the system was designed in 1997. [\[FN115\]](#)

The domestic commissioners in the 24th JDC are now 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; interim custody and visitation orders; default judgments; consent judgments; uncontested divorces; domestic abuse petitions; hearings on ex parte orders from authorized divisions of court; and hearings on contempt of the Commissioner's orders.

#### **\*23 VI. DOMESTIC HEARING OFFICERS IN THE 24TH JDC**

For the 24th JDC, in addition to the domestic commissioners, the Court has established the position of domestic hearing officer, whose duties are to hear support and support related matters. Prior to 2003, the hearing officers in the 24th JDC provided an expedited process for the establishment, modification, and enforcement of support obligations. [\[FN116\]](#) There were initially two (2) hearing officers, one who worked part-time and another who worked full-time. The hearing officers acted as finders of fact and made recommendations to the domestic commissioner or to the district court concerning the following matters: (1.) Establishment and Modification of Support; (2.) Method of Collection of Support; and (3.) Enforcement of Support. [\[FN117\]](#)

I found that the hearing officers were highly effective in handling the large number of support issues that came before the Court. The hearing officers were hearing virtually all of the child and spousal support matters coming before the Court. After the hearing officers made findings of fact and recommendations on the proper amount of support, then the matter was set for hearing before

the domestic commissioner for an interim order. If either party disagreed with the interim order signed by the domestic commissioner that party could object and set the matter for hearing before the District Judge to whom the case was allotted. Additionally, most [\[FN118\]](#) of the recommendations on child and spousal support that the hearing officers made became interim orders of the domestic commissioner, and the litigants did not object. Therefore the recommendations of the hearing officers effectively became final judgments and were appealable to the Louisiana Fifth Circuit Court of Appeal. [\[FN119\]](#)

When a demand was made for child support, interim or final spousal support, litigants were able to schedule a hearing before a support hearing officer within thirty (30) days of the filing of the support demand if a separate order was submitted with the demand. Because the hearing officers were so successful in resolving the overwhelming number of child and spousal matters that came before the court, I recommended to the Court \*24 in the Harges First Efficiency Study that the duties of the hearing officers be expanded to include all issues ancillary to a divorce. The Court implemented this recommendation, revised its local rules, and developed the Domestic Early Intervention Triage Program. [\[FN120\]](#)

In early 2005, I was again retained by the Court to assess the Domestic Intervention Triage Program. The purpose of that study [\[FN121\]](#) was three-fold:

(1) to evaluate the Domestic Early Intervention Triage Program, [\[FN122\]](#) (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.

The current procedures used by the domestic hearing officers in the 24th JDC are detailed in the Twenty-Fourth Judicial District Court Rules - Domestic Early Intervention Triage Program. [\[FN123\]](#) 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. [\[FN124\]](#) 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. [\[FN125\]](#)

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. [\[FN126\]](#) Additionally, the hearing officer has the discretion to schedule additional conferences, hearings, rule dates, or additional time if necessary. [\[FN127\]](#) The scheduling of HOCs throughout the day is in sharp contrast to the previous system with a general docket call at a specific time such as 9:00 a.m. where all lawyers and their clients appeared at the same scheduled time and waited for minutes or hours until the district

judge or commissioner heard their case. During the HOCs, the domestic hearing officers act as quasi-mediators conducting settlement conferences on all disputed issues. Most of the HOCs result in a Joint Stipulation and Order \*25 that is drafted by the hearing officer during the conference and then sent directly to the district judge for his or her signature. Many matters left unresolved after the HOCs are scheduled for hearings before the district judges, however only five percent (5%) of the matters scheduled for HOCs are actually being heard by the district judges. [FN128] Therefore, this suggests that even when cases do not settle during the HOC, they settle before the court date.

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

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

In order to assess the effectiveness of the HOCs, I analyzed a sample of 1,013 cases scheduled for a HOC to determine the percentage of cases that were actually heard by trial judges. This analysis revealed that only 4.6% of the cases were actually decided by the trial judges. Therefore, 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 \*26 hearing officers, and 29.61% of the cases were 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. [FN129] Therefore, it appears that HOCs, where the domestic hearing officers are hearing all issues ancillary to a divorce, are very effective in disposing of the vast majority of the domestic issues that

are filed in the 24th JDC.

## VII. CHALLENGES TO THE AUTHORITY OF CIVIL COURT COMMISSIONERS AND DOMESTIC HEARING OFFICERS

### A. Challenges to Court Commissioners

Although infrequently done, parties sometimes challenge the authority of court commissioners to serve in a quasi-judicial capacity. The primary contention of litigants is that the action of a court commissioner in submitting proposed findings of fact to the district judge constitutes an adjudication of the matter and is violative of the Louisiana Constitution. However, Louisiana courts hearing these contentions have held otherwise. The courts have held that the Constitution is not violated as long as the district judge retains the responsibility for making ultimate decisions. For example, in *Bordelon v. Louisiana Department of Corrections*, the Louisiana Supreme Court found that since the actions of the court commissioner for the Nineteenth Judicial Court were authorized by statute, the court commissioner had the authority to conduct hearings on any motions and make recommendations to the district judge "as long as [the district judge] retain[s] the responsibility for making the ultimate decision in the case." [\[FN130\]](#) The Court concluded that the plaintiff's constitutional due process was adequately protected by the procedure outlined in title 13, section 713 of the Louisiana Revised Statutes, because pursuant to the statute, the trial judge will make a de novo determination of disputed findings or recommendations and can accept, reject, or modify those findings or recommendations or require additional evidence. [\[FN131\]](#)

Likewise, in *Autrey v. Energy Corporation of America*, the Third \*27 Circuit Court of Appeal found the actions of a court commissioner of the 15th JDC were pursuant to the authorization of the district judge for the disposition of the case based on the evidence and argument, and did not constitute an adjudication of the matter. The court commissioner had conducted an evidentiary hearing on the merits of worker's compensation and wrongful discharge claims, and submitted the proposed findings of facts to a district court judge. [\[FN132\]](#) Thus, as long as the district judge retains the ultimate decision-making authority in the case, the court commissioner's practice does not violate the Louisiana Constitution. [\[FN133\]](#)

In *Sibille v. Hygeia International Systems, Inc.*, the Third Circuit Court of Appeal found that the court commissioner for the Fifteenth Judicial District Court also had the authority to constitutionally grant a preliminary default judgment. [\[FN134\]](#) This function was also found not to be an adjudicatory function because the preliminary default had been entered under the supervision of the district judge who retained the ultimate authority in the case. [\[FN135\]](#)

However, in a case where the trial judge ruled on the court commissioner's written recommendation based solely on the court commissioner's report without ordering that the transcript of the lengthy proceeding be prepared, *Quarles Drilling Corporation v. General Accident Insurance Co.*, the appellate court held that the trial judge erred because the enabling statute, [La. Rev. Stat. Ann. § 13:1171\(G\)](#), requires the trial judge to have the record before him when he considers the exceptions to the court commissioner's report. [FN136] The appellate court further stated that the "commissioner's role is limited to gathering facts and making recommendations to the judge in whom is vested the authority to decide the case." [FN137] Additionally, since the trial judge did not decide the case on the record, the Louisiana Constitution was also violated because the trial judge's actions violated [article 5, section 22 of the Louisiana Constitution](#) which requires that all judges be elected. Recognizing that this "provision confers on a litigant the corresponding right to have his case decided by an elected judge, and not by a commissioner appointed by the judges," the court of appeal stated that "[t]he decision making process necessarily \*28 requires consideration of the testimony and weighing the evidence." [FN138] Since the trial judge did not have the transcript of the proceeding of the court commissioner before him when he made his decision, the trial judge erred. [FN139]

From these cases, it appears that the actions of court commissioners in Louisiana are constitutional as long as the responsibilities of the court commissioner are authorized by statute, the court commissioners limit their actions to conducting hearings on motions and making recommendations to the district judge, and the district judge retains the responsibility for making the ultimate decision in the case. In making this decision, the trial judge should have the entire record before her, including a transcript of the proceeding of the court commissioner. This will satisfy the constitutional requirement that the ultimate decision maker be an elected judge. [FN140] Judicial districts in Louisiana wishing to utilize the services of court commissioners might want to keep these considerations in mind.

Moreover, even when a court commissioner conducts a proceeding on a matter before a Louisiana district court and subsequently orders the entry of judgment, where the parties have consented to the matter being heard and adjudicated by the court commissioner, it appears that this action is also constitutional. This is because the parties, by their consent, have waived their right to have the matter heard by a district judge. In this instance, the court commissioner may, in my opinion, constitutionally conduct any and all proceedings on any matter pending before the court and may order the entry of judgment in the case. If the judgment so recommended by the court commissioner is signed by a judge of the district court, then any concern that an official that is subordinate to the district judge is adjudicating matters before the court is without merit. [FN141] Thereafter, any party who is aggrieved by a judgment entered by a commissioner should be allowed to appeal that judgment in the same manner as any other judgment entered by a district court.

#### **\*29 B. Challenges to the Authority of Domestic Hearing Officers**

The authority of domestic hearing officers who computed child and spousal support under the authority of the previous version of title 46, section 236.5 of the Louisiana Revised Statutes and who determined paternity matters brought by the State of Louisiana have also been challenged on a few occasions. [\[FN142\]](#) Some of the challenges were based on the fact that these domestic hearing officers were conducting hearings and making recommendations on matters that were beyond the scope of section 236.5. For example, in *Muller v. Muller*, the court of appeal found that the domestic hearing officer did not have the authority to "conduct a hearing and to make recommendations concerning child custody matters," because section 236.5, as it existed in 1992, did not allow the domestic hearing officer to do so. [\[FN143\]](#) In *Soileau v. Houser*, the court of appeal also found the domestic hearing officer exceeded his jurisdictional authority and was without subject matter jurisdiction to determine matters of custody. [\[FN144\]](#) The court also found that a domestic hearing officer was not authorized to determine paternity matters brought by a private party. [\[FN145\]](#) Consequently, the court vacated the recommendations of the domestic hearing officer. [\[FN146\]](#)

In another case challenging the actions of a domestic hearing officer, *Piccione v. Piccione*, the Third Circuit Court of Appeal reversed the judgment of a trial court holding a party in contempt of court for failing to pay spousal support and child support in accordance with the recommendations of the domestic hearing officer. [\[FN147\]](#) The local rule of court stated that if the domestic hearing officer's recommendation is objected to, \*30 then the recommendation became an interim order pending the final disposition of the claims by the court. [\[FN148\]](#) This rule conflicted with section 236.5 because that section did not allow the domestic hearing officer's recommendations to become an interim order of the court. After both parties objected to the domestic hearing officer's recommendations, the payor party was held in contempt of court because he failed to pay spousal and child support as recommended by the domestic hearing officer. [\[FN149\]](#) The court of appeal found that the local rule of court modified section 236.5 by giving the recommendations of the domestic hearing officer the effect of a court order, "an authority never contemplated by that statute." [\[FN150\]](#) Since no authority existed in Louisiana allowing a local rule of court to expand a state statute to allow a contempt proceeding against a party against whom no court order had ever been issued, the district court erred in holding the payor party in contempt of court for failure to pay child and spousal support in compliance with the domestic hearing officer's recommendations. [\[FN151\]](#)

In *Kim v. Kim*, the Fifth Circuit Court of Appeal found that the support and support related domestic hearing officer procedure in the Twenty-Fourth Judicial District Court that existed in 1990, which allowed domestic hearing officers to hold hearings and make recommendations to district court judges, was constitutional, and that a litigant did not have a constitutional right to have his case heard solely by an elected district court judge after he has signed a waiver form allowing a domestic hearing officer to hear the case. [\[FN152\]](#) The court held that the domestic hearing officer procedure was set up by local court rules, was authorized by section 236.5, and was constitutional. [\[FN153\]](#)

In another challenge to domestic hearing officers who are authorized by section 236.5, *Paschal v. Hazlinsky*, the court held that litigants were not deprived of due process of law when a domestic hearing officer granted domestic abuse protective orders against two adult daughters in favor of the mother. [FN154] Title 46, section 2135(I) of the Louisiana Revised Statutes allows domestic hearing officers who are qualified under section 236.5 to issue temporary restraining orders in domestic violence cases to prevent a defendant from abusing, harassing or interfering with the person or going near the residence or place of employment of the petitioner. [FN155] After a \*31 contradictory evidentiary hearing where all parties were allowed to testify and present evidence to the domestic hearing officer, the domestic hearing officer issued protective orders against the daughters and assessed them with various medical costs arising out of the domestic dispute with their mother. [FN156] A same-day appeal was granted, but the daughters, who were proceeding pro se, did not appear at the appeal hearing. [FN157] When the matter was called for review by the district judge and the daughters were not present, the district judge, after ordering a fifteen minute recess for court personnel to look for the daughters, who could not be located, affirmed the recommendations of the domestic hearing officer in toto, making such recommendations the judgment of the district court. [FN158] Subsequently, the daughters hired an attorney, who filed a Motion for Appeal which contained an objection to the ruling of the domestic hearing officer as well as a request for appeal. [FN159] The district judge denied the motion, noting on the order that, because the daughters "failed to appear at the same-day appeal hearing, the ruling of the hearing officer had become the judgment of the district court." [FN160] On appeal, the court of appeal affirmed, stating that the "practice of utilizing an initial hearing by a domestic hearing officer in domestic violence cases facilitates resolution of these time sensitive matters in an expedient manner." [FN161] Since this procedure allows all parties to participate in a contradictory hearing before the domestic hearing officer and, where requested, allows for a second opportunity to be heard before the district court judge, the practice utilized by the 4th JDC "strikes a proper balance between the governmental interest of abating the epidemic levels of domestic violence and the citizen's right to a fundamentally fair and meaningful opportunity to be heard." [FN162]

An important edict made by the court of appeal in *Paschal v. Hazlinsky* was that in order to guarantee parties due process of law when matters are "heard" by non-elected judges such as domestic hearing officers, the parties must be granted a contradictory hearing with a meaningful opportunity to be heard. In my opinion, this contradictory hearing can be conducted by the domestic hearing officer or by the district judge or by both of them. [FN163]

\*32 As a result of the cases discussed in the previous paragraphs, in order to implement a domestic hearing officer system in Louisiana that will be deemed constitutional where the issues are incidental to a divorce such as child or spousal support, use of community property, child custody or visitation, judicial districts must first ensure that the domestic hearing officer does not hear matters that are beyond the scope of section 236.5. Moreover, the judicial districts must take care

to emphasize that a domestic hearing officer simply issues a written recommendation, not an order, and that a domestic hearing officer's written recommendation will only have the effect of an order after it is signed by a district judge or a court commissioner. Additionally, courts will want to make certain that they have local rules of courts that detail the domestic hearing officer system. These local rules of court must not conflict with or somehow modify section 236.5. Finally, it is good practice for judicial districts to emphasize to the district judges that once an objection is made to a written recommendation of a domestic hearing officer, that the judges should not simply "rubber stamp" or automatically ratify the recommendation. Rather the trial judge should schedule a contradictory hearing and hear the matter de novo. [\[FN164\]](#) Of course, if no written objection is filed with the clerk of court within the time and manner established by local rule, the recommendation of the domestic hearing officer will become a final judgment of the court after signature by a district judge or court commissioner. These procedures will demonstrate to a reviewing appellate court that litigants truly do have the opportunity to be heard by an elected district judge as mandated by the Louisiana Constitution. [\[FN165\]](#)

When the domestic hearing officers hear matters in domestic violence cases under section 2135, the domestic hearing officer should hold a contradictory hearing, allowing the litigants an opportunity to be heard, before issuing the temporary restraining order. It is also good practice for the local rules of court to allow for a second opportunity to be heard before \*33 the district court judge. This practice will likely be found constitutional and satisfy due process requirements by granting citizens their right to a fundamentally fair and meaningful opportunity to be heard.

#### VIII. AN ANALYSIS OF THE USE OF DOMESTIC COMMISSIONERS AND HEARING OFFICERS IN THE 24TH JUDICIAL DISTRICT COURT

Domestic commissioners in the 24th Judicial District Court for the Parish of Jefferson (24th JDC) assist the Court in dealing with delays and backlogs that result from the large number of domestic relations filings in this metropolitan court. These quasi-judicial officials help to effectively and efficiently manage the caseloads of the sixteen judges of general jurisdiction who hear a wide variety of civil and criminal matters. The domestic commissioners in the 24th JDC, working in conjunction with the four (4) hearing officers, work very well in disposing of the vast majority of the domestic issues that come before the Court. Since the development of its Domestic Early Intervention Triage Program in 2005, [\[FN166\]](#) the bulk of the issues in domestic relations cases are now processed by the hearing officers in the hearing officer conferences, thus it is beneficial to examine the effectiveness of the hearing officer conferences more closely.

Hearing Officer Conferences (HOCs) in domestic cases in Louisiana have many benefits for both the litigants and 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, HOCs are being scheduled in

the Sixteenth Judicial District Court (16th JDC) within twenty-one (21) days following the rendition of the order scheduling a court hearing. [\[FN167\]](#) In the Twenty-Fourth Judicial District Court (24th JDC), HOCs are currently being set at the time of the filing of a pleading and are being scheduled to be held within not less than thirty days and not more than thirty-five 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 hearing officer and requiring a domestic hearing officer conference." [\[FN168\]](#) 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 \*34 following the filing of the pleading. [\[FN169\]](#) The subsequent date that is scheduled on the district judge's docket allows the parties to have a quick date before the district judge in the event the case does not settle at the HOC and one or more of the parties disagrees with the recommendations of the domestic hearing officer. Prior to the use of HOCs in the 24th JDC, litigants could appear before a support-only domestic hearing officer within thirty days of a demand for child support or interim or final spousal support. [\[FN170\]](#) 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. [\[FN171\]](#)

A further benefit of the HOCs 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 [\[FN172\]](#) - an opportunity to appear before a quasi-judicial officer of the court in order to voice their concerns, needs, and interests. Because the conferences are usually one to two hours long, the HOCs allow the litigants sufficient time to state their views, all while not being subjected to direct or cross-examination by lawyers or the judge. The HOCs are informal mediation-type sessions that are conducted in private with the domestic hearing officer serving as the neutral third party. [\[FN173\]](#) The parties are represented by their attorneys and are allowed to participate in the conferences in a meaningful way. [\[FN174\]](#) Because of the informality of the \*35 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 parties or legal representatives are not admissible in later trials or hearings. [\[FN175\]](#)

Another benefit to the use of HOCs in domestic cases is the assistance the domestic hearing officers provide to district court judges in the processing of cases. It is envisioned that most cases that appear on the domestic hearing officers' dockets will settle, [\[FN176\]](#) 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 Louisiana are now appearing before individuals who have significant expertise and experience litigating divorce and family law cases. Although the enabling statute, title 46, section 236.5 of the Louisiana Revised Statutes, requires a domestic hearing officer to be a Louisiana licensed attorney with at least five years of prior experience in cases involving child support services, the domestic hearing officers currently serving in Louisiana courts have significantly more experience than the five year minimum. [\[FN177\]](#) The expertise and experience of the domestic hearing officers can only aid in their processing of cases. Moreover, all of the \*36 domestic hearing officers that interviewed for this article commented that they loved their jobs and that being a domestic hearing officer is very satisfying. One domestic hearing officer, when asked why she took the position, commented that she loved her job and believed that she felt that she was making a difference. [\[FN178\]](#)

Notwithstanding the substantial benefits of the domestic hearing officer system, there are criticisms. One criticism that has been directed at the use of quasi-judicial officers such as domestic hearing officers is that such individuals are lesser functionaries who are not judges. [\[FN179\]](#) As a result, parties may feel that they are being heard by individuals functioning in some subordinate role. [\[FN180\]](#) 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 judge at a contradictory hearing. [\[FN181\]](#) If the trial judge has the 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. [\[FN182\]](#) 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 \*37 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 a trial on the merits, it is important for judicial districts utilizing the domestic hearing officers to hold a contradictory evidentiary hearing 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. [\[FN183\]](#) 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](#). [\[FN184\]](#) 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. [\[FN185\]](#)

Another argument against the use of domestic hearing officers is made when the domestic hearing officers grant temporary restraining orders in domestic violence cases. The argument is that the delegation of such authority to domestic hearing officers violates the litigants' rights to due process of law. [\[FN186\]](#) However, the proper retort to this argument is that since the domestic hearing officer allows the litigants their right to be heard at a contradictory hearing, with the trial judge retaining the final decision-**38** making authority after a second contradictory evidentiary hearing on the merits, litigants are given their rights to due process of law. [\[FN187\]](#)

## IX. CONCLUSION

Court commissioners and domestic hearing officers are being used with overwhelming success in the processing of domestic cases in Louisiana. 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, judicial districts utilizing court commissioners and domestic hearing officers must be mindful to design their procedures with the Louisiana Constitution in mind.

[\[FN1\]](#). Adams and Reese Distinguished Professor of Law II, Loyola University New Orleans College of Law. The author wishes to thank Professor Cheryl Buchert for her comments on an earlier draft of this article, and Richard Baudouin, Laura Cocus, Maryjo Roberts, and Etheldra Scoggins for their valuable research assistance.

[\[FN1\]](#). See Elizabeth Barker Brandt, The [Challenge to Rural States of Procedural Reform in High Conflict Custody Cases](#), 22 U. Ark. Little Rock L. Rev. 357, 357 (2000) (describing the growth in the recognition of mediation serving as an effective dispute resolution tool in child custody cases).

[FN2]. Ben Barlow, [Divorce Child Custody Mediation: In Order to Form a More Perfect Disunion?](#), *52 Clev. St. L. Rev.* 499, 510 (2004) (recognizing that after child custody disputes, the parties usually find it necessary to remain in contact with one another because of the common child).

[FN3]. ADR refers to various extra-judicial procedures such as mediation, arbitration, the summary jury trial, and the mini-trial that are used to resolve disputes with the assistance of a neutral third party. See, e.g., Phillip M. Armstrong, [Georgia-Pacific's ADR Program: A Critical Review After 10 Years](#), *60 Disp. Resol. J.* 19 (2005) (assessing a Fortune-500 company's ten-year old ADR program); Marc Galanter, [The Hundred-Year Decline of Trials and the Thirty Years War](#), *57 Stan. L. Rev.* 1255, 1262-65 (2005) (discussing the increasing use of ADR procedures and the declining use of trials to resolve disputes); Bobby Marzine Harges, [Mediator Qualifications: The Trend Toward Professionalization](#), *1997 BYU L. Rev.* 687, 688-90 (discussing the growth of ADR in domestic relations cases).

[FN4]. The various terms used to refer to quasi-judicial officers in domestic relations cases include family law referee, magistrate, special master, master, divorce master, domestic commissioner, and domestic hearing officer. See, e.g., [Ariz. Rev. Stat. Ann. § 12-298](#) (2007) (family law referee); [Ohio Rev. Code Ann. § 3125.60](#) (LexisNexis 2007) (magistrate in child support cases); [Utah R. Civ. P. 53](#) (master); [UT R J Admin 6-401](#) (domestic relations court commissioner); [Idaho R. Civ. P. 53](#) (special master); [La. Rev. Stat. Ann § 13:717 \(1999 & Supp. 2006\)](#) (domestic commissioner); [La. Rev. Stat. Ann. § 46:236.5\(C\)\(1\) \(1999 & Supp. 2006\)](#) (hearing officer); [Pa R. Civ. P. 1920.51](#) (divorce master).

[FN5]. Jefferson Parish is the largest parish in Louisiana as a result of Hurricane Katrina's impact on New Orleans. Prior to Hurricane Katrina striking the Louisiana Gulf Coast on August 29, 2005, Orleans Parish, where the City of New Orleans is located, was the state's most populous parish with a population of approximately 454,863 people. U.S. Census Bureau Population Estimates, <http://www.census.gov/popest/cities/tables/SUB-EST2005-01.csv> (last visited Feb. 8, 2008). Recent estimates now state that the population of Jefferson Parish is 411,003, and the population of Orleans Parish is 214,486. Karen Turni Bazile, *State Taking Stock of Post-Storm World, Door-to-Door Surveys Seek a Count*, *The Times-Picayune* (New Orleans, La.), Aug. 2, 2006, at B1.

[FN6]. From 2001 to 2006, I conducted two studies for the 24th JDC. Bobby Marzine Harges, *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) (unpublished study on file with author) [hereinafter Harges First Efficiency Study]; Bobby Marzine Harges, *Efficiency Study of Court Commissioners and Domestic Hearing Officers, An Analysis of the Domestic Early Intervention Triage Program* (July 31, 2006) (unpublished study on file with author) [hereinafter Harges Second Efficiency Study].

[\[FN7\]](#). LA. 24th Jud. Dist. Ct. Rules 22-25 (May 25, 2005).

[\[FN8\]](#). See Chief Judge William E. Crane and Jerry P. Lang, Successful Tools in the Management of Case Loads, Court Commissioners, 58 Wisconsin Bar Bulletin 35 (September 1985) (stating that Wisconsin has used court commissioners since 1848); Richard D. Hicks, The [Power, Removal, and Revision of Superior Court Commissioners](#), 32 *Gonz. L. Rev.* 1, 2 (1996) (relating that a specific provision for superior court commissioners was written in the Washington state constitution in 1889 when Washington became a state); Lawton M. Nuss, This [Learned and Versatile Court](#), 71 *J. Kan. B.A.* 22, 23 (2002) (discussing the fact that three commissioners were added to the Kansas Supreme Court in the 1880's to assist with caseloads).

[\[FN9\]](#). Dianne Molvig, Expanding the Use of Court Commissioners, 70-Feb. Wis. Law. 11, 11-12 (Feb. 1997) (suggesting that the term "court commissioner" in Wisconsin "might be someone appointed by a judge who performs a few weddings a year, or someone formally hired by a county who handles 150 cases a day in criminal intake court - and everything in between").

[\[FN10\]](#). Commissioners are also used in some states to assist in the managing of appellate caseloads. See Thomas C. Marvin, [Ignore the Men Behind the Curtain: The Role of Commissioners in the Michigan Supreme Court](#), 43 *Wayne L. Rev.* 375, 384-85 (1997) (describing the role of commissioners in the Michigan Supreme Court).

[\[FN11\]](#). Molvig, *supra* note 9, at 12.

[\[FN12\]](#). See [Wis. Stat. Ann. § 757.69\(1\)\(p\) \(West 2001 & Supp. 2007\)](#) (outlining the duties of court commissioners assigned to juvenile matters).

[\[FN13\]](#). See [Wyo. Stat. Ann. § 2-2-106 \(2007\)](#) (outlining powers and duties of court commissioners assigned to probate); [Wis. Stat. Ann. § 757.68 \(West 2001 & Supp. 2007\)](#) (establishing probate court commissioners).

[\[FN14\]](#). See, e.g., [La. Rev. Stat. Ann. § 13:717 \(1999 & Supp. 2006\)](#) (establishing criminal court commissioner for the 24th JDC).

[FN15]. See, e.g., [Ariz. Rev. Stat. Ann. § 8-231](#) (2007) (allowing juvenile court judges to appoint juvenile court commissioners).

[FN16]. See generally R. Lawrence Dessem, The [Role of the Federal Magistrate Judge in Civil Justice Reform](#), 67 *St. John's L. Rev.* 799, 811-25 (1993) (categorizing the general roles of magistrate judges in various judicial districts).

[FN17]. Crane and Lang, *supra* note 8, at 35.

[FN18]. *Id.*

[FN19]. See [La. Rev. Stat. Ann. § 13:717 \(1999 & Supp. 2006\)](#) (establishing the functions and powers of court commissioners in the 24th Judicial District of Louisiana); Crane and Lang, *supra* note 8, at 35 (delineating the broad amount of authority that is given to court commissioners); [Wis. Stat. Ann. §757.69](#) (West 2007) (establishing the various powers and duties of court commissioners in Wisconsin).

[FN20]. See [La. Rev. Stat. Ann. § 13:717\(F\) \(Supp. 2006\)](#) (outlining powers of court commissioners in domestic matters in the 24th Judicial District).

[FN21]. See, e.g., [Wis. Stat. Ann. § 757.69\(1\)\(c\) \(West 2001 & Supp. 2005\)](#) (stating that a court commissioner may conduct initial appearances in traffic cases).

[FN22]. See, e.g., [Dabin v. Dir. of Revenue, 9 S.W.3d 610, 612-13 \(Mo. 2000\)](#) (discussing the duties of traffic court commissioners).

[FN23]. See, e.g., [Wyo. Stat. Ann. § 2-2-107 \(2005\)](#) (outlining the powers and duties of probate court commissioners in Wyoming).

[FN24]. See, e.g., [Wyo. Stat. Ann. § 2-2-106 \(2005\)](#) (outlining the general powers of court commissioners).

[FN25]. E.g., [Wis. Stat. Ann. §757.69\(1\)\(e\) \(West Supp. 2005\)](#).

[FN26]. See, e.g., [Wis. Stat. Ann. §757.69\(1\)\(k\) \(West Supp. 2005\)](#) (describing the general functions court commissioners may perform in Wisconsin).

[FN27]. E.g., [Wis. Stat. Ann. §757.69\(1\)\(g\) \(West Supp. 2005\)](#).

[FN28]. See, e.g., [La. Rev. Stat. Ann § 13:1347\(A\), \(D\)](#) (1999 and Supp. 2006) (requiring criminal court commissioners in the Criminal District Court for the Parish of Orleans to possess the same qualifications as judges in the magistrate section); [Mo. Rev. Stat. § 478.466](#) (West 2004) (requiring drug court commissioners in the Sixteenth Judicial Circuit (Jackson County) to possess the same qualifications as an associate circuit judge).

[FN29]. See, e.g., [W. Va. Code Ann. §50-1-4](#) (LexisNexis 2000) (requiring each magistrate to have a high school education or its equivalent).

[FN30]. See, e.g., Wis. Sup. Ct. R. 75.02 (must be licensed to practice law in that state, as well as, have been licensed to practice law in any state for three years immediately before the appointment); [Ariz. Rev. Stat. Ann. §12- 213](#) (2003) (three years of practice); and [Ariz. Rev. Stat. Ann. §8-231](#) (1999) (four years of practice).

[FN31]. See, e.g., [Wash Rev. Code Ann. § 26.12.050](#) (West 2004) (stating that attorneys may be appointed as family court commissioners); [Wash Rev. Code Ann. § 3.42.010](#) (West 2004) (stating that any person appointed as a commissioner must be a lawyer admitted to practice law in Washington) .

[FN32]. See, e.g., Craig M. Bradley, The "[Good Faith Exception](#)" Cases: Reasonable Exercise in Futility, 60 [Ind. L.J.](#) 287, 293 (1985) (stating that thirty-nine states allow search warrants to be issued by non-attorney magistrates); [W. Va. Code Ann. § 50-1-4 \(2000\)](#) (magistrates in West Virginia must be at least twenty-one years of age and have a high school diploma or its equivalent).

[FN33]. See [U.S. v. Neering](#), 194 F. Supp. 2d 620, 625 (E.D. Mich. 2002) (discussing the constitutionality of state statute not requiring formal legal training for magistrates).

[FN34]. [Mich. Comp. Laws Ann. § 600.8501\(4\)](#) (West 2000); see also [Ga. Code Ann. § 15-10-22](#)

(2005) (requiring magistrates to be a resident of the county for at least a year preceding the beginning of his term). Another quasi-judicial officer in criminal cases, the justice of the peace, performs many of the same functions as magistrates in criminal cases. In many states, justices of the peace are not required to be attorneys. The state of West Virginia is illustrative of this point. In West Virginia, magistrates are only required to be at least twenty-one years of age; have a high school education or its equivalent; not have been convicted of any crime involving moral turpitude; and be a resident of the county of her election. [W. Va. Code Ann. § 50-1-4 \(2000\)](#).

[FN35]. The Fourth Amendment governs the rights that people in the United States have against unreasonable searches and seizures by government officials, and dictates the standard for the issuance of search and arrest warrants. [U.S. Const. amend. IV](#).

[FN36]. See Justice Charles W. Johnson, [Survey of Washington Search and Seizure Law: 1998 Update](#), 22 [Seattle U. L. Rev.](#) 337 (1998) ("Constitutional provisions, statutes, and court rules identify the requirements for qualification of a magistrate. The Fourth Amendment does not require that a magistrate be an attorney or a judge so long as he or she is 'neutral and detached' and 'capable of determining whether probable cause exists for the requested arrest or search.'") (quoting [Shadwick v. Tampa](#), 407 U.S. 345, 350 (1972))). In Louisiana, court commissioners are lawyers who are legally trained, while Justices of the Peace, who sometimes serve as criminal magistrates, do not have to be legally trained. Justices of the Peace "have criminal jurisdiction parishwide as committing magistrates and shall have the power to bail or discharge, in cases not capital or necessarily punishable at hard labor, and may require bonds to keep the peace." [La. Rev. Stat. Ann. § 13:2586\(C\)\(1\) \(1999 & Supp. 2006\)](#). The only state requirements for a person to run for the office of Justice of the Peace are to 'be of good moral character, a qualified elector, a resident of the ward and district from which elected, and [be] able to read and write the English language correctly.' Seth B. Hopkins, [Local Justice: What Every Lawyer Should Know About Louisiana's Justices of the Peace, Part I: History of Ancient Court](#), 52 [La. B.J.](#) 16, 17 (2004) (quoting [La. Rev. Stat. Ann. § 13:2582 \(1999\)](#)).

[FN37]. See, e.g., [La. Rev. Stat. Ann. § 13:717 \(1999 & Supp. 2006\)](#) (domestic commissioners in the Twenty-Fourth Judicial District Court).

[FN38]. See, e.g., Fla. Fam. Law R. 12.490(a) (general magistrates in family court).

[FN39]. See, e.g., [Pa R. Civ. P. 1920.51](#) (appointment of divorce masters).

[FN40]. See, e.g., [Idaho R. Civ. P. 53](#) (appointment of special masters); Sarah Arnett, Parenting

Coordinators in High Conflict Divorce Cases, 45-Sep Advoc (Idaho) 7 (2002) (discussing use of special masters and parenting coordinators in Idaho).

[FN41]. E.g., [Cal. Fam. Code § 3170\(a\)](#) (West 2004); see Harges, *supra* note 3, at 688 (discussing the growth in use of child custody mediators).

[FN42]. See, e.g., [Idaho Code Ann. § 32-717 \(2006\)](#) (appointment of parenting coordinators in child custody cases); Arnett, *supra* note 40, at 7 (using the term parenting coordinators).

[FN43]. See, e.g., Fla. Fam. Law R. 12.491(c) (appointment of support enforcement hearing officer for child support issues).

[FN44]. See, e.g., [Holm v. Smilowitz, 840 P.2d 157, 165-68 \(Utah Ct. App. 1992\)](#) (court surveys states with commissioner systems similar to Utah, and holds that judicial power must be exercised by judges and cannot be delegated by the court to another person).

[FN45]. 1934 La. Acts No. 119 (creating office of Commissioner for the Civil District Court of New Orleans).

[FN46]. *Id.*

[FN47]. See *Id.* ("That whenever any one of the Judges of the Civil District Court for the Parish of Orleans shall have pending before him any case which said judge shall have reason to believe will require more than six (6) days to try and dispose of, said Judge shall have the right and power to transfer such case to the said Commissioner with instruction to said Commissioner to try same.").

[FN48]. See *Id.* (stating that the trial shall include the taking of testimony "as if the case were tried before a Judge").

[FN49]. *Id.*

[FN50]. *Id.*

[\[FN51\]](#). [Id.](#)

[\[FN52\]](#). Many decisions of the Louisiana Fourth Circuit Court of Appeal, the appellate court to which decisions rendered in the Civil District Court for Orleans Parish are appealed, have stated that in civil cases court commissioners are "limited to gathering facts and making recommendations to a trial judge who is vested with authority to decide the litigant's case." [Crespo v. Kohlman](#), 573 So. 2d 1272, 1273 (La. Ct. App. 4th Cir. 1991) (citing [Jones v. New Orleans Legal Assistance Corp.](#), 535 So. 2d 33 (La. Ct. App. 4th Cir. 1988)); see also [Harleaux v. Wood](#), 542 So. 2d 747, 750 (La. Ct. App. 4th Cir. 1989); [Whitney Nat'l Bank of New Orleans v. Derbes](#), 436 So. 2d 1185, 1192 (La. Ct. App. 4th Cir. 1983); [Quarles Drilling Corp. v. Gen. Accident Ins. Co.](#), 520 So. 2d 475, 476 (La. Ct. App. 4th Cir. 1988).

[\[FN53\]](#). [La. Rev. Stat. Ann. § 13:1171 \(1989\)](#) (repealed 1990).

[\[FN54\]](#). [Id.](#); 1984 La. Acts No. 893 (provided for four court commissioners of CDC who were designated as Commissioner A, Commissioner B, Commissioner C, and Commissioner D).

[\[FN55\]](#). 1990 La. Acts No. 8 (stated that "R.S. 1171 is hereby repealed effective upon the date the judges of Divisions M and N of the Civil District for the Parish of Orleans assume their respective offices.").

[\[FN56\]](#). In all Louisiana parishes except Orleans Parish, state district judges hear both civil and criminal cases. In Orleans Parish, state district judges sit either on the Civil District Court for the Parish of Orleans or the Criminal District Court for the Parish of Orleans, thereby hearing either civil or criminal cases on their respective benches.

[\[FN57\]](#). [La. Rev. Stat. Ann. § 13:713\(A\) \(1999\)](#).

[\[FN58\]](#). [La. Rev. Stat. Ann. § 13:713\(B\) \(1999\)](#).

[\[FN59\]](#). [La. Rev. Stat. Ann. § 13:713\(C\)\(1\) \(1999\)](#).

[\[FN60\]](#). [La. Rev. Stat. Ann. § 13:713\(C\)\(3\) \(1999\)](#).

[\[FN61\]. La. Rev. Stat. Ann. § 13:713\(C\)\(5\) \(1999\).](#)

[\[FN62\]. La. Rev. Stat. Ann. § 13:713\(E\)\(1\) \(1999\).](#)

[\[FN63\]. La. Rev. Stat. Ann. § 13:713\(E\)\(1\) \(1999\).](#)

[\[FN64\]. La. Rev. Stat. Ann. § 13:713\(E\)\(2\) \(1999\).](#)

[\[FN65\].](#) See, e.g., [La. Rev. Stat. Ann. §§ 13:714-716 \(1999 & Supp. 2006\)](#) (enabling statutes for court commissioner in the Fifteenth Judicial District Court); [La. Rev. Stat. Ann. §§ 13:717-718 \(1999 & Supp. 2006\)](#) (enabling statutes for court commissioner in the Twenty-Fourth Judicial District Court).

[\[FN66\].](#) See, e.g., Dessem, *supra* note 16, at 811-26 (describing how state and federal court commissioners and magistrates are generally used in the United States).

[\[FN67\].](#) In criminal cases, court commissioners possess many of the powers of the district judges including the power to administer oaths and affirmations; take acknowledgments, affidavits, and depositions; sign orders; act on felony charges through arraignment; act on misdemeanor charges including accepting pleas in misdemeanor cases preliminary to trial on the merits and conduct evidentiary hearings of misdemeanor cases; hear preliminary motions prior to filing the bill of information or indictment; fix bail; sign and issue search and arrest warrants; and find and punish for contempt of court as a district court judge. See, e.g., [La. Rev. Stat. Ann. § 13:713 \(1999\)](#) (describing the duties of the criminal court commissioners in the Nineteenth Judicial District); [La. Rev. Stat. Ann. § 13:716 \(1999\)](#) (describing the duties of the criminal court commissioners in the Fifteenth Judicial District); [La. Rev. Stat. Ann. § 13:1347 \(1999 & Supp. 2006\)](#) (describing the duties of the criminal court commissioners in the magistrate section of Criminal District Court for the Parish of Orleans). Court commissioners in criminal cases in Louisiana also have the power to conduct trials of misdemeanor cases. See, e.g., [La. Rev. Stat. Ann. § 13:713\(B\) \(1999\)](#) (describing the duties of court commissioners who preside over criminal cases in the Louisiana Nineteenth Judicial District Court); [La. Rev. Stat. Ann. § 13:721 \(Supp. 2006\)](#) (describing the duties of court commissioners who preside over criminal cases in the Louisiana Twenty-Second Judicial District Court). But see 2003 La. Acts No. 714, § 2 (withdrawing the power under [§ 13:717](#) of criminal court commissioners in the Twenty-Fourth Judicial District to hear preliminary motions). As in civil cases, a court commissioner who conducts a misdemeanor trial in criminal cases is required to submit a written report of his findings, together with a recommendation to the district judge that transferred the case to the court commissioner, about how he thinks the case should be decided. See [La. Rev.](#)

[Stat. Ann. § 13:713\(C\) \(1999\)](#) (Louisiana Nineteenth Judicial District Court); [La. Rev. Stat. Ann. § 13:721 \(Supp. 2006\)](#) (Louisiana Twenty-Second Judicial District). Thereafter, any party, within ten days of receipt of the court commissioner's findings and recommendations, may object to such findings or recommendations in writing. *Id.* The district judge may then accept, reject, or modify in whole or in part the findings or recommendations made by the court commissioner. *Id.* However, criminal court commissioners in Orleans Parish Criminal District Court do not make written recommendations to a district judge. Apparently, the judgments of the criminal court commissioners in Orleans Parish Criminal District Court in misdemeanor trials are final and binding on the defendants. See [La. Rev. Stat. Ann. § 13:1347 \(1999 & Supp. 2006\)](#) (not stating that commissioners are required to submit written recommendations to a district judge). This scheme may be unconstitutional in light of *State v. O'Reilly*, 00-2864 (La. 5/15/01); [785 So. 2d 768](#), wherein the Louisiana Supreme Court found that the commissioner, pursuant to the authority granted by [La. R.S. 13:719\(E\)\(2\)\(e\)](#), had exercised adjudicatory power in violation of the Louisiana Constitution. With these responsibilities, court commissioners in criminal cases in Louisiana also serve 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. Criminal court 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.

[FN68]. The compliance provision of the Louisiana Code of Judicial Conduct states in part:

All elected judges and anyone, whether or not a lawyer, who is an officer of a court of record performing judicial functions, including an officer such as a judge ad hoc, judge pro tempore, referee, special master, court commissioner, judicially appointed hearing officer, or magistrate, and anyone who is a justice of the peace, is a judge for the purpose of this Code. All judges shall comply with this Code.

La. Code Jud. of Conduct, Compliance (2007).

[FN69]. The term hearing officer has been used in Louisiana in a number of other contexts. For example, prior to 1997, workers' compensation judges were referred to as hearing officers. See [La. Rev. Stat. Ann. § 23:1310.7 \(1996\)](#), amended by 1997 La. Acts No. 88; Jay S. Bybee, [Agency Expertise, ALJ Independence, and Administrative Courts: The Recent Changes in Louisiana's Administrative Procedure Act](#), 59 *La. L. Rev.* 431 (1999) (describing the history of Louisiana's administrative law process). Additionally, hearing officers are persons who are allowed to assess fines, fees, and penalties against those who violate public health, housing, fire code, environmental, and historic district regulations. See [La. Rev. Stat. Ann. § 13:2575 \(1999 & Supp. 2006\)](#). Furthermore, hearing officers also play a part in the administration and enforcement of traffic violations and other minor offenses. See [La. Rev. Stat. Ann. § 13:2562.21 \(1999\)](#) (establishing traffic hearing officers for Jefferson Parish). The jurisdiction of these officers is limited to traffic

violations and municipal ordinances that are committed within the territorial boundaries of the parish where the hearing officer has been appointed if the violations are punishable by a fine not exceeding \$500.00 or by imprisonment not exceeding six months, or both. *Id.* These officers are engaged in the administration of traffic and other minor violations in areas ranging from municipalities to the Port of New Orleans. See [La. Rev. Stat. Ann. 13:2571\(A\) \(1999\)](#) (Lafayette, Gretna, and any municipality with 100,000 or more residents); [La. Rev. Stat. Ann. § 13:2571.1 \(Supp. 2006\)](#) (Port of New Orleans).

[FN70]. [La. Rev. Stat. Ann. § 46:236.5 \(1999\)](#) was added by 1986 La. Acts No. 517. Under this statute, domestic hearing officers must be either full-time or part-time employees of the court and are also required to be attorneys in good standing with any state bar association for at least five years and have prior experience in child support cases. [La. Rev. Stat. Ann. § 46:236.5\(C\)\(2\) \(1999 & Supp. 2006\)](#).

[FN71]. Title IV-D of the Social Security Act, "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) (quoting 42 U.S.C. §§ 651-669b, 602(a)(2) & 652(a)(3) (2000)). Title IV-D sets out the rules that states must adhere to in order to receive the funding. *Id.*

[FN72]. The legislation also provided for an expedited process for the establishment of paternity where hearing officers would hear these matters. [La. Rev. Stat. Ann. § 46:236.5 \(1999 & Supp. 2006\)](#).

[FN73]. [La. Rev. Stat. Ann. § 46:236.5\(C\) \(1999 & Supp. 2006\)](#). [La. Rev. Stat. Ann. § 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 \(2000\)](#), 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\(A\)\(1\) \(2000\)](#). 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) (codified at [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 support enforcement program. [42 U.S.C. § 654\(A\)\(7\) \(2000\)](#). The Louisiana Department of Social Services is the centralized agency for support enforcement. *La. Rev. Stat. Ann.*

§ 46.236.5 (Supp. 2006). [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. Ann. 46:236.5\(B\)\(1\) \(Supp. 2006\)](#). [Louisiana Revised Statute § 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 Soc. Servs. ex rel. I. v. C.W., 01-1213 \(La. App. 5 Cir. 3/26/02\); 815 So. 2d 241, 243.](#)

[FN74]. Lisa Rogers Trammell, [A Lawyer's Guide to Expedited Child Support Enforcement](#), 44 *La. B.J.* 20, 21 (June 1996) (describing child support enforcement in Louisiana courts).

[FN75]. [La. Rev. Stat. Ann. § 46:236.5\(C\)\(3\)\(d\) \(1999 & Supp. 2006\)](#).

[FN76]. See generally [La. Rev. Stat. Ann. §§ 9:315-315.47 \(1999 & Supp. 2006\)](#) (statutory guidelines used by domestic hearing officers to calculate child support).

[FN77]. [La. Rev. Stat. Ann. § 46:236.5\(C\)\(3\)\(a\) \(1999 & Supp. 2006\)](#).

[FN78]. [La. Rev. Stat. Ann. § 46:236.5\(C\)\(6\) \(1999 & Supp. 2006\)](#).

[FN79]. See generally Trammell, *supra* note 74 (describing the responsibilities of a support enforcement domestic hearing officer in Louisiana).

[FN80]. Telephone Interview with Carol Accordo, Domestic Hearing Officer, Twenty-Fourth Judicial District Court for the State of Louisiana, in New Orleans, La. (Mar. 27, 2006). Ms. Accordo has never used a court reporter or taken testimony in a hearing officer conference.

[FN81]. [La. Rev. Stat. Ann. § 46:236.5\(C\)\(1\) \(Supp. 2006\)](#).

[FN82]. *Id.* The 24th Judicial District was one district that expanded the duties and responsibilities of its domestic hearing officers as a result of the 2003 change to section 236.5. 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. 24th Jud. Dist. Ct R.* 23- 39.

[\[FN83\]](#). Letter from Paul A. Landry, Domestic Hearing Officer for Sixteenth Judicial District Court to author (March 27, 2002) (on file with author) (explaining the HOC in the 15th and 16th Judicial District Courts).

[\[FN84\]](#). Id. See La. 15th Jud. Dist. Ct. R. 23, 35, 36.5, 37.2, & 38 (outlining the role of the Domestic Hearing Officer in the 15th JDC).

[\[FN85\]](#). Telephone Interview with Paul A. Landry, Domestic Hearing Officer for the Sixteenth Judicial District Court, in New Orleans, La. (Jan. 27, 2003).

[\[FN86\]](#). See LA. 16th Jud. Dist. Ct. R. 27.1 (establishing the schedule for pre-trial status conferences in the 16th JDC).

[\[FN87\]](#). In those judicial districts where domestic commissioners are used, the Joint Stipulation and Order may also be signed by the domestic commissioner.

[\[FN88\]](#). Telephone Interview with Paul A. Landry, Domestic Hearing Officer for the Sixteenth Judicial District Court, in New Orleans, La. (Jan. 27, 2003). Additionally, as part of the Harges First Efficiency Study, mentioned supra note 6, I observed several HOCs in the Sixteenth Judicial District Court on December 11, 2002.

[\[FN89\]](#). I 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.

[\[FN90\]](#). See, e.g., La. 15th Jud. Dist. Ct. R. 35(C)(2) (explaining the procedure in the event the parties agree to the hearing officer's recommendations); La. 16th Jud. Dist. Ct. R. 28 (same); La. 24th Jud. Dist. Ct. R. 24.1(B)(8) (same).

[\[FN91\]](#). Letter from Paul A. Landry, Domestic Hearing Officer for Sixteenth Judicial District Court to author (Mar. 27, 2002) (on file with author) (explaining the HOC in the Fifteenth and Sixteenth Judicial District Courts).

[FN92]. E.g., La. 15th Jud. Dist. Ct. R. 35(C)(2); La. 16th Jud. Dist. Ct. R. 28; La. 24th Jud. Dist. Ct. R. 24.1(B)(8).

[FN93]. 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).

[FN94]. See, e.g., La. 15th Jud. Dist. Ct. R. 35(C)(3) (stating the procedure in the event the parties do not agree with the hearing officer's recommendations); La. 16th Jud. Dist. Ct. R. 27.2 (same); La. 24th Jud. Dist. Ct. R. 24.1(B)(8) (same).

[FN95]. E.g., La. 15th Jud. Dist. Ct. R. 36.5(J); La. 16th Jud. Dist. Ct. R. 27.2; La. 24th Jud. Dist. Ct. R. 24.1(B)(10)(c).

[FN96]. See *supra* note 5 (discussing that Jefferson Parish is now the largest parish as a result of Hurricane Katrina's impact on New Orleans).

[FN97]. 24th JDC, <http://www.24jdc.us> (last visited November 1, 2006).

[FN98]. *Id.*

[FN99]. *Id.*

[FN100]. See *infra* Part V.B. (discussing the domestic commissioner's office in the 24th Judicial District Court).

[FN101]. Telephone Interview with Carol Accordo, Domestic Hearing Officer, Twenty-Fourth Judicial District, in New Orleans, La. (Mar. 27, 2006). Ms. Accordo has been employed by the 24th JDC in various capacities such as judicial law clerk, staff attorney, support hearing officer, and domestic hearing officer since 1978.

[FN102]. *Id.*

[\[FN103\]](#). Id.

[\[FN104\]](#). Id. See supra Part IV. for a discussion of the general use of support hearing officers in Louisiana.

[\[FN105\]](#). [La. Rev. Stat. Ann. § 13:717 \(1999 & Supp. 2006\)](#) (added by 1997 La. Acts. No. 824).

[\[FN106\]](#). [La. Rev. Stat. Ann. § 13:717 \(1999\)](#).

[\[FN107\]](#). Domestic Relations Case Rule II, Section 2, Designation of Records - La. R. 24th Dist Ct (1999).

[\[FN108\]](#). Harges First Efficiency Study, supra note 6 at 1.

[\[FN109\]](#). Prior to the 2003 amendments to [Louisiana Revised Statute § 13:717](#), the judges of the 24th JDC were assisted by three (3) Commissioners: two (2) criminal, and one (1) domestic. [La. Rev. Stat. Ann. § 13:717\(C\) \(1999\)](#). The 2003 amendments to [§ 13:717](#) changed the responsibilities of one of the court commissioners by allowing one commissioner to have jurisdiction over domestic relations, family law, and criminal matters. Id. The current version of that portion of the statute states, "[o]ne 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." [La. Rev. Stat. Ann. § 13:717 \(Supp. 2006\)](#). The procedures used by the domestic commissioners are detailed in the Twenty-Fourth Judicial District Court Rules - Domestic Early Intervention Triage Program. La. 24th Jud. Dist. Ct. R. 23-25.

[\[FN110\]](#). 2003 La. Acts. No. 964. In 2003, the statutory responsibilities of domestic hearing officers in domestic relations cases were expanded. Id. 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." Id. The range of issues that domestic 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; and all protective orders and injunctions filed in domestic or family violence cases, or that are brought under the Children's Code. [La. Rev. Stat. Ann. § 46:236.5 \(Supp. 2006\)](#). The 24th JDC 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. The procedures used by the

domestic hearing officers are detailed in the Twenty-Fourth Judicial District Court Rules - Domestic Early Intervention Triage Program. La. 24th Jud. Dist. Ct. R. 23-25 (effective May 25, 2005).

[FN111]. La. 24th Jud. Dist. Ct. R. 23-25; 24th Judicial District Court for the State of Louisiana, Domestic Hearing Officers, <http://www.24jdc.us/tele/domhearingofficer.htm> (last visited Jan. 30, 2008) (providing the names of the four commissioners).

[FN112]. [La. Rev. Stat. Ann. § 13:717\(C\) \(1999 & Supp. 2006\)](#).

[FN113]. Domestic Relations Section Rules, Rule IV, Section 3. Purpose, Local Rules of the Twenty-Fourth Judicial District (1998).

[FN114]. Harges First Efficiency Study, *supra* note 6, at 15; Harges Second Efficiency Study, *supra* note 6, at 14.

[FN115]. Harges First Efficiency Study, *supra* note 6, at 6; Harges Second Efficiency Study, *supra* note 6, at 12-13.

[FN116]. [La. Rev. Stat. Ann. § 46:236.5 \(1999\)](#).

[FN117]. Rule V, Section 4 of the Domestic Relations Case Rules of the Twenty-Fourth Judicial District Court.

[FN118]. An analysis of the cases during the Harges First Efficiency Study revealed that eighty percent (80%) of the matters that the support hearing officers heard, which became interim orders of the domestic commissioner, were not appealed to the district court. Harges First Efficiency Study, *supra* note 6, at 9. Thus, only twenty percent (20%) of the support issues reached the dockets of the district judges.

[FN119]. Harges First Efficiency Study, *supra* note 6, at 9.

[FN120]. La. 24th Jud. Dist. Ct. R. 23-25 (effective May 25, 2005).

[\[FN121\]](#). Harges Second Efficiency Study, *supra* note 6, at 1.

[\[FN122\]](#). La. 24th Jud. Dist. Ct. R. 23-25.

[\[FN123\]](#). *Id.*

[\[FN124\]](#). La. 24th Jud. Dist. Ct. R. 24(A)(3)(a).

[\[FN125\]](#). La. 24th Jud. Dist. Ct. R. 24(A)(3)(b).

[\[FN126\]](#). La. 24th Jud. Dist. Ct. R. 24.1(B)(2).

[\[FN127\]](#). La. 24th Jud. Dist. Ct. R. 24.1(B)(3).

[\[FN128\]](#). 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 HOC.

[\[FN129\]](#). A similar analysis of HOCs in the Sixteenth Judicial District in January 2002 revealed that ninety percent (90%) of domestic relations cases that are scheduled for a HOC never reach the trial judges. Telephone Interview with Judge Edward Leonard, Jr., 16th Judicial District Court, in New Orleans, La. (July 3, 2002); St. Mary Parish Hearing Officer Program Consolidated Case Review Statistical Tracking from January 2002.

[\[FN130\]](#). [Bordelon v. La. Dep't of Corrs.](#), 398 So. 2d 1103, 1105 (La. 1981) (citing [Matthews v. Weber](#), 423 U.S. 261 (1976)).

[\[FN131\]](#). *Id.*

[\[FN132\]](#). [Autrey v. Energy Corp. of America](#), 594 So. 2d 1354, 1357 (La. Ct. App. 3 Cir. 1992).

[FN133]. Id. (citing [Bordelon](#), 398 So. 2d at 1105).

[FN134]. [Sibille v. Hygeia Int'l Sys., Inc.](#), 488 So. 2d 752, 753-54 (La. Ct. App. 3 Cir. 1986).

[FN135]. See id. (stating that the commissioner who signed the judgment was under the supervision of a district judge).

[FN136]. [Quarles Drilling Corp. v. Gen. Accident Ins. Co.](#), 520 So. 2d 475, 475-76 (La. Ct. App. 4 Cir. 1988).

[FN137]. Id. at 476 (citing [Whitney Nat'l Bank of New Orleans v. Derbes](#), 436 So. 2d 1185 (La. Ct. App. 4 Cir. 1983)).

[FN138]. Id.

[FN139]. Id.

[FN140]. See [La. Const. art. V, § 1](#) (providing that the judicial power of the state is vested in a supreme court, courts of appeal, district courts, and other courts authorized by [Article V](#)); [La. Const. art. V, § 22](#) (establishing that all judges shall be elected except for appointments to fill temporary vacancies). The effect of these two provisions of the Louisiana Constitution is that officials who exercise judicial power in a Louisiana district court should be elected except for those judges who fill temporary vacancies in office.

[FN141]. Procedures for domestic court commissioners similar to the one described above currently exist in the 24th JDC. See [La. Rev. Stat. Ann. § 13:717 \(1999 & Supp. 2006\)](#) (creating three offices of commissioners for the 24th JDC and setting up their procedures). Similar procedures for civil court commissioners currently exist in the 15th JDC. See [La. Rev. Stat. Ann. § 13:716 \(1999\)](#) (establishing the procedures for court commissioners in the 15th JDC).

[FN142]. Prior to 2003, domestic hearing officers were only authorized by [La. Rev. Stat § 46:236.5](#) to hear paternity cases brought by the State of Louisiana, support, and support-related matters. See [La. Rev. Stat. Ann. § 46:236.5 \(1999\)](#) (using hearing officers only for the establishment of paternity and the establishment and enforcement of support). The 2003 amendment to [§ 46:236.5](#) allowed

domestic hearing officers to hear all "domestic and family related matters." [La. Rev. Stat. Ann. § 46:236.5 \(c\)\(1\) \(Supp. 2007\)](#).

[FN143]. [Muller v. Muller, 600 So. 2d 933, 934 \(La. Ct. App. 3 Cir. 1992\)](#). In 1992, [La. Rev. Stat. § 46:236.5](#) only allowed domestic hearing officers to make recommendations concerning support and paternity matters. [La. Rev. Stat. Ann. § 46:236.5\(C\)\(1\) \(1999\)](#), amended by [La. Rev. Stat. Ann. § 46:236.5\(C\)\(1\) \(Supp. 2007\)](#). In 2003, the statute was amended to allow domestic hearing officers to make recommendations on any matter ancillary to a divorce proceeding. 2003 La. Acts No. 964; [La. Rev. Stat. Ann. § 46:236.5 \(C\)\(1\) \(Supp. 2006\)](#).

[FN144]. [Soileau v. Houser, 03-0032, p. 1 \(La. App. 3 Cir. 4/30/03\)](#); [865 So. 2d 97, 98](#).

[FN145]. [Id at 98](#). After [Soileau v. Houser](#) was decided, [La. Rev. Stat. § 46:236.5](#) was amended in 2003 to allow domestic hearing officers to hear and make recommendations on any issue ancillary to a divorce proceeding, including custody and visitation matters and in any paternity matter, whether in a private matter or one brought by the state. See 2003 La. Acts No. 964; [La. Rev. Stat. Ann. § 46:236.5 \(C\)\(1\)\(Supp. 2007\)](#).

[FN146]. [Soileau, 865 So. 2d. at 98](#).

[FN147]. [Piccione v. Piccione, 01-1086, pp. 11-12 \(La. App. 3 Cir. 05/22/02\)](#); [824 So. 2d 427, 434](#).

[FN148]. [Id. at 434](#).

[FN149]. [Id.](#)

[FN150]. [Id.](#)

[FN151]. [Id.](#)

[FN152]. [Kim v. Kim, 563 So. 2d 529, 529-30 \(La. Ct. App. 5 Cir. 1990\)](#).

[\[FN153\]](#). [Id. at 530.](#)

[\[FN154\]](#). [Paschal v. Hazlinsky, 35,513, p. 5 \(La. App. 2 Cir. 12/19/01\); 803 So. 2d 413, 417.](#)

[\[FN155\]](#). [La. Rev. Stat. Ann. § 46:2135\(I\) \(1999 and Supp. 2007\).](#)

[\[FN156\]](#). [Paschal, 803 So. 2d at 418.](#)

[\[FN157\]](#). [Id. at 415.](#)

[\[FN158\]](#). [Id.](#)

[\[FN159\]](#). [Id.](#)

[\[FN160\]](#). [Id.](#)

[\[FN161\]](#). [Id. at 418.](#)

[\[FN162\]](#). [Id.](#)

[\[FN163\]](#). [See infra, notes 181-84 and accompanying text \(discussing the necessity of a contradictory hearing\).](#)

[\[FN164\]](#). ["A trial de novo in a judicial proceeding means a trial anew or from the beginning.... At a trial de novo the whole case is retried as if there had been no prior trial whatever had been had." Pardue v. Stephens, 558 So. 2d 1149, 1159 \(La. Ct. App. 1 Cir. 1989\) \(citations omitted\); see also Mihalopoulous v. Westwind Africa Line, Ltd., 511 So. 2d 771, 776 \(La. Ct. App. 5 Cir. 1987\) \("A 'de novo trial' is defined as '\[t\]rying a matter anew; the same as if it had not been heard before and as if no decision had been previously rendered.'"\) \(citing Black's Law Dictionary \(5th ed. 1979\)\); \[infra notes 179-82 and accompanying text \\(discussing the necessity of a contradictory hearing\\).\]\(#\)](#)

[FN165]. See [La. Const. art. V, § 1](#) (providing that the judicial power of the state is vested in a supreme court, courts of appeal, district courts, and other courts authorized by [Article V](#)); [La. Const. art. V, § 22](#) (establishing that all judges shall be elected except for appointments to fill temporary vacancies). The effect of these two sections of the Louisiana Constitution is that officials who exercise judicial power in a Louisiana district court should be elected except for those judges who are filling temporary vacancies in office.

[FN166]. La. 24th Jud. Dist. Ct. R. 23-25 (effective May 25, 2005).

[FN167]. La. 16th Jud. Dist. Ct. R. 27.1.

[FN168]. La. 24th Jud. Dist. Ct. R. 24(A)(3)(a).

[FN169]. La. 24th Jud. Dist. Ct. R. 24(A)(3)(b).

[FN170]. Harges First Efficiency Study, *supra* note 6, at 9.

[FN171]. Harges First Efficiency Study, *supra* note 6, at 13. In the 18th JDC, 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 Clayton, Domestic Hearing Officer, Eighteenth Judicial District Court, in New Orleans, La. (March 14, 2006).

[FN172]. 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. [La. Rev. Stat. Ann. § 46:236.5](#) (1999 and Supp. 2007).

[FN173]. See generally Harges, *supra* note 3 (describing the mediation process).

[FN174]. In the 15th JDC, the HOCs may be conducted with the lawyers alone without the clients being present inside the conference room. Interview with Vanessa Randle, Domestic Hearing Officer, Fifteenth Judicial District Court, in New Orleans, La. (March 14, 2006). In these instances, the attorneys conduct the negotiations with the clients participating as needed or simply to ratify the

agreements reached by the attorneys. Id. 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. Interview with Paula Hartley Clayton, Domestic Hearing Officer, Eighteenth Judicial District Court, in New Orleans, La. (March 14, 2006). Here, the domestic hearing officer hears each case in succession until all scheduled cases are heard. Id. The negotiations may take place with the lawyers alone or with the clients participating as dictated by the domestic hearing officer. Id.

[FN175]. [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 \(2006\)](#).

[FN176]. The HOCs in the 16th JDC are used by the court to resolve close to ninety percent of domestic relations cases. Interview with Judge Edward Leonard, Jr., Sixteenth Judicial District Court, in New Orleans, La. (July 3, 2002).

[FN177]. I interviewed many of the Louisiana domestic hearing officers who currently serve under [La. Rev. Stat. Ann. § 46:236.5](#) (1999 and Supp. 2007).

[FN178]. I chose to keep the name of this domestic hearing officer confidential.

[FN179]. See, e.g., Joe D. Lovelace, Florida Dissolution of Marriage Handbook § 20.4 (6th ed. 2002), available at DISS FL-CLE S-20-1 (discussing the use of court masters and support enforcement hearing officers in Florida); Mary P. Gallagher, [Court Issues Uniform Guidelines for Domestic Violence Hearing Officers, Lawyers Worry Nonjudges are Being Vested with Judicial Authority](#), 167 N.J.L.J. 1 (2002) (describing a domestic violence hearing officer program in New Jersey and suggesting that hearing officers who issue temporary restraining orders violate due process).

[FN180]. See, e.g., Gallagher, *supra* note 179 (discussing the concerns attendant with the use of hearing officers).

[FN181]. See [La. Rev. Stat. Ann. § 46:236.5\(C\)\(6\) \(Supp. 2007\)](#) ("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 discretion determines that additional information is needed, he may receive evidence at the hearing or remand the proceeding to the hearing officer.").

[FN182]. See discussion supra Part VII. (discussing challenges to the authority of civil court commissioners and domestic hearing officers).

[FN183]. [Pardue v. Stephens, 558 So. 2d 1149, 1159 \(La. Ct. App. 1 Cir. 1989\)](#) (citing [Scott v. Moore, 39 So. 2d 741 \(La. 1949\)](#)).

[FN184]. See [Duroncelet v. Doley, 530 So. 2d 653, 654-55 \(La. Ct. App. 4 Cir. 1988\)](#) (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).

[FN185]. Id. See also [State v. O'Reilly, 00-2864, pp.7-10 \(La. 05/15/01\)](#); [785 So. 2d 768, 773-75](#) (citing [Bordelon v. La. Dep't of Corr., 398 So. 2d 1103 \(La. 1981\)](#) to strike down a statute authorizing the court commissioner in the Twenty Second Judicial District Court to conduct trials, accept pleas, and impose sentences in misdemeanor cases); discussion supra Part VII.A. (examining Bordelon and other jurisprudence dealing with the issues arising from the Louisiana Constitution's requirement that judges be elected).

[FN186]. A similar argument was made in [Paschal v. Hazlinsky, 35,513 \(La. App. 2 Cir. 12/19/01\)](#); [803 So. 2d 413, 417](#). See supra notes 154-62 and accompanying text (discussing Paschal). See also Gallagher, supra note 179 (describing a domestic violence hearing officer program in New Jersey and suggesting that hearing officers who issue temporary restraining orders violate due process).

[FN187]. See discussion supra Part VII (addressing the need for courts to retain ultimate authority).

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