



MINUTES

December 4, 2015

Civil Justice Committee Meeting

Duke University Law School

Committee members: David Levi, Janet Ward Black, AP Carlton, Sheila Eley, Ed Gaskins, Rob Harrington, Calvin Hill, Anne Lloyd, Darrell Miller, Michael Mitchell, George Hausen, Osmond Smith

Other attendees: Deneen Barrier, Carolyn Dobbins, Brad Fowler, Allan Head, David Hoke, Bert Kemp, Amanda Lacoff, Jennifer Lechner, Julian Mann, Marty McGee, Barbara Moore, Chris Nichols, Emily Portner, Evelyn Pursley, Will Robinson, Danielle Seale, Kathy Stuart, Jeff Welty, Jon Williams

Meeting opened at 10:32

Minutes from last meeting approved.

Kathy Stuart gave presentation on how cases get calendared.

Stuart: 90 days out, set for arbitration By seventh or eighth month, trial date for District Court. Superior Court takes a little longer. Stuart discussed various matters that can delay calendaring, including, failure to serve, extensions, payment plans, multiple defendants.

ADR, motion calendars, scheduling order, exceptional case designation, and other tools used for case management (in presentation).

Goal is 95% cases finished in 1 year under local rule which incorporates performance standards.

Performance Standards set up by NC Supreme Court in 1996.

Final judgment, no trial means consent judgment, summary judgment.

2% of Superior Courts end with trial by jury. This is equal to approximately 10 civil jury trials in Durham this year.

Filings down in Superior Court. Not atypical.

Carolyn Dobbins says that they are down due to court costs.

Smith and Levi both confirm filings down. Williams unsure that it is caused by court costs. Smith suggested maybe litigation costs, rather than court costs.

Hausen concurred that fees are down, noted funding for legal aid tied to court filing.

Durham Superior Court running just over 70% disposed in 1 year.

Discovery can take place before trial date and motion calendar. If parties file a motion then it can be set by coordinator. Mediation deadline in Durham is 30 days before trial.

Discovery can commence with the complaint being filed. If parties agree, they can handle discovery themselves. If they can't agree, they can request a case management conference.

District court clears cases faster, not much discovery, get on trial calendar quickly.

Everything but domestic cases can go into non-binding arbitration. Arbitration is 1 hour with relaxed evidentiary rules. Arbitrator makes decision on standard AOC form. Disposes of many, many cases.

Arbitration is in a statute, but not done uniformly throughout the districts in North Carolina. Chief District judge makes decision on how much to use and implement arbitration.

Parties pay for arbitration, \$100 for arbitrator, arbitrator has to be a lawyer for five years, member of the state bar, go to arbitration training.

Judges stay cases pending arbitration, needs to have a deadline.

Levi: Where is the judicial case management? Shuart says lots of reliance on case managers to keep them on track. Coordinator will pull them for an administrative status matter.

Williams: Time standards are enforced and notified how? Who enforces the performance standards?
Answer: Judge can put in local rules. Local enforcement of these performance goals.

Carolyn Dobbins handles more than one county (Stokes/Surry) Two judges. Sometimes have two in court at the same time. Cases filed, ordered to mediation, get on a trial calendar, all cases within trial calendar within 1 year unless special circumstances. Attorneys have no issues with getting in front of the judge. Judge may do civil court during criminal session.

Robinson asked Dobbins about 6 month rotation.

Dobbins: rotation schedule good, sad to see go away, need it so home judge doesn't stay home all the time, avoids the judge shopping. Hate to see it stop.

Robinson asked about case assignment through whole case.

Shuart: Superior go to master calendar A, B, C depending on where it is on that day.

Individual calendaring case assigned to specific judge, that's what happens in family court. Family court becomes familiar with the issues in that case.

Hill said that the family court worked very efficiently and the judges do not have to re-learn the case.

Shuart says that in Superior Court when there is a case that may benefit from continuity, Judge Hudson has suggested that a judge will take that on for that 6 months.

Hoke says if the judge rotated out, can always commission judge for final trial of the case.

Mitchell says such assignment is in lieu of 2.1, but not under 2.1. Gaskins says it is by local rule in Wake County.

Hoke: other cases were treated very similarly to 2.1 in Durham.

Hoke says this practice is not uncommon, flexible, and will make it work if needed.

Ten court administrators, predominantly in metro areas, but not entirely. Some districts only have judicial assistants who do calendaring.

Informal calls between the coordinators to make things work. NC Conference of Court Administrators a group for administrators. Hoke says the court coordinators hold everything together in justice system in NC.

Levi asked about a non-complex case with some activity, and defense counsel is making substantive motions, and plaintiff is going to make discovery motions, and defendant wants to use dismissals as way to educate judge and plaintiff doesn't like it. What happens?

Second full week of every month, there's motions heard, ask that moving party contact opposing counsel to set the date, or see if it can be added to an existing trial calendar. If opposing counsel doesn't agree, the moving party can still set it at that date and time.

Levi asked: What if judge rules a way on discovery motion and then lets it go forward, can the judge assign case to themselves?

Nichols, they do it by saying six months running out, want to see you before then.

Court coordinator may have to remind lawyers about when orders etc. need to be filed to keep case disposed.

If parties and judge agree, then Senior Resident Superior Court judge would have to submit to Hoke to have the judge keep hearing the case by commission.

Gaskins says that the parties may agree to have the same judge hear the matter in another county.

Harrington: But if the parties disagree, then the likelihood there's going to be a commission.

Bert Kemp and Chris Nichols on case assignment from the litigant's side. (Kemp mostly criminal calendar familiarity)

Nichols, NCBA Litigation Section, last meeting discussed feelings about rotation. Consensus 100% was like it, don't want to change it. Like rotation because of concern about everyone knowing everyone. Nichols says this ensures everyone feels like they get a fair shake. Plus, elect judges in North Carolina.

Kemp: NCBA criminal section. Won't take position on rotation. Pro: less likelihood of public pressure and influence, increase likelihood of similar treatment state wide, fresh variety of views with regard to certain matters. Cons: out of county judges not(?) readily available, he knows judges that will work till late at night so they can get back to their county, knows judges that have eye on the door so they don't have to be there till Friday, can create a problem when case is ready, but the judge is not there, some judges will have idiosyncratic rules and procedures.

Nichols: One size does not fit all for the state. Every county resisted unified local rules. Majority of mandatory binding arbitration cases coming out of uninsured or underinsured motor vehicles, and act as a pending case on the calendar.

David Hoke, assistant director of AOC, responsible for all of calendaring, for the past 14 years, made a presentation.

Master Calendar set by Court order.

Courts rotation within divisions. But sometimes will go out of their division.

Special Superior Court judges not on the calendar. By end of January down to seven Special Superior Court Judges, reducing to 5 Special Superior Court Judges and 5 Business Court judges.

In each division most Senior Resident Superior Judge will submit a plan of rotation. They submit a plan of rotation to the Chief Justice, to make sure the judges are going to all the districts within the division.

Some suspensions of rotations by Chief Justice through the years based on budget reductions, gasoline crisis, Hurricane, reduction of criminal case backlog.

Senior residents can request 2.1 designation for exceptional cases, all judges are eligible take those cases.

50 judges carrying 135 exceptional cases. 15 of those 50 are carrying just 1 2.1. 35 are carrying more than one 2.1 designated cases. Monitor to ensure that the judges are not overloaded.

2103 85 2.1 designation

2015 64 2.1 designation

2015 65 2.1 designation

Average of 5.75 of 2.1 cases going through Chief Justice's office state wide per month, very few rejections of 2.1.

2.1 of general rules of practice specify the 2.1 special designation status. Has to clear Senior Resident Judge. If Senior Resident Judge says no, then Chief never sees it.

Hoke, consider everything including expertise in how to designate the 2.1 judge. First consideration is demand on the judge's time.

Mitchell: how to resolve dispute between parties with respect to 2.1.

Hoke: Senior resident makes the decision on case by case basis.

Hoke on why so workable. Proven entity with NC from founding of the State.

Robinson asked about origin of 6 month? Hoke/Smith says idea has been to have 6 month rotations for more than 40 years.

Hoke, with special designation, best of both worlds rotation plus designation as 2.1.

Levi rotation may have demographic effects as to who can be judges. On selection process, others may resist judges picking other judges. Smith says that demographic effect of rotation was big when only 4 divisions, but not when there's 8.

Hoke, some divisions are more burdensome than others.

Mitchell asked of all Superior Court filing, how many business court or 2.1. Less than 2% have a specific judge.

Mitchell wants to do rotation efficiently. If 98% rotation is doing inefficiently? Have case come to the judge, but not judge to the case.

Broke at 12:25

Reconvened at 12:50

Presentation by Brad Folwer, Judge McGee and Judge Smith

Levi: Is there judge by judge data?

Fowler: Generally don't publish judge by judge, counting dispositions only will be misleading, and no judge "owns" the case, now we have judge named as of disposition. Don't own motions either.

Nothing in the indexing system would say whether judge has been assigned by special designation. Plus the numbers are very small.

Fowler not certain why there was a rise in median age and pending cases in 2010 and it's persistence from 2010-2015.

Mitchell wonders why that would be so when filings are down. Smith thinks may be money, party, or resource driven with respect to the lawyers and clients.

Nichols suggested that it was because of tort reform that went into effect in October 2011 because of timing of medical malpractice reform. Black said that may not be the reason because of the civil district rise in pending cases too.

Levi, how to figure out the increase in age to disposition and age pending. Fowler says can do some things, but may be some coding and isolating issues.

Levi, paradox. Lower case filing, higher pending, why? Fowler will take a crack at trying to figure that out. Black suggested arbitration cases and med mal are skewing the data.

Fowler said generally case filings down nationwide. But can't compare tracking of disposition on national standard, not all states don't report that kind of data.

Smith if have case stayed pending arbitration, or inactive, can order it be closed administratively. Can be counted as disposed case. Rotation helps minimize the appearance of cronyism or favoritism. Court clerks are typically civil or criminal, not cross-trained. Issue is feast or famine, too much or not enough to do.

McGee: Local legal culture is important. Getting to see all the counties is helpful. Learned from other counties and districts on how to process cases. Hope to revise local rules to help streamline and create efficiency. Likes rotation, thinks it helps with judicial independence and helps with perception of justice. Negatives: not there on a day to day basis and have to rely more on staff, travel. On balance thinks rotation is net positive. Resources not balanced throughout state. 55,000 cases in district but only 3 administrative staff. Big issue is court reporters. Have agreed to record.

Black: make sense to go to more divisions? Smith answered that it would save travel time.

Hausen said that more divisions also cut down on judicial independence.

Adjourned 1:44pm