Western District News

Newsletter of the

WESTERN DISTRICT OF WISCONSIN BAR ASSOCIATION

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Avoiding the Scathing Rebukes of the Seventh Circuit: Pleading Diversity Jurisdiction

by Sarah A. Zylstra
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Ask any lawyer about diversity jurisdiction and most will say diversity jurisdiction exists when plaintiff and defendant are from different states and there is at least $75,000 in controversy. Despite the simplicity of the basic principle, numerous lawyers fail to plead diversity jurisdiction correctly. This is a problem in the Western District.

At least six times in the last sixteen months, Judge Barbara B. Crabb has issued an order stating that the pleadings failed to allege diversity jurisdiction properly and needed correction. In issuing these orders, Judge Crabb was not simply playing a game of semantics. Rather, the Seventh Circuit has reminded district court judges repeatedly of their independent obligation to ensure that diversity jurisdiction exists. *See, e.g., Prizevoits v. Indiana Bell Tel. Co.*, 76 F.3d 132, 134-35 (7th Cir. 1996).

It is an understatement to say the Seventh Circuit dislikes pleadings that allege diversity improperly. Recently, the court wrote:

> "[B]y their insouciance concerning jurisdiction the litigants not only ran the risk of having to start the case over in state court, but also made more work for us and delayed the decision of the appeal. We remind the bench and bar of this circuit that it is their non-delegable duty to police the limits of federal jurisdiction with meticulous care and to be particularly alert for jurisdictional problems in diversity cases in which one or more of the parties is neither an individual nor a corporation."

Hart v. Terminex Int'l, 336 F.3d 541, 542 (7th Cir. 2003) (quotation omitted). This admonition pales in comparison to the often repeated censure that appears in *America's Best Inns, Inc. v. Best Inns of Abilene, L.P.*, 980 F.2d 1072 (7th Cir. 1992):

> These litigants have had chance after chance to establish diversity of citizenship — the complaint, the answer, the jurisdictional statements and their appellate briefs, and finally the memoranda and filings under [28 U.S.C.] sec. 1653 called for at oral argument. Despite receiving express directions about what they had to do, counsel did not do it. At some point the train of opportunities ends. The parties' reluctance to supply the court

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The President's Corner

By
Todd Smith
President
Western District of Wisconsin Bar Association

This being the WDBA's year-end newsletter, right about now you are hopefully enjoying memories of the family holiday gathering, celebrating a Badger football bowl victory and looking forward to the new year. In the tradition of the season, I offer the following new year wishes:

- That our troops stationed in Iraq, Afganistan and around the globe return home safely and in short order.
- That the WDBA increases its membership from 300 to 400 and continues to be an important resource for the court and litigants.
- That we all find an opportunity in 2004 to donate our valuable time and skills to a deserving pro bono client or cause.
- That someone – anyone – figures out how to get all of the spam out of my inbox so that I can get back to work.
- Good health and continued service for the court's judges, staff and personnel.
- A quick healing period for Brett Favre's right thumb.
- That retirement suits Joe Skupinewitz as well as he has served the district court, litigants and counsel for the last 31 years.
- That 2004 brings you and your family peace, happiness and prosperity.

Have a happy new year and please feel free to contact me at any time with your comments and suggestions for the WDBA.

- Todd

Pleading Diversity Jurisdiction

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> with essential details supports an inference that jurisdiction is absent; at all events, it is the obligation of the plaintiff to establish jurisdiction, and in this obligation the plaintiff has failed. These lawyers knew what they had to do, and they did not do it. Failure in one round of supplemental filings leads us to doubt that a second would be any more successful. Anyway, it is not the court's obligation to lead counsel through a jurisdictional paint-by-numbers scheme. Litigants who call on the resources of a federal court must establish that the tribunal has jurisdiction, and when after multiple opportunities they do not demonstrate that jurisdiction is present, the appropriate response is clear. Counsel have only themselves to blame if they must now litigate this case from scratch in state court.

Id. at 1074 (emphasis added); *see also Meyerson v. Showboat Marina Casino P'ship*, 312 F.3d 318, 321 (7th Cir. 2002) (stating that counsel "made to this court a promise that they broke at their very first opportunity, a few weeks later" when they filed a brief in a second appeal with an improper jurisdictional allegation of diversity). Indeed, even district court judges are not immune from the Seventh Circuit's wrath. *See, e.g., Isaacs v. Sprint Corp.*, 261 F.3d 679, 682 (7th Cir. 2001) ("Our decision of this appeal was delayed by the district judge's failure to make an adequate inquiry into the existence of federal jurisdiction over the plaintiffs' suit").

Failure to plead diversity jurisdiction appropriately can have disastrous consequences. First, the Seventh Circuit has routinely dismissed cases on appeal and remanded cases to the district courts with orders to vacate their opinions due to lack of jurisdiction. *See, e.g., Meyerson*, 312 F.3d 318, 321 (7th Cir. 2002); *Hart*, 336 F.3d at 544; *Guaranty Nat'l Title Co., Inc. v. J.E.G. Assocs.*, 101 F.3d 57, 59 (7th Cir. 1996).

Second, the Seventh Circuit has warned litigants repeatedly that improper pleading is sanctionable, *see, e.g., Professional Service Network, Inc. v. American Alliance Holding Co.*, 238 F.3d 897, 903 (7th Cir. 2001), and have on occasion imposed sanctions. *See Wild v. Subscription Plus, Inc.*, 292 F.3d 526, 533 (7th Cir. 2002) (reprimand), *cert. denied*, 537 U.S. 1045 (2002); *Cincinnati Ins. Co. v. Eastern Atl. Ins. Co.*, 260 F.3d 742, 747-48 (7th Cir. 2001) (reprimand). Sanctions are imposed for violation of Seventh Circuit Rule 28(a)(1), which requires the appellant's brief to state the citizenship of each party if jurisdiction depends on diversity, and Rule 28(b), which requires appellees to state whether an appellant's jurisdictional statement is complete and correct. Accordingly, counsel for both parties face the possibility of sanctions. In one case where counsel failed to properly rectify pleadings after being reminded by the Seventh Circuit, the court issued an order "to show cause why sanctions (not only fines but also suspension from practice) should not be imposed for their egregious disregard of obligations to the court — obligations that stem in part from Rule 28 . . . ." *Meyerson*, 312 F.3d at 321.

As recently as December 1, 2003, the Seventh Circuit imposed this penalty:

> The costs of a doomed foray into federal court should fall on the lawyers who failed to do their homework, not on the hapless clients. Although we lack jurisdiction to resolve the merits, we have ample authority to govern the practice of counsel in the litigation. . . . The best way for counsel to make the litigants whole is to perform, without additional fees, any further services that are necessary to bring this suit to a conclusion in state court, or via settlement. That way the clients will pay just once for the litigation. This is intended not as a sanction, but simply to ensure that clients need not pay for lawyers' time that has been wasted for reasons beyond the clients' control.

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Pleading Diversity Jurisdiction

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Belleville Catering Co. v. Champaign Mkt. Place, L.L.C., No. 02-3975, slip op. at 5 (7th Cir. Dec. 1, 2003) (citations omitted). Avoiding the pitfalls of pleading diversity jurisdiction is a necessity for any lawyer practicing in the Seventh Circuit.

The Diversity Statute

The diversity jurisdiction statute, 28 U.S.C. § 1332, is fairly straightforward and clear. It provides in part:

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between —
>
> > (1) citizens of different States;
> > (2) citizens of a State and citizens or subjects of a foreign state;
> > (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
> > (4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States. . . .

28 U.S.C. § 1332(a). The statute also provides, among other things, that an alien admitted to the United States for permanent residence shall be deemed a citizen of the state in which the alien is domiciled, that a corporation shall be deemed to be a citizen of any state in which it has been incorporated and of the state in which it has its principal place of business, and that the legal representative of an estate shall be deemed to be a citizen of the decedent's state of citizenship. 28 U.S.C. § 1332(b) and (c). The statute also addresses how to determine the amount in controversy, when a direct action is brought against an insurer, and how to determine the citizenship of infants and incompetents. Although the statute is generally understandable, certain problems arise with recurring frequency. These are discussed below.

Avoiding the Common Mistakes: Four Key Principles for Diversity Pleading

1. **It's Citizenship, Not Residency.** A common mistake in pleading diversity is to allege that an individual is a *resident* of a particular state. The Seventh Circuit has repeatedly stated that residency is insufficient for diversity jurisdiction. *See, e.g., Tylka v. Gerber Prods. Co.*, 211 F.3d 445, 448 (7th Cir. 2000), *cert. denied*, 531 U.S. 1002 (2000). Citizenship for the purpose of diversity jurisdiction is based on domicile, and domicile is the place one intends to remain, with the caveat that citizenship requires the additional showing that the person is a citizen of the United States or an alien admitted to the United States for permanent residence. *Dakuras v. Edwards*, 312 F.3d 256, 258 (7th Cir. 2002); 13B Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 3611 (West CD-ROM Libraries, July 2003); 28 U.S.C. § 1332(a). While domicile is generally the test, a proper pleading should allege that the individual is a "citizen" of a particular state, not that he or she is a resident or domiciled there.

2. **Corporations are Citizens of Two Places.** A corporation is deemed to be a citizen of two places: the state in which the corporation was incorporated and the state of the corporation's principal place of business. In some cases, the incorporation state and the principal place of business are the same. However, both must be alleged, and the allegation must be in the positive — that is, the pleader must allege the specific state of incorporation and the specific state of the principal place of business. A litigant may not plead in the negative — that is, state that the corporation was not incorporated or did not have its principal place of business in the state of plaintiff's citizenship. *See, e.g., Wild*, 292 F.3d at 529 ("But how can the plaintiffs know that the company's principal place of business is not in Louisiana if they don't know where its principal place of business is?"); *America's Best Inns*, 980 F.2d at 1073 ("And litigants instructed to specify the partners and their citizenship may not respond with a vacuous statement such as 'no partner is a citizen of Illinois.' How can anyone tell?"). Moreover, "principal" means most important, and thus, a corporation cannot have more than one principal place of business. *See, e.g., McVeigh v. UnumProvident Corp.*, No. 01-C-0679-C, slip op. at 1-2 (W.D. Wis. July 30, 2002).

3. **For Entities That are Not Corporations, the Litigant Must Plead the Citizenship of Each Partner or Member.** A litigant must take care when an entity is not a standard corporation. For a limited liability company, for example, a litigant must identify the citizenship of every member in the pleading. *Cosgrove v. Bartolotta*, 150 F.3d 729, 731 (7th Cir. 1998). The Seventh Circuit is suspicious of affidavits stating that all members are citizens of the same state. *America's Best Inns*, 980 F.2d at 1073. A list of each member's state of citizenship must be provided. This level of detail is needed not only for any LLC but also for any limited or general partnership, unincorporated entity or limited liability partnership. Unlike a standard corporation, citizenship for these entities is not determined by their principal place of business or their incorporation state.

4. **The Litigant Must Trace Through All Layers of Non-Corporate Entities.** This principle builds upon the preceding one. A litigant must trace through all layers of non-corporate entities to get to a final determination of diversity jurisdiction. For example, suppose a party is a general partnership with two partners: a corporation and a limited partnership. The litigant must determine and plead the citizenship of each partner. For the corporation, the litigant must allege both the state of incorporation and the principal place of business for that corporate partner. For the limited partnership, the litigant must identify all of the partners in the second partnership and allege each partner's citizenship. If any partner or member in any layer of the analysis is a citizen of the same state of the opposing party, diversity is destroyed and the federal court does not have jurisdiction. *See, e.g.*, *Hart*, 336 F.3d at 542-43.

All hope is not lost if you find yourself before the Seventh Circuit or the district court and realize that diversity was pled improperly. Section 1653 of Title 28 of the United States Code provides lawyers an opportunity to cure their mistakes. It states: "[d]efective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts."

While 28 U.S.C. § 1653 may provide a remedy, the better plan is to avoid the problems in the first place. If you do so, you may avoid getting rebuked by the Seventh Circuit, spending your client's money unnecessarily, being sued for malpractice (especially if the statute of limitations has run), having your appeal dismissed, or having your district court decision vacated. Therefore, if you receive an order from the district court judge early in the proceedings requesting an amendment to your pleadings to ensure diversity jurisdiction, the appropriate response is a simply thank you.

WDBA Member Viewpoint

Are the Federal Courts Eroding the Seventh Amendment's Grant of the Right of Trial By Jury in Civil Suits

By: Russell T. Golla

The Seventh Amendment to the United States Constitution grants the right of trial by jury in suits at common law where the value in controversy exceeds $20.00. It further provides that no fact tried by a jury shall be re-examined in any court of the United States other than according to the rules of the common law. The question presented is whether federal courts are protecting this constitutional right with sufficient vigilance given its elevated status. Recent studies discussing the frequency at which motions to dismiss, motions for summary judgment, motions in limine to prohibit introduction of expert testimony under *Daubert*[1] and its progeny and all so-called dispositive or quasi-dispositive motions are granted, strongly suggest that this Constitutional right to trial by jury is **not** being properly protected and safeguarded by the federal courts.[2]

The right to a jury trial on civil claims as recognized at common law has a long, rich and, on occasion, tumultuous tradition.[3] The Seventh Amendment grant of the right to trial by jury arose as a result of a fight between the Federalists and Anti-Federalists over the Bill of Rights.[4] Anti-Federalists used the concept of class-conflict to make their most powerful argument for an explicit constitutional guarantee of trial by jury. They argued that: (1) ordinary citizens could tend to identify with those of their own social rank.[5]

The class conflict concept and the view that the "common" people must share in the administration of public justice through decisions rendered by juries–groups of impartial citizens representing society–was initially espoused by, perhaps, the most famous common law jurist, William Blackstone. He stated:

> "'[A] competent number of sensible and upright jurymen, chosen by lot from among those of the middle rank, will be found the best investigators of truth and the surest guardians of public justice. For the most powerful individual in the state will be cautious of committing any flagrant invasion of another's right, when he knows that the fact of his oppression must be examined and decided by 12 indifferent men, not appointed until the hour of trial; and that, when once the fact is ascertained, the law must of course redress it. **This therefore preserves in the hands of the people that share which they ought to have in the administration of public justice, and prevents the encroachments of the more powerful and wealthy citizens. Every new tribunal, erected for the decisions of facts, without the intervention of a jury . . . is a step towards establishing aristocracy, the most oppressive of absolute governments.**' [Emphasis supplied]"[6]

Indeed, Kevin Phillips, in his book, *Wealth and Democracy: A Political History of the American Rich* (Random House 2002) and Charles Lewis, in his book, *The Buying of the Congress* (Avon Books, Inc. 1998) make a very compelling argument that the propertied or wealthy elite are, now more so than ever, controlling Congress. Has this same group, through misinformation and propaganda, regarding "junk science" and the as yet unproven "litigation explosion" or "liability crisis" exercised its monied interests and undue influence over the Federal Judiciary?[7]

In his recent study, Marc Galanter documents that despite more filings and a five-fold increase in case terminations, the number of civil jury trials has, over the last 40 years, decreased dramatically.[8] He states that the percentage of civil cases reaching trial has fallen from 11% in 1962 to 1.8% in 2002. Civil case filings and civil case terminations have increased by a factor of five yet the raw number of civil jury trials fell by 20%. Although the jury is still out, no pun intended, some studies suggest that far more aggressive use of summary judgment and *Daubert* challenges to expert witnesses by defendants and the federal judiciaries increased receptivity to such motions are major factors influencing this trend.[9] The numbers analyzed in *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, (December 2003), *supra*, Note 2, support this proposition. Those numbers suggest that the percentage of cases terminated in settlement have fallen between 10 and 15%, from approximately 50 percent in 1970 to between 35 and 40 percent during the 1980s and 1990s, whereas "non-trial adjudications"–termination of civil actions by judicial decision–have risen to 50% from 32% in 1970.[10]

Historically, summary judgment was unknown in common law and early code practice.[11] It originated in England in the Bills of Exchange Act of 1855, well after our Constitution was adopted.[12] Early on, it was primarily used by plaintiffs in breach of contract claims.[13] Now, it is primarily invoked by defendants in all sorts of actions.[14] Although it is thought that summary judgment is only appropriate where no genuine issue of material fact exists, Judge Possner, in *Shager v. Upjohn Company*, 913 F.2d 398, 403 (7th Cir. 1990) stated, "Appellate courts [are] reluctant to reverse a grant of summary judgment merely because a rational fact finder could return a verdict for the non-moving party, if such a verdict is highly unlikely as a practical matter because the plaintiff's case . . . is marginal." If this sentiment is shared by the Federal Judiciary as some think it is,[15] then it would appear that the Federal Judiciary is willing to usurp the fact finding role assigned by the Seventh Amendment to the jury in exchange for convenience and expediency.

In *Daubert* the Supreme Court directed federal judges to examine the method and reasoning underlying expert evidence and to exclude relevant expert evidence if they found it was "unreliable." The quest to determine whether a particular expert opinion is "reliable" has in effect required courts to assess the weight and credibility of proffered expert testimony.[16] Further, a look at the definitions of "reliable" and "credible" reveals that they are at least fraternal, if not identical, twins. "Credible" is an adjective which means the offering of reasonable grounds for being believed. "Reliable," as an adjective, has the same meaning as dependable or capable of being depended on or trustworthy. In any event, there is no evidence to suggest that the Federal Judiciary is any better than juries at determining whether expert testimony is "reliable."[17]

Although the role of the jury has changed over time, it is generally accepted that juries are the sole arbiters of historical facts as well as many mixed questions of law and fact which are sometimes referred to as "ultimate facts."[18] However, if one or more facts are in dispute or different inferences may be drawn from undisputed facts and if expert testimony is relevant and will aid the jury in determining a fact in issue, the dispute and the "reliability" of the expert testimony, in due deference to the Seventh Amendment, should be submitted to the jury. By refusing to do so, the Federal Judiciary would not only usurp the role of the jury, but also fail to properly safeguard the rights granted by the Seventh Amendment. Moreover, as Blackstone observed, factual decision making by the courts in cases where a jury trial has been demanded would be a step toward "establishing an aristocracy, the most oppressive of absolute governments."[19]

Are the federal courts eroding the Seventh Amendment's grant of the right of trial by jury in civil suits? The data suggests that the answer is: Yes. Further, it appears as though this is being accomplished by "paper trials" to the court–summary judgments and judicial assessment of the "reliability" of required expert testimony in so-called *Daubert* hearings. The beneficiaries of the vast majority of summary judgments and *Daubert* orders prohibiting the introduction of expert testimony are defendants and, more often than not, defendant corporations and insurers. The losers are most often people alleged to have been injured by negligence, medical malpractice, defective and unreasonably dangerous products, toxic chemicals as well as alleged victims of civil rights violations. Rather than creating procedural mechanisms such as *Daubert* challenges and encouraging the use of dispositive motions designed to deprive civil litigants of their right to a jury trial, the Federal Judiciary should

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Seventh Amendment

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safeguard this Constitutional right. Seasoned trial lawyers know by experience that jury trials do allow the people to share in the administration of public justice and do prevent the encroachments of the more powerful and wealthy citizens and the corporations that they act through. The deprivation of the benefits of trial by jury was, for good reason, also included in the list of grievances supporting the Declaration of Independence. It is sadly ironic that the institution that has championed the peoples' Constitutional rights, the Federal Judiciary, may be responsible for the deprivation of one of their most cherished Constitutional rights.

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[1] *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

[2] Miller, *The Pretrial Rush to Judgment: Are the "Litigation Explosion," "Liability Crisis," and Efficiency Cliches Eroding our Day in Court and Jury Trial Commitments?*, 78 N.Y.U. L. Rev. 982 (June 2003); Dixon and Gill, *Changes in the Standards for Admitting Expert Evidence in Federal Civil Cases Since the Daubert Decision,* Rand Institute for Civil Justice, (2001) available on the web at www.rand.org/publications/MR/MR1439/index.html" ; Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts* (December 2003) prepared for the Symposium on the Vanishing Trial sponsored by the litigation section of the American Bar Association available in part at this writing on the web at HREF="http://www.abanet.org/litigation/taskforces/cji/nosearch/home.html" ; *Daubert: The Most Influential Supreme Court Ruling You've Never Heard Of* (June 2003), a publication of the Project on Scientific Knowledge and Public Policy, coordinated by the Tellus Institute, available on the web at www.tellus.org/general/publications.html" .

[3] Jeffrey Robert White, *The Civil Jury: Two Hundred Years Under Siege*, Trial (June 2000).

[4] *Id.*

[5] *Id.* Citing Alan Howard Scheiner, *Note, Judicial Assessment of Punitive Damages, The Seventh Amendment, and the Politics of Jury Power,* 91 Colum. L. Rev. 142, 145-60 (1991) and Akhil Reed Amar, *The Bill of Rights as a Constitution*, 100 Yale L.J. 1131, 1187-88 (1991).

[6] *Pretrial Rush to Judgment, supra*. Note 2 at 1077-78 citing 3 William Blackstone Commentaries 380.

[7] *See Pretrial Rush to Judgment, supra* Note 2 and *Daubert: The Most Influential Supreme Court Ruling You've Never Heard Of, supra* Note 2.

[8] *The Vanishing Trial, supra* at Note 2.

[9] *Pretrial Rush to Judgment, supra* Note 2, *Changes in the Standards for Admitting Expert Evidence, supra*, Note 2 and *Daubert: The Most Influential Supreme Court Ruling You've Never Heard Of, supra*, Note 2.

[10] Adam Liptak, *U.S. Suits Multiply, But Fewer Ever Get to Trial, Study Says,* The New York Times (December 14, 2003).

[11] *Pretrial Rush to Judgment, supra* Note 2 at 1016.

[12] *Id.*

[13] *Id.* at 1016-1019.

[14] *Id.*

[15] *Pretrial Rush to Judgment, supra* Note 2 at 1057.

[16] *See Changes in Standards for Admitting Expert Evidence, supra* Note 2; *Daubert: The Most Influential Supreme Court Ruling You've Never Heard Of, supra* Note 2; and *See* www.daubertontheweb.com/circuits.html" .

[17] *Changes in Standards for Admitting Expert Evidence, supra*, Note 2.

[18] *The Pretrial Rush to Judgment, supra* Note 2 at 1077-1094.

[19] *See also* the books authored by Phillips and Lewis, *supra*, which make the case that as a matter of fact rather than form, our government, now more so than in the past, is a plutocracy rather than a representative democracy.

"The WDBA Member Viewpoint forum provides members with an opportunity to submit articles expressing the author's personal opinions on important issues facing the legal community. The opinions expressed therein do not necessarily reflect the opinions of the WDBA, its officers, or Board of Governors."

DEVELOPMENT OF A MEDIATION PROGRAM

By James R. Troupis

Over the past two years, the Western District Bar Mediation/Arbitration Committee has been active in reviewing alternatives available for Western District practitioners. In the course of that review, there have been a number of important developments, and the Board of Governors recently asked for additional input from the members of the Association.

BACKGROUND

In the early 1990s the Association, in cooperation with the Court and the Clerk's Office, undertook to identify and list practitioners prepared to mediate disputes. The Clerk's Office utilized that list to call on specific practitioners for help in mediation and the list was a resource for other attorneys looking for assistance in evaluating possible matters before the Court. To encourage use of mediation, the Court notified parties at the time of filing that they were expected to explore mediation or other settlement alternatives. According to practitioners, utilization of the mediation list decreased significantly later in the 1990s when the Court no longer took an active role in encouraging use of the process and the calendar simply would not accommodate the time needed for separate mediation.

In recent years, the use of mediation and other settlement practices have increased around the country, particularly in backlogged dockets. In addition, early neutral evaluation is becoming a source of discussion among members of the Bar.

It is with this background that the Western District Bar undertook the ongoing study of the potential uses of mediation in Western District proceedings.

Ongoing Work: Two broad areas for mediation have been explored by the Committee – early neutral evaluation and settlement.

Early neutral evaluation can take many forms, but as a voluntary program this often involves attorneys calling on other attorneys to review either a potential case or a filed case. The informal program to obtain review through the Wisconsin State Bar is well known, but no active program exists with the Western District Bar for similar assistance in Federal matters. Some practitioners have expressed an interest in utilizing a panel of experienced lawyers on a voluntary basis for such early neutral evaluation.

On the settlement front, experienced litigators in the Court often have a good deal of knowledge that would be helpful in settlement. In addition, complex cases can often utilize the experience and knowledge of active practitioners in mediating disputes toward settlement. This latter role, however, has evolved throughout the 1990s, as formal organizations were being created, on a paid basis, to conduct that mediation.

It is now incumbent on the Western District Bar to decide where this project ought to go. In particular, input is sought from members of the Bar on their need for a formal mediation. If a formal program is to be proposed then a host of issues must be addressed, including qualification for participation, conflicts, participation by the Court, participation by the Clerk's Office and compensation. All of these matters, members of the committee believe, are solvable, but undertaking the authoring of those rules and regulations would be a significant task. Before undertaking that task, the Board of Governors has asked that Bar members speak up on whether or not they believe this type of program would be useful.

Members of the Bar are requested to contact any members of the Board of Governors with their thoughts on this project, and may specifically email the Chair of the Committee, James Troupis (jrtroupis@mbf-law.com) or the President, Todd Smith (tsmith@gklaw.com).

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