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July 2, 1980

The Honorable James A. Belson
Superior Court of the District
of Columbia
500 Indiana Avenue, N. W.
Washington, D. C. 20001

Re: SCR 26 and 12-I

Dear Judge Belson:

The D.C. Bar Division IV Subcommittee to Monitor Proposed Court Rules Changes takes this opportunity to respond to the proposed changes to SCR Rules 26 and 12-I as published in the Daily Washington Law Reporter on May 30, 1980. I have been authorized to state that Division IV of the D.C. Bar concurs with this subcommittee's response, and expresses its gratitude for the opportunity to comment upon these and other proposed court rules changes.

The subcommittee supports the Court's attempt to assure that Civil II cases are resolved in a more expeditious manner. The subcommittee has several comments, however, concerning the "short track" proposals. First, the subcommittee is concerned that the proposed discovery cut-off rules may cause a proliferation of pre-trial motions filed to prove "cause" why further discovery is necessary, therefore causing delay.*/

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*/ We note that the Draft Civil Trial Court Report of the D.C. Court System Study Committee ("the Horsky Committee") deals with the specter of increased motions by stating that "there is no empirical data at present to suggest that additional motions could not be absorbed by the present machinery," but that, in any event, a proliferation of such motions could be controlled by a restrictive policy on continuances. Draft Report at 20-21. We agree that rigorous judicial control over the filing and speedy resolution of these motions will prevent these pretrial motions from causing delay. The subcommittee believes that stringent enforcement of sanctions under SCR 37 for failure to make discovery would also substantially curtail delays. Judges seldom follow verbal remonstrances to counsel with applications of costs or other more serious sanctions.

Second, the subcommittee questions the disparity with respect to discovery limitation times for non-jury versus jury cases. Although non-jury cases clearly go to trial earlier than jury cases, this would seem to be a function of the availability of court resources, rather than of discovery need or complexity. The Report of the Committee on the Feasibility of Establishing a Short Track for Civil Litigation would seem to agree. See Report at 8-9.

Third, the subcommittee supports the reinstitution of mandatory pretrial conferences, and we have several suggestions for additional proposals. The Court's proposal suggests that the Civil Assignment Commissioner set the trial date for any case that has not been settled. The subcommittee suggests that instead, the trial date should be set at the time of pretrial by the pretrial judge, since he is more familiar with the case. Since counsel is present at the pretrial, setting the trial date at that time will decrease the likelihood of later allegations of time conflicts. The subcommittee further suggests that if the discovery limitations are adopted, a specific date should also be set by court rule for pretrials, perhaps 210 to 230 days after issue is joined. This will assure that a case continues to move from the completion of discovery stage to trial without undue delay. In addition, the subcommittee strongly feels that pretrials would be more effective if the Court enforces SCR 16-I(a) requiring that pretrial statements be filed and served by counsel at least five days prior to the pretrial conference.

Lastly, we respectfully request that the Court broaden its present policy and consider placing all attorneys, parties and witnesses on one-half hour call in order to alleviate the burden of in-court waiting time for trials.

Again, we note our support for the Court's attempt to reduce delay.

Sincerely,

Claudia Ribet

Claudia Ribet
Chair, Division IV
Subcommittee to Monitor
Proposed Court Rules Changes

cc: Stephen Pollack, Esq.
President, D.C. Bar
Ann Steinberg, Esq., Chair
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