Dockets show signs of frustration over judge's showing on list of long-languishing motions

Kris Olson

As of March 31, U.S. District Court Judge Douglas P. Woodlock had 37 cases with motions pending for more than six months.

Even within a report totaling more than 2,300 pages, a certain data point sticks out.

As of March 31 — the most recent date for which the information is available — U.S. District Court Judge Douglas P. Woodlock had 37 cases with motions pending for more than six months, 20 more than any of his peers on the Massachusetts federal bench.

In some cases, attorneys have shrugged off those long-languishing motions, attributing the delay to the complexity of the issues involved, or to the fact that the parties themselves are in no rush.

But in other instances, lawyers are mystified over what is taking so long. Uniformly, they are loath to criticize the judge publicly. But reading between the lines in their court filings, their frustration in some instances can be sensed.

When it releases the semiannual report required by the Civil Justice Reform Act of 1990, the Administrative Office of the United States Courts stresses that it "presents what may best be described as a 'snapshot' of motions" pending at the time of the report.

"Readers should take into consideration the overall case processing demands placed on the courts by both civil and criminal matters," the office's statement reads. "An accurate assessment of the demands placed on the district courts also requires consideration of numerous factors, including vacant judgeships and the effects of all cases making up each court's caseload."

Indeed, one group of legal scholars suggests that Congress got it wrong when it settled on using as benchmarks motions pending and bench trials that remain undecided after six months as a way of addressing significant delays in the resolution of federal civil litigation.

Moreover, Lawyers Weekly's review of dockets found that about 16 of the cases that appeared on Woodlock's list in the federal report had been resolved or at least seen significant activity since March 31.

However, until the administrative office releases the Sept. 30 report, there is no way to know how many other motions in Woodlock's cases may have since crossed the six-month threshold and been added to the list.

And any progress is likely cold comfort to attorneys anxious to see their clients' cases move forward — or, in some cases, to get paid themselves.

Mounting frustration

On its face, *USA, ex. rel., William St. John LaCorte, M.D. v. Wyeth*, is a typical qui tam action.

Motionless motions

Number of cases with motions pending for more than six months, as of March 31, by judge:

- Douglas P. Woodlock, 37
- George A. O'Toole Jr., 17
- Mark L. Wolf, 6
- Mark G. Mastroianni, 5
- Rya W. Zobel, 4
- Chief Judge F. Dennis Saylor, 2
- Indira Talwani, 2
- Allison D. Burroughs, 0
- Denise J. Casper, 0
- Nathaniel M. Gorton, 0
- Edward F. Harrington, 0
- Timothy S. Hillman, 0
- Angel Kelley, 0
- Michael A. Ponsor, 0
- Patti B. Saris, 0
- Leo T. Sorokin, 0
- Richard G. Stearns, 0
- William G. Young, 0

Source: Civil Justice Reform Act Table 8

Drug manufacturer Wyeth was accused by a whistleblower, Dr. William LaCorte, of engaging in an unlawful "bundling" scheme to boost market share for its proton pump inhibitor, Protonix.

LaCorte asserted claims under the False Claims Act against Wyeth in a complaint filed in the Eastern District of Louisiana on March 21, 2002, and the case was later merged with a Massachusetts case and transferred here.

Fourteen years later, after the defendants' motion for summary judgment had failed, Wyeth and co-defendant Pfizer agreed to settle the substance of the claims against them for $784.6 million.

All that remained to do then was decide how much should be awarded in fees and costs and how those sums should be divided among the lawyers who worked on the case.

A five-day bench trial on those matters began before Woodlock in late January 2018 and concluded on April 5, 2018.

As of October 2018, the docket indicated that the judge's "findings and conclusions" "were in the draft process of being prepared," according to a letter authorized by all parties and their counsel that was sent to the court this past Feb. 22.

Yet, more than four years later, the parties are still waiting for those findings and conclusions to be handed down.

"We are hopeful that the Court may be able to give us some indication as to when the parties might expect a written ruling from the court," reads the Feb. 22 letter co-signed by New Orleans attorney Richard C. Stanley and Christopher R. O'Hara of Boston.

O'Hara declined to comment for this story, while Stanley had not responded to a request for comment before Lawyers Weekly's deadline.

Though polite — "with thanks in advance for the court's consideration of our request," the letter concludes — the writers are more direct than most have been in reminding the judge that the parties are still waiting.

More frequently, attorneys are popping their heads up subtly, filing requests for status conferences or offering supplemental authority on the issues the judge is considering.

But in at least one case, a plaintiff recently decided he would like to be done with Woodlock altogether.

In *Perrot v. Kelly, et al.*, the plaintiff, George Perrot, was wrongfully convicted of a 1985 home invasion and sexual assault of an elderly woman in Springfield. After he served 30 years in prison, Perrot's conviction was overturned.

In early 2018, he filed suit against the city of Springfield and several current and former members of the Springfield Police Department, whom he claims framed him by helping fabricate evidence and withholding exculpatory evidence.

The defendants filed motions to dismiss and took the stance that they would not agree to the plaintiff's efforts to pursue discovery while those motions were pending. Perrot assented to the stay of discovery, never imaging how long it would remain in place.

"Despite Plaintiff's desire to resolve this matter expeditiously, this case has sat dormant for more than three years pending dispositions of various motions to dismiss," states the plaintiff's motion to have the case reassigned, which was filed on Nov. 3.

For the past year and a half, the plaintiff's attorney, Mark Loevy-Reyes of Chicago, indicates that he has been seeking a status conference to get the case moving again, pointing to three separate docket entries conveying that request.

"Plaintiff does not know why there has been no activity in this matter for over three years but presumes that the Court has a backlog of cases," Loevy-Reyes writes. "He, therefore, respectfully asks that the case be reassigned to a different judge so that the matter can proceed expeditiously."

The city of Springfield has opposed Perrot's request, saying that the plaintiff has failed to cite any legal or factual basis upon which to seek such reassignment.

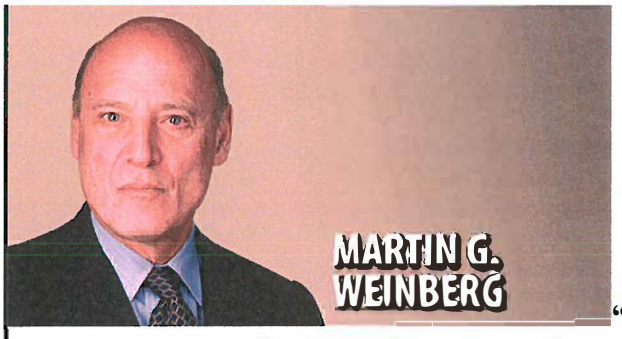
"Plaintiff also fails to explain how the reassignment of this action from a judge already familiar with the underlying facts promotes the 'interests of justice' or 'further[s] the efficient performance of the business of the court,'" the standards for reassignment under Local Rule 40.1(i)(1), the city's opposition states.

Sympathy found

In response to an inquiry from Lawyers Weekly, the U.S. District Court provided a statement from Chief Judge F. Dennis Saylor IV, which offered no excuses for Woodlock, while not mentioning him by name.

"The court is always concerned, not only with the fair administration of justice, but with its prompt administration as well," the statement reads.

When conducting "regular" reviews of statistics related to the caseloads of judges, their workloads and the complexity of each legal matter are given "due consideration," Saylor adds.



"I can say that neither his age nor status as a senior judge have even slightly impeded or slowed his discharge of his judicial responsibilities."

— Martin G. Weinberg on Judge Douglas P. Woodlock

As the court has resumed normal operations after the pandemic, it has begun to whittle away at the accumulated backlog of cases and trials, Saylor writes.

"Nonetheless, the court is aware that it sometimes falls short of its goals and will continue

to strive to do better in the coming year," Saylor says.

But Boston criminal defense attorney Martin G. Weinberg believes that Woodlock should be cut some slack, precisely because he tends to hear unusually complex cases.

One of Weinberg's cases, *Securities and Exchange Commission v. McLellan*, appears in the report of motions pending more than six months.

Weinberg said Woodlock had looked at the proposed resolution in *McLellan* and "quite properly" raised sua sponte important legal issues that required consideration of "a complex set of factors well beyond the proposed motion."

"In fairness, neither party has sought to expedite the court's consideration of what would be a novel and complex issue, and neither party has been prejudiced by the deferring of the decision," Weinberg said.

Weinberg surmised that "the imperatives of the federal Speedy Trial Act, which often requires the prioritizing of criminal cases and motions, particularly post-COVID," may be contributing to Woodlock's backlog.

According to Weinberg, Woodlock just concluded two lengthy trials — *U.S. v. Cromwell and DeQuattro*, and *U.S. v. Dana Pullman* — in which there were 191 and 225 docket entries, respectively. That speaks to the depth of issues that are raised on the rare occasions that federal criminal defendants choose to go to trial, Weinberg said.

"In short, [Woodlock] thinks hard and digs deep into the law's history and reach, and although I may not as a defense counsel representing a client agree with all his legal conclusions, I very much respect — as do many others in the federal court community — the dedication and tireless work he brings to judging," Weinberg said.

Woodlock, who is in his mid-70s, has been on senior status since June 1, 2015. But Weinberg said he has seen no sign that the judge is slowing down.

"I can say that neither his age nor status as a senior judge have even slightly impeded or slowed his discharge of his judicial responsibilities," Weinberg said.

Misguided measuring stick?

If a group of University of Connecticut Law School professors had their way, the so-called "Six Month List" currently painting Woodlock in a dim light would be deemphasized.

In an article in the Cornell Law Review in 2020, Miguel F.P. de Figueiredo, Alexandra D. Lahav and Peter Siegelman argue that the requirement that judges' backlogs be made public twice a year has created a perverse incentive, which the data shows is leading them to close substantially more cases and decide more motions in the week immediately before the semiannual reports are compiled. That, in turn, may be leading to more errors, the authors say.

The authors conclude that incentivizing judges to process cases faster "is probably a mistake."

But knowing that Congress is unlikely to alter its mandate any time soon, the law professors

suggest, as a stopgap, supplementing the list with an evaluation of a judge's aggregate performance based on either the average or median amount of time motions are pending before them, combined with "a risk adjustment measure."

Widely used in other contexts, risk adjustment techniques "are designed to distinguish between results that are due to luck and those that reflect the actual contribution of a particular agent," the authors note.

They cite the example of a heart surgeon who operates on older, sicker and harder-to-treat patients, who may then appear to have a lower "success" rate than one whose patients are younger and healthier.

"To avoid this kind of confounding, risk adjustment methods try to control for the difficulty of the assigned task when evaluating performance," the authors explain.