



NEWS RELEASE

HONORABLE CHARLES L. BRIEANT
CHIEF JUDGE

December 17, 1991

Chief Judge Brieant announced that at a special Board of Judges meeting held December 12, 1991, the Civil Justice Expense and Delay Reduction Plan submitted by the Southern District of New York's Advisory Group, was unanimously approved. Copies of the approved Plan have been sent to the Second Circuit Subcommittee for consideration.

Chief Judge Brieant acknowledged the valuable contributions of the Advisory Group: Marcia Alazraki, Robert L. Conason, Philip L. Graham, Jr., Henry L. King, Clifford P. Kirsch, Joseph T. McLaughlin, Stacey J. Moritz, Benito Romano, Shira A. Scheindlin, Lorie A. Slutsky, Gerald Walpin, and Edwin J. Wesely, *ex-officio*, and on behalf of the Board of Judges, commended them for their dedication and efforts. The members of the Advisory Group were appointed to a four year term.

Special thanks have been extended to Judge Robert W. Sweet, Chairman of the Advisory Group and to Judge Thomas P. Griesa, a member of the Advisory Group, without whose dedication and commitment this project could not have been accomplished.

Copies of the Southern District's Civil Justice Expense and Delay Reduction Plan as annexed may be obtained in the District Executive's Office, Room 313 of the Foley Square Courthouse.

**CIVIL JUSTICE EXPENSE AND
DELAY REDUCTION PLAN**



**Adopted by
The Board of Judges of
the Southern District of New York
on December 12, 1991**

THE PLAN

Following the designation of the Southern District of New York as a pilot district under the Judicial Improvements Act of 1990 and Title I of the Civil Justice Reform Act of 1990, Chief Judge Charles L. Brieant convened an Advisory Group under the leadership of Judge Robert W. Sweet. The Advisory Group consists of attorneys, representing both the private and public sector, who practice regularly in the Southern District of New York, as well as a lay member of the community. In addition to Judge Sweet, Judge Thomas P. Griesa is a member of the Advisory Group. Chief Judge Charles L. Brieant and Edwin J. Wesely, the Chair of the Eastern District Advisory Group, serve in an ex officio capacity.

The Advisory Group, divided into subcommittees, took a number of steps leading to the formulation of the Plan and the Advisory Group Report. It drafted and sent a questionnaire regarding practice in the SDNY to the judges of the Court and to 3,000 practicing attorneys, and analyzed the responses. It also undertook an extensive study of 2,000 closed cases in order to identify causes of undue cost and delay. In addition, it reviewed the court's docket and noted in particular the problems of pro se litigation which, in 1990-91, constituted almost 20% of the civil cases filed. The Advisory Group also reviewed relevant literature and case law. Finally, the Advisory Group met regularly to deliberate and draft reports. Price Waterhouse assisted in analyzing statistics, questionnaire responses and the docket study.

The Plan does not apply to Multidistrict Litigation cases. Such cases are subject to special rules in the Manual For Complex Litigation and are generally supervised by the Judicial Panel on Multidistrict Litigation.

Recognizing the experimental nature of this Plan which is adopted primarily for the internal management of the caseload of the court, it shall not be deemed to vest any rights in litigants or their attorneys and shall be subject to such amendments from time to time as shall be approved by the Court.

The Advisory Group's work resulted in a number of findings and recommendations, many of which are incorporated in the Plan. The assessment of the Court's docket shows an ever expanding number of pending cases and a delay, sometimes substantial, in reaching cases that are ready for trial. Delay in civil cases arises in part from the Speedy Trial Act, 18 USC § 3161 et seq., which effectively requires that all criminal business take precedence over civil litigation. Delay arises also directly from unfilled judicial vacancies (now 7 out of 28 authorized judgeships), which amounted to 78.8 vacant judgeship months in 1990. Surprisingly, with the exception of these two problems, the docket shows no other excessive delay, a consequence that can be attributed largely to substantial efforts on the part of judges and magistrate judges.

Based largely on the Advisory Group recommendations, the Court will implement the following procedures or practices.

1. There shall be early judicial case management in all cases.
2. A simplified case assignment system and a differential case management system based upon whether a case is "Complex," "Standard" or "Expedited" will be created. The designation should be made by the judge based upon Case Information Statements filed by the parties or by a determination made at a Case Management Conference.
3. An initial Case Management Conference should be held in all cases within 120 days of filing the complaint.
4. In cases determined to be Expedited, defined categories of relevant documents will be produced automatically. Discovery will be limited. The case will be set for trial within one year of service of the complaint, unless good cause is shown.

5. In Complex and Standard cases, a Case Management Plan will be developed at the Case Management Conference. At that conference the Court and counsel shall address, as necessary, topics relevant to the efficient handling of the case, including:

- a. the identification and simplification of the principal issues in contention;
- b. the discovery proceedings that are anticipated to be necessary and the sequence of such proceedings, including an identification of the parties with knowledge of the factual background at issue and relevant documents;
- c. dispositive motions;
- d. the joinder of additional parties;
- e. whether counterclaims are to be asserted;
- f. the feasibility of settlement or alternate dispute resolution;
- g. whether and to what extent there should be a reference to the designated magistrate judge;
- h. the dates for future conferences or other procedures to permit continuing judicial oversight, and the setting of a trial date.

A Case Management Plan scheduling events in the case should be issued following the conference. Periodic Case Management Conferences should be scheduled to ensure adequate court supervision.

For Complex and Standard cases a magistrate judge shall be designated for each case. This shall not constitute an automatic reference. At the option of the assigned judge or in the event of that judge's unavailability, if the judge so authorizes in the Case Management Plan or any amendment thereto, magistrate judges may handle, among other things, the resolution of pre-trial discovery issues. The Advisory Group in conjunction with the judges and magistrate judges shall monitor the effect of these provisions and evaluate such effect commencing six months from the implementation of the Plan.

6. For Complex and Standard cases, the court should set a firm trial date which is as early as reasonable and no later than eighteen months after the filing of the complaint, unless the court certifies that:

- a. the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or
- b. the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases; or
- c. other good cause exists.

7. Pre-motion conferences should be considered by judges where advisable.

8. Judges should decide motions with reasonable promptness. Motions not decided within sixty (60) days of final submission should be reported by each judge and magistrate judge, and a quarterly report circulated to all members of the Court. A court-wide statistical summary shall be delivered to the Advisory Group.

9. The Court is a single institution responsible for the management of its docket. The Advisory Group recognizes, of course, that individual judges are responsible for handling their own dockets in a timely manner. Because imbalances in the number of cases pending in the dockets of different judges cause delay, the Court should consider appropriate steps, including the assignment and reassignment of cases or the provision of additional resources, to ensure timely judicial attention to the Court's docket.

10. The Court shall request authorization for additional magistrate judges.

The Advisory Group studied and reviewed the discovery process both generally and in the Court. Based upon its study, the Advisory Group formulated discovery proposals to expedite the discovery process. The Court adopts the objectives of the Advisory Group as to the following principles (Nos. 11-15) concerning discovery.

11. At the initial Case Management Conference, a discovery plan should be formulated. See paragraphs 4 and 5 above. Subsequent disputes as to the scope and appropriateness of discovery should, after a good faith effort at resolution by all parties, be resolved on oral motion or on the basis of a letter submission - the letters not to exceed two pages double spaced. The Court should resolve such applications as promptly as possible either on the basis of the letters or by telephone or personal conference.

12. The Court should adopt guidelines for deposition practice, interrogatories, requests for documents and discovery of experts.

13. In cases brought by prisoners pro se, the court should establish guidelines, including provisions for certain items of standardized discovery, to insure prompt and appropriate disclosure.

14. Sanctions for failure to comply with discovery obligations should be imposed where appropriate.

15. Appeals from discovery rulings by magistrate judges on discretionary issues are disfavored. Judges will not hesitate to award sanctions for frivolous appeals from such rulings.

The Advisory Group found that Alternate Dispute Resolution mechanisms have been underutilized by the Court and makes the following proposals.

16. A two year program of mandatory court-annexed mediation will be established for expedited cases, and a sample of other civil cases. In accordance with the program, the Court will establish a pool of attorneys to serve as mediators on a voluntary basis. Qualifications to serve on the panel will be established by the Court. Attorneys serving on the panel will be credited for pro bono work. At the inception of the Plan, this mediation program will not apply to cases filed in White Plains.

17. For Standard and Complex cases, a voluntary court-annexed arbitration program as well as other voluntary ADR mechanisms shall be discussed, considered and suggested as appropriate at the time of the Case Management Conference.

18. The use of ADR mechanisms shall be monitored by the Advisory Group to assess their effectiveness.

The Advisory Group emphasized that the SDNY should take the lead in the area of acquiring, demonstrating and installing the latest technological advances available. In this regard, the Advisory Group makes the following proposal.

19. The Court should commence a program of modernizing all existing courtrooms, chambers and court offices and assure that the new courthouse will have the capability to support the following:

- a. Real-time reporting and all facilities encompassed by that concept including computer access for attorneys, graphic image processing for documents and exhibits and enhanced sound systems.
- b. Filing court documents by fax.
- c. Teleconferencing and videoconferencing.
- d. Suitable attorney work space.

Other technological innovations are discussed in the Report.

The Civil Justice Reform Act of 1990 seeks to reduce the cost and delay involved in civil litigation. The Act creates a strategy and framework for addressing these issues. It is within this framework that the Court adopts this Plan.