CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

I. Introduction

The United States District Court for the Eastern District of Virginia, in compliance with the Civil Justice Reform Act of 1990, adopts the following Civil Justice Expense and Delay Reduction Plan and directs that it be implemented as of December 31, 1991. This plan is based on the recommendations contained in the Report of the Civil Justice Reform Act Advisory Group for the Eastern District of Virginia that was submitted to this court on September 19, 1991 as mandated by statute.[1]

The Report of the Advisory Group demonstrated that the existing procedures of this court have been most effective in controlling not only litigation expenses but also in reducing delays in our civil docket. The Report presented a thorough

[1] 28 U.S.C. Sections 471 and 472.

assessment of conditions in the district, analyzing the state of the dockets, statistical trends, and resources. This examination of the Eastern District of Virginia resulted in the following conclusion of the Advisory Group: "After careful consideration of the information set forth, and based on their collective experience as lawyers or litigants in the federal district court for the Eastern District of Virginia and the input of numerous bar organizations representing the district's litigation constituencies, the members of the Advisory Group have concluded unanimously that the district does not have a problem either with undue expense, or with delay, associated with its handling of its civil caseload." The report also includes several suggestions for minor modifications that are individually addressed in this plan. Therefore, by virtue of the Advisory Groups unanimous recommendation that the federal judges of the Eastern District of Virginia adopt existing case management procedures, as embodied in the district's local rules, standing orders, and internal procedures, as its CJRA Expense and Delay Reduction Plan and so after careful consideration, this court adopts the following plan:

II. The Plan

The Eastern District of Virginia will continue to enforce its local rules to maintain a current docket on all civil cases. The

existing procedures entail strict judicial control over all phases of litigation. It is well known in the local legal community that the court demands that attorneys admitted to practice in the Eastern District of Virginia know and comply with the local rules and standing orders. The current local procedures also requires litigants to cooperate in the discovery process and other phases of the pretrial process in many significant ways.[2]

III. Requirements of Section 473

Sections 473(a) and (b) of the Civil Justice Reform Act provide that each district court, in consultation with the Advisory Group, "shall consider and may include" six specific principles and guidelines of litigation management and cost and delay reduction in formulating a proposed Expense and Delay Reduction Plan to recommend to the district court. The six statutory principles are: (1) systematic, differential treatment of civil cases depending on their relative complexity;[3] (2) early ongoing control of the litigation process by a judicial officer;[4] (3) use of discovery-case management conferences in complex cases;[5] (4) encouraging

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[2] 28 U.S.C. 472(c)(3).

[3] 28 U.S.C. 473(a)(1).

[4] 28 U.S.C. 473(a)(2).

[5] 28 U.S.C. 473(a)(3).

discovery through voluntary and cooperative means;[6] (5) requiring counsel to meet and attempt to resolve discovery-related motions;[7] and (6) authorization to refer appropriate cases to alternative dispute resolution.[8] The five statutory techniques for implementing these principles are: (1) a requirement that counsel submit a discovery-case management plan prior to the initial pretrial conference;[9] (2) a requirement that each party be represented at each pretrial conference by an attorney having binding authority in connection with matters to be discussed at the conference;[10] (3) a requirement that all requests for extension of discovery deadlines and postponement of trial dates be signed by the party as well as the attorney making the request;[11] (4) a program for early neutral evaluation;[12] and (5) a requirement that a party representative with binding settlement authority be available at any settlement conference.[13]

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[6] 28 U.S.C. 473(a)(4).

[7] 28 U.S.C. 473(a)(5).

[8] 28 U.S.C. 473(a)(6).

[9] 28 U.S.C. 473(b)(1).

[10] 28 U.S.C. 473(b)(2).

[11] 28 U.S.C. 473(b)(3).

[12] 28 U.S.C. 473(b)(4).

[13] 28 U.S.C. 473(b)(5).

A. Statutory Principles and Guidelines for Litigation Management

The court agrees completely with the Advisory Group's view of compliance with the Requirements of Section 473 of the Civil Justice Reform Act and relies on their recommendations as follows:

1. The court has considered incorporating a procedure for "systematic, differential treatment of civil cases" depending on their relative complexity. We have looked at the Brookings Institution's report on expense and delay in the federal courts, see And Justice for All 14-21 (Brookings Institution 1989), and do not believe that such a system is either needed or desirable in this court. The court's existing procedures permit and encourage attorneys and judges to accommodate differences in case complexity through the Rule 16 scheduling order. In addition, the court has developed special procedures for asbestos-related and pro se prisoner litigation, procedures that would appear to fall within the broad language of the statute.

2. The court has considered mechanisms that ensure "early and ongoing control of the litigation process by a judicial officer." Specifically, this section suggests procedures requiring the judicial officer to assess and plan the progress of the case, set an early and firm trial date no later than 18 months after filing; control the time spent on discovery and ensure compliance

with time deadlines; and set time frames for filing and ruling on motions. The procedures in place in the Eastern District of Virginia unquestionably incorporate this principle and its related suggestions. Indeed, the hallmark of this particular court is that its judges control and manage the litigation process. From the preliminary involvement in setting a discovery schedule, often within two weeks of issue, in the initial pretrial order to the absolute control over deadlines and the trial date the court makes it clear to attorneys and litigants alike that the court, and not the lawyers control the docket. Existing procedures that reflect this philosophy and practice include, but are not limited to, Local Rule 3 and 4 (venue of actions filed within the district); Local Rule 11 (governing motions practice); Local Rule 11.1 and 21 (governing discovery practice); and Local Rule 29 (authorizing use of magistrate judges to the full extent permitted by stature and the Federal Rules of Civil Procedure). Sanction provisions are enforced in this district in appropriate cases to ensure compliance with the local rules and orders in individual cases. The court rules promptly on pretrial motions--within a matter of days with respect to motions submitted on the papers, or from the bench with respect to most motions having a hearing. Without exception, cases are set for trial at a very early stage in the litigation, and the trial date is rarely more than seven months from the filing date. The court sees no need to alter its existing procedures in order to further accommodate the principles and guidelines contained in this section of the statute.

3. The court has considered a procedure requiring one or more discovery-case management conferences in complex or other "appropriate" cases. Among the matters for consideration at such discovery-case management conferences are the propriety of settlement, identification of issues and possible bifurcation of discovery and trial pursuant to Fed. R. Civ. P. 42(b), a proposed discovery schedule, and a proposed schedule for the filing of and ruling on motions. The court does not believe that a general and formal requirement that such conferences take place is needed at this time. It should be noted that in the Newport News and Norfolk divisions, such a procedure effectively exists for all cases, in the form of the initial scheduling conference. The district's requirement, articulated in Local Rule 11.1(J), that counsel consult and attempt to resolve discovery disputes prior to filing discovery-related motions effectively ensures that periodic discovery management "conferences" occur throughout the discovery phase of the case. In all divisions the scheduling order generally incorporates a discovery schedule geared to the specific case. To the extent that attorneys believe that a specific discovery schedule does not allow enough time to complete discovery, their concerns can be and are addressed through appropriate motions and requests for extensions of time in connection with that schedule, pursuant to Local Rule 11 and 11.1. As noted above, the initial scheduling order contains deadlines for the filing of pretrial motions that are tied to the date of either the final pretrial

conference or the trial date, and the court inevitably rules promptly on these motions. Any requirement that one or a series of pretrial conferences be added to existing procedures would likely be counterproductive in terms of expense to litigants and the court.

4. The court has considered procedures that will encourage the litigants to engage in voluntary or cooperative discovery. Such procedures currently exist with respect to asbestos-related litigation in the form of the court's standing order that certain relevant factual information be provided to the opposing party or parties as a matter of course. Beyond this, however, the court sees no need for additional rules or procedures respecting discovery within the district. The court's existing rules and procedures concerning discovery are designed to facilitate cooperative discovery, and they have been largely successful in this endeavor, as the relative lack of discovery-related disputes arising within the district attests.

5. Consideration of a rule or procedure requiring that lawyers attempt to resolve discovery is not necessary because Local Rule 11.1(J) already embodies this principle.

6. The court has considered incorporating alternative dispute resolution (ADR) devices, including mediation, summary jury trial, mini-trial, early-neutral evaluation, and possibly

arbitration, into the court's case management procedures. The court does not believe such procedures are warranted in the district, for three reasons. First, there is no persuasive evidence that the use of ADR would decrease costs, improve disposition rates, or improve the quality of justice administered in civil cases in this district. Second, ADR procedures do not in most cases have any impact on the time spent in discovery, which is the principal cause of both expense and delay in the federal courts. Finally, and most important, the availability of a firm and early date for a trial before an Article III judge has eliminated the need for an alternative adjudicatory procedure in this district. It is the consensus of the court that incorporating ADR procedures would likely increase costs and delays in this district without offering any significant benefits to the court or the litigants.

B. Statutory Techniques for Litigation Management

The court has also considered the five specific techniques of litigation management as means to incorporate the six principles and guidelines described above. Again, the court relies on the Advisory Group's recommendations as follows:

1. The court has considered implementing a requirement that counsel submit a discovery-case management plan prior to the initial pretrial conference. Such a requirement, if institutionalized, might be incompatible with many of the district's existing pretrial procedures, which in two of the four divisions involve entry of a Rule 16 scheduling order without consultation of counsel.

2. The court has considered implementing a requirement that each party be represented at each pretrial conference by an attorney having binding authority in connection with matters to be discussed at the conference. It is the court's view that a district-wide procedure or rule of this nature is unnecessary. The various scheduling orders require that counsel attending pretrial conferences be knowledgeable about the case, and in practice lead counsel generally do attend these conferences. Because there is no evidence that such a rule is necessary to ensure that pretrial conferences achieve their intended objectives, the court does not believe conditions in the district warrant such a provision.

3. The court has considered adopting a requirement that all requests for extension of discovery deadlines and postponement of trial dates be signed by the party as well as the attorney making the request. In this court requests for extensions of time are rarely filed, and they are even more seldom granted. Embodying such a requirement in a Rule would suggest otherwise, a suggestion

the court does not want to make. Moreover, the court believes that such a requirement would imply that attorneys in the district routinely request unnecessary extensions and routinely behave in a manner that is inconsistent with their clients' interests. Because neither condition has historically existed or now exists in the Eastern District of Virginia, the court does not believe that a rule of this nature is needed at this time.

4. The court does not believe that the district needs a program for early neutral evaluation for many of the same reasons that it does not need alternative dispute resolution above, and should not implement such a program.

5. Finally, the court has considered a rule that requires a party with binding settlement authority to be available, either in person or by telephone, at any settlement conference. Inasmuch as the court does not as a matter of course hold such conferences, it is our view that such a rule is not needed in this district.

IV. Proposals for Minor Modifications the Court's Procedures

The court has also examined five proposals for minor

C. Amend E.D. Va. Local Rule 11.1 to clarify that nothing in that rule should be deemed to preclude attorneys from approaching a judge or magistrate telephonically when discovery matters needing prompt judicial attention arise in a case.

The court rejects this proposal. As a matter of policy we think it unwise to begin making disclaimers as to what the Rule does not preclude. Different judges have different views concerning telephone conferences on demand whenever a discovery dispute arises. Some feel, with justification, that encouraging such conferences, which such a disclaimer would do, removes counsel's motivation to resolve the dispute by agreement. Other judges routinely permit such telephone conferences. It should be left for each judge to decide.

D. Consider adopting standard initial and pretrial orders for use throughout the district.

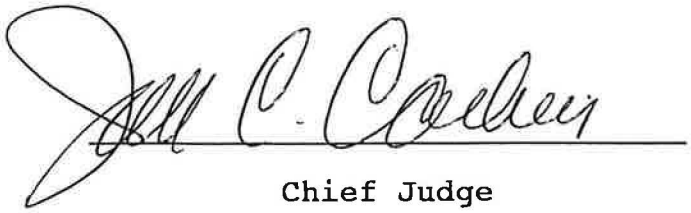
The court believes that one of the reasons that our existing procedures operate so efficiently is because of the flexibility they offer each judge or division of the court to control the docket as needed by the particular circumstances in that court.

Therefore, after careful consideration, the court has determined that the initial and pretrial orders now being used should be retained.

E. Consider adopting an individual docket system district-wide.

The Eastern District of Virginia has had a central docket in all but the Richmond division for many years. In the past this system has worked very well and has allowed the court to control the docket in a very efficient manner. Both the Alexandria and the Norfolk/Newport News divisions are as of now firmly committed to the central docket. The court believes that an individual docket may have merit, but because adoption of such a docket will affect many of the existing procedures of this court, the courts which have the central docket will have to consider such a change carefully. However, the court will continue to look at the proposal.

FOR THE COURT



Chief Judge

December 16, 1991