

## FJC Review of CJRA Reports and Plans

### Prepared for the Judicial Conference Committee on Court Administration and Case Management

**District:** Eastern District of Kentucky

**Date:** November 14, 1993

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The district has four authorized and filled judgeships, a senior judge, three full-time magistrate judges, and one part-time magistrate judge. Another district judgeship, to be shared with the Western District of Kentucky, has been vacant since 1991. Since 1986 the district has had uniform joint local rules with the Western District of Kentucky.

#### Summary of Conditions in the District

Based on statistical information and the subjective input of attorneys and judges, the advisory group concluded that "under the circumstances that have existed in the district since 1991 to the present, there is no excessive delay in civil litigation in the Eastern District." The committee admitted that this conclusion is tempered by the fact that temporary readjustments of the docket (among Article III judges) to compensate for the vacant judgeship, as well as staff readjustments to deal with the rise in prisoner cases (both state and federal), cannot continue. The advisory group's analysis of the docket revealed that:

- The life expectancy of civil cases has steadily gone down and now is below the national average of 12 months.
- A greater proportion of the court's caseload is composed of social security cases than in any other federal district court. The district has managed to stay abreast of this caseload and its other civil cases by assigning all social security cases to a single senior judge.
- Prisoner case filings have dramatically increased since 1988. The district's federal prison population (4500) is more than six times the national average.
- Civil rights filings have increased from 1991-1992 to comprise over 21% of the civil docket. Civil cases are projected to continue to increase.
- The number of criminal cases has steadily risen since 1991 and has impeded civil cases.
- 50-65% of the magistrate judges' caseload are habeas corpus cases.

In addition, the advisory group found that:

- The clerk needs more staff to maximize the efficiency of the new docket automation system.
- The court is renting private facilities for the senior judge and for federal agencies related to court operations, because present facilities are inadequate to accommodate staff increases caused by increased case filings.
- The court has suffered from a prolonged judicial vacancy.

Although the caseload statistics do not show a dire picture, the advisory group's survey of attorneys and litigants reveal that both (though litigants more than attorneys) believe there is excessive cost and that litigants think there is unnecessary delay in the



district. Litigants felt attorneys fees were the cause of high costs, while attorneys said discovery costs, such as experts fees, were responsible. The reasons most frequently cited for delay were excessive discovery, hypertechnical defenses, complex joinder, lack of preparation, docket bumping, slow rulings by the court, and difficulty in getting trial dates.

The advisory group acknowledged these findings but also noted the historical reasons, such as vacancies, for the court's condition. Its recommendations, therefore, respond to both the historical circumstances as well as to the survey findings.

### **Summary of the Court's Plan**

The court adopted the advisory group report and recommendations as its plan, with four clarifications set out in a general order.

#### Case Management

The court will hold a mandatory status conference early in the litigation (except in criminal cases, prisoner cases such as habeas corpus, extraordinary writs, and U.S. cases such as student loans and forfeitures). Prior to the mandatory status conference, the litigants' representatives will have an "early meeting" to exchange information then available to the parties (such as the names of witnesses and documents).

At the mandatory status conference the court will address management of the case, including: limits of 25 interrogatories and 10 depositions; limits on the number of expert witnesses; deadlines for discovery and dispositive motions; identification of all trial witnesses, trial experts, documents, and exhibits to be used at trial; and setting of final pretrial conference and firm trial date. Scheduling orders will be issued promptly. The court will make better use of telephone and video conferences when they are available. (Subsequent to the effective date of the federal rule amendments, the court has adopted the federal rule changes. Conversation with chief judge's secretary, 1/5/94.)

Following the advisory group, the court did not adopt a "rocket docket" - i.e., early trial dates - but will specify early in the case what the trial date will be. The court also did not adopt mandatory tracking of cases, preferring flexibility for the judges.

Any civil motion referred to a magistrate judge for report/recommendation will automatically revert back to the court if not ruled on within 90 days from the date of submission (all briefs filed and hearings and oral arguments held). Excluded from this requirement are criminal cases, prisoner cases such as habeas corpus, extraordinary writs, and U.S. cases such as student loans and forfeitures.

#### Alternative Dispute Resolution

The court will adopt and implement a voluntary mediation program. The court will also widely publish the availability of ADR options and will encourage the use of private ADR procedures.

#### Other Provisions

The court will continue to refine and implement those measures that have provided for standardization and uniformity through the joint local rules, which it incorporated into the plan through its general order adopting the plan.



Noting that it did not have the power to implement several of the advisory group's recommendations, the court nonetheless endorsed the following:

- the Eastern District should have a full compliment of judges;
- each Article III judge should have his or her own assigned magistrate judge;
- each magistrate judge should have an additional assigned law clerk;
- there should be an additional pro se law clerk, with a full-time secretarial position for support; and
- there should be full funding for court personnel and physical facilities.

The court also instructed the advisory group to prepare an annual assessment of the plan and the district by September 1st of each year during which such an assessment is required.

#### Implementation

The plan was adopted by order dated October 21, 1993.

#### Consideration of §§ 473(a) and (b)

The court said that it had "fully considered all principles, guidelines, and techniques under 28 U.S.C. § 473".

#### **Comments**

Despite quite adverse circumstances, this court has substantially improved its position over the last several years. The court's plan, which is responsive to remaining problems identified by the advisory group, should enhance this improvement. Several of the plan's provisions seem particularly aimed at curbing the discovery abuses, delay, and cost identified by the advisory group: the mandatory early conference; scheduling of case events, including discovery and trial; and limits on interrogatories and depositions. The plan also provides a mechanism for earlier rulings on motions. Recent adoption by the district of the federal rule amendments may assist the court further.

On the other hand, the court's reliance on a single senior judge for the entire social security caseload almost certainly cannot continue, especially in light of projected caseload increases. In addition, the court said it needs more civil pretrial involvement from its magistrate judges, who now handle primarily criminal and prisoner cases. These resource issues cannot be solved by the court but may have an adverse impact on the court in the future despite its best efforts. The court might, however, consider what other methods it could adopt for handling the prisoner caseload, to free up the magistrate judges in case more resources are not forthcoming.

#### **Conclusion and Recommendation**

I recommend that the committee accept the plan of the Eastern District of Kentucky.