

Central District of California
Report of the Advisory Group
Expense and Delay Reduction Plan

Summary

PART ONE: REPORT OF THE ADVISORY GROUP

I. Assumptions; Miscellany; and Background

- A. The district serves the city of Los Angeles and its surrounding counties. The population served in this district is larger than that of all but three states: California, Texas and New York. This district receives approximately 13% of all civil cases filed in the entire country.
- B. The district maintains two divisions. The first, located in Los Angeles, is housed in two buildings, the second is located in Santa Ana.
- D. The district has 27 authorized Article III judgeships, of which 23 are currently filled (i.e., four vacancies). There are eleven full-time and seven part time magistrate judges. The District is also served by seven active senior judges.
- E. The Advisory Group conducted interviews of all judicial officers. It also conducted six separate surveys of bar members and litigants. Data analysis was performed utilizing court and national data, as well as data generated by the Advisory Group. A special sub-sample of cases was also drawn for analysis. The services of researchers at the University of Southern California were used to assist in survey research.
- F. The district has implemented ICMS civil and criminal. Neither CHASER or PACER are currently running in this district, although applications are planned.
- G. The district has a number of Local Rules in place which foster CJRA goals.
 - 1. Exchange of information: rules 9.5, 9.5.3 and 9.4.10 require each party to make known to the other by memorandum its contentions regarding applicable law and fact not less than 21 days in advance of the pretrial conference; rule 9.4.3 requires parties to make every effort to stipulate to facts for the purpose of simplifying issues of fact for trial;

2. Discovery/scheduling: rule 6 contains an early general "meet and confer" requirement; rule 6,4.2 calls for a report to be delivered at a status conference discussing the state of discovery including a detailed schedule for further discovery, a discovery cut-off date, a schedule for law and motions matters, and a proposed date for pretrial conference and trial; rule 6.1.2 provides for the exchange of preliminary schedules of discovery;
3. Differential case management: rule 26 and General Order 224 provide specialized procedures for the disposition of prisoner petitions and habeas corpus actions;
4. Witnesses: rules 9.4 and 9.4.6 require a meeting 40 days prior to the pretrial conference to exchange narrative statements on the qualifications and likely testimony of experts; rule 9.6 requires the filing of a witness list 21 days in advance of the pretrial conference;
5. Settlement: rules 6.1 and 6.1.5 require a meeting to discuss settlement within 20 days of service of answer; rules 9.4 and 9.4.11 also require a settlement discussion within 40 days of the pretrial conference.

II. State of the Docket

A. Overall Workload Statistics

1. The Indexed Average Life Span (ILA) and life span for civil cases in this district were 10.1 and 10.8 months, respectively, for 1992. The district ranked 28th and 22 nationally in these two indices for that year.
2. Filing to disposition times for civil cases in this district stood at four months in 1992, ranking the district fourth nationally in this indice; This relatively short time frame can be explained, in part, by the large numbers of student loan cases filed in the district which end in default.
3. Criminal case filing to disposition times for the same statistical period were 4.5 months, for a national ranking of 12.

4. Despite relatively fast disposition times, rising civil case life expectancy, and rising numbers of cases over 3 years old are causes for concern.
5. Pending civil cases over three years old have increased rapidly over the past eight years, from 4.1% in 1984 to 10.5% in 1992. These increases are explained in part by a large block of products liability cases against the A.H. Robbins Company, and a number of lingering veterans benefit cases. Filings, however, have remained relatively steady, and have shown changes only in the number of type I or less time consuming civil cases. The bulk of three year old cases are tort and contract cases.
6. Since 1988, one clear trend to emerge is the gradual rise in criminal jury trials, which have recently (1990) become more numerous than civil jury trials. A total of 61% of all jury trials are now criminal jury trials. These figures cannot be explained in filings changes, as criminal filings have remained relatively constant over several years.
7. A second indice of changed case processing activity involves the increasing incidence of longer trials.

III. Causes of Cost and Delay

- A. Survey responses by attorneys on the primary causes of excessive costs included:
 1. Excessive court appearances;
 2. Compliance with Local Rule 9 (requiring submission of a joint discovery and case management document);
 3. Frivolous motions;
 4. Postponements of trial when witnesses have been scheduled.
 5. Unnecessary or unfinished discovery;
 6. Requests for additional discovery on peripheral issues;
 7. Unnecessary discovery disputes;
 8. Failure to make comprehensive response to discovery requests on first request;

9. Discovery gamesmanship; and
 10. Failure to conduct timely discovery.
- B. Judicial survey responses on the principle causes of excessive costs included:
1. Discovery;
 2. Overly litigious attorneys;
 3. Attorneys fees; and
 4. Over lawyering.
- C. Attorney survey responses on the causes of delay:
1. Recent federal legislation;
 2. Failure of the President to promptly fill judicial vacancies;
 3. The use of different rules in different Central District courtrooms;
 4. Judges holding motions without decision for over 30 days;
 5. Civil trials postponed by court order;
 6. Unrealistically long periods of discovery;
 7. The lack of a discovery plan;
 8. The lack of firm trial dates;
 9. The lack of a decision immediately after oral argument;
 10. The lack of active judicial case management; and
 11. Judges declining to consider seriously dispositive motions.
- D. Judicial survey responses to the causes of delay:
1. Criminal trials forcing the continuance of civil trials;
 2. Fewer criminal case settlements/pleas before trial;
 3. The increasing number of sentencing disputes;

4. Attorney practices (unspecified); and
 5. The Sentencing Guidelines.
- E. Advisory Group summary causes of cost and delay:
1. Too few judges; and
 2. Congressional failure to consider the impact of new legislation on the Judicial System.

IV. Recommendations

A. Overview: Four classes of recommendations

1. Tools for effective case management by the court.
2. Actions to control discovery costs and delays.
3. Other methods for controlling costs and delays.
4. Availability of ADR mechanisms.
5. Improvement in lawyer-litigant department.

B. Prompt filling of judicial vacancies

The Advisory Group notes that the four pending vacancies in the Central District were pending prior to the passage of the Civil Justice Reform Act.

C. More Effective Case Management

1. The court should set realistic, firm trial dates and adhere to them.
2. The Court should divide into criminal and civil divisions.
3. The Court should adopt a three-tier tracking system.
4. The Court should adopt early neutral evaluation (ENE) for standard cases.
5. The Court should increase the number of status conferences and hear them telephonically.
6. The Court should require mandatory settlement conferences before any civil case goes to trial.

7. The mandatory settlement conference should be heard by a judicial officer.
8. The Court should use special masters in complex cases.

D. Controlling discovery costs and delays

1. The Courts adoption of the suggested tracking system will place presumptive limits on the quantity of discovery.
2. The Court should issue a standing order defining inappropriate conduct during depositions,
3. Court procedures should permit the parties to raise deposition disputes with the court during the course of the deposition.
4. District Judges should be relieved of initially deciding discovery disputes; these matters should be assigned to Magistrate Judges in simple and standard cases, and to Special Masters in complex cases.
5. the Court should endorse a rules change restricting the permissible scope of discovery.

E. Other methods for controlling costs and delays

1. The Court should use telephone conferencing and eliminate personal appearances of counsel in simple and standard cases, except for case dispositive motions
2. The Court should use split calendars.
3. The Court and the parties should continuously evaluate the appropriateness of bifurcation.
4. The Court should require cover sheet identification of certain facts and legal issues.
5. The court should encourage, but not require, alternative dispute resolution.

F. Methods for judicial control of lawyer conduct

1. The Court should continue to strongly endorse and should also enforce the County Bar Association Guidelines for the Conduct of Litigation.

2. The Court should adopt a consistent approach to enforcement of Rule 11.
3. The Court should consider the continuing problem of frivolous pleadings.

V. Conclusion

VI. Minority Report Supporting Legislation Authorizing the Prevailing Party to Recover Attorney's Fees

PART TWO: THE COURT PLAN

I. Plan Principles and Commentary

- A. The Court will make every effort to maintain firm trial dates.

Commentary: if trial dates are threatened a judge may call upon the Chief Judge or the committee designated by the Chief Judge for assistance. Among the forms of assistance available are the services of senior judges or visiting judges.

- B. The Court hereby adopts as part of its Local Criminal Rules, Local Criminal Rule 13, which provides a rule to govern settlement conferences in complex criminal cases.

Commentary: this rule will provide a judicial officer not involved in the case or its rulings to assist the parties reach a plea agreement in complex or economic crime cases; this rule should not be violative of F.R.Crim.P. 11(e)(1)(c) as drafted (see appendix exhibit "A").

- C. The Court hereby adopts as part of its Local Rules, Local Rule 23, providing for the holding of a mandatory settlement conference in every civil case.

Commentary: this rule authorizes a mandatory settlement conference and authorizes resort to various ADR techniques as a means of satisfying that requirement.

- D. The Court hereby adopts as a part of its Local Rules, Local Rule 27A, which provides protection for litigants from vexatious litigation by adopting this rule as a principle of differential case management.

Commentary: this rule responds to Advisory Group concerns that the Court be cognizant of unfounded and frivolous complaints; after a finding of abuse, the court may impose a condition of security deposits against costs, refuse filings, or resort to the state statute dealing with vexatious litigation.

- E. The judges of this Court shall refrain from adopting their own rules in the form of Standing Orders or otherwise, that are inconsistent with or conflict with the Local Rules or the FRCP.

Commentary: the Rules Committee of the Court will have the responsibility to monitor all "local-local" rules for compliance with this principle.

- F. In cooperation with the Lawyer Delegate of the District to the Ninth Circuit Judicial Conference, the Court, through its Committee on Civility and Professionalism, has developed guidelines to guide the conduct of lawyers and judges in this District. The Civility and Professionalism Guidelines have been approved by the Court and adopted as part of this Plan.

Commentary: this principle is responsive to the Advisory Group recommendations, and the Conference resolution on this topic.

- G. The Court hereby adopts, as part of its Local Rules, an amendment to Local Rule 3.11, which provides that certain stipulations will no longer require court approval.

Commentary: this rule will ease the burden on counsel and reduce cost to litigants of seeking court approval of the most routine of stipulations- the first extension of time to answer a complaint, or extensions of time for discovery responses or continuing depositions. The Court will continue to require approval of all other stipulations effecting the progress of the case, and this amendment will not interfere with the Court's case management objectives.