UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

ORDER

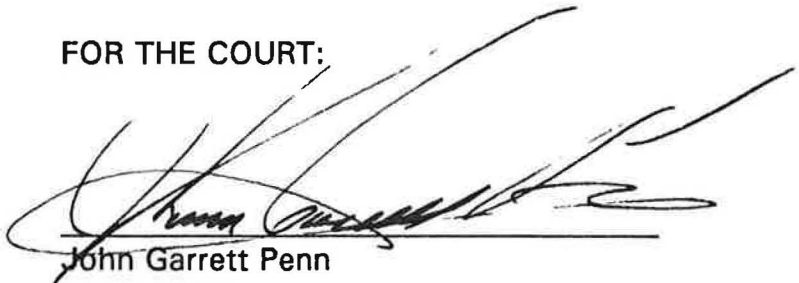
The Court, meeting in Executive Session on October 13, 1993, considered the Final Report and Recommendations of the Civil Justice Reform Act Advisory Group for the United States District Court for the District of Columbia. Following discussion and modification, the attached **CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN** is ADOPTED on November 30, 1993.

It is hereby ORDERED by the Court that the Plan shall be considered effective as of March 1, 1994 and shall apply to all civil cases filed on or after March 1, 1994, and may, at the discretion of the individual judicial officer, apply to civil cases then pending.

It is FURTHER ORDERED that the Plan shall be incorporated into the Local Rules of the Court through the rule revision process. Until the Plan is adopted by Local Rule, this Order shall serve as authorization that the Plan will be treated as an amendment to the Local Rules of this Court.

DATED this 30th day of November, 1993.

FOR THE COURT:



John Garrett Penn
Chief Judge

CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

OF THE

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Adopted on November 30, 1993

Effective on March 1, 1994

PART I: REQUIREMENTS OF THE ACT

The United States District Court for the District of Columbia adopts the following Civil Justice Expense and Delay Reduction Plan as required by 28 U.S.C. § 471 and directs that it be implemented on December 1, 1993 (Sec. 103(b), Pub.L. 101-650).[1] The Plan will become effective by Executive Order on March 1, 1994. The Plan will be incorporated in the Local Rules of the Court through the rule revision process.

Pursuant to 28 U.S.C. §§ 472(a) and 478, the Court has had the benefit of a detailed report prepared by an Advisory Group appointed by former Chief Judge Aubrey E. Robinson, Jr., in March 1991 after consultation with the other judges of the Court. The Court has been mindful of its obligation to undertake an independent review and assessment of the Advisory Group's recommendations, and it has done so (28 U.S.C. §§ 472(a) and 473(b)(6)). Nevertheless in formulating this Plan, the Court has relied extensively on the work of the Advisory Group and its Final Report.

The Civil Justice Reform Act of 1990 sets forth in great detail "principles and guidelines of litigation management and cost and delay reduction" (28 U.S.C. § 473(a) and requires that every district court consider these principles and guidelines in the development of its plan. The six principles and guidelines are: (1) systematic, differential treatment of civil cases; (2) early ongoing judicial control of the trial process; (3) discovery and case management conferences; (4) encouragement of voluntary exchange of information among litigants and other cooperative discovery devices; (5) prohibition of discovery motions absent a certification of a good faith effort to reach agreement with opposing counsel; and (6) authorization to refer cases to alternative dispute resolution (ADR) programs. As is clear from the Final Report prepared by the Advisory Group and the Court's Plan (Parts II and III), each of these principles has been carefully considered and applied to the realities of this district.

The Act also includes a number of litigation management techniques that district courts "shall consider and may include" in their plan (28 U.S.C. § 473(b)). The cost and delay reduction techniques are: (1) a requirement of a joint discovery-case management plan; (2) a requirement that counsel with authority to bind be present at the pretrial conference; (3) a requirement that clients as well as their lawyers sign requests for extension of discovery deadlines or postponement of the trial date; (4) the availability of referral to a neutral evaluation program early in the litigation; and (5) a requirement that representatives of the parties with authority to bind be present or available by telephone during any settlement conference. Each has been considered by the Advisory Group and the Court. Adoption of all of them in whole or in part as well as the rejection of one of them can be seen in the Court's Plan.

Pursuant to 28 U.S.C. § 474(b)(2), the Court's Plan "adequately responds to the conditions relevant to the civil and criminal dockets of the court." While the Advisory Group's Final Report does include several chapters discussing the docket, the recommendations really describe what the Court should do in response to the problems identified by the Advisory Group. As such, the Court has addressed the Group's concerns with the docket by adopting many of its recommendations in this Plan.

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[1]The Judicial Conference of the United States has determined that courts will be in compliance with this requirement if the following has occurred before December 1, 1993: (1) The advisory group has filed the report required by 28 U.S.C. § 472(b); (2) The district court has reviewed the advisory group report and adopted a civil justice expense and delay reduction plan; (3) The plan adopted by the district court contains a schedule for effectuating the various components of the plan which evidences a good faith effort to make the plan fully operational as promptly as feasible; and (4) The chief judge of the district court has transmitted a copy of the plan and the advisory group report to the Director of the Administrative Office, the judicial council of the circuit in which the district court is located, and the chief judge of each of the other district courts located in such circuit. (Memorandum from L. Ralph Mecham, Secretary to the Judicial Conference, September 5, 1991)

PART II: THE CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

As required by the Act at 28 U.S.C. §§ 472(a) and 473(b)(6), the Court has considered all of the Advisory Group's 49 recommendations. Based on the Advisory Group's Final Report, the Court adopts the following recommendations as the content of its Civil Justice Expense and Delay Reduction Plan. This Plan will apply to all civil cases filed on or after March 1, 1994, and may, at the discretion of the individual judicial officer, apply to cases then pending. The Plan will be incorporated into the Local Rules of the United States District Court for the District of Columbia through the rule revision process.

Section 1: Preliminary Pretrial Procedures

When a complaint is filed, the Clerk will mail to the party or counsel filing the complaint (1) a description of the Court's Alternative Dispute Resolution (ADR) Program, (2) a list of the items on which the parties must confer before the scheduling conference with the Court, and (3) a notice that the action will be dismissed against a defendant unless proof of service of process is filed as to that defendant within 125 days of the date of the filing of the complaint. Items (1) and (2) will also be sent when an answer or any motion is filed by a party or counsel. The Clerk will automatically issue an order dismissing without prejudice any complaint against a defendant for which a return of service has not been filed as to that defendant within 125 days of the filing of that complaint, unless otherwise expressly directed by the judge to whom the case has been assigned.

Section 2: Case Tracking

The Court adopts in principle the concept of case tracking. The Court adopts a three track differentiated case management system. The Fast Track will include all cases that can be disposed of promptly. The Routine or Standard Track will include cases that are relatively routine. The Complex Track will include complex cases. There would be presumed limits on the number of interrogatories and depositions.

The determination of which track a case would be assigned would rest initially with counsel who would discuss track assignment during the meet-and-confer conference. The Court, however, will make the final decision on track assignments and limits on the number of interrogatories and depositions. The judge can change track assignments at anytime.

Section 3: Meet-and-Confer Conferences

In cases involving only one defendant, counsel (including any nonprisoner *pro se* party) will meet in person or, if the parties consent, by telephone to discuss the case in preparation for the initial scheduling conference with the Court within 15 days of the appearance or first filing in the form of an answer or any motion by that defendant. In any case involving multiple defendants, including the United States or any other defendant who is given more than 20 days to answer the complaint, the 15-day period will begin with the appearance or first filing in the form of an answer or any motion by the party that is given the longest time to answer under the Federal Rules of Civil Procedure.

In any case in which some but not all defendants have been served or in which some defendants with longer periods to answer have not appeared, the plaintiff or any defendant may file a motion with the Court requesting that the meet-and-confer requirement be suspended until such time as the Court shall fix in light of the fact that some defendants have not yet entered or appeared in the case.

The meet-and-confer requirement will not apply in any prisoner *pro se* case or in any nonprisoner *pro se* case in which a dispositive motion is filed before the time to meet and confer expires.

The following matters will be discussed at the meet-and-confer conference:

1. The case tracking category in which the case should be placed, whether the case is likely to be disposed of by dispositive motion, and whether, if a dispositive motion has already been filed, the parties should recommend to the Court that discovery or other matters should await a decision on the motion.

2. The date by which any other parties shall be joined or the pleadings amended, and whether some or all the factual and legal issues can be agreed upon or narrowed.

3. Whether the case can be assigned to a magistrate judge for all purposes, including trial.

4. Whether there is a realistic possibility of settling the case.

5. Whether the case could benefit from the Court's alternative dispute resolution (ADR) procedures or some other form of alternative dispute resolution and, if so, which procedure should be used, and should discovery be stayed or limited pending completion of ADR.

6. Whether the case can be resolved on summary judgment or motion to dismiss; dates for filing dispositive motions and/or cross-motions, oppositions, and replies; and proposed dates for a decision on the motions.

7. Whether the parties can agree on the exchange of certain core information (e.g., names and addresses of witnesses, relevant documents, computations of damages, the existence and amount of insurance) without formal discovery, the extent of any discovery, how long discovery should take, whether there should be a limit on discovery (e.g., number of interrogatories, number of depositions, time limits on depositions), whether a protective order is appropriate, and a date for the completion of all discovery, including answers to interrogatories, document production, requests for admissions, and depositions.

8. Dates for the exchange of expert witness information pursuant to Fed.R.Civ.P. 26(b)(4), and for taking depositions of experts (within the discovery cut-off period) where necessary.

9. In class actions, appropriate procedures for dealing with Rule 23 proceedings, including the need for discovery and the timing thereof, dates for filing a Rule 23 motion, and opposition and reply, and for oral argument and/or evidentiary hearing on the motion and a proposed date for decision.

10. Whether the trial and/or discovery should be bifurcated or managed in phases, and a specific proposal for such bifurcation.

11. The date for the pretrial conference (understanding that a trial will take place 30 to 60 days thereafter).

12. Whether the Court should set a firm trial date at the first scheduling conference or should provide that a trial date will be set at the pretrial conference from 30 to 60 days after that conference.

No later than 10 days following this meeting, counsel for the parties must file with the Court a succinct statement of the following matters:

1. Any agreements the parties have reached at their meeting with respect to any of the 12 specific matters set forth above.

2. The parties' position on any of the 12 specific matters set forth above as to which they disagree. Counsel must file a joint submission, even if the submission sets forth differing views. Counsel's filing of a statement will constitute certification that counsel has discussed with the client the 12 matters set forth above, including the possibility of settlement and the availability and range of ADR options.

Section 4: Scheduling Conference

After conferring with the parties at the first scheduling conference, the judge will place a case in the category in which it best fits, determine whether specified limits should be placed upon discovery, and issue a scheduling order.

The Court will determine which categories of cases will be exempt from the scheduling conference requirement.

Section 5: Pretrial Conference

The Court will seek to ensure that the period of time between the pretrial conference and commencement of the trial is no more than 30 to 60 days.

Section 6: Motions and Hearings; Findings in Bench Trials

A. The trial judge will carefully consider which *in limine* motions, if decided prior to trial, might warrant the granting of a motion for summary judgment or lead to settlement and endeavor to resolve those motions prior to trial. The trial judge will also carefully consider whether other *in limine* motions might become moot if a case settles or as the issues unfold at trial or might more easily be resolved either immediately before the trial begins or during the trial.

B. Each judge will establish as his or her policy that all motions will be heard and decided promptly and that findings of fact and conclusions of law will be promptly rendered in nonjury cases. The Court will endeavor to issue bench opinions where appropriate.

As to specific deadlines for deciding matters, the Court is required already under the Act to file reports on all motions pending over six months and all bench trials submitted more than six months as well as all civil cases pending more than three years. The Court believes that these timeframes are sufficient.

C. Each judge will require that all dispositive motions be filed sufficiently in advance of the pretrial conference so that they can be ruled on before the conference and the parties can avoid unnecessary preparations for a conference and/or a trial if such motions are granted.

D. Each judge will require counsel for the party planning to make a nondispositive motion to discuss the motion either in person or by telephone with opposing counsel in a good-faith effort to determine whether there is any opposition to the motion and to narrow the areas of disagreement if there is opposition. A party will be required to include in its motion a statement that the required discussion occurred, state whether the motion is opposed or not, and describe briefly whether that discussion did in fact reduce the area of disagreement and how it was reduced.

Section 7: Discovery

A. The Court adopts the principle that there should be numerical limits on interrogatories and depositions. Counsel and parties, through their involvement in the meet-and-confer conference, will discuss discovery limits. The trial judge will determine, based on the results of the meet-and-confer conference and the characteristics of the case, the specific limits on the number of interrogatories and depositions.

B. At the discretion of the district judge, discovery and pretrial matters should be referred to magistrate judges.

C. The Court's Committee on Local Rules will review the problem of deposition and discovery misconduct and ask the District of Columbia Bar to study the problem and assist in promoting appropriate deposition and discovery conduct.

D. At the discretion of the district judges and magistrate judges, discovery disputes will be resolved by telephone conference, short informal written submissions, formal submissions, or briefing and oral argument. Judges will endeavor to decide routine discovery motions from the bench, in a telephone conference with counsel, or within 7 days of submission or of the hearing.

Section 8: Magistrate Judges

A. The Court will seek to educate the Bar on the possibility of proceeding before a magistrate judge for all purposes in civil cases and will invite the Bar to provide feedback on its experiences before magistrate judges.

B. Magistrate judges will retain primary responsibility for considering petitions by adopted persons to open adoption records of the Court pursuant to Rule 501.

C. The Court will invite magistrate judges to attend certain meetings of the Executive Session.

Section 9: Special Masters

A. Under the appropriate supervision from the Court, special masters will be used in all cases where suitable.

B. The Clerk of Court will maintain a list of special masters with experience in this Court and in other courts as a reference source. The list of special masters will be created by the judges in Executive Session. A list of mediators will be provided by the Circuit Executive's Office. The Clerk will seek to ensure that the lists are updated on a regular basis to guarantee that they are as inclusive as is reasonably possible.

Section 10: Trial Procedures

A. Each judge will try to schedule a trial, in either a civil or a criminal case, so that the evidence will not be interrupted by other proceedings. The Court agrees in principle in holding uninterrupted proceedings, but notes that exceptions (e.g., emergency Temporary Restraining Orders (TROs) and other matters that will be left to the discretion of the judge) may exist.

B. Each judge will try to hold trials during "normal business hours." Judges will consider the needs of court personnel, witnesses, and jurors when scheduling trials. Exceptions to this general principle may exist and will be determined at the discretion of the trial judge.

C. Each judge will set strict timetables for the submission of proposed findings of fact and conclusions of law in nonjury trials and proposed jury instructions for jury trials.

Section 11: Alternative Dispute Resolution (ADR)

A. When using ADR, the parties should have three options for choosing an ADR specialist: (1) a qualified volunteer from the Court's roster or a staff mediator, (2) a magistrate judge, or (3) a person agreed upon and paid by the parties. If the parties cannot agree, the Court will select a qualified volunteer or staff mediator.

B. The Court will require that all attorneys certify that they are familiar with the ADR processes that are available.

C. The Court will require, whenever possible, that representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during settlement negotiations and ADR proceedings.

Section 12: Pro Se Cases

A. For *pro se* prisoner cases involving the District of Columbia Department of Corrections, unless there is a need for immediate judicial intervention or the prisoner has already exhausted the remedies offered by the grievance process or the judge determines that there is no reasonable possibility that the grievance process will resolve the complaint, judges will grant a 90-day stay to permit the grievance process certified by the Department of Justice to run its course. The Court will monitor the effectiveness of the grievance process to ensure that the stays actually contribute to reducing cost and delay.

B. Judges will decide as soon as possible after a case is assigned to them whether appointment of counsel is appropriate and, if so, will appoint counsel as early as possible.

Section 13: Space and Facilities

The Court will seek sufficient space to provide adequate chambers and an adequate courtroom for every active judge, every senior judge, every magistrate judge, and the bankruptcy judge.

Section 14: Impact on Local Rules

The Court's Committee on Local Rules will review this Plan and will make recommendations as to any local rule change as necessary, including determining presumptive limits on the number of interrogatories and depositions for each track.

PART III: PRINCIPLES AND TECHNIQUES CONSIDERED BUT NOT ADOPTED

As required by the Act at 28 U.S.C. § 473(b), the Court has considered the following case management techniques and recommendations but did not adopt them:

1. A requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request. (28 U.S.C. § 473(b)(3))

The Court notes that such a requirement is less meaningful in this Court where 48% of all civil cases involve the United States or the District of Columbia.

2. Recommendation that judges schedule, hear, or decide various matters within prescribed time limits arbitrarily set by the Advisory Group in its Final Report. (Recommendations 5, 7, 12, 13, and 14)

The Court notes that while each judge does his or her best to keep the docket moving, each is operating with an unpredictable criminal and civil caseload. This Court has been handling a full docket for the past year with five judicial vacancies, yet it is still able to dispose of civil cases within the median time of nine months. Any recommendations for when matters should be decided should be addressed not by reducing judicial discretion, but by encouraging judges to manage their calendar in the most effective manner possible as determined by each judge in each case and consistent with the CJRA Plan that has been adopted and as may be amended.

3. Recommendations that the Court establish various pilot programs to experiment with greater involvement of magistrate judges in civil cases, a back-up role of senior judges, use of jury questionnaires, and greater use of the Court's ADR program. (Recommendations 18, 21, 23, 34, and 35)

The Court notes that each judge already has the discretion to refer matters to magistrate judges and the ADR program, and use jury questionnaires. Senior judges are presently coordinating with the Calendar Committee and are serving in an informal back-up role to support the active judges.

4. Recommendations that the Court hire additional staff. (Recommendations 24 and 40)

While additional staff is needed, the Court cannot hire additional personnel because of a lack of available funds.

5. Recommendations concerning judicial vacancies, statistics, sentencing guidelines, mandatory minimum sentences, and additional resources for the Clerk's Office. (Recommendations 42, 43, 44, 45, 46, and 47)

The Court determined that no action was required as these recommendations are directed to the Executive, the Congress, the United States Sentencing Commission, and the Administrative Office of the United States Courts.

PART IV: CONCLUSION

The Court recognizes that facilitating access to justice and ensuring just, speedy, and inexpensive resolutions of civil disputes is an ongoing process. As required by 28 U.S.C. § 475, the Court will assess annually the condition of the Court's civil and criminal dockets with a view to determining what additional steps could be taken to reduce cost and delay and improve litigation management techniques practiced by the Court.

This Plan was approved and adopted by the Board of Judges of the United States District Court for the District of Columbia.

November 30, 1993
Date

John Garrett Penn
Chief Judge