United States District Court

District of Connecticut
United States Courthouse
141 Church Street
New Haven, Connecticut 06510

Chambers of
José A. Cabranes
Chief Judge

(203) 773-2147

November 10, 1993

The Honorable Ann Claire Williams
Chair, Committee on Court Administration
and Case Management
Judicial Conference of the United States
c/o United States Courthouse
219 South Dearborn Street
Chicago, Illinois 60604

Re: Revised Civil Justice Expense
and Delay Reduction Plan

Dear Judge Williams:

In response to the letter of July 9, 1993, from your predecessor as Chair of the Committee on Court Administration and Case Management, Judge Robert M. Parker (a copy of which I enclose for ease of reference), requesting that our Court consider adopting the techniques identified in 28 U.S.C. § 473(a) and (b) and them formulate a separate Civil Justice Expense and Delay Reduction Plan, our District's Civil Justice Advisory Group has recommended, and our Judges have approved, the accompanying Revised Plan. We believe that it responds fully to Judge Parker's request, but trust that you will let me know as soon as possible if you have any questions, comments or concerns regarding any aspect of it.

Thank you for your consideration.

With best wishes,

Sincerely yours,

José A. Cabranes
Chief Judge

JAC:lmo
Attachments: As Indicated
cc: All District Judges
The Hon. Jon O. Newman, Chief Judge
U.S. Court of Appeals (Second Circuit)
Mr. Steven Flanders, Circuit Executive
Mr. Abel Matos, AO
Ms. Donna Stienstra, FJA
(each with copy of attachments)

CIVIL JUSTICE ADVISORY GROUP
FOR THE DISTRICT OF CONNECTICUT

REVISED
CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

1. Limit on Interrogatories

Unless otherwise permitted by the Court for good cause shown, no party shall serve upon any other party more than 30 written interrogatories, including all parts and sub-parts. This limit may not be waived by agreement of counsel. Local Rule 9(d)(1).

2. Discovery Deadline

All discovery shall be completed within six months after the filing of the complaint, the filing of a petition for removal, or the date of transfer of an action from another District. Standing Order on Scheduling in Civil Cases 2(c).

3. Motion Deadlines

All motions relating to joinder of parties, claims or remedies, class certification, and amendment of the pleadings shall be filed within 60 days after the filing of the complaint, the filing of a petition for removal, or the date of transfer of an action from another District. Standing Order on Scheduling in Civil Cases 2(a).

All motions to dismiss based on the pleadings shall be filed within 90 days after the filing of the complaint, the filing of a petition for removal, or the date of transfer of an action from another District. Standing Order on Scheduling in Civil Cases 2(b).

All motions for summary judgment shall be filed within seven months after the filing of the complaint, the filing of a petition for removal, or the date of transfer of an action from another District. Standing Order on Scheduling in Civil Cases 2(d).

4. Differential Treatment of Cases

When indicated, the District Judge in his or her discretion shall order the systematic, differential treatment of civil cases so as to tailor the level of case management to the cases' complexity, length, and amount of resources required for their preparation and disposition.

5. **Voluntary Discovery**

The Court encourages all litigants and their attorneys to engage in cost-effective discovery through the voluntary exchange of information and other cooperative discovery devices.

6. **Discovery Motions**

No discovery motions pursuant to Fed. R. Civ. P. 26 through 37 shall be filed unless they are accompanied by certification that the moving counsel has conferred with opposing counsel and made a good faith effort to eliminate or reduce the area of controvery and to arrive at a mutually satisfactory resolution. Such certification shall take the form of an affidavit filed as part of the motion papers confirming that such good faith efforts have been made and specifying the issues that have been resolved and the issues that remain unresolved. Local Rule 9(d)(2).

7. **Alternative Dispute Resolution**

In addition to existing ADR programs (such as Local Rule 28's Special Masters Program) and those promulgated by individual judges (e.g., Parajudicials Program), a case may be referred for voluntary ADR at any stage of the litigation deemed appropriate by the parties and then judge to whom the particular case has been assigned.

Before a case is referred to voluntary ADR, the parties must agree upon, subject to the approval of the judge:

(a) The form of the ADR program (e.g., mediation, arbitration, summary jury trial, minitrial, etc.);

(b) The scope of the ADR process (e.g., settlement of all or specified issues, resolution of discovery schedules or disputes, narrowing of issues, etc.);

(c) The ADR provider (e.g., a court-annexed ADR project; a profit or not-for-profit private ADR organization; or any qualified person or panel selected by the parties);

(d) The effect of the ADR process (e.g., binding or nonbinding).

When agreement between the parties and the judge for a voluntary ADR referral has been reached, the parties shall file jointly for the judge's endorsement a "Stipulation for Reference to ADR." The Stipulation, subject to the judge's approval, shall specify:

(a) The form of ADR procedure and the name of the ADR provider agreed upon;

(b) The judicial procedings, if any, to be stayed pending ADR (e.g., discovery matters, filing of motions, trial, etc.);

(c) The procedures, if any, to be completed prior to ADR (e.g., exchange of documents, medical examinations, etc);

(d) The effect of the ADR process (e.g., binding or nonbinding);

(e) The date or dates for the filing of the progress reports by the ADR provider with the trial judge or for the completion of the ADR process; and

(f) The special conditions, if any, imposed by the judge upon any aspect of the ADR process (e.g., requiring trial counsel, the parties, and/or representatives of insurers with settlement authority to attend the voluntary ADR session fully prepared by make final demands or offers).

Attendance at ADR sessions shall take precedence over all non-judicially assigned matters (depositions, etc.). With respect to court assignments that conflict with a scheduled ADR session, trial judges may excuse trial counsel temporarily to attend the ADR session, consistent with the orderly disposition of judicially assigned matters. In this regard, trial counsel, upon receiving notice of an ADR session, immediately shall inform the trial judge and opposing counsel in matters scheduled for the same date of his or her obligation to appear at the ADR session.

All ADR sessions shall be deemed confidential and protected by the provisions of Fed. R. Evid. 408 and Fed. R. Civ. p. 68. No statement made or document produced as part of an ADR proceeding, not otherwise discoverable or obtainable, shall be admissible as evidence or subject to discovery.

At the conclusion of the voluntary ADR session(s), the ADR provider's report to the judge shall merely indicate "case settled or not settled," unless the parties agree to a more detailed report (e.g., stipulation of facts, narrowing of issues and discovery procedures, etc.). If a case settles, the parties shall agree upon the appropriate moving papers to be filed for the trial judge's endorsement (Judgment, Stipulation for Dismissal, etc.). If a case does not settle but the parties agree to the narrowing of discovery matters or legal issues, then the ADR provider's report shall set forth those matters for endorsement or amendment by the judge. Local Rule 36, adopted pursuant to Civil Justice Advisory Group Report.

8. **Court-Appointed ADR Provider**

Pursuant to Local Rule 36 and a Standing Order dated February 19, 1993, the Court appoints Sta-Fed ADR, Inc. as a court-annexed ADR program. Sta-Fed ADR, Inc. is a not-for-profit corporation whose core group of mediators are members of the state judiciary, and members of the federal judiciary will serve as officers of the corporation and sit on its Board of Directors. Local Rule 36 and Standing Order dated February 19, 1993, adopted pursuant to Civil Justice Advisory Group Report.

9. **Special Masters**

Pursuant to Local Rule 28, District Judges may appoint special masters to report upon particular issues in a case, to hold early status conferences, or to conduct settlement conferences. Local Rule 28.

10. **Pretrial Conferences**

Each party will be represented at each pretrial conference by an attorney with authority to bind that party regarding all matters identified by the Court for discussion at the conference as well as all reasonably related matters.

11. **Settlement Conferences**

Counsel shall attend any settlement conference fully authorized to make a final demand or offer and to act promptly on any proposed settlement. The judicial officer or special master before whom a settlement conference is held may require that counsel be accompanied by the person or person authorized and competent to accept or reject any settlement proposal, or that such persons be available by telephone. Local Rule 11(b)(3) and 36(3)(f).

12. **Monitoring and Reporting**

On at least an annual basis (starting one year from the date of the Court's adoption of the Revised Plan), the Group will collect and review all available data (e.g., from the Administrative Office, Clerk's Office, and Sta-Fed ADR, Inc.'s Office) regarding the effect of the Revised Plan. The Group then will draft a report analyzing the effect of the Revised Plan and forward the report to the Court.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

JUDICIAL CONFERENCE of the UNITED STATES

Honorable Robert M. Parker
Chairman

July 9, 1993

Honorable Jose A. Cabranes
Chief Judge, United States
District Court
141 Church Street
New Haven, Connecticut 06510

Dear Judge Cabranes:

Judicial Conference review of your district's Civil Expense and Delay Reduction plan and the report of the Advisory Group has been completed. We commend you for the innovations in your Alternative Dispute Resolution initiative, but wish to make several suggestions to the court for additional efforts to reduce cost and delay in civil litigation.

Recognizing our inability to become intimately familiar with the problems and proposed solutions which are peculiar to your district, our suggestions must suffer from that obvious inadequacy.

Although your Advisory Group Report contained a number of recommendations, the court's adoption of the Report as its plan results in uncertainty as to whether the court has adopted all parts of all recommendations and how the recommendations will be implemented. We request you formulate a separate, comprehensive plan for reducing cost and delay in civil litigation. Your ADR program can, if you desire, be the focal point of your plan but we suggest the district consider adopting, on at least a pilot basis, some or all of the principles and techniques identified in sections 473(a) and (b) of title 28, United States Code. We recommend you pay particular attention techniques which address discovery abuse, an area identified as a cause of delay by the Advisory Group.

Additionally we request that you consider establishing procedures to monitor the success of your plan in reducing costs to litigants by controlling the extent of discovery and other procedural measures and report on an annual basis to the committee. The committee feels it is important that discovery is controlled by a judicial officer rather than the attorneys. The committee further believes limits on the number of discovery requests, interrogatories, and depositions should be considered in conjunction with limits on the length of time to complete discovery.

In closing the committee would like to once again commend the court and the advisory group on their effort and hard work in developing its ADR program. We would also like to wish you much success in developing and implementing a comprehensive Civil Justice Expense and Delay Reduction Plan. Please forward your revised plan to Abel J. Mattos of the Administrative Office and Donna Stienstra of the Federal Judicial Center.

Best regards,

Robert M. Parker

cc: Kevin F. Rowe

LIBRARY REFERENCES

Federal Civil Procedure ⇐1991.
C.J.S. Federal Civil Procedure § 933.
WESTLAW Topic No. 170A.

§ 472. Development and implementation of a civil justice expense and delay reduction plan

(a) The civil justice expense and delay reduction plan implemented by a district court shall be developed or selected, as the case may be, after consideration of the recommendations of an advisory group appointed in accordance with section 478 of this title.

(b) The advisory group of a United States district court shall submit to the court a report, which shall be made available to the public and which shall include—

(1) an assessment of the matters referred to in subsection (c)(1);

(2) the basis for its recommendation that the district court develop a plan or select a model plan;

(3) recommended measures, rules and programs; and

(4) an explanation of the manner in which the recommended plan complies with section 473 of this title.

(c)(1) In developing its recommendations, the advisory group of a district court shall promptly complete a thorough assessment of the state of the court's civil and criminal dockets. In performing the assessment for a district court, the advisory group shall—

(A) determine the condition of the civil and criminal dockets;

(B) identify trends in case filings and in the demands being placed on the court's resources;

(C) identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation; and

(D) examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts.

(2) In developing its recommendations, the advisory group of a district court shall take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys.

(3) The advisory group of a district court shall ensure that its recommended actions include significant contributions to be made by the court, the litigants, and the litigants' attorneys toward reducing cost and delay and thereby facilitating access to the courts.

(d) The chief judge of the district court shall transmit a copy of the plan implemented in accordance with subsection (a) and the report prepared in accordance with subsection (b) of this section to—

(1) the Director of the Administrative Office of the United States Courts;

(2) the judicial council of the circuit in which the district court is located; and

(3) the chief judge of each of the other United States district courts located in such circuit.

(Added Pub.L. 101–650, Title I, § 103(a), Dec. 1, 1990, 104 Stat. 5090.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 101–650, see 1990 U.S.Code Cong. and Adm. News, p. 6802.

§ 473. Content of civil justice expense and delay reduction plans

(a) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following principles and guidelines of litigation management and cost and delay reduction:

(1) systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case;

(2) early and ongoing control of the pretrial process through involvement of a judicial officer in—

(A) assessing and planning the progress of a case;

(B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies that—

(i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or

(ii) 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;

(C) controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and

(D) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

(3) for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer—

(A) explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

(B) identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to—

(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

(ii) phase discovery into two or more stages; and

(D) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

(4) encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;

(5) conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion; and

(6) authorization to refer appropriate cases to alternative dispute resolution programs that—

(A) have been designated for use in a district court; or

(B) the court may make available, including mediation, minitrial, and summary jury trial.

(b) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following litigation management and cost and delay reduction techniques:

(1) a requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so;

(2) a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters

previously identified by the court for discussion at the conference and all reasonably related matters;

(3) 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;

(4) a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation;

(5) a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference; and

(6) such other features as the district court considers appropriate after considering the recommendations of the advisory group referred to in section 472(a) of this title.

(c) Nothing in a civil justice expense and delay reduction plan relating to the settlement authority provisions of this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, or any delegation of the Attorney General.

(Added Pub.L. 101-650, Title I, § 103(a), Dec. 1, 1990, 104 Stat. 5091.)

HISTORICAL AND STATUTORY NOTES

References in Text

The Federal Rules of Civil Procedure, referred to in subsec. (a)(3)(B), are set out in this title.

Legislative History

For legislative history and purpose of Pub.L. 101-650, see 1990 U.S.Code Cong. and Adm. News, p. 6802.

LAW REVIEW COMMENTARIES

Eliminating abusive discovery through disclosure: Is it again time for reform? Thomas M. Mengler, 138 F.R.D. 155 (1991).

§ 474. Review of district court action

(a)(1) The chief judge of each district court in a circuit and the chief judge of the circuit shall, as a committee—

(A) review each plan and report submitted pursuant to section 472(d) of this title; and

(B) make such suggestions for additional actions or modified actions of that district court as the committee considers appropriate for reducing cost and delay in civil litigation in the district court.

(2) The chief judge of a circuit may designate another judge of the court of appeals of that circuit, and the chief judge of a district court may designate another judge of such court, to perform that chief judge's responsibilities under paragraph (1) of this subsection.

(b) The Judicial Conference of the United States—

(1) shall review each plan and report submitted by a district court pursuant to section 472(d) of this title; and

(2) may request the district court to take additional action if the Judicial Conference determines that such court has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the district court's advisory group.

(Added Pub.L. 101-650, Title I, § 103(a), Dec. 1, 1990, 104 Stat. 5093, and amended Pub.L. 102-198, § 2(2), Dec. 9, 1991, 105 Stat. 1623.)

HISTORICAL AND STATUTORY NOTES

1991 Amendment

Subsec. (a)(1). Pub.L. 102-198, § 2(2)(A)(i), substituted "judge" for "judges" preceding "of each district".

Pub.L. 102-198, § 2(2)(A)(ii), struck out "court of appeals for such" preceding "circuit".

Subsec. (a)(2). Pub.L. 102-198, § 2(2)(B)(i), substituted "circuit may designate another judge of the court of appeals of that circuit" for "court of appeals".