

**Northern District of New York
Report of the Advisory Group
Expense and Delay Reduction Plan
Summary**

I. Assumptions; Miscellany; and Background

- A. Northern District is a geographically large district encompassing 32 of 62 counties in New York State.
- B. District has four authorized and one temporary judgeships, one senior judge, and three full time and one part time magistrate judges. In 1992 there was 24.4 months of vacancy.
- C. The district's jurisdiction includes a foreign border.
- D. The district has staffed courthouses in Albany, Syracuse, Utica, and Binghamton, and unstaffed courthouses in Watertown, Auburn and Malone.

II. Status of the Docket

A. Civil Cases

- 1. In 1992, 1576 civil cases were filed, which is a 6.9% increase over the previous year.
- 2. The number of civil cases terminated increased 49.6% during this period.
- 3. The number of pending civil cases in 1992 was 2804, which represents a 14.9% decrease over 1991.
- 4. The median time for disposing of a civil case was 20 months, well above the national average of 9 months.
- 5. 23.6% of pending civil cases were at least three years old, which is higher than the national average of 8.7%.

B. Criminal Cases

- 1. In 1992 523 criminal cases were filed, which is a 13.2% increase over 1991.

2. The number of criminal cases terminated increased 38.8%.
3. The number of pending criminal cases in 1992 represents a 3% increase.
4. The median time for disposing of a criminal case was 5.9 months which was the fastest on the 2d Circuit.

C. Reliance on Magistrate Judges

1. The Northern district accounted for nearly 25% of the number of civil cases terminated by magistrates in the entire 2d circuit.
2. The 24% increase of total trials completed was largely attributed to the use of magistrate judges.

D. Causes of Delay and Expense

1. Failure to fill judicial vacancies in a timely fashion.
2. Under-utilization of magistrate judges. This has been corrected.
3. Random assignment of judges.
4. Large number of pending prisoner cases.
5. Problems with the current motions practice.
 - a) requirement of oral argument on all motions;
 - b) unnecessary amount of paperwork; and
 - c) delay in rendering decisions.
6. Concerns with the Uniform Pretrial Scheduling Order
 - a) failure to enforce deadlines; and
 - b) failure to set strict trial dates.
7. Extended discovery periods and the excessive use of interrogatories.
8. Failure to disseminate information about amendments to Local Rules and issuance of General Orders.
9. Reluctance of members of the bar to use alternate dispute resolution mechanisms.
10. Insufficient judicial resources to deal with new legislation.

III. Recommendations

- A. Fill Judgeship vacancies in a timely fashion.
- B. Upgrade the part-time magistrate judge position to full-time and provide each magistrate judge with 2 clerks.

- C. Locate courthouse facilities in Watertown in a convenient downtown area.
- D. Divide district into three filing divisions: Albany, Syracuse and Binghamton.
- E. Consider implementation of fast track system for disposition of prisoner cases.
 - 1. A scheduling order should be issued for each fast track petition to ensure that dispositive motions, discovery and other pretrial matters are completed prior to the trial date.
 - 2. An additional law clerk should be assigned to the Pro Se Staff Attorneys Office.
- F. Amend local motion rules to provide that:
 - 1. Oral argument should only be required when directed by the court.
 - 2. When no oral argument is held, only the moving parties should be permitted to submit reply papers without leave of the court.
 - 3. Affidavits should not be required in support of motions presenting pure questions of law.
 - 4. Parties should not be required to submit proposed orders.
 - 5. A monitoring system should be implemented to make inquiry into a judicial officer before whom a motion has been pending for more than 60 days.
- G. Conform local rules to Model Rules approved by the Judicial Conference of the United States.
- H. Local rules should be amended to provide that a representative of parties with authority to bind be present or available by telephone during any settlement conference.
- I. Local rules should be amended to include provision that clerk shall assign both a district judge and a magistrate judge to each civil action at the time of filing.
- J. Fixed trial date should not be postponed unless a showing of good cause by the parties.

- K. Scheduling order deadlines should be strictly enforced, unless a showing of good cause by the parties.
- L. Develop a plan for prompt publication and distribution of amendments of local rules and general orders.
- M. Appoint an ADR subcommittee to design an additional ADR program for the district with the specific objectives of:
 - 1. Enabling litigants to confront issues and facts before discovery.
 - 2. Reducing burden on court to allow more time for cases inappropriate for ADR.
 - 3. Provide opportunities for remedies that may not be available through adversarial process.
 - 4. Maximize use of magistrate judge.
 - 5. Provide data about effective use of ADR.
- N. Increase clerk office staff.

IV. The Plan

- A. Requirements of Case Management Plan
 - 1. Service must be given within sixty days of filing complaint.
 - 2. The clerk shall assign to all civil cases both a district judge and a magistrate judge, both of which have the authority to design and issue a case management order. [§473(a)(2)]
 - 3. An initial pretrial conference shall be held within 120 days after the filing of the complaint. The parties must meet before this conference and formulate a proposed discovery plan, which must be submitted 10 days before the conference.[§473(a)(2)], [§473(a)(3)], [§473(b)(1)]
 - 4. At the pretrial conference the court will consider and the parties shall prepare to discuss the following:
 - a) deadlines for joinder of parties; amendment of pleadings; completion of discovery and filing of motions. [§473(a)(3)];
 - b) trial dates;

- c) requests for jury trials;
 - d) subject matter and personal jurisdiction.
 - e) factual and legal basis for claims and defenses;
 - f) factual and legal issues in dispute;
 - g) facts and issues which can be argued upon or narrowed;
 - h) specific relief requested;
 - i) intended discovery and proposed methods to limit discovery time and expenses [§473(a)(3)] , [§473(a)(4)];
 - j) suitability of case for voluntary arbitration;
 - k) measures for reducing length of trial;
 - l) related pending cases;
 - m) procedure for certifying class actions, if necessary, and
 - n) settlement prospects. [§473(a)(3)]
- [§473(a)(2)], [§473(b)(2)], [§473(a)(3)]
5. After pretrial conference, the presiding judicial officer shall issue a uniform pretrial scheduling order setting forth deadlines for joinder of parties, amendment of pleadings, completion of discovery and the filing of motions, a settlement conference, a trial date, and requirement for all trial submissions. [§473(a)(3)], [§473(a)(3)]
 6. The trial date shall be limited to no later than 18 months after the filing of the complaint. [§473(a)(2)]
 7. If a trial is deemed too complicated to be adjudicated in 18 months, the district judge or magistrate shall exempt the case and issue a particularized case management order which will allow the judge to:
 - a) explore the possibility of settlement [§473(a)(3)];
 - b) identify and bifurcate principle issues [§473(a)(3)];
 - c) Identify and eliminate expensive and unnecessary discovery [§473(a)(2)], [§473(a)(4)];
 - d) set earliest possible deadlines [§473(a)(2)]; [§473(a)(3)], and
 - e) use discretion to expedite cases. [§473(a)(1)], [§473(a)(2)]

8. All deadlines must be strictly enforced unless a party can show good cause. [§473(a)(2)], [§473(a)(3)], [§473(b)(3)]

B. Exempted Cases

1. The following cases are exempted from the preparation of case management plan: [§473(a)(1)]
 - a) actions where one party is incarcerated;
 - b) prize proceedings in admiralty;
 - c) judicial review of administrative agency decisions;
 - d) recovery of debts owed to the United States;
 - e) enforcement of judgments or recovery of overpayment
 - f) proceedings in bankruptcy
 - g) proceedings for admission to or cancellation of citizenship;
 - h) proceedings to compel or set aside arbitration, and
 - i) proceedings to compel testimony or production pursuant to a subpoena other than one issued by the Northern District.
2. If a case is given exempt status the court shall issue a standard case management plan, and assign a trial date within 18 months of the filing date. [§473(a)(1)], [§473(a)(2)]

C. DISCOVERY

1. Parties must voluntarily exchange discoverable information and must avoid unnecessary discovery. [§473(a)(2)], [§473(a)(3)], [§473(a)(4)]
2. Magistrate judges shall conduct all discovery conferences, hear all discovery motions, and have the authority to use discretion in changing discovery deadlines. [§473(a)(2)], [§473(a)(3)]
3. The court shall, in the pretrial conference, discuss types of discovery and the availability of less costly and time consuming methods. [§473(a)(2)], [§473(a)(3)], [§473(a)(4)]
4. Except when efficiency or justice may otherwise be served, discovery, pretrial pleadings, and the trial itself, should be held within the district's division where venue lies, giving regard to the convenience of the parties and witnesses.

[§473(a)(2)], [§473(a)(3)]

5. Discovery requests and responses shall be maintained by the parties, unless the court directs otherwise. [§473(a)(2)], [§473(a)(3)]
6. Discovery motions shall not be considered unless:
 - a) Counsel makes a good faith effort amongst themselves to reduce or resolve discovery differences.
 - b) Counsel requests a discovery conference and files a letter brief.
 - c) An affidavit stating that a good faith effort was made is included. [§473(a)(5)][§473(a)(2)], [§473(a)(3)], [§473(a)(4)]

D. MOTIONS

1. Proper motions serve to reduce the cost and time of litigants, lawyers and the court. [§473(a)(2)], [§473(a)(3)]
2. Motion deadlines may only be extended upon showing of good cause by a party. [§473(a)(2)], [§473(a)(3)], [§473(b)(3)]
3. Jurisdiction and venue motions shall be made within 30 days of issuance of case management order. [§473(a)(2)], [§473(a)(3)]
4. Any motion requiring a Memoranda of Law in support must be filed by the moving party 28 days and the opposing party 14 days prior to the return date of the motion. [§473(a)(2)]
5. Oral argument shall not be held on non-dispositive pretrial motions, unless directed by the court. In this situation the moving party will be able to file reply papers without leave of the court. [§473(a)(2)]
6. Oral arguments shall be held on all dispositive motions, and the moving party must obtain motion before serving reply papers. [§473(a)(2)]
7. Affidavits are not needed in support of motions presenting pure questions of law. [§473(a)(2)]

8. Parties are not required to submit proposed orders at the time moving papers or opposition papers are served to the court.
[§473(a)(2)]
9. When possible, all motions shall be decided within 60 days, and a monitoring system shall be implemented to inquire about motions pending for longer than this period. The court may also put a stay on all proceedings that have been pending for 60 days or more.
[§473(a)(2)], [§473(a)(3)]

E. SETTLEMENT

1. Whenever settlement is discussed, a party that has the authority to bind the parties shall be present or available by phone.
[§473(b)(5),
2. One week prior to settlement conference, parties shall give court a settlement conference statement discussing:
 - a) brief statement of facts;
 - b) summary of proceedings to date;
 - c) brief statement of claims and defenses and their basis;
 - d) estimate of time and cost of further action;
 - e) brief statement of agreed upon facts and issues;
 - f) any issue that if resolved would aid in disposition of the case;
 - g) the relief sought, and
 - h) party positions on settlement.[§473(a)(3)]

F. TRIAL

1. All cases shall have a trial date within 18 months. [§473(a)(2)]
2. Trial date shall only be advanced by:
 - a) request and stipulation by parties and consent of court; or
 - b) request of court and agreement by all parties; or
 - c) if all discovery and pretrial motions have been made and no prejudice will result.[§473(a)(2)]
3. Trial date shall only be postponed if:

- a) a or b of above; or
 - b) Upon finding by the court that postponement is necessary for effective utilization of judicial resources. [§473(a)(2)], [§473(b)(3)]
4. In order to avoid postponement, the parties have the option of having the matter tried in front of an available magistrate or a district judge may try the case contemporaneously with another trial. [§473(a)(2)]

G. Prisoner litigation

1. If the Northern District has venue, subject matter jurisdiction, and the case relates to prisoner incarceration, the pro se attorney shall report to the court whether the case has meritorious and complicated issues requiring extensive recovery.
- a) If these criteria are not found the case is placed on a fast track and the trial must be within 6-8 months from the date of filing.
 - b) If these criteria do exist the trial must occur within 18 months of filing.
- [§473(a)(1)], [§473(a)(2)]

H. Development of an Expanded ADR Program. [§473(a)(6)]

1. The district court sponsors a voluntary, court annexed, non-binding arbitration program.
2. An ADR subcommittee of the advisory group shall:
- a) develop a training program;
 - b) recommend methods for early case evaluation;
 - c) establish criteria for cases excluded from ADR;
 - d) develop process for training and certifying ADR providers.
 - e) develop a method to evaluate the program.
 - f) recommend amendment's to local rules to help implement the program.
3. The present ADR program shall be preserved until an expanded program is designed and recommended.

I. Implementation of the Plan

1. General Resources - the following resources are necessary:

- a) Filling judicial vacancies.
 - b) Funding for additional full time magistrate judge.
 - c) Additional law clerks for magistrate judges,
 - d) Additional pro se staff attorney.
 - e) Full staffing of clerk's office.
 - f) Additional courthouse facilities needed.
2. Amendment of Local Rules
- a) When necessary the local rules will be amended to include provisions of this plan.
3. Enforcement of Plan
- a) Any judicial officer may assess sanctions against any party or attorney for non-compliance with the plan.
4. Oversight of the Plan
- a) Advisory group is directed to report at least once a year to the court regarding cost effectiveness, the condition of the docket, necessary revisions, and matters pertinent to the court's plan of differentiated case management. [**\$475**]