

OFFICE OF THE
DISTRICT COURT EXECUTIVE
SOUTHERN DISTRICT OF NEW YORK

DATE: 10/31/91

Mr. Philip Argetsinger
Court Administration Division
Administrative Office of the
United States Courts
Washington, D.C. 20544

Dear Mr. Argetsinger :

Attached is the Southern District of New York's
Civil Justice Expense and Delay Reduction Plan.

The Advisory Group's Report and Recommendations
will be forwarded shortly.

Sincerely,



Gary Lee
Asst. District Executive

**SOUTHERN DISTRICT OF NEW YORK
CIVIL JUSTICE REFORM ACT ADVISORY GROUP
CIVIL JUSTICE EXPENSE & DELAY
REDUCTION PLAN**

October 31, 1991

THE PLAN

Following the designation of the Southern District of New York ("SDNY" or the "Court") as a pilot district under the Judicial Improvements Act of 1990 (the "JIA") and Title I of the Civil Justice Reform Act of 1990 (the "CJRA" the "Act"), Chief Judge Charles L. Brieant convened an Advisory Group under the leadership of Judge Robert W. Sweet ("the Advisory Group"). The Advisory Group consists of attorneys, representing both the private and public sector, who practice regularly in the Southern District of New York, as well as a lay member of the community. In addition to Judge Sweet, Judge Thomas P. Griesa is a member of the Advisory Group. Chief Judge Charles L. Brieant and Edwin Weseley, the Chair of the Eastern District Advisory Group, serve in an ex officio capacity. The discussion below is a summary of the work of the Advisory Group and the proposals made after study and careful consideration of the objects of the legislation and the nature of the practice in the SDNY. We refer the reader to the Report for the full explication of the Plan.

The Advisory Group, divided into subcommittees, took a number of steps leading to the formulation of this Plan and the Advisory Group Report. It drafted and sent a questionnaire regarding practice in the SDNY to the Court and to 3,000 practicing attorneys and analyzed the responses. It also undertook an extensive study of 2,000 closed cases in

order to identify causes of undue cost and delay. In addition, it reviewed the court's docket and noted in particular the problems of pro se litigation which, in 1990-91, constituted almost 20% of the civil cases filed. The Advisory Group also reviewed relevant literature and case law. Finally, the Advisory Group met regularly to deliberate and draft reports. Price Waterhouse assisted in analyzing statistics, questionnaire responses and the docket study.

The Advisory Group's work resulted in a number of findings and recommendations. The assessment of the Court's docket shows an ever expanding number of pending cases and a delay, sometimes substantial, in reaching cases that are ready for trial. These problems arise directly from unfilled judicial vacancies (now 7 out of 28 authorized judgeships), which amounted to 78.8 vacant judgeship months in 1990. Surprisingly, with the exception of these two problems, the docket shows no other excessive delay, a consequence that can be attributed largely to substantial efforts on the part of judges and magistrate judges.

Based upon its analysis of the above, the Advisory Group recommends that the Court implement the following procedures or practices.

1. There shall be early judicial case management in all cases.

2. A simplified case assignment system and a differential case management system based upon whether a case is "Complex," "Standard" or "Expedited" will be created. The designation should be made by the Court based upon Case Information Statements filed by the parties or by a determination made at a Case Management Conference.

3. An initial Case Management Conference should be held in all cases within 120 days of the filing of the complaint.

4. In cases determined to be Expedited, defined categories of relevant documents will be produced automatically. Discovery will be limited. The case will be set for trial within one year of filing the complaint.

5. In Complex and Standard cases, a discovery plan and a settlement schedule will be developed at the Case Management Conference. At that Conference the Court and counsel shall address, as necessary, thirteen specific issues (as set forth in the Report), including discovery and settlement. A magistrate judge shall be assigned to each such case. At the option of the assigned judge or in the event of that judge's unavailability, magistrate judges should handle, among other things, the resolution of pre-trial discovery issues. A Case Management Plan scheduling the events in the case as specifically as possible

should be issued following the conference. In these cases periodic Case Management Conferences should be scheduled to ensure adequate court supervision

6. Pre-motion conferences should be mandatory prior to making a motion, except where time periods required in the Federal Rules of Civil Procedure make the Conference impractical.

7. All motions shall be decided within sixty (60) days of final submission. Motions not decided within that time should be reported by each judge and magistrate judge in a quarterly report to be circulated to all members of the Court and to the Advisory Group.

8. The Court is a single institution responsible for the management of its docket. The Advisory Group recognizes, of course, that individual judges are responsible for handling their own dockets in a timely manner. Because imbalances in the number of cases pending in the dockets of different judges cause delay, the Court should undertake appropriate steps, including the assignment and reassignment of cases or the provision of additional resources, to ensure timely judicial attention to the Court's docket.

9. All cases brought by an individual pro se plaintiff shall be referred to the same magistrate judge.

10. The Court shall request authorization for additional magistrate judges.

The Advisory Group studied and reviewed the discovery process both generally and in the Court. Based upon its study, the Advisory Group formulated discovery proposals to expedite the discovery process. These proposals are set forth below.

11. At the initial Case Management Conference, a discovery plan should be formulated. Subsequent discovery issues should be resolved by expedited letter submission, not to exceed two pages double spaced, or by telephone or personal conference after a good faith effort at resolution by all parties.

12. The Court should adopt rules containing guidelines for deposition practice, interrogatories, requests for documents and discovery of experts.

13. Mandatory standardized discovery shall be required in pro se prisoner cases.

14. Sanctions for failure to comply with discovery obligations should be enforced.

15. The unsuccessful appeal of a magistrate judge's discovery ruling shall result in cost-shifting to the unsuccessful party.

The Advisory Group found that Alternate Dispute Resolution mechanisms have been underutilized by the Court and makes the following proposals.

16. A two year program of mandatory court-annexed mediation will be established for all expedited cases, and a sample of most other civil cases. In accordance with the program, the Court will establish a pool of attorneys to serve as mediators on a voluntary basis. Qualifications to serve on the panel will be established by the Court. Attorneys serving on the panel will be credited for pro bono work.

17. For Standard and Complex cases, a voluntary court-annexed arbitration program as well as other voluntary ADR mechanisms shall be discussed, considered and suggested as appropriate at the time of the Case Management Conference.

18. The use of ADR mechanisms shall be monitored by the Advisory Group to assess their effectiveness.

The Advisory Group emphasized that the SDNY should take the lead in the area of acquiring, demonstrating and installing the latest technological advances available. In this regard, the Advisory Group makes the following proposal.

19. The Court should commence a program of modernizing all existing courtrooms, chambers and court offices and assure that the new courthouse will have the capability to support the following:

a. Real-time reporting and all facilities encompassed by that concept including computer access for

attorneys, graphic image processing for documents and exhibits and enhanced sound systems.

- b. Filing court documents by fax.
- c. Teleconferencing and videoconferencing.
- d. Suitable attorney work space. Other

technological innovations are discussed in the Report.

The Civil Justice Reform Act of 1990 seeks to reduce the cost and delay involved in civil litigation. The Act creates a strategy and framework for addressing these issues. It is within this framework that the SDNY Advisory Group recommends its Plan.

Respectfully submitted,

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