

**Southern District Of New York
Report of Advisory Group
Cost and Delay Reduction Plan
Summary**

I. Assumptions; Miscellany; and Background

- A. The district is a Pilot Court. Therefore it must have a plan in place by December 31, 1991.
- B. The district is the oldest and largest federal trial court in the country.
- C. There are 28 authorized judgeships and seven vacancies. There are also 18 senior judges and 10 magistrate judges.
- D. The district conducted a thorough survey, including sending extensive questionnaires to judges and attorneys practicing in the district.
- E. Price Waterhouse & Co. was enlisted to aid the advisory group in a survey and analysis of 2000 closed cases.

II. State of the Docket

A. General Trends.

- 1. Civil cases pending for more than three years have increased by 110.4% since 1987.
- 2. The total number of trials (civil and criminal) have decreased by 15.9% since 1985. However the average trial time and number of trials per judge increased.
- 3. In the eight year period ending 1990 civil assignments to magistrate judges have increased by 41%.
- 4. Median Time to Disposition
 - a. District: 9 months
 - b. National average: 9 months
- 5. Median Time From Joinder of Issue to Trial
 - a. District: 19 months
 - b. National Average: 14 months
- 6. Complex cases make up a substantial portion of the docket.

B. Filing Trends.

- 1. Despite a decline in filings pending cases increased by 24.4% since 1987.

2. Terminations have decreased by 18% since 1987.
 3. Total filings in the district have decreased 17.6% since 1987.
 4. Pro se filings represent almost 15% of the total filings in the district.
- C. Causes of negative trends.
1. Judicial vacancies.
 2. Over burdened magistrate judges.
- D. Effects of Motions on case closing.
1. In 65% of cases that closed in less than three years no motions were made.
 2. Dismissal motions typically added 2.05 months to a case.
 3. Summary judgement motions would add 5.32 months to the life of the case.

III. Recommendations

- A. Designate all cases as either complex, standard, or expedited and devise separate case management techniques for each group.
- B. Standard and Complex Cases.
1. All cases should be assigned a magistrate judge as soon as the case is designated complex or standard.
 - a) The court will need to apply for additional magistrate judges.
 - b) The type of assignments currently made to magistrates will have to be curtailed or eliminated. Assignments to be effected:
 - 1) dispositive motions
 - 2) social security appeals
 - 3) habeas corpus petitions
 - 4) pro se cases
 2. Case Management Conferences (CMC) are to be held on the earliest practicable date but in no case more than 120 days after the filing of the complaint.
 - a) Attorneys attending the CMC should be authorized to enter into stipulations.
 - b) Topics to be discussed:
 - 1) identification of issues

- 2) desirability of bifurcating adjudication
 - 3) scope and sequence of discovery anticipated (see section G of this outline)
 - 4) motions for recusal
 - 5) dispositive motions
 - 6) joinder of additional parties
 - 7) any counter claims anticipated
 - 8) settlement or ADR possibilities (see section H of this outline)
 - 9) amendments to pleadings
 - 10) Any special procedures which might be necessary
 - 11) date of future CMC or trial date
- c) At the conclusion of the CMC the court should formulate a plan in the form of an order.
- d) A magistrate judge or a special master should conduct a settlement conference no more than one year from the filing of the complaint.
- e) Pre-motion conferences should be required or encouraged.

C. Complex cases.

1. Greater use of special masters.
2. A uniform approach to RICO cases should be developed.

D. Standard Cases.

1. Trial should take place within 18 months of filing the complaint.
2. If a trial does not occur in that time additional CMCs should be held.
3. If the case is ready for trial but the judge is not the case should be referred for reassignment.

E. Expedited Cases.

1. Defined as cases in which the following is anticipated:
 - a) no more than two depositions
 - b) one comprehensive document request for each party
 - c) limited interrogatories (see local rules)
2. CMC within 120 days of complaint.
3. Trial date should be set for no more than one year from date of answer.

4. A two year experiment with automatic disclosure encompassing the following:
 - a) 21 days after the complaint is served the plaintiff must serve on the defendant all documents that support or contradict the material averments of the complaint.
 - b) 21 days after service of the answer the defendant must serve on the plaintiff all documents that support or contradict the material averments of the answer.
 - c) either party may make the documents available for copying in lieu of a) or b) above provided that the content and location of the documents is provided.

F. Prisoner and Pro se Cases.

1. Appoint a single magistrate judge to repeat pro se plaintiffs.
2. Standard interrogatories and document requests should be used.
3. Defendants shall be required to identify witnesses and basic documents.
4. Plaintiff is free to seek additional discovery.
5. Defendants must seek protective orders to escape disclosure requirements.

G. Discovery presents special problems and is subject to special rules.

1. In addition to the specific recommendations below the advisory group generally recommends active judicial intervention in discovery matters.
2. The parties shall be required to file a proposed plan of discovery, noting areas of disagreement, with the court 30 days after the first responsive pleading.
3. Prior to motions to enforce discovery the parties must make a good faith effort to resolve the dispute themselves.
4. Prior to motions the moving party must submit a letter (no more than two double spaced pages) to the judge.
5. Magistrates should be utilized to settle discovery disputes.
6. Sanctions should be used to encourage compliance with the rules of discovery.
7. The clerk will identify and report any civil case where a discovery plan has not been entered within 180 days of the filing of the complaint.
8. All discovery disputes should be decided in an expedited fashion.
9. If a magistrate judge's discovery decision is appealed and the appealing party loses, it must pay costs including attorney fees.

H. Alternative Dispute Resolution

1. Basic Goals.
 - a) increased options to litigants
 - b) procedural fairness and high quality justice
 - c) reducing costs
 - d) reducing time to disposition
 - e) reducing the burden on the court
2. Pilot Program of court-annexed mandatory non-binding mediation and a voluntary court-annexed program with options of non-binding arbitration, early neutral evaluation, mini-trial, or summary jury/non-jury trials.
3. This program will replace the current ADR program in place in the district
4. Mandatory Mediation.
 - a) hire an ADR administrator
 - b) 2/3 of all cases in which only money damages are sought randomly designated for program
 - 1) certain types of cases are to be excluded from the pool
 - c) the parties may stipulate any case for mediation
 - d) in no event should the mediation conference be held later than 150 days after the last responsive pleading was filed
 - e) parties must provide the mediator copies of their pleadings and a concise memorandum summarizing their positions
 - 1) these memos should be served on the other parties at least seven days prior to the mediation conference
 - f) the attorney primarily responsible for the case must attend the mediation conference
 - g) the mediator may require a representative with authority to settle the case attend the conference
 - h) if settlement is not reached the mediator shall explore other ADR techniques with the parties
 - i) the mediator shall file a certificate of compliance with the clerk if no settlement is reached

I. Advanced Technology.

1. The use of audio-visual technology will make access to information more efficient.

2. "Virtually immediate" trial transcripts will avoid rereading questions.
3. Computer links between the court and attorney offices will facilitate case preparation.
4. Video conferencing will save time and money.
5. Sound proof jury boxes will aid in side bar conferences.
6. PACER will allow the public to obtain information about a case from outside the courthouse without involving clerk's office personnel.

IV. Plan

- A. Differential Case Management. [§473(a)(1)]
 1. Expedited
 2. Standard
 3. Complex
- B. Early involvement of Judicial Officer. [§473(a)(2)]
- C. Discovery Case Management. [§473(a)(3)]
 1. Discovery plan shall be formulated at the Case Management Conference.
 2. Discovery disputes shall be resolved by oral motion or on the basis of a letter of submission after good faith efforts at resolution by the parties. [§473(a)(5)]
 3. Discovery will be limited in expedited cases; guidelines to encourage efficient discovery will be adopted. [§473(a)(4)]
 4. The court will establish guidelines for standardized discovery in prisoner pro se cases.
 5. Sanctions will be imposed for frivolous appeals of discovery rulings by magistrates as well as failure to comply with discovery obligations.
- D. Alternative Dispute Resolution. [§473(a)(6)]
 1. Mandatory court-annexed mediation for expedited cases.
 2. Voluntary court-annexed arbitration as well as other voluntary ADR mechanisms for standard and complex cases.
 3. The effectiveness of ADR programs will be monitored by the Advisory Group.

E. Early Firm Trial Dates.

1. Expedited cases will be set for trial within one year of service of the complaint.
2. Complex and standard track cases will be set for trial as early as possible and no later than 18 months after filing the complaint unless the court certifies good cause exists.

F. Motion Practice.

1. Pre-motion conference are encouraged.
2. Motions should be decided with reasonable promptness.
3. Motions not decided within 60 days should be reported by each judge and magistrate judge.

G. Reasonable steps should be taken to equalize the judicial work load including reassignment of cases.

H. Magistrates.

1. A magistrate judge should be assigned for each case.
2. Additional magistrates should be requested.

I. Miscellaneous.

1. Modernization of the courtrooms.