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WESTERN DISTRICT OF NEW YORK
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RODNEY C. EARLY
CLERK

February 13, 1995

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Abel J. Mattos
Administrative Office of the
United States Courts
Thurgood Marshall Federal Judicial Building
One Columbus Circle, NE
Washington, DC 20544

RE: First Annual Assessment of the Civil Justice Expense and Delay Reduction Plan for the Western District of New York

Dear Mr. ^{abel}Mattos:

Enclosed for your information is a copy of the First Annual Assessment of the Civil Justice Expense and Delay Reduction Plan for the Western District of New York. Please feel free to contact me with any questions you may have about the assessment.

Very truly yours,


RODNEY C. EARLY
Clerk of Court

Enclosure

First Annual Assessment
of the
Civil Justice Expense and Delay Reduction Plan

United States District Court
for the
Western District of New York



I. INTRODUCTION

The Civil Justice Reform Act provides in part that:

After developing or selecting a civil justice expense and delay reduction plan, each United States district court shall assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. In performing such assessment, the court shall consult with an advisory group appointed in accordance with Section 478 of this title.

28 U.S.C. § 475. These assessments are to be prepared annually through 1997.

The Court prepared this report after having reviewed its civil and criminal dockets and its case management initiatives since the inception of its CJRA Plan, and having sought and considered the views of the members of the CJRA Advisory Group. At this time no changes to the CJRA Plan are proposed. However, insofar as case management is one of the Court's priorities, it will continue in its efforts to improve existing and develop new case management mechanisms.

II. CIVIL AND CRIMINAL DOCKETS

A. Civil Caseload

Since September 1, 1993, the date on which the Court implemented its CJRA Plan, the size of the Court's civil and criminal dockets has grown. For statistical year (SY) 1993 (October 1, 1992 through September 30, 1993), the Western District of New York had 1,601 civil case filings.¹ For the same period during 1994, the number of filings decreased 4.3% to 1,583. The number of civil filings per active judgeship decreased from 390 in SY 1993 to 383 in SY 1994.

The number of civil case terminations dropped during SY 1994. In SY 1994, 1,399 cases were terminated, reflecting a decline of 14.9% from SY 1993 during which the Court terminated 1,643 cases. The decrease in civil case terminations, however, can be attributed to the increased efforts the Court has devoted to the burgeoning criminal caseload as set forth below and the pending three year old caseload which by its very nature is more complex thereby requiring more time and effort to manage.

As a consequence of devoting greater judicial resources to the criminal caseload, the number of civil cases pending in the District has risen from 2,018 in SY 1993 to 2,152 in SY 1994, an increase of 6.6%. As noted above, the Court has made substantial efforts to reduce the number of civil cases pending longer than three years as evidenced by the fact that the number of such cases pending at the end of SY 1994 numbered 322 as compared to 329 such cases pending at the end of SY 1993.

¹All statistics cited herein are taken from the Statistical Tables for the Twelve Month Period Ended September 30, 1994 prepared by the Administrative Office of the United States Courts.

B. Criminal Caseload

During SY 1994, criminal filings declined from the preceding year. The United States Attorney attributes this decline largely to the relocation of his Buffalo office in January 1994 to leased facilities outside the courthouse. The total number of felony criminal filings during SY 1994 was 297 as compared to the record-breaking 328 felony criminal cases filed during SY 1993. As of September 30, 1994, there were 74 criminal felony filings per active judgeship in the District. Overall, the District experienced a decrease of 9.4% in criminal felony filings from SY 1993 to SY 1994. This lapse in filings is only temporary in nature and based on the statistical trends of the past several years, there is every reason to believe that criminal filings will rise in this District during upcoming statistical years.

The Court's efforts in managing the criminal caseload are best exhibited by the fact that felony criminal terminations remained fairly steady from SY 1993 to SY 1994. Criminal case terminations declined only 1.8% during their period, from 282 in SY 1993 to 277 in SY 1994.

Although criminal case terminations decreased only slightly during SY 1994, the pending criminal caseload increased from 336 cases in SY 1993 to 356 in SY 1994 - a 6% increase. As of September 30, 1994, there were 89 felony criminal cases per active judgeship pending in the Western District of New York.

The number of criminal felony defendants filed increased markedly more than 8% from 496 in SY 1993 to 536 SY 1994. The number of criminal felony defendants terminated remained virtually the same in the two years (464 in SY 1993 and 465 in SY 1994). Notably, the number of criminal felony defendants pending at the end of SY 1994 was 638 as compared to 565 at the end of SY 1993 - an increase of nearly 13%. This indicates that the Court's

criminal caseload is growing rapidly in both size and complexity.

C. Judicial Resources

The Court's workload has steadily increased over time as illustrated by the Federal Court Management Statistics prepared by the Administrative Office of the United States Courts. In the face of this increasing workload, however, the Court labors without sufficient judicial resources. Fortunately, the Court has the services of two senior judges, one of whom accepts a full assignment of civil and criminal cases and the other of whom has not taken criminal assignments for nearly two years, but takes a two-thirds assignment of civil cases. Additionally, the Court benefits from the services of three full-time magistrate judges and one magistrate judge who has been recalled to service pursuant to 28 U.S.C. §375. The efforts of the senior judges and the magistrate judges are essential to the Court in managing its caseload.

Despite the assistance of the senior judges and the magistrate judges, the Court has an insufficient number of judicial officers to handle the expanding caseload. This lack of resources was recognized by the Judicial Conference of the United States which recently approved the appointment of an additional full-time magistrate judge in Buffalo. The Court has selected a candidate for appointment to that position and it is expected that he will begin his term of service sometime during the first half of the 1995 calendar year. Additionally, the Judicial Conference has approved the addition of a temporary judgeship for the District on which the Court is currently awaiting Congressional action. This much needed infusion of judicial resources is expected to alleviate the significant caseload burdens borne by the current members of the Court.

III. CASE MANAGEMENT IN THE WESTERN DISTRICT OF NEW YORK

A. Amendments to the Local Rules

In response to amendments to the Federal Rules of Civil Procedure which became effective December 1, 1993, the Court was required to consider several options presented by the amended discovery rules. Initially when the amended federal rules became effective, Chief Judge Telesca issued an administrative order staying the application of several revised discovery rules in the District pending further study. After considering the impact of the amended discovery rules and in consultation with the members of the bar, the Court amended its local rules effective December 1, 1994. The Court opted out of the initial disclosure and the meet and confer requirements contained in Federal Rule of Civil Procedure 26(a)(1) and (f), respectively. Under the amended local rules, however, parties are required to make the disclosures called for by Federal Rule of Civil Procedure 26(a)(2) relative to expert testimony and pretrial disclosures in accordance with Federal Rule of Civil Procedure 26(a)(3). Furthermore, the Court adopted the limitations on the number of depositions and interrogatories which shall apply in all civil cases except class actions, unless otherwise stipulated or ordered by the Court.

While the most significant amendments made to the local rules during 1994 related to discovery practices, there are some other amendments that were implemented to provide greater efficiency in practicing before the Court:

-The Local Rules were amended to require the filing of affidavits and briefs with motions made pursuant to Federal Rules of Civil Procedure 12, 56 and 65(a). [Local Rule of Civil Procedure 7.1].

-Supporting and opposing legal memoranda may not exceed 25 pages and reply briefs are limited to 10 pages, absent prior court approval. [Local Rule of Civil Procedure 7.1].

-Documents presented for filing must be on 8½" x 11" paper and pre-punched at the top to accommodate a standard two-pronged fastener. [Local Rule of Civil Procedure 5.2 and Local Rule of Criminal Procedure 49.1].

-Unperfected appeals from decisions of the Bankruptcy Court may be dismissed sua sponte or upon motion of the appellee. [Local Rule of Civil Procedure 76.2].

-Selection of petit jurors is made from a list that includes names from both New York State Department of Motor Vehicle records and voter registration lists. [Local Rule of Civil Procedure 47.2 and Local Rule of Criminal Procedure 24.2].

Finally, the Court separated its rules into Local Rules of Civil Procedure and Local Rules of Criminal Procedure. In addition, the Court renumbered its rules in accordance with the uniform numbering system developed by the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States and patterned on the Federal Rules of Civil and Criminal Procedure.

B. Alternative Dispute Resolution

The Court continues its designation as a participant in the voluntary arbitration program authorized by the Judicial Conference of the United States. As one of ten courts selected to offer court-annexed voluntary arbitration, the Court adopted procedures and established such a program. To date, the program has not been widely utilized and consideration is being given to how it may be made more attractive to potential participants.

The Court is also working with the Bar Association of Erie County to develop a

settlement week program. The two active judges and two senior judges in Buffalo have agreed to participate and plan to collectively refer approximately 100 cases to the program. Volunteer attorneys will serve as mediators. The first settlement week in Buffalo is scheduled for October 1995. A similar program has been sponsored by the Monroe County Bar Association in Rochester for five consecutive years and several cases have been referred to the program by one of the judges who sits in Rochester.

Several members of the CJRA Advisory Group have recommended that the Court develop additional, and in some circumstances mandatory, alternative dispute resolution mechanisms in light of the expanding civil and criminal caseloads. Numerous other districts offer a range of ADR options to litigants and the success of the arbitration and settlement week programs in the District will be critical to gaining the confidence of the Court and the local bar in ADR as an effective means of resolving cases. The Court continues to explore the possibility of implementing additional court-annexed ADR programs which might significantly reduce cost and delay in civil litigation in the District.

C. ICMS Reports and Analyses

The Court maintains its civil and criminal docket records on a computer system known as the Integrated Case Management System (ICMS). This system has the capability of providing a wide range of information and reports that are useful in case management. Many of the reports and analyses that are prepared from the automated database have been developed as a result of the Court's CJRA Plan. Some of the reports generated by the system are described briefly below:

-Deadline Report - This report is generated weekly and, for each judge, shows all

deadlines that are due to expire in the upcoming week. This report is provided to each district judge's courtroom deputy to be used in scheduling and case tracking.

-Pending Motions Report - This report is generated quarterly and shows all motions that appear to be pending contained in the ICMS database. This report is provided to the courtroom deputies for the district judges and magistrate judges to be used in tracking chambers workloads. The report is also used in the preparation of the semi-annual CJRA reports to the Circuit of motions and bench trials pending longer than six months.

-Civil Cases Pending Longer Than Three Years - This report is generated monthly. The CJRA staff analyzes the current docket status of each case contained in this report. Individual analyses are prepared for and transmitted by the Clerk to each chambers.

-Civil Cases Showing No Activity for Six Months or Longer - This report is generated monthly. The CJRA staff analyzes the current docket status of each case contained in this report and recommends which cases may be considered for dismissal for failure to prosecute. Analyses are prepared for and transmitted by the Clerk to each chambers.

D. Education

During the first year of the CJRA Plan's implementation in the District, numerous seminars have been presented at which members of the Court, court staff and members of the bar have had the opportunity to discuss new court procedures and other case management initiatives. These programs have had various sponsors including the New York State Bar Association, the Erie County Bar Association, the Monroe County Bar Association, as well as the Court. These programs have both allowed the Court to educate the bar as to its new procedures and provided a forum for the exchange of ideas.

E. Chambers Case Management Techniques

In addition to court-wide efforts being made to track and manage the civil and criminal caseloads, the Court's CJRA Plan leaves room for the development of case management measures within each individual chambers. For instance, the Chief Judge maintains a case management list indicating the current status of all cases assigned to him. His courtroom deputy updates the list at the beginning of each month based on information she collects from the Judge, his staff, and the ICMS database. This list proves useful in identifying at a glance those cases that are trial ready and those cases which can be set down for status or settlement conferences.

Another effective case management technique utilized in some chambers is to schedule court appearances in each case on an ongoing basis. Thus, each time counsel appears in court for a status report, motion argument, or the like, before they leave they are given a next appearance date for a further status report. This ensures that all cases progress toward disposition with ongoing judicial supervision.

IV. CONCLUSION

During the first year of the Court's implementation of its CJRA Plan, the Court and the bar were called upon to adjust their practices in accordance with the local rules amended as the result of the CJRA Plan, the Federal Rule amendments that became effective December 1, 1993, and the local rules adopted in response to the Federal Rule amendments. The tools to reduce cost and delay in civil cases are in place. Although the Court seems to have an increased awareness of the need for case management, it has been slow to embrace the specific measures that can ultimately lessen the caseload burdens it faces.

Nevertheless, to modify the provisions of the Court's CJRA program at this time would detract from the desired ends of cost and delay reduction. Long standing practices, part of the legal culture of both principal metropolitan communities, have militated against abrupt change in customary practices. As envisioned by Congress, the Plan mandates case management to a much more particularized extent than had been adopted in the past.

There is strong consensus for the belief that both the bench and bar are required to embrace too much in a relatively short period of time. No sooner had the District adopted both its CJRA Plan and its revised Local Rules, than Congress enacted major changes in the Federal Rules of Civil Procedure relative to self-executing discovery procedures. Once again the District amended its Local Rules and opted out of most of the self-executing procedures provided in Rule 26 of the Federal Rules of Civil Procedure. The proliferation of rules and rule changes in the past 18 months militates against any additional changes in the adopted CJRA Plan. Instead, a "wait and see" policy seems prudent. This will allow both the bench and bar to accommodate the CJRA Plan, the amendments in the Federal Rules of Criminal and Civil Procedure and the

amended Local Rules.

As Chief Judge Michael A. Telesca has stated, "We don't need more rules. The Judges have very heavy trial schedules principally driven by increased criminal filings. We simply do not have the time to micro-manage cases. We need time to see how things work out. We are appreciative of the work by the CJRA committee and hope to implement the plan within the realistic limitations imposed by our schedules."