

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

EFFECTIVE DECEMBER 23, 1991

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

**IN RE: ADOPTION OF A COST)
AND DELAY REDUCTION PLAN)**

CIVIL ADMINISTRATIVE ORDER

On March 12, 1991, the Judicial Conference of the United States notified the United States District Court for the District of Delaware that it had been selected as a Pilot District under the terms and conditions of the Civil Justice Reform Act of 1990. P.L. 101-650, 104 Stat. 5089 (1990).

Thereafter, the Chief Judge of this District, with the advice of members of the Court, appointed an Advisory Group to (a) collect empirical data concerning the Court's civil and criminal dockets; (b) perform statistical analyses of the Court's dockets; (c) conduct a survey of attorneys who have represented parties in cases filed in this Court; (d) interview the judicial officers of the Court; (e) review existing rules and procedures applicable to civil litigation in the Court; (f) analyze the effects of particular types of civil litigation; (g) assess the impact of new legislation on the Court; and (h) prepare a report of its findings (the "Report") and make recommendations for a plan to reduce the costs and time in civil litigation while administering justice fairly in The United States District Court for the District of Delaware.

On October 1, 1991, the Advisory Group presented the Report along with its recommendations for such a Plan.

NOW, THEREFORE, after a review of the Report and recommendations of the Advisory Group,

IT IS ORDERED that:

The following Plan, designed to administer civil justice fairly and to reduce costs and time in civil litigation, is adopted by the United States District Court for the District of Delaware. The Plan shall forthwith be considered implemented as of this 23rd day of December, 1991, subject to modification as may hereafter be adopted pursuant to suggestions and requests of the committee composed of the Chief Judges of each district court within the Third Circuit and the Chief Judge of the Third Circuit Court of Appeals (the "Circuit Committee"), the Judicial Conference of the United States (the "Judicial Conference") and such other amendments as may be adopted by the Court to implement and promote the purposes of this Plan.

Copies of the Plan shall be forthwith forwarded to The Honorable Dolores K. Sloviter, Chief Judge of the United States Court of Appeals for the Third Circuit; The Honorable John F. Gerry, Chief Judge of the United States District Court for the District of New Jersey; The Honorable Louis C. Bechtle, Chief Judge of the United States District Court for the Eastern District of Pennsylvania; The Honorable Richard P. Conaboy, Chief Judge of the United States District Court for the Middle District of Pennsylvania; The Honorable Maurice B. Cohill, Jr., Chief Judge of the United States District Court for the Western District of Pennsylvania; The Honorable Stanley S. Brotman, Acting Chief Judge of the United States District Court for the District of the Virgin Islands; the Judicial Council of the United States Court of Appeals for the Third Circuit; and, the Honorable L. Ralph Mecham, Director of the Administrative Office of the United States Courts.

THE ADOPTED PLAN

1. The Court shall adopt, with due consideration of the need for drafting, public notice and formal approval, interim Local Rules which shall incorporate the substance of what follows:

(a) A Rule shall require certain mandatory discovery by all parties involved in litigation which could be characterized as personal injury, medical

malpractice, employment discrimination or a civil action under the Racketeer Influenced and Corrupt Organizations Act ("RICO"). 18 U.S.C. § 1961 et seq. (1990).

Under this Rule, a party must include the following information with its initial pleading: ~~(i)~~ the names, addresses and telephone numbers of each person with knowledge of facts relating to the litigation; ~~(ii)~~ the names, addresses and telephone numbers of all persons interviewed in connection with the litigation; ~~(iii)~~ the names, addresses and telephone numbers of each person who conducted any interview; ~~(iv)~~ a general description of documents in the possession, custody or control of the party which are reasonably likely to bear significantly on the claims or defenses asserted; (v) an identification of all expert witnesses presently retained by the party or whom the party expects to retain, together with the dates of any written opinions proposed by the experts; and ~~(vi)~~ a brief description of any insurance coverage applicable to the litigation. This Rule would require disclosure of such information without a formal discovery request from an opposing party.

This Rule addresses the conditions described in Section II.E.2.(d) of the Report, adopts Section III.A.4.(a) of the Recommendations of the Report ("Recommendations"), and adopts Section IV.A.1 of the Advisory Group's Proposed Plan (the "Proposed Plan").

~~(b)~~ A Rule shall provide guidelines for determining whether a given case is complex.

Under this Rule, (i) any party seeking a determination of complexity under 28 U.S.C. 473(a)(2)(B) must file a Notice of Intent with the complaint or answer and a short statement setting forth the grounds for the determination of complexity; (ii) all other parties must file a short response within fifteen days thereafter or with a responsive pleading; and (iii) at the time of the Rule 16 scheduling conference, the Court shall determine whether the case is complex.

In making its determination of complexity, the Court may consider the following: (i) the type of action; (ii) the number of parties and their capacities; (iii) the factual and legal issues raised by the pleadings; (iv) the technical complexity of the factual issues; (v) the retroactivity of the circumstances giving rise to the claims and defenses; (vi) the volume and nature of documents subject to discovery; (vii) the amount of third-party and foreign discovery necessary; (viii) the number of deposition witnesses and their locations; (ix) the need for expert testimony; and (x) the nature of the issues to be determined pretrial.

This Rule addresses the requirements of 28 U.S.C. §473(a)(2)(B), adopts Recommendations 6(a), 6(b) and 8, and adopts Section IV.A.2 of the Proposed Plan.

~~(c)~~ A Rule shall provide guidelines for the use of case management techniques in cases determined to be complex.

Under this Rule the Court may: ~~(i)~~ order separate trials of certain issues or the staged resolution of issues; ~~(ii)~~ set an early date for joinder of parties and amendments to the pleadings; ~~(iii)~~ make use of the Magistrate-Judge or a Special Master to monitor discovery and resolve disputes; ~~(iv)~~ limit discovery (e.g., the

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number of depositions or the sequence of discovery) without court order; (v) set the schedule of expert discovery; (vi) limit or restrict the use of expert testimony; (vii) limit the length of time for presentation of evidence or the number of witnesses or documents that may be presented at trial; and (viii) use a state-of-the-art courtroom.

This Rule shall also provide the following procedures: (i) the parties shall file reports concerning the status of discovery and any motions or other procedural matters which are pending or anticipated as required by the presiding judge; and (ii) conferences shall be scheduled, as appropriate, by the presiding judge to discuss the issues in contention, monitor the progress of discovery, determine or schedule pending matters, and explore settlement.

This Rule addresses the requirements of 28 U.S.C. §473(a)(2)(b) and (3), adopts Recommendations 6, 7 and 8, and adopts Section IV.A.2 of the Proposed Plan.

(d) A Rule shall describe a Rule 16 scheduling procedure.

This Rule shall provide a scheduling procedure containing variations among expedited, standard and complex cases. This Rule shall also provide for a scheduling order which will include the following standard items among its provisions: (1) a date for termination of discovery; (2) dates for filing various motions, such as motions to join other parties, motions to amend pleadings, case dispositive motions; (3) a date for a pretrial conference, if appropriate; and (4) a date for trial, if appropriate. The Rule shall permit the Court to make exceptions when it finds that the circumstances so warrant.

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The Rule shall also require counsel to certify to the Court that they have conferred prior to the Rule 16 conference to discuss settlement. The Rule shall also identify the matters that would be discussed at the conference including: ~~(i)~~ the possibility of settlement; ~~(ii)~~ whether the matter could be resolved by voluntary mediation or binding arbitration; ~~(iii)~~ the briefing practices to be employed in the case, including what matters are or are not to be briefed and the length of briefs; and (iv) the date by which the case is to be tried. ADR

This Rule addresses the conditions described in Section II.E.2.(b) of the Report, adopts Recommendations 11, 12 and 14, and adopts Section IV.A.3.(b) and (c) of the Proposed Plan.

(e) A Rule shall address procedures in connection with requests for extensions of any deadline set in a scheduling or other order or statutorily imposed deadline. Continuation 85

This Rule shall ~~(i)~~ require the applicant to identify each prior request for an extension of a deadline in the particular case; ~~(ii)~~ require the applicant to explain the reasons for the request; ~~(iii)~~ require any other information or certification requested by the presiding judge; and ~~(iv)~~ require that the request be signed by counsel and supported by a client's affidavit or that the request be accompanied by a certification that counsel has sent a copy of the request to the client.

This Rule addresses the conditions described in Section II.E.2.(h) of the Report, adopts Recommendation 13, and adopts Section IV.A.5 of the Proposed Plan.

(f) The Court shall retain and enforce Local Rule 3.1.C but amend it to require parties to file briefs in support of motions at the time the motions are filed.

This Rule addresses the conditions of Section II.E.2.(d) of the Report, adopts Recommendations 9 and 10, and adopts Section IV.A.4 of the Proposed Plan.

2. The Court shall adopt, with due consideration of the need for drafting, public notice and formal approval, a master scheduling order for the processing of prisoner section 1983 cases and habeas corpus petitions which would (a) require defendants to file a responsive pleading, if necessary, within forty-five (45) days of service of the complaint; (b) require defendants to accompany their response to the complaint with a production of all relevant documents and an affidavit establishing that defendant has conducted a thorough search for relevant documents and that the documents produced are the only documents in defendant's custody pertinent to the action; (c) require that briefs in support of any motion accompany the filing of the motion; (d) require affidavits of fact, if appropriate, to be submitted with motions; and (e) require notice to parties that if reference is made to any matter outside the pleadings the dispositive motion may be considered one for summary judgment. The Court should adopt the practice of returning the management of a case to the Judge originally assigned to the case if the Magistrate-Judge does not recommend granting a case dispositive motion or if the assigned Judge does not accept the Magistrate-Judge's recommendation to grant a case dispositive motion.

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CASES

This Rule addresses the conditions described in Section II.E.2.(a) of the Report, adopts Recommendations 17(a) and 17(b), and adopts Section IV.A.6 of the Proposed Plan.

3. As a matter of internal operation, the Court shall adopt the following procedures:

(a) The Judges of the Court should retain responsibility for all habeas corpus petitions and social security cases currently referred to the Magistrate-Judge. If the Court cannot implement this recommendation, then the Court should not continue to refer all prisoner section 1983 cases and habeas corpus petitions to the Magistrate-Judge. Rather, the Court should divide some of the prisoner section 1983 cases and habeas corpus petitions among the Article III Judges and the Magistrate-Judge.

This procedure addresses the conditions described in Section II.E.2.(a) of the Report and adopts Section III.A.17.(c) of the Proposed Plan.

(b) The courtroom clerks shall be trained to participate in case management through a series of adopted procedures starting with the duty to provide routine notices with regard to at least the following: (i) notices under Local Rule 5.2 (inactivity for 3 months); (ii) periodic notices during discovery; (iii) notices when briefs are more than five (5) days late; (iv) Rules to Show Cause for failure to serve process; (v) notices requesting default or stipulations for extensions of time to answer; and (vi) notices for Rule 16 conferences.

This procedure addresses the conditions described in Section II.E.2.(g) of the Report and adopts Recommendation 15.

4. The Court shall initiate and with continuing effort proceed to:

(a) Encourage the Congress to specify with respect to regulatory legislation it enacts whether it is or is not intended to afford a private remedy.

This action adopts Recommendation 19 and adopts Section C.4 of the Proposed Plan.

~~(b)~~ Encourage the Congress to evaluate the impact upon the Judicial Branch of new or amended legislation, identify the courts whose caseloads are anticipated to be increased by such legislation and provide additional resources to those courts to accommodate that increase.

This action adopts Recommendation 19 and adopts Section C.4 of the Proposed Plan.

(c) Develop and adopt model jury instructions for standard charges in all cases (i.e., burden of proof) and, to the extent practicable, in non-complex cases.

This action adopts Recommendation 16 and adopts Section C.5 of the Proposed Plan.

(d) Conduct further study of the costs, potential use and effects upon the court, lawyers and litigants of an electronic courtroom.

This action adopts Recommendation 20 and adopts Section C.6 of the Proposed Plan.

(e) Conduct a legal education program for members of the Bar in conjunction with the Delaware State Bar Association that addresses the Court's practices and procedures, particularly those resulting from the adoption of a plan under the Civil Justice Reform Act.

This action adopts Recommendation 21 and adopts Section C.7 of the Proposed Plan.

(f) Seek authorization for a third law clerk to provide additional assistance to the Chief Judge whose available time for judicial responsibilities is limited by his administrative duties.

This action adopts Recommendation 22 and adopts Section C.8 of the Proposed Plan.

~~(g)~~ Seek authorization for an additional "floater" secretary to be available to members of the Court during the absence of the regularly assigned secretaries and to assist the Court as circumstances may require, the schedule of assignment to be arranged by the Chief Judge of the Court.

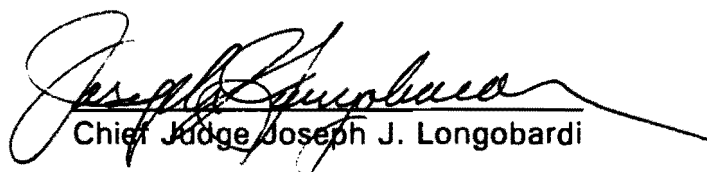
This action adopts Recommendation 22 and adopts Section C.9 of the Proposed Plan.

(h) Seek authorization for an additional law clerk to assist the Magistrate-Judge with respect to pro se prisoner section 1983 petitions in identifying the specific issues addressed by the complaint, summarizing the evidence applicable to these issues and providing such other assistance as the Court may request in processing any action.

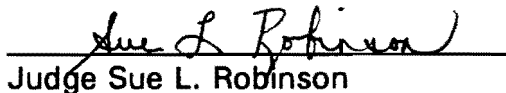
This action adopts Recommendation 17(d) and adopts Section C.10 of the Proposed Plan.

(i) The Court should consider establishing a panel of lawyers to serve as appointed counsel to in forma pauperis petitions in both prisoner section 1983 and habeas corpus proceedings.

This action adopts Recommendation 17(d).


Chief Judge Joseph J. Longobardi


Judge Joseph J. Farnan, Jr.


Judge Sue L. Robinson