

Office of Attorney General, Eastern Regional Office

July 10, 1991

Subject: Differential Case Management

To: Advisory Group

From: John O. J. Shellenberger
Chief Deputy Attorney General

Attached is a draft plan for a differential case management system along the lines discussed at the last meeting. It differs in one respect: it does not include a "simple" track. I felt that most simple cases would be covered by one of the four already existing tracks. Those that aren't should fit comfortably in the new standard track. A "simple" track could still be added. It would be the same as the standard track but with shorter times.

CASE MANAGEMENT

A. Management Tracks - Each civil case filed will be assigned to one of the following tracks: Habeas Corpus, Social Security, Arbitration, Asbestos, Special Management, Standard Management.

B. Management Track Definitions -

1. Habeas Corpus - Cases brought under 28 U.S.C. §§ 2241 through 2255.
2. Social Security - Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security benefits.
3. Arbitration - Cases in which money damages only are being sought in an amount not in excess of \$100,000 exclusive of interest and costs, except Social Security cases, cases in which a prisoner is a party, cases alleging violation of a right secured by the U.S. Constitution, and actions in which jurisdiction is based in whole or in part on 28 U.S.C. § 1343.
4. Asbestos - Cases in which the plaintiff claims personal injuries due to exposure to asbestos.
5. Special Management - Cases that do not fall into tracks 1 through 4 and that need special or intense management by the Court due to one or more of the following factors: large number of parties, large number of claims or defenses, complex factual issues, large quantity of evidence, problems locating or preserving evidence, large amount of discovery, exceptionally long time needed to prepare for disposition, exceptionally short time needed for disposition, need to decide preliminary issues before final disposition.
6. Standard Management - Cases that do not fall into one of the other tracks.

C. Management Track Assignments

1. The Clerk will assign cases to the Habeas Corpus Track based on the initial pleading.
2. In all other civil cases the plaintiff will submit to the clerk, and serve with the complaint on all defendants, a Designation Form designating the track to which plaintiff believes the case should be assigned. Each defendant will, with its answer, submit to the clerk, and serve on the plaintiff, a Designation Form designating the track to which that defendant believes the case should be assigned.
3. The Clerk will assign cases to the Social Security Track based on the complaint and the plaintiff's Designation Form.
4. In all other cases, if the plaintiff and the first answering defendant agree on the management track, the Clerk will assign the case to that track. If the plaintiff and the first answering defendant disagree on the management track, or if a later answering defendant disagrees with the plaintiff's track choice, the Clerk will refer the disagreement to the Court and the Court will make the track assignment.

5. The Court may, on its own or at the request of any party, change a case's track assignment at any time.

D. Management Track Procedures

1. Habeas Corpus Track - Cases will follow the Federal Rules Governing Section 2254 Cases or, in cases brought under 28 U.S.C. § 2255, the Federal Rules Governing Section 2255 Cases. The Court may, in its discretion, refer the case to a magistrate judge pursuant to 28 U.S.C. § 636 (b).

2. Social Security Track - Within ten days after the Clerk has assigned a case to the Social Security Track, the Clerk will enter and serve on all parties an order stating:

a. Within ten days after the date of the order the plaintiff shall cause the summons and complaint to be served on the defendant in the manner specified by Federal Rules of Civil Procedure 4(d)(4) and 4(d)(5)

b. Within sixty days after service of the complaint, defendant shall file an answer and a certified copy of the administrative record.

c. Within forty-five days after service of the answer, plaintiff shall file and serve a motion for summary judgment and supporting brief.

d. Within thirty days after service of plaintiff's motion and brief, defendant shall file and serve a cross-motion for summary judgment and supporting brief.

e. Plaintiff may file and serve a reply brief within fifteen days after service of defendant's motion and brief,.

f. The case shall be deemed submitted for disposition fifteen days after the service of defendant's motion and brief.

The case shall proceed in accordance with the Clerk's order.

3. Arbitration Track - Cases will be managed in accordance with Local Rule 8.

4. Asbestos Track -

5. Special Management Track - The Clerk will notify the Court immediately upon assignment of a case to the Special Management Track. Thereafter, management of the case will proceed as determined by the Court in consultation with the parties.

6. Standard Track

a. As soon as possible after a case is assigned to the standard track the Court shall enter a scheduling order stating:

(1). The anticipated month and year of trial, which shall be a month from the tenth through the thirteenth month after the month in which the scheduling order is entered. If the scheduling order is entered after the case has been reassigned from another track, the trial month may be sooner to reflect the progress of the case before reassignment.

(2). That all discovery shall be completed sixty days before the first day of the trial month.

(3). That within fifteen days after the close of discovery each party shall file and serve a Trial Information Statement, described below.

b. If after the Court enters its scheduling order either a new defendant or a third party defendant is brought into the case, the Court shall extend the case's trial and discovery schedule to dates that the Court believes are appropriate.

c. Within fifteen days after the close of discovery each party will file a Trial Information Statement stating:

(1). Whether discovery is complete, and if not why not, and what remains.

(2). Whether the party has any issue dispositive motions outstanding or intends to file any issue dispositive motions.

(3). Whether the party has any other kind of motion outstanding or intends to file any other kind of pre-trial motion.

(4). Whether the trial will be jury or non-jury.

(5). An estimate of the time needed to present the party's case.

(6). The name of trial counsel.

(7). The dates during the trial month that trial counsel is unavailable and the reasons for unavailability.

(8). Any factors that will prevent the trial from going forward during the trial month.

If the information under items (6), (7), or (8) change before the Court issues a trial date, the party shall file an amended Trial Information Statement.

d. Within thirty days after the date the Trial Information Statements are due, the Court will notify the parties either of a trial date (which may be in the trial month or a later month) or a new trial month. If the Court assigns a new trial month, it may impose additional pre-trial requirements, including the filing of new Trial Information Statements.

e. After the Court has notified the parties of a trial date the parties must be ready to proceed on that date. If the Court does not reach the case within five work days after the trial date, the Court will give the case a new trial date, which will be at least thirty days after the original trial date.

f. Motions - Issue dispositive motions may be filed at any time up to the thirtieth day after the close of discovery.

g. The Court may, on its own motion or the motion of any party, extend the schedule for any Standard Track case.