PLAN UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Hon. Gustave Diamond, Chief Judge
Hon. Maurice B. Cohill
Hon. Donald E. Ziegler
Hon. Alan N. Bloch
Hon. Glenn E. Mencer
Hon. William L. Standish
Hon. D. Brooks Smith
Hon. Donald J. Lee
Hon. Barron P. McCune

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EXPENSE AND DELAY REDUCTION PLAN
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I. INTRODUCTION

The Report of the Civil Justice Advisory Group properly, and proudly, makes note of the special bonds that traditionally have existed between members of the bench and bar within the Western District of Pennsylvania. The Civil Justice Reform Act of 1990 has added an important new dimension to that professional partnership--the working relationship between the District Court and the Advisory Group.

This Plan will focus principally on particular parts of the Advisory Group Report--those recommendations that can now be implemented by local rule. However, we recognize that the scope of the Report is far broader than this. Therefore, we begin by expressing our support for the many other aspects of the Report and by offering two general observations.

First, if the goals of the Civil Justice Reform Act are to be fully achieved, assistance from the other branches of government is required. Many of the most significant problems facing local districts can be dealt with effectively only at the national level. The Civil Justice Reform Act recognizes that Congress and the Executive Branch share responsibility for the problems of cost and delay in civil litigation. The Act also recognizes that these other branches of government must make contributions to the solution of those problems.

Second, some of the most important recommendations included in the Advisory Group Report require further work before they can be adopted. This is particularly true of those recommendations regarding the processing of prisoner cases and the development of additional programs for alternative dispute resolution. Ideas advanced in the Report require both further study and careful implementation.

Each of these observations serves as a reminder that the Advisory Group has not fully discharged its responsibilities with the filing of its Report. Instead, there are important contributions yet to be made. This may involve working with the court to advance proposals that can only be adopted at the national level. It almost certainly will include continuing involvement as recommendations for local change not yet ready for implementation are considered and refined. And the changes to be effectuated under this Plan must be monitored.

The Civil Justice Advisory Group itself has a continuing life under the statute, though its membership must change over time. The current members of the Advisory Group deserve great thanks for their contributions to this important

undertaking. The court looks forward to working with a reconfigured Advisory Group in the months and years ahead.

A. Overview

The Civil Justice Reform Act requires the District Court to establish a plan for case management based upon the "systematic, differential treatment of civil cases." The Act calls for a system that "tailors the level of . . . case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case." 28 U.S.C. § 473(a)(1). The ultimate goal is to establish an early, firm trial date in every civil action so that the case can be tried within eighteen months after filing of the complaint, unless the complexity of the case or the number of pending criminal cases prevents this end. 28 U.S.C. § 473(a)(B)(ii).

The Plan is designed to resolve the problems described by the Advisory Committee in five ways:

(1) utilize judicial resources more effectively;

(2) implement early and ongoing intervention in case management by judicial officers;

(3) involve the parties and the responsible attorneys;

(4) expand the availability of ADR; and

(5) conclude the ongoing revision of the local rules.

In developing our Plan, we have considered each of the recommendations of the Report. We have considered each of the cost and delay reduction and litigation techniques specified in 28 U.S.C. § 473(b). We have also received input from the members of the Advisory Group, the Federal Court Section of the Allegheny County Bar Association, the federal practitioners of the Erie bar, and the Rules Committee of the court. Finally, the differential case management system adopted by the Western District is intended to permit management of the civil docket in the most effective manner, and to reduce costs and avoid unnecessary delay, without compromising the independence or authority of either the judicial system or the individual judge. The underlying principle is to make a fair and efficient court system available and affordable to all citizens.

B. Amendments to the Local Rules -- The District Court shall initiate the process for formal amendment of the following local rules.

(1) Revise Local Rule 4 by inclusion of a new subsection (e) which shall read as follows:

> (e) Timely Resolution of Motions. The court shall resolve non-dispositive motions in an expedited fashion, ordinarily within 30 days, with or without oral argument and without briefs, unless briefs are required by the court. Dispositive motions shall be resolved within 90 days of their filing, on briefs and oral argument, unless oral argument is expressly precluded by the court. Any motion that is not resolved within 90 days of its filing shall be scheduled for oral argument by the Clerk of Court.

(2) Delete Local Rule 5 II and replace it with a new Local Rule 5 II, which shall read as follows:

II. Pre-Trial Procedure

A. Scheduling Case Management Conferences--Generally

1. As soon as counsel are identified, but in any event, within 60 days of the filing of an answer (or the answer of the last defendant), the judicial officer to whom the case is assigned shall schedule an initial case management conference. A judicial officer or judge is either a United States District Court Judge or a United States Magistrate Judge. The judicial officer may defer an initial conference if a motion is pending such as a motion to dismiss or to transfer venue, which may make an initial conference superfluous.

2. The judicial officer may conduct such further status conferences as are consistent with the circumstances of the particular case and this rule, and may revise any prior scheduling order for good cause.

3. At each conference each party not appearing pro se shall be represented by an attorney who shall have full authority to bind the party in all pretrial matters, and shall have authority to discuss settlement of the action.

4. At each such conference, attorneys shall ensure that the parties are available, either in person or by telephone, except that a governmental party may be represented by a knowledgeable delegate.

5. Initial case management conferences shall not be conducted in any civil action that is referred to arbitration pursuant to Local Rule 43, or in civil actions involving social

security claims, bankruptcy appeals, habeas corpus, government collection, and prisoner civil rights cases, unless the judge directs otherwise.

6. No judicial officer shall depart from the provisions of these rules and impose additional requirements on counsel or the parties, except as may be necessary in an individual case to avoid injustice.

B. Case Management Plan

1. The judicial officer shall, after consultation with counsel, enter a case management order which may include, but need not be limited to, the following:

(a) the dates by which the parties must move to amend pleadings or add new parties;

(b) the dates for completion of fact and expert discovery;

(c) the dates for document production;

(d) the dates for submission of experts' reports and the dates for depositions of experts, if appropriate;

(e) the dates for filing of dispositive motions after considering whether such motions should be brought at an early stage of the proceedings (i.e., before completion of fact discovery or submission of experts' reports);

(f) the date of the pretrial conference;

(g) the designation of the case for arbitration, mediation, appointment of a special master or other special procedure; and

(h) the presumptive trial date, or the date of the subsequent status conference for complex cases.

2. The case management order may further include such limitations on the scope, method or order of discovery as may be warranted by the circumstances of the particular case to avoid duplication, harassment, delay or needless expenditure of costs.

3. The judicial officer shall, after consultation with the parties, designate each civil action either Track I or

II. Each class action, antitrust, securities, environmental, patent, trademark, multi-district or complex case shall presumptively be designated as Track II.

4. The judge shall also advise each party of the provisions of Local Rule 43 (Arbitration).

5. In a civil action arising under 38 U.S.C. §§ 1961-1968, the judge may require a RICO case statement to be filed and served in a form approved by the court.

6. Counsel shall confer to resolve any discovery or case management disputes, without judicial intervention. Any dispute not resolved shall be presented by motion in accordance with Local Rule 4.

7. Discovery motions shall have annexed thereto copies of only those pertinent portions of depositions, interrogatories, demands for admission and responses, etc., which are the subject matter of the motion.

C. Subsequent Conferences -- Track I and II Cases

Track I cases are those which are neither subject to Local Rule 43 (arbitration) nor designated as Track II. Track I cases are presumed to require infrequent judicial conferences or other judicial intervention after the initial case management conference. A pretrial conference shall presumptively be conducted within 12 months of filing of an initial answer in Track I cases, and scheduled for trial within 18 months after the filing of the complaint.

Counsel are advised that the judges will make regular use of a "trailing docket" of Track I cases. When such procedures are employed, the judge shall provide counsel with reasonable notice of the date on which the case will be called for trial.

Track II cases are those which, based on the complexity of the pleadings or facts, or the demands of the case, appear to require frequent conferences or other judicial intervention. Status conferences shall be scheduled on a regular basis, and the case shall be scheduled for trial on a date certain, as justice requires.

D. Pre-Trial Conference

1. Within 20 days of the close of the discovery period, counsel for the plaintiff shall file and serve a brief narrative statement of the material facts that will be offered at trial, including all damages claimed, the method of calculation, and the damages that will be proven. There shall be attached to the statement:

(a) A copy of all reports containing the substance of the facts, findings or opinions, and a summary of the grounds and reasons for each opinion of any expert whom a party expects to call as a witness at the trial. If timely production of any such report is not made, the testimony of such expert shall be excluded at the trial, except upon consent of the other party or parties, or order of court. The testimony of an expert shall be confined to the scope of his report. The report of an expert shall bear his/her signature.

(b) A copy of all reports containing findings or conclusions of any physician who has treated, examined, or has been consulted in connection with the injuries complained of, and whom a party expects to call as a witness at the trial of the case. If timely production of any such report is not made, the testimony of such physician shall be excluded at the trial, except upon consent of the other party or parties, or order of court. The testimony of a physician shall be confined to the scope of the report.

(c) Names and addresses of all witnesses, including damage witnesses, that the plaintiff expects to call.

(d) A list of any unusual legal issues.

(e) A written list of the exhibits which the plaintiff expects to offer in evidence, containing the identifying mark of each exhibit and a brief description of each exhibit. Exhibits shall be examined by opposing counsel prior to the pretrial conference in preparation for the conference.

(f) Authorizations to other parties to examine pertinent records unless earlier provided.

2. Within 20 days of filing of the plaintiff's pretrial statement, counsel for defendant shall file and serve a brief narrative statement of the material facts that will be offered at trial, including the defenses to the damage claims. There shall be attached to the statement:

(a) A copy of all reports containing the substance of the facts, findings, opinions

and a summary of the grounds and reasons for each opinion of any expert whom a party expects to call as a witness at the trial. If timely production of any such report is not made, the testimony of such expert shall be excluded at the trial, except upon consent of the other party or parties, or order of court. The testimony of an expert shall be confined to the scope of the report. The report of an expert shall bear his/her signature.

(b) A copy of all reports containing findings and conclusions of any physician who has treated, examined, or has been consulted in connection with the injuries complained of, and whom a party expects to call as a witness at the trial of the case. If timely production of any such report is not made, the testimony of such physician shall be excluded at the trial, except upon consent of the other party or parties, or order of court. The testimony of a physician shall be confined to the scope of the report.

(c) Names and addresses of all witnesses, including damage witnesses, that the defendant expects to call.

(d) A list of any unusual legal issues.

(e) A written list of all of the exhibits which defendant expects to offer in evidence containing the identifying mark of each exhibit and a brief description of each exhibit. Exhibits shall be examined by opposing counsel prior to the pretrial conference in preparation of the conference.

(f) Authorizations to other parties to examine pertinent records unless earlier provided.

3. Within 20 days of the filing of defendant's pretrial statement, counsel for any third party defendant shall file a brief narrative statement meeting the requirements set forth above for plaintiffs and defendants.

4. Following the filing of the statements, counsel shall meet with the court at a time fixed by the court for a pretrial conference. Prior to the conference, counsel shall determine, in jury cases, whether they can agree that the

case shall be tried non-jury. If an agreement is reached, the parties shall report to the court at the conference. If no agreement is reached, no inquiry shall be made and no disclosure shall be made identifying the attorney or party who failed to agree.

5. At the pretrial conference, the following shall be done:

(a) Each attorney shall indicate on the record whether the taking of the deposition of an expert witness may ensure the just, speedy and inexpensive resolution of the civil action. If the court grants the request to depose an expert, the court shall grant reciprocal discovery of expert witnesses upon request. The depositions of expert witnesses shall be completed within 45 days of the pretrial conference.

(b) Each attorney shall indicate on the record whether the exhibits of any other party are agreed to or objected to, and the reason for any objection.

(c) If any legal issues have not been decided, the proper motions shall be presented, along with a brief.

(d) Counsel shall have inquired of their authority to settle and shall have their clients present or available by phone. The judge shall inquire whether counsel have discussed settlement.

(e) Such record shall be made of the conference as the judge orders. Failure to fully disclose in the pretrial narrative statements, or at the pretrial conference, the substance of the evidence proposed to be offered at trial, will result in the exclusion of that evidence at trial, unless the parties otherwise agree or the court orders otherwise. The only exception will be evidence used for impeachment purposes.

(f) Only in an unusual case may the court require additional material from counsel.

6. In the event that the civil action has not been tried within 12 months of the pretrial conference, the judicial officer shall schedule a status conference to discuss the possibility of settlement and establish a prompt trial date.

(3) **Revise Local Rule 35 by inclusion of new subsection G which shall read as follows:**

> G. Except in the case of death, disability or other exceptional circumstances approved by the Chief Judge, no civil action shall be transferred from one judge to another where (1) the action has already been transferred from one judge to another; (2) the case has been pending for more than two years; or (3) there are dispositive motions pending.

(4) **Revise Local Rule 38 by adding new requirements (g) and (h), which shall read as follows:**

> (g) Fails to state whether or not the facts underlying the complaint were the subject of an earlier disciplinary proceeding against the plaintiff and, if so, the basic identifying information regarding that proceeding.
>
> (h) Is otherwise incomplete.

II. BASIS FOR CERTAIN PROVISIONS OF THE PLAN

A. Efficient Use of Judicial Resources

The District court will implement early and ongoing judicial intervention by scheduling initial conferences under Fed.R.Civ.P. 16 within 60 days of filing of the initial answer. This is more workable than setting an initial conference triggered by the date of filing of a complaint. The latter would be inappropriate inasmuch as service need not be effected under Fed.R.Civ.P. Rule 4(j) until 120 days after filing a complaint.

The District Court will utilize more effectively judicial resources by the creation of "tracks." The Plan creates two tracks for civil actions not in arbitration. Track I will consist of all civil actions which do not qualify for Rule 43 arbitration but appear capable of completion of discovery and execution of a final pretrial order within one year of filing of an initial answer. Conferences are expected to be infrequent in Track I cases.

Track II cases are those which are complex and lengthy. Certain types of cases shall presumptively be in Track II. Judicial officers will designate cases in Track I or II at the initial conference. Since cases will be segregated into tracks, presumptively complex cases have been identified for enhanced judicial scrutiny on a regular basis.

In the interest of conserving the resources of both the court and parties, revised Local Rule 5 II A.1. authorizes the judicial officer to defer the initial conference if a motion is pending. Such a motion (for example, to dismiss a complaint or to transfer venue) might make an initial conference superfluous.

Consistent with the practice in the Western District pursuant to which certain classes of civil cases are not usually conferenced, the Plan excludes habeas corpus proceedings, social security review proceedings, government collection cases, bankruptcy appeals and pro se actions. Most actions in which pro se litigants are either plaintiffs or defendants are best dealt with on written submissions.

B. Discovery

The District Court will ensure that certain steps are taken to minimize expenses arising from discovery disputes. First, attorneys must confer among themselves in an attempt to resolve any discovery dispute. Second, if the attorneys cannot resolve the dispute, the dispute should be brought to the attention of a judicial officer only after the lawyers have made a good faith effort.

The Advisory Committee considered the possibility of placing limits on discovery (for example, limiting the number of interrogatories and depositions). However, such uniform limitations are inappropriate. It is the obligation of attorneys in each case, based upon its own particular characteristics, to attempt to limit discovery prior to involvement of a judicial officer.

C. Role of Attorneys

Attorneys play an important role in this Plan. The role of counsel may be summarized as one of conferring among themselves and with the District Court. In the first instance, attorneys must be prepared to assist the judicial officer in formulating a case management plan at the initial case management conference. The judicial officer, after consultation with the parties, will issue a case management order.

Attorneys who appear at conferences are expected to be fully prepared to deal with all scheduling matters, including having binding authority to discuss settlement and to enter into scheduling orders. This requirement for binding authority is expected to minimize the need to relax scheduling orders after they are entered and is further expected to minimize subsequent discovery disputes.

The role of the attorney is heightened in all non-arbitration cases. In such cases the attorneys must confer prior to any conference after the initial scheduling conference. The

purpose of this requirement is to encourage attorneys to resolve scheduling and/or discovery issues before these are presented to the judicial officer.

D. Alternative Dispute Resolution

The District Court envisions a major expansion in the use and availability of ADR in the district. The court is justifiably pleased with the success of arbitration under Local Rule 43. Arbitration limits the involvement of judicial officers, diverts cases from the standard pretrial process, and allows parties to submit their disputes promptly to a neutral panel of professionals.

The Advisory Committee recommends that the Chief Judge shall establish a neutral evaluation program in cooperation with the President of the Academy of Trial Lawyers of Allegheny County. The neutral evaluation program shall be conducted by members of the Academy of Trial Lawyers who shall serve as "adjunct settlement judges."

1. The adjunct settlement judge shall be selected by the Clerk of Court from a list of the members of the Academy of Trial Lawyers who are willing and able to serve.

2. The proceedings shall be conducted in the United States Courthouse in accordance with rules adopted by the court to implement the neutral evaluation program.

3. The adjunct settlement judge shall conduct a conference with counsel and the parties, or a representative of a party with appropriate settlement authority, in an effort to conclude the civil action without a trial on the merits.

4. The adjunct settlement judge shall be assigned select civil actions by the district court judges which have a reasonable probability of settlement. The civil action may be selected by the judicial officer at any state of the litigation with particular attention to early neutral evaluation of civil actions, and to cases in which a trial de novo has been demanded following arbitration.

5. The adjunct settlement judge shall advise the parties of alternative dispute resolution programs which are available in the District Court in the event that settlement efforts are unsuccessful, such as arbitration, trial before a magistrate, non-jury trial, or summary jury trial.

E. Experimental Trial of Civil Cases

In order to meet the goals of the Civil Justice Reform Act, the District Court may adopt a plan on an experimental basis for a two year period which will permit each district court judge

to devote 60 consecutive days to the trial of civil cases. Each district court judge shall schedule only civil actions for trial during the period of time designated by the Chief Judge. If a criminal case is assigned to a judicial officer and must be tried within the 60 day period due to the Speedy Trial Act, the Chief Judge shall reassign the criminal case to an available judicial officer, or shall direct the Clerk of Court to reassign the criminal case in accordance with the assignment of criminal cases.

F. Cost and Delay Reduction Data

The Clerk of Court shall compile and report to the Chief Judge on an annual basis the improvement in the adjudication of civil actions, if any, based upon the recommendations of the Report and the Plan adopted by the court. The clerk shall collect data to determine, inter alia, the impact of the number of criminal filings, the success of the alternative dispute resolution programs, and the reduction of cost and delay in the pending civil actions.

III. CONCLUSION

The Report and Plan set forth above provide this court with a comprehensive means by which to reduce expense and delay within the district to the benefit of all participants in the civil justice process. The court pledges its efforts to put the Report and Plan into practice and calls upon attorneys and litigants to do likewise. Working together we can achieve the goals of the Civil Justice Reform Act of 1990. The effective date of this Plan shall be October 1, 1993, and shall apply to all civil actions filed thereafter.

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