

**Middle District of North Carolina  
Report of Advisory Group  
Cost and Delay Reduction Plan  
Summary**

**I. Assumptions; Miscellany; and Background**

- A. The population of the district is evenly mixed between urban and rural. Industries include furniture manufacturing and cigarettes. There are no major military installations and no federal prisons.
- B. There are 4 authorized judgeships and one vacancy. There are also 3 senior judges, 1 of whom is active, and 2 full time magistrate judges.
- C. The district has a Criminal Term Limitation Plan to "restore balance to the civil docket."

**II. State of the Docket**

**A. Filing Trends.**

- 1. There has been a sharp increase in criminal filing in the last 10 years. In 1992 The district ranked second in the country in felony filings per judge.
- 2. Civil filings have declined sharply over the past 10 years, and slightly over the past 5 years. Most of the decline can be attributed to Type I civil cases.
- 3. The life expectancy of Type II cases dropped from 16 months in 1983 to 10 months in 1988 and then rose to 18 months in 1992. Life expectancy for all civil cases is 8 months.
- 4. Median time from filing to disposition in civil cases is 8 months. Median time from issue to trial is 35 months.
- 5. Median time from filing to disposition inr criminal cases is 5.3 months.
- 6. The district ranks in the top third in trials complete per judge. 89% of trials are criminal.
- 7. Prisoner filings have declined by over 50% since 1989. This is attributable a requirement a prisoner must exhaust available administrative procedures.
- 8. 3 year old cases represent 5.35% of the docket.
- 9. Pending cases have remained steady for the past 5 years.

**B. Causes of cost and delay.**

- 1. Delay in resolving discovery disputes and other motions.

2. Delay in trying trial ready cases.
3. Opposing counsel tactics, including overuse or abuse of discovery.
4. Underutilization of telephone conferences.
5. Inadequate judicial resources.
6. Lack of controls and limits on discovery.
7. Criminal docket.
8. Current ADR utilization.

### **III. Recommendations**

#### **A. Discovery Control**

1. Amend local rules to state the obligations and responsibilities regarding overuse and abuse of discovery.
2. Allow nonstenographic depositions upon notice or stipulation.
3. Provide for automatic disclosure of core information and experts to be used at trial.
4. Manage types, frequency, and amount of discovery.

#### **B. Pretrial Order**

1. All cases in which an initial pretrial order is entered shall be assigned, by stipulation or court order, to 1 of the following tracks:
  - a) Standard: 4 months of discovery from date of initial pretrial order. Depositions, including experts, are limited to 5 per side, and interrogatories are limited to 25 per side. The discovery period and limitations can be altered by stipulation only with court approval.
  - b) Standard with expedited trial: This track is contingent upon the parties consenting to trial by magistrate judge. The discovery period and limitations are the same as the standard track. Disposition will take place within 9 months of the initial pretrial order. A trial date will be set at the time of the pretrial order and can be continued only after a showing of extraordinary good cause.
  - c) Complex: 7 months for discovery and 10 depositions and 50 interrogatories per side. Limits and discovery period can be altered by stipulation after court approval. If the parties consent to trial by a magistrate judge a trial date shall be set for approximately 15 months after the initial pretrial order.
2. In all case parties will be given notice of the opportunity to consent to trial by magistrate judge. Parties should be required to state whether they have stipulated to trial before a magistrate judge.

3. Parties should be given notice of the opportunity to stipulate to court-annexed arbitration, binding arbitration, mediation, and use of a special master. Parties should be required to state whether they stipulate to any of the above.
- C. The group recommends the timing of the Rule 16 conference be keyed to joinder of issue instead of filing.
  - D. Parties should be put on notice that they should be prepared to participate in settlement discussions at the final pretrial conference.
  - E. Alternative Dispute Resolution
    1. The monetary cap on cases that can be referred to mandatory arbitration should be increased.
    2. The timing of arbitration should be keyed to joinder of issue not filing.
    3. Arbitration should be allowed before resolution of summary judgment motions.
    4. The court should adopt court-annexed Early Neutral Evaluation and mediation.
  - F. The court should adopt a presumptive 35 page limit for briefs.
  - G. The court should encourage telephone conferencing with the court or among counsel.
  - H. The court should be given discretion to require attendance of parties or insurers at settlement conferences or other dispute resolution proceedings.
  - I. Resources
    1. A third magistrate judge should be sought.
    2. An additional law clerk for magistrate judges should be provided.
    3. A staff attorney for prisoner and similar cases should be provided.

#### **IV. Plan**

- A. In all cases (except certain categories) there should be an early face-to-face meeting of the parties, through lead counsel, to discuss a discovery plan and other important pretrial issues.
  1. The meeting may be held by phone only if lead counsel are separated by more than 150 miles.

2. The topics of discussion shall included:
    - a) all matters listed in Rule 16(b) and (c) and 26(f);
    - b) possibility of settlement;
    - c) the appropriate DCM track;
    - d) timing of mediation and identity of mediator (if agreed upon);
    - e) the nature of information and documents believed necessary for the case;
    - f) issues of burden and relevance and the discoverability of different types of documents;
    - g) a preliminary schedule for depositions (to be updated when necessary); and
    - h) whether or not each party consents to trial by magistrate judge.
  3. The parties can not stipulate out of this meeting
- B. An initial pretrial order will be entered by the court based on the joint report of the parties as contemplated by Rule 26(f) or separate reports and an in court meeting. The order will set the end-date for discovery and control the conduct of litigation.
- C. Immediately after entry of the initial pretrial order the clerk should set a firm trial date and give notice thereof. The date will not be earlier than 4 months after the close of discovery.
- D. Differential Case Management
1. There will be 3 tracks:
    - a) Standard: 4 depositions per side; 15 interrogatories per side; 15 requests for admissions; and 4 months for discovery.
    - b) Complex: 7 depositions; 25 interrogatories and requests for admissions; and 6 months for discovery.
    - c) Exceptional: 10 depositions; 30 interrogatories and requests for admissions; and 8 months of discovery.
  2. Expert discovery must be accomplished in the discovery period allocated to each track, and expert disclosure will be governed by Rule 26(a)(2).
- E. The court expects counsel to cooperate and be courteous in all phases of discovery. Parties must formulate a preliminary deposition schedule and continue to cooperate throughout discovery
- F. Procedures for expedited resolution of discovery disputes will be created. If the parties agree the matter can be ruled upon by a magistrate judge in

a 1/2 hour telephone conference or a 1 hour hearing, without briefing. Discovery sanctions will be imposed when appropriate.

- G. In a range of civil cases, to be determined by the court, the parties should hold a mediated settlement conference during the discovery period. Each side will pay a portion of the mediator's fee. The parties may alter the details of the procedures but the conference must take place. The court will discontinue its arbitration program.
- H. Summary judgment motions should be due shortly after close of the discovery period, but their pendency should not delay trial of the action. Summary judgment briefs will have page limitations and a particular format to clear demonstrate existence or nonexistence of genuine factual disputes.
- I. Final pretrial proceedings should be simplified. There will be no final pretrial conference unless specifically called for by the court, and no pretrial order will be entered. Pretrial disclosure will be governed by Rule 26(a)(3). Trial briefs, with proposed jury instructions or proposed findings of fact and conclusions, shall be filed 20 days before trial.
- J. Cases should be set for trial on the calendar of the assigned judge or a master calendar to be called by 2 or more judges. A magistrate judge may assist with the master calendar, but no case will be tried by the magistrate judge without consent. Cases not reached on the calendar will be given priority on the next calendar.
- K. Implementation
  - 1. The FRCP and Local Rules should be controlling without requiring parties to look at the Plan as third set of rules, therefore, this plan will be implemented by local rule amendments.
  - 2. The local rule amendments caused by the plan are effective on December 1, 1993, as are the amendments to the FRCP.