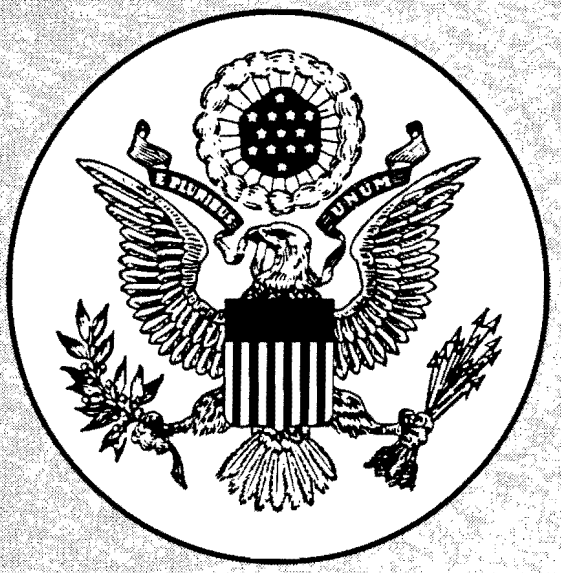
CIVIL JUSTICE
EXPENSE AND DELAY REDUCTION PLAN



UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
APPROVED BY THE COURT
NOVEMBER 30, 1993

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I. INTRODUCTION

Congress mandated that each United States district court implement a civil justice expense and delay reduction plan. 28 U.S.C. § 471. Further, Congress advised that the purposes of the plan are to "facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes." *Id.*

The contents of each plan are governed by 28 U.S.C. § 473. Specifically, within our plan, we must consider:

(1) the six principles and guidelines of litigation management and cost and delay reduction set forth in 28 U.S.C. § 473 (a)(1)-(6); and

(2) the six litigation management and costs and delay reduction techniques set forth in 28 U.S.C. § 473(b)(1)-(6) which includes consideration of the recommendations made by the Civil Justice Reform Act ("CJRA") Advisory Committee.

The items for consideration have been divided into three categories: (1) Case Management; (2) Discovery; and (3) Alternative Dispute Resolution Programs. All of the statutory requirements have been considered and addressed under one of the three categories referenced above.

The Court agrees that the most significant reason for delay in the civil docket in the Western District of Kentucky has been the lack of full judicial resources for the past several years. Indeed, statistics show that progress has been made when such resources are made available. Debilitating illnesses and death have resulted in numerous actual as well as constructive judgeship vacancy months. Obviously, these matters are completely outside the control of the Court yet have a tremendous impact on the Court's ability to manage its civil docket in an expeditious manner. We are confident that with a full complement of Judges,

Magistrate Judges, and resources,[1] the civil docket in the district will return to normal disposition rates and in fact make significant improvements therefrom. The Committee's Report demonstrates that significant improvement in the docket is already evident.

We also note that while lack of judicial resources has contributed most significantly to the civil docket delay, other factors have also had a bearing. These factors include complex cases requiring significant amounts of judicial time and the increase in the amount of courtroom time required for criminal cases.[2]

While we find the CJRA Committee's Report very comprehensive, however, we would like to emphasize an issue which seems to be quite prevalent in courts, government, and private industry. It appears that an emphasis has been placed on speed and quantity rather than quality. Our reading of the Civil Justice Reform Act leads us to the conclusion that quantity and quality are intertwined and should be balanced. We believe that the bar, the public, and the litigants are best served when the Court emphasizes the quality of justice rather than simply disposing of as many cases as quickly as possible. The amount of time from filing the case to final disposition is just one factor in the quality of justice meted out by this Court or any other. Obviously, we are concerned with any goal which would jeopardize quality for the sake of speed and better statistics. Nevertheless, we affirm our commitment to providing the highest quality and most efficient justice possible for the dockets in this district, both civil and criminal. At the same time, this Court is committed to reviewing its procedures and, where appropriate, instituting improvements which will enhance the administration of justice in this District.

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[1]The specific recommendation of the CJRA Advisory Committee that the clerk's office be staffed at 100% will be addressed later in this Plan.

[2]Specifically, the Sentencing Guidelines have had a tremendous impact on the amount of time devoted to criminal cases. This impact reaches far beyond the obvious hearings associated exclusively with the issue of sentencing and touch upon the actual number of cases which ultimately go to trial due to the confines of the Guidelines.

II. CASE MANAGEMENT

A. Systematic, Differential Treatment of Civil Cases

The district currently exempts a number of categories of cases from the requirements of Fed. R. Civ. P. 16(b) by Local Rule. Those categories of cases include: *habeas corpus, pro se* prisoner civil rights, social security, and civil penalty. LR 22. Real estate forfeiture actions are also routinely exempted from Rule 16 requirements. The *pro se* law clerk for the district has devised and implemented an extremely efficient system for handling *pro se* prisoner cases. Furthermore, the full-time Magistrate Judges make considerable contributions in the handling of social security and *habeas corpus* cases.

The Advisory Committee found that a formal system of tracks for cases other than those specifically described above would not significantly aid efficiency of the civil docket. We agree. Therefore, the district will continue with the system for tracking currently in use. We prefer an individualized tracking system when cases are differentiated at pretrial. Our goal is to have cases pending only in proportion to the elapsed time the attorneys reasonably need for their preparation.

B. Early and Ongoing Control of the Pretrial Process by a Judicial Officer

The Judges and Magistrate Judges of this Court already take an active role very early in the pretrial process. Initial scheduling conferences are held in all cases, except those excluded by Local Rule, by a judicial officer. Pretrial management strategies among the Judges and Magistrate Judges are varied. Each Judge may vary early Court involvement depending on the nature of the case and the needs of the parties. We believe it would be counter-productive and impractical to establish an ironclad rule governing all cases and binding all judges.

1. Assessing and planning the progress of a case. This principle is currently addressed at the Rule 16 conference.

2. Setting early, firm trial dates - trial scheduled within 18 months after filing of complaint. The CJRA Advisory Committee recommended a new Local Rule 4(f) which would require that all trials be commenced within 18 months after filing of the compliant unless the complexity of the case, or the demands of the Court's docket would not allow the trial to reasonably be held within such time.

The Court is committed to the laudable goal that all cases be tried within 18 months from the time of filing where such is possible and when the docket permits. However, we do not consider this goal appropriate for codification by Local Rule.

Many older cases on the docket prevent trial of new cases within the suggested 18 month time period. This problem has arisen, in part, due to the lack of full judicial resources for the last several years. We are convinced that a full complement of Judges and Magistrate Judges will assist this district in substantially reducing the time it takes to bring a case to trial.

We agree with the Advisory Committee's observation that setting an early and firm trial date will help focus attention on the case and will encourage cooperation in discovery and adherence to established deadlines. The Court will make every effort to set early and firm trial dates.

3. Controlling discovery. The Court is committed to controlling the extent of discovery and the time for completion of discovery as well as ensuring compliance with appropriate discovery requests in a timely fashion. This issue is discussed in greater detail later in this Plan.

4. Deadlines for filing motion and a time framework for their disposition. The Court currently sets deadlines for the filing of various types of motions, including dispositive motions. We agree with the substance of the Advisory Committee's recommendation that dispositive motions should be decided well in advance of trial when possible. The Court also recognizes the responsibility of counsel to bring preliminary dispositive motions to the Court's attention at the earliest possible time, including the scheduling conference. Resolution of these

preliminary motions could certainly lessen pretrial preparation time and perhaps eliminate said time when the motion is completely dispositive of the action.

We agree that the individual Judges should attempt to prioritize decisionmaking processes, including prioritization of motions, within their chambers.

The Advisory Committee also recommended that a Local Rule be adopted requiring counsel to advise the Court of any reasonably anticipated settlement of a case if the case is under submission. Current Local Rule 10 requires counsel to notify the Clerk when a civil or criminal action is settled by the parties. Failure to do so when the case is set for trial may result in assessment of costs of jury usage against one or more of the parties or their counsel.

We agree that counsel should notify the Court of reasonably anticipated settlement so that judicial resources are not wasted on resolved cases. The Court believes that the bar of this district generally complies with this need to keep the Court apprised of anticipated settlement. We do not believe that the current Local Rule should be altered.

The Advisory Committee also recommended adoption of proposed Local Rule 6(a)(4). It would appear that this proposed Local Rule would require counsel to meet and confer concerning the dispute at issue prior to seeking Court intervention. Further, our interpretation of the Rule indicates that it would allow for denying certain motions (*i.e.*, fees, sanctions, and disqualification), unless moving counsel filed a separate statement advising the Court that reasonable efforts had been taken to reach an agreement prior to filing said motion. The Court refers this recommendation back to the Advisory Committee for further clarification. The proposed Rule as it is written is not specifically drawn and we, therefore, cannot take further steps toward implementation at this time.

C. Identifying Complex Cases

The Court currently acts to identify complex cases which will require increased judicial involvement. Once identified, the Court explores the parties' receptivity to settlement;

identifies or formulates the principal issues in contention; and when appropriate, provides for the staged resolution or bifurcation of issues for trial. Furthermore, the Court works with counsel to prepare a discovery plan, including phased discovery when necessary. As with all cases, deadlines are set at the earliest practicable time, including a framework for motion practice. We do not see the need to implement a more formal procedure than that already employed by the individual chambers.

D. Case Management Plan

This Court enthusiastically endorses the concept of a case management plan as suggested by statute and proposed by our CJRA Advisory Committee. Some Judges of this Court will choose to require the parties to prepare a written case management plan to be filed prior to the scheduling conference. Others will require the parties to consider the issues set forth in the case management plan, consult prior to the scheduling conference, and discuss the issues at the scheduling conference. All of the Judges in the district recognize and approve of the need to address and discuss the various issues raised in the Advisory Committee's proposed case management plan. These issues include: trial date, contentions, discovery schedule, witnesses and exhibits, accelerated discovery, limits on depositions, motions, stipulations, bifurcation, alternative dispute resolution, settlement, referral to a Magistrate Judge, amendments to the pleadings and joinder of parties, jurisdiction, proper designation and service of parties, appointments if necessary, jury trial demand, existing or contemplated related actions, and interim pretrial conferences.

The Advisory Committee's recommendation concerning the case management plan will be studied further by the Court for ways to improve current practices. Any changes in various chambers will be implemented with all deliberate speed.

The Court further agrees with the concepts expressed in the Advisory Committee's recommendations concerning additional pretrial conferences, contents of the final pretrial

order, and the need to adhere to deadlines. However, we believe that the Court's current pretrial and conference orders generally reflect these issues and do not see the need to deviate from existing practices.

E. Pretrial Conference Must be Attended by Attorney with Authority to Bind on all Matters Previously Identified by the Court for Discussion

The Court currently requires that counsel attending pretrial conferences must either have authority, or access thereto, to bind the parties on matters set for discussion at that conference. We see no need to alter existing practices.

F. Signature of Both Counsel and Party Required for Extensions of Time

The Advisory Committee made no recommendation concerning a requirement that both counsel and party must sign motions to extend the time for discovery or to reset a trial date. We refer this issue to the Advisory Committee for its consideration. The Court will consider this statutory proposal after the Advisory Committee has addressed the need, if any, for such measure in this district.

G. Settlement Conferences Must be Attended by Those with Authority to Bind

Current Court practices require that persons with authority to settle the case at bar must be in attendance at settlement conferences. We see no need to alter current practices.

III. DISCOVERY

A. Encouragement of Cost Effective Discovery Through Voluntary Exchange of Information

The Advisory Committee considered the effect and utility of proposed amendments to Fed. R. Civ. P. 26(a) which would require mandatory disclosures of certain standardized information early in the life of the case. Due to serious reservations and concerns regarding the provisions for mandatory disclosure in the proposed Federal Rule changes, the Committee

declined to recommend routine mandatory disclosure by Local Rule for several reasons:

> 1. Required Local Rule disclosures may conflict with or duplicate those called for by the proposed amendments to the Federal Rule;
>
> 2. If local disclosure requirements proliferate, they may differ in many respects. Necessary research into local requirements would add expense and further "balkanize" federal practice;
>
> 3. Depending upon the timing of required disclosures, the requirements may be viewed as pro-defendant if they require early production of information possessed only by the plaintiff, who by virtue of Fed. R. Civ. P. 11 must inquire into the facts supporting the allegations of the complaint before bringing suit. The proposed Federal Rule attempts to balance these concerns by keying plaintiffs' disclosure requirements to the filing of <u>any</u> answer to the compliant, and defendants' disclosure requirements to the filing of <u>its</u> answer. Whether this arrangement will be workable and perceived as fair has not yet been tested through experience;
>
> 4. Rule-mandated disclosures will inevitably lack the flexibility which comes from case-by-case consideration of the desirability and scope of cooperative disclosures; and
>
> 5. Mandatory disclosures of information are time-consuming and may add to the expense of litigation in some instances.

The Committee concluded by stating that mandatory disclosures should be implemented only where there is a demonstrated need for them. The ultimate recommendation from the Committee concerned addressing cooperative, accelerated disclosures as an item to be considered in the preparation of the case management plan. We agree with the Committee's assessment of mandatory disclosure.

We will await Congress' action on the proposed Federal Rule changes. We will not require mandatory disclosure *via* Local Rule as such may well duplicate Congressional action.

The Advisory Committee also recommended that the Court adopt a Local Rule concerning aspects of the conduct of depositions, the timing of disclosure of expert witnesses, and procedures governing a claim of privilege. We believe that these issues will be more appropriately handled as part of the case management plan and that a Local Rule is not necessary.

B. Conservation of Judicial Resources

The Advisory Committee recommended a Local Rule to publicize the willingness of the Magistrate Judges to hear and resolve discovery disputes telephonically. We strongly commend the recognition that the Magistrate Judges are willing and able to hear discovery disputes telephonically. We note, however, that the Judges of this district are also available and willing to settle discovery disputes telephonically. Counsel should advise the Court *via* the Clerk's Office of any immediacy associated with a discovery dispute. The Clerk's Office will then see that the matter is addressed by an available Judge or Magistrate Judge. We do not believe that this matter is appropriate for codification by Local Rule.

28 U.S.C. § 473(a)(5) suggests that judicial resources be conserved "by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion." This district currently employs a similar practice. Local Rule 6(a)(2) requires the moving party to attach to the motion for discovery order a certification of counsel that counsel have conferred and that they have been unable to resolve their differences.

IV. ALTERNATIVE DISPUTE RESOLUTION

A. Alternative Dispute Resolution Programs

The Advisory Committee recommended an amendment to Local Rule 23 concerning Alternative Methods of Dispute Resolution. The Court agrees with the concept of, and need for, alternative dispute resolution ("ADR") programs. We note, however, that the Court does not believe that ADR methods are effective unless participation is voluntary.

We will investigate whether it is in the best interest of the Court to establish a central referral system or operate on a chambers by chambers basis. For example, a Judge may

choose to make an ADR referral on his or her own, without regard to a centralized system. In fact, Judge Heyburn has already done so in several instances.

Judge Heyburn has effectively begun the use of mediation as a method of ADR. We will consider his continued efforts in this area as a pilot program for the district. We will work toward development of a district-wide program based on the results of Judge Heyburn's report to the remaining members of the Court concerning the progress of the pilot program. We designate June 1, 1994, as the goal date for further development of a district-wide program.

We will not implement an ADR program *via* Local Rule at this time. Rather, we will follow the course set forth above concerning a pilot program, reporting, and review, with the ultimate goal of full district implementation.

B. Neutral Evaluation Program

We consider a neutral evaluation program one method of ADR. It will be incorporated into the district's pilot program described above.

We agree with the Advisory Committee's recognition that early neutral evaluation can be important in reducing costs to litigants. The Court will encourage litigants to suggest methods of ADR which may be acceptable to them. Again, the Court believes that for any neutral evaluation program to be effective, it must be implemented on a voluntary basis.

V. SUGGESTIONS AND CONSIDERATIONS WITH RESPECT TO FUTURE CONGRESSIONAL AND FEDERAL ACTION

The CJRA Advisory Committee made several specific recommendations which would require action on the part of Congress, the Judicial Conference, and in some instances, both. Those recommendations were as follows:

1. That Congress authorize the creation of a full-time judgeship to replace the half-time position currently allocated for this district;

2. That the Judicial Conference approve the addition of one full-time Magistrate Judge for this district;

3. That the Judicial Conference approve a career classification for *pro se* law clerks (classified as staff attorneys in many districts and circuits); and

4. That Congress appropriate funds necessary for appropriate Clerk's Office staffing levels.

We fully concur in the Committee's recommendations.

VI. IMPLEMENTATION, FUTURE ASSESSMENT, AND EVALUATION

Unless otherwise specifically noted herein, implementation will begin immediately. The Court will consult the Advisory Committee to develop criteria by which the success in reducing delay and cost will be measured. We will expect the Advisory Committee to monitor such success and to advise the Court regarding its findings and recommendations no later than September 30, 1994, and on the same date annually thereafter. In compliance with 28 U.S.C. § 475, we will assess the condition of the civil and criminal dockets based on the Advisory Committee's Report. These assessments will be made annually. *See id.*

This Plan is not intended to conflict with existing Local Rules. However, any inconsistencies should be brought to the attention of the presiding Judge in any action.

This Plan is adopted by the Court and is effective December 1, 1993.

IT IS SO ORDERED. This 30 day of November, 1993.

Ronald E. Meredith

RONALD E. MEREDITH
CHIEF UNITED STATES DISTRICT JUDGE