FJC Review of CJRA Reports and Plans

Prepared for the Judicial Conference Committee on Court Administration and Case Management

District: **Western District of Kentucky**

Date: **December 23, 1993**

The district has four and a half judgeships (one full judgeship is vacant), two senior judges, three full-time magistrate judges, and two part-time magistrate judges.

Summary of Conditions in the District

The advisory group surveyed counsel and litigants in 100 cases terminated in the district, interviewed the district's judicial officers, and examined the court's caseload statistics. They found a court that has suffered serious illnesses and vacancies over the past several years, resulting in longer disposition times. With the appointment of another judge, there has been some improvement recently. The numbers below provide a profile:

- From SY91-93, more than one-third of the civil cases was filed pro se. The court has a heavy civil rights and personal injury docket as well.
- Civil filings rose 3% from SY92-93, compared to 0.7% nationally.
- In SY93, median time from issue to trial was 24 months (19 months nationally).
- Indexed Average Lifespan for the district is 13 months (12 months nationally), down from 15 months in SY92.
- In SY93, 10% of civil cases were over 3 years old, near the national average.
- Criminal filings decreased 17% from SY92-93, compared to a 3.3% decrease nationally. The number of defendants also decreased.

The advisory group found that a number of practices like those recommended by the CJRA are already in use in the district. All judges hold scheduling conferences, issue scheduling orders, and set cut-off dates for discovery. Most motion practice is completed without oral argument and oral rulings are often given at pretrial conferences. Final pretrial conferences are held if necessary or requested, and trial dates are set at the conference (or after filing of dispositive motions in cases with no final pretrial conference). The group also found that much of the magistrate judges' time is taken up with criminal matters and that the clerk's office is seriously understaffed.

From its surveys of attorneys and litigants, the advisory group found that two-thirds of attorneys and half of litigants believe litigation is not delayed nor too expensive. The one-third of attorneys who found it too costly or delayed cited a number of reasons, including both attorney and judicial behavior: (1) for attorneys, excessive numbers of depositions and deposition questions; overbroad document requests; frivolous objections; and failure to attempt in good faith to resolve issues without court intervention; and (2) for judges, too few status conferences, pretrial motions conferences, and deadlines; failure to resolve discovery and other motions promptly; failure to initiate settlement conferences; failure to tailor discovery to the needs of the case; inadequate judicial preparation for conferences; and failure to set prompt trial dates and to meet dates that are set. The survey showed that more than 40% of counsel favored improved case management and more use of ADR.

Based on its examination of current practices, the advisory group concluded that litigation in the district is "generally well-managed". The advisory group was also

reassured by the improving caseload statistics and by the possibility of additional judicial resources. Nonetheless, the advisory group felt that two indicators suggest cost and delay reduction measures are needed: (1) the long time to trial indicates that pretrial and trial dates are not firm; and (2) there is a backlog of motions in several chambers. The advisory group identified four principal causes of these problems - reluctance to adhere to pretrial deadlines, delays associated with pretrial motions, inefficiencies in discovery practice, and underuse of alternatives to litigation - and addressed its recommendations to these problems.

Summary of the Court's Plan

In response to the advisory group, the court said it agreed that "the most significant reason for delay in the civil docket in the Western District has been the lack of full judicial resources for the past several years." With a full complement of judges, the court hopes to return to normal disposition rates. The court also said that while the advisory group's report is "very comprehensive ... the emphasis has been placed on speed and quantity rather than quality.... 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." The court thus endorsed most of the principals and practices recommended by the advisory group, but it declined to adopt them as local rules

Case Management and Discovery

1. Differential Case Management. The plan notes that the district already exempts habeas corpus, pro se prisoner civil rights, social security, civil penalty, and real estate forfeiture cases from FRCP 16(b). The court also attempts to identify complex cases and to work with counsel to identify issues, prepare a discovery plan, and set deadlines. Thus, the court agreed with the advisory group that no other formal tracking system was needed.

2. Early, On-going Judicial Involvement and Case Scheduling. The plan notes that the district's judicial officers already take an active role very early in the pretrial process, holding initial scheduling conferences in all cases except those excluded by local rule. Nonetheless, the court enthusiastically endorsed the advisory group's concept of a case management plan prepared by attorneys before the initial Rule 16 conference and said all of the judges recognize the need to address and discuss the issues included in the advisory group's proposed local rule, including trial date, discovery schedule, limits on depositions, stipulations, ADR, and settlement. The court did not, however, adopt the advisory group's proposed rule but said instead that some judges will require parties to prepare a written case management plan, to be filed prior to the scheduling conference, and others will require the parties to consider the issues listed by the advisory group, to consult prior to the scheduling conference, and to discuss the issues at the conference. In addition, the court said it would study the group's recommendation for ways to improve current practices and would implement changes "with all deliberate speed."

The court also agreed with the concepts expressed in the advisory group's recommendations on additional pretrial conferences, the contents of the final pretrial order, and the need to adhere to deadlines. However, the court said that current pretrial and conference orders generally incorporate these practices, and it did not see a need to change.

Regarding the setting of firm trial dates, the court rejected "an ironclad rule governing all cases and binding all judges." Thus, the court thought it inappropriate to codify a goal of trying all cases within 18 months. However, the court agreed with the advisory group on the usefulness of setting an early and firm trial date and said it would make every effort to do so.

3 Motions. The court agreed with the substance of the group's recommendation that dispositive motions should be decided well in advance of trial when possible and said the judges should prioritize the decision-making process in their chambers. The plan does not, however, provide specific time limits for rulings, as urged by the advisory group.

The court also agreed with the recommendation that counsel should notify the court of reasonably anticipated settlement, but noted that rule revisions are not necessary because a local rule already requires such notification and provides a penalty for failure to comply (assessment of jury costs against one or more parties or their counsel).

The court said the advisory group had not adequately drafted its proposed local rule requiring counsel to meet and confer to resolve disputes prior to seeking court intervention and providing a penalty allowing denial of certain motions, fees, and sanctions. The court referred it back to the group for clarification before taking further action.

4. Discovery. The court agreed with the advisory group that mandatory disclosures should be implemented only where there is a demonstrated need for them. Thus, as recommended by the advisory group, disclosure will be an item considered in preparation of the case management plan. (Subsequent to the effective date of the federal rule amendments on discovery, the court has decided to follow the federal rules. Conversation with deputy clerk, 1/4/94.)

In response to the advisory group's recommendation for a new local rule concerning conduct of depositions, timing of disclosure of expert witnesses, and procedures governing claims of privilege, the court said it felt these issues were more appropriately handled in the case management plan and thus a local rule was not necessary.

The court commended and supported the advisory group's recommendation that magistrate judges be willing to hear discovery disputes by telephone and noted the willingness of the district judges to do the same. Counsel should advise the clerk's office when a discovery dispute needs immediate resolution, and that office will see that an available judge addresses the matter. The court said codification by local rule was not appropriate.

Although not addressed by the advisory group, the court noted that a local rule already requires a moving party to attach to a discovery motion a certification that counsel have conferred and are unable to resolve their dispute.

5. Other (not addressed by the advisory group). The court currently requires counsel attending pretrial conferences to have, or have access to, authority to bind the parties on the matters set for discussion. The court also requires properly authorized counsel to attend settlement conferences. These practices will be continued. The court referred back to the advisory group the statute's suggestion that requests for extensions be signed by counsel and client, saying the group had made no recommendation on it.

Alternative Dispute Resolution

Although the court currently encourages settlement, the advisory group recommended that the court go further and promulgate a local rule to establish guidelines for initiation and implementation of ADR methods. The advisory group recommended that participation in ADR be required, that the court publish a brochure to describe ADR mechanisms, and that the court appoint an ADR administrator to establish and maintain the district's ADR programs. The advisory group provided a draft local rule, which would authorize the court, in its discretion or with the consent of the parties, to set any appropriate civil

case for non-binding (unless the parties agree otherwise) ADR, including mediation, ENE, "or any other method agreed upon by the parties and approved by the court."

The court agreed with the concept of and need for ADR programs, but said it believes such programs are effective only if voluntary. The court also felt further exploration was necessary and thus rejected a local rule at this time. Rather, the court will use Judge Heyburn's efforts in mediation as a pilot program, with June 1, 1994 as the goal for further development of a district-wide program and an ultimate goal of full district implementation of ADR. The court said it will incorporate ENE into its pilot program and will encourage litigants to suggest ADR methods acceptable to them.

Other

The court concurred with the advisory group that:

- Congress should authorize the creation of a full-time judgeship to replace the district's half-time position and should appropriate the funds necessary for appropriate clerk's office staffing levels; and
- the Judicial Conference should approve the addition of a full-time magistrate judge and a career classification for pro se law clerks.

Consideration of §§ 473(a) and (b)

The plan addresses each case management principal and technique listed in the statute, including several that were not addressed by the advisory group.

Implementation

The plan was adopted on November 30, 1993 and became effective on December 1, 1993. Implementation is to "begin immediately". The advisory group and court will assess the docket and the plan annually, with findings to be made each September 30th.

Comments

The advisory group's examination of the district reveals a desire by the bar for tighter case management and more ADR, which the advisory group recommended codifying in new local rules. In response, the court accepted the advisory group's case management and ADR goals and many of its recommended practices, but declined to incorporate them in the local rules. Although it may be unintended, the court's cautious approach and its rejection of codification suggest some reluctance to be as firm in managing cases as the bar would like. The committee may want to urge the court be vigilant in providing the controls the bar seeks.

Conclusion and Recommendation

Although the court takes a very cautious approach to the problems identified by the advisory group, I recommend that the committee accept this plan.

Principal Reviewer: John A. Thawley, Research Division, Federal Judicial Center