UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

CIVIL JUSTICE REFORM ACT OF 1990

PLAN FOR THE REDUCTION OF EXPENSE AND DELAY IN CIVIL CASES

October 1993

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

In re: Plan for Reduction of Expense and Delay in Civil Cases

Administrative Order

93-AO-093

At its regular meeting on October 4, 1993, the United States District Court for the Eastern District of Michigan approved the attached Plan for the Reduction of Expense and Delay in Civil Cases as provided in 28 U.S.C. § 471 et seq., to apply to all cases filed in the Court on or after December 1, 1993. In preparing the Plan, the Court considered the recommendations contained in the July 1992 Report of the Civil Justice Reform Act Advisory Group and the Advisory Group's supplemental Report dated March 23, 1993.

FOR THE COURT:

Julian Abele Cook, Jr.
Chief Judge

Attachment

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U.S. DISTRICT COURT
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Approved by the Court **October 4, 1993**
Effective in all cases filed on or after **December 1, 1993**

Introduction

Pursuant to the provisions of the Civil Justice Reform Act of 1990 (28 U.S.C. §§ 471-482), the Judges of the United States District Court for the Eastern District of Michigan adopt this Plan for Reduction of Expense and Delay in Civil Cases for all civil cases filed on or after December 1, 1993.

This Plan is based on the research and proposals advanced by the Civil Justice Reform Act Advisory Group for the Eastern District of Michigan which spent over a year examining the docket and case management practices of judicial officers and support staff of this District. Their recommendations, set forth in their report of July 22, 1992, have provided the Court with a foundation upon which to build this Plan.

The Court notes particularly the following sentence from the report of the Advisory Group:

> Because the initial assessment of the Eastern District's civil docket showed it to be in satisfactory condition, the Advisory Group could not immediately isolate any clear-cut causes of cost and delay.[1]

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[1]"Civil Justice Reform Act of 1990, Report of the Advisory Group", July 1992, p. 9.

The Court appreciates and subscribes to the above finding of the Advisory Group and for that reason has avoided the imposition of any draconian measures at this time.[2] Nonetheless, the Court pledges to exercise vigilance in the oversight of the docket and will meet annually to assess the docket, consider reduction of expense and delay, and recommendations from the Advisory Group.

Copies of this Plan shall be made available to the public upon request in the Clerk's Offices in Ann Arbor, Bay City, Detroit and Flint.

The Court adopts the following measures to reduce cost and delay in civil litigation.

I. Differentiated Case Management (DCM)

The Court will not institute any additional case tracks at this time other than those already in use in prisoner and social security cases. The Advisory Group will monitor the state of the docket and assess the ongoing case tracking programs at the pilot and demonstration districts and annually recommend to the Court any differentiated case management programs which might be advisable.

[2]Included as an Appendix to the Plan is a detailed explanation of the reasons that the Court did not adopt, or adopted in revised form, certain of the Advisory Group's recommendations.

II. **Early and Ongoing Judicial Control of the Pretrial Process**

A. The Court will encourage early and ongoing judicial involvement in the pretrial process by adherence to Rule 16, Fed. R. Civ. P.

B. The Court will establish a policy urging the early scheduling of a firm trial date at the initial pretrial conference. When a trailing docket is utilized, counsel should be given at least 48-hours notice of the adjournment or the commencement of their trial.

C. Upon request of counsel, the Court will encourage involvement of magistrate judges in mediation of discovery disputes.

D. The Court will continue to encourage telephonic conferences and/or hearings.

III. **Discovery/Case Management Conferences for Complex Cases**

In appropriate cases, the Court will encourage discovery/case management conferences in which a judicial officer will meet with the parties to explore the possibility of settlement, identify the principal issues in contention, and enter orders that will facilitate the just and speedy resolution of the matter in the least expensive manner possible under the circumstances.

IV. **Encouragement of Voluntary Exchange of Information Among Litigants**[3]

The Court will encourage as a matter of policy the voluntary exchange of all discovery material among litigants. Nevertheless, counsel must remain aware that discovery deadlines will be enforced, and that disputes requiring formal adjudication require the prompt filing of appropriate motions.

V. **Prohibition of Discovery Motions unless Party has made a Good Faith Effort to Reach Agreement with Opposing Counsel**

The Court will rigorously enforce LR 7.1(a) which requires the movant in all motions to ascertain whether or not the contemplated motion will be opposed and requires a conference between the attorneys as well as a certification that concurrence has been denied. The provision for taxing of costs under LR 7.1(a) will be enforced.

VI. **Authority to Refer Cases to Alternative Dispute Resolution (ADR)**

As the Advisory Group report has noted, this District led the nation in adoption of a mediation program and, despite this Circuit's later prohibition of non-stipulated sanctions, that program remains highly successful. However, the Civil Justice Reform Act requires that the Court "shall consider and may include"

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[3]The Court notes the language of proposed Rule 26, Fed. R. Civ. P. and will consider adopting the language of this rule at a later date.

in this Plan "authorization to refer appropriate cases to alternative dispute resolution programs", 28 U.S.C. § 473(a)(6). [NOTE: Certain categories of cases may be excluded from alternative dispute resolution (ADR) procedures, e.g., social security, collections, *habeas corpus* and unrepresented prisoner cases.] The Advisory Group has recommended that a selection of several alternative modes of ADR be made available to litigants. The Court hereby adopts that approach, to the extent that the costs of court operations are not increased. The terms and conditions under which the Court shall endeavor to implement this policy include the following:

A. **Scheduling Conferences and Orders.** At the initial scheduling conference held pursuant to Rule 16, Fed. R. Civ. P., in each case, or at the direction of the Court's initial scheduling order if no conference is held, the parties shall advise the Court of at least one mode of ADR to which they are amenable. The schedule adopted for that case shall include a deadline for completion of ADR before the contemplated trial date, and no adjournments of scheduled dates will be granted because of delays which may occur in the ADR process except for good cause shown.

B. **ADR Alternatives.** The ADR options offered to civil litigants in this Court shall include early neutral evaluation, mediation, special mediation, arbitration, settlement conference and such other modes as the parties to a case may agree to pursue.

The Court, however, will bear no costs resulting from ADR activities and the parties should, in making their selections, be mindful that they bear total financial responsibility for all arrangements beyond the entry of orders by the Court. This shall include the costs associated with selection and payment of special mediation panels, arbitrators and any jurors called for summary jury trial. The use of jurors for advisory purposes shall require payment by the parties of juror's fees, mileage and parking. The judge to whom the case is assigned may require a stipulation concerning payment of all costs before referring any case to ADR.

Unless a case is to be tried by the judge without a jury, the judge to whom the case is assigned shall be promptly notified of the results of all ADR undertaken, and whether or not each party has accepted such results. The judge to whom a jury case is assigned is not only the person responsible, but also the person best situated, to facilitate the settlement of that case.

C. **Early Neutral Evaluation.** The parties to any civil case may, by stipulation, request that the case be ordered to an early neutral evaluation on condition that the other dates set in the case are not delayed, and that the parties stipulate as to the neutral selected and the evidence or other materials to be submitted. The parties shall be responsible for the expenses of the activity on terms which they may include in their stipulation. The Court will not limit parties to a Court-selected list of

neutrals.

D. **Mediation.** The Court will continue to make referrals to the Wayne County Mediation Tribunal Association, on stipulation of the parties that they shall be bound by the sanctions there applied.

E. **Special Mediation Panels.** The Court will permit special mediation upon stipulation by the parties as to how they wish to choose a panel, how the panel shall be compensated, and as to what sanctions shall be imposed upon a party refusing to accept the award of the panel. No referrals will be made of matters in which the parties cannot agree to the imposition of sanctions.

F. **Arbitration.** Upon stipulation of the parties, the Court will refer matters to binding arbitration. The parties will not be limited to a Court-selected list of arbitrators, but may stipulate to such persons as they may agree are competent in the subject being litigated, and to such terms and conditions as they deem appropriate, so long as the court schedule is not affected.

G. **Summary Jury Trial.** In a matter which is expected to consume at least two weeks of trial time, the parties may stipulate to submit their case to a summary jury trial on such terms and conditions as they may agree, so long as sanctions are imposed upon a party not accepting the outcome and no delay of the Court's schedule is caused. The stipulation shall provide for payment of all costs attendant upon the calling of a jury panel.

The judge to whom the case is assigned may enter an order permitting such a trial after consideration of all surrounding circumstances, including availability of a courtroom and/or a judicial officer not otherwise engaged in non-advisory trials.

H. **Settlement Conference.** All judges of this Court remain available to conduct settlement conferences in the cases assigned to them and, on request of a colleague, in cases assigned to others, as well. It is the responsibility, however, of the judge to whom a case is assigned to conduct all proceedings not referred to a magistrate judge in that case, until a judgment is entered. Settlement conferences will be held, on request of the parties, at any time.

This section does not limit the authority of any judge to order or approve ADR procedures on such terms and conditions as the Judge may approve.

VII. **Miscellaneous Matters**

A. The Court supports the drafting of legislation and the appropriation of funds to compensate attorneys willing to represent *pro se* litigants in civil rights cases.

B. The Court will direct the Clerk of Court to publish a notice in the *Michigan Bar Journal* and legal newspapers stating that statistics developed pursuant to the Civil Justice Reform Act are available for public review in the Clerk's Offices in Ann Arbor, Bay City, Detroit, and Flint.

C. The Court will encourage and participate in lawyers' activities which foster collegiality and will request the Federal Bar Association and the State Bar of Michigan to propose an attorney civility plan to the Court.

VIII. **Conclusion**

A. The Court may revise this Plan from time to time in response to changing conditions and pursuant to recommendations from the Advisory Group or the Civil Justice Reform Act Committee composed of Judges of the Court.

B. Pursuant to 28 U.S.C. §§ 472(d) and 474(a), the Court hereby orders that this Plan, and the Report of the Civil Justice Reform Act Advisory Group, be distributed to:

1. the Director of the Administrative Office of the United States Courts;

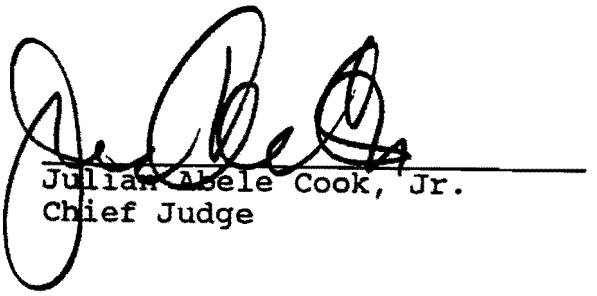
2. the Judicial Council of the United States Court of Appeals for the Sixth Circuit;

3. the Chief Judges of all of the other United States District Courts located in the Sixth Circuit;

4. the Chief Judge of the United States Court of Appeals for the Sixth Circuit, and

5. the Judicial Conference of the United States.

FOR THE COURT:



Julian Abele Cook, Jr.
Chief Judge

Appendix to Plan

The Court has given careful consideration and discussion to all of the recommendations of the Advisory Group, as directed by the Civil Justice Reform Act of 1990, 28 U.S.C. § 472(a). However, the Court has not adopted some of their recommendations in this Plan. This Appendix explains the Court's reasons for not adopting those recommendations.

1. **Proposed amendment of LR 16.1 to mandate the holding of an initial pretrial conference within 120 days after filing of every complaint.**

This proposal has not been adopted because it destroys the discretion given the Court by Rule 16, Fed. R. Civ. P., and requires discussion of many matters which cannot be fruitfully discussed prior to discovery or on motion with due notice given. Such a mechanistic approach would add, not reduce, cost and delay in the cases unnecessarily called for conference as well as in those from which the Court's attention must be turned to meet this arbitrary requirement.

2. **Proposed amendment of LR 40.1 to mandate docketing of cases for trial by dates certain.**

This proposal, again, is an unnecessary constraint upon those judges who wish to utilize the trailing docket to maximize cases tried and thereby reduce delay. The concern of the Advisory Group appears to have been the setting or adjournment of trials on

short notice. To meet that concern, the Court adopts the policy of giving 48-hours notice of any adjournment or call to trial (II,B, p.3). Trial dates will have been set after the first pretrial conference, *ab initio*.

3. **Proposed amendment to LR 37.1 to provide for conference with a judicial officer prior to the filing of a discovery motion, for informal resolution of the dispute.**

Informal discussion of non-dispositive disputes with a judicial officer has, in practice, rarely resulted in their resolution and distracts from time better spent on matters in which the issues have been framed by written motions and responses thereto. Moreover, the matters here pending are sufficiently substantial to merit a record as to what precisely has been requested of the Court and what granted or denied.

4. **Proposed amendment to LR 7.1(e)(2) to mandate oral hearings on motions.**

LR 7.1(e)(2) has only recently been fully debated and adopted by this Court and in its present form represents the extent to which the Court may require its members to hold oral hearings on motions. Moreover, the Sixth Circuit, in Yamaha v. Stonecipher's Baldwin Pianos, etc., 975 F.2d 300 (6th Cir. 1992) has decided that district courts may provide by local rule that motions for summary judgment may be decided on briefs alone, absent a request for oral argument. As the members of this Court are not of one

mind concerning oral argument, current LR 7.1(e)(2) represents the consensus most favorable thereto.

It should be noted further that the Advisory Group's proposal appears to suggest that the holding of oral argument reduces cost and delay, and the Court is not, as a body, of that opinion.

5. **Proposed ADR policy, requiring that a settlement conference be held in each case substantially in advance of final pretrial, and in advance of examination of expert witnesses, by a judicial officer who will not try the case.**

Although the members of this Court always remain available to assist in settlement of their cases, the timing and conduct of such conferences should be left to the discretion of the individual district judge assigned to the case.

The Court has recently adopted the practice of randomly assigning magistrate judges to civil matters upon filing, thus facilitating their involvement in civil cases. In cases destined for bench trials, the Court follows the practice of assigning settlement discussions to a judicial officer other than the one assigned to the case. In other matters, the Court is always amenable to third-party involvement in settlement discussions at the request of the parties; however, the Court does not at this time believe that settlement conferences should be mandatory in every civil case.

6. **Strict adherence to Rule 56(d), Fed. R. Civ. P. requiring hearings on motions for summary judgment.**

The Court's response to this recommendation is covered by Item 4 in this Appendix.

7. **Publication of Court statistics by news media.**

The Court believes that publication of individual statistics in the media, in the absence of lengthy and expensive explanations, would be misleading to the public and unfair to individual judicial officers. Therefore, the Court will direct the Clerk to place public notices informing interested individuals that these statistics are available in the Clerk's Offices in Ann Arbor, Bay City, Detroit and Flint, where staff are able to interpret and explain them upon request.

8. **Magistrate Judges hearing cases and entry of judgment - 28 U.S.C. § 636(C)(2).**

The Court has one of the most efficient civil dockets in the United States, with average civil caseloads for active judges at well under 300. The Court has three senior judges who all carry substantial caseloads, and the judges routinely transfer cases among each other if there is a temporary problem. The Court has voted not to include in its Plan the Advisory Group's recommendation that magistrate judges be permitted to conduct civil jury trials. This matter has been considered and discussed by the Court at length within the last two years, and the consensus

continues to be that the Court has no need to utilize magistrate judges for this function.

9. **Amendment of LR 7.1, Motion Practice, to allow magistrate judges to render final decision.**

The Court's motion calendar provides for timely disposition of virtually all motions filed, so the Court does not see a need to extend this function to magistrate judges. Further, the resolution of dispositive motions affects may other aspects of a case, including the date for trial. The Court believes that the resolution of dispositive motions is a critical case management function which should remain with the trial judge. The Court has voted not to include in its Plan the Advisory Group's recommendation that the magistrate judges be permitted to render final decisions on dispositive motions upon consent of the parties.

10. **Amendment of LR 7.1 to suspend all pretrial deadlines in cases in which a motion has remained undecided for over 60 days.**

The Court has voted not to include in its Plan the Advisory Group's recommendation that LR 7.1 be amended to suspend all pretrial deadlines in cases in which a motion has remained undecided for over 60 days. In this Court, a scheduling order is issued in every case. The scheduling order touches upon dates for such items as serving the first set of interrogatories; filing motions to compel; the exchange of trial witnesses; referring the case to mediation; the setting of a discovery cut-off date; a date

for the filing of dispositive motions; a date for filing the final pretrial order; the date on which a final pretrial conference will be held and a trial date. In addition, some judges set additional dates.

To adopt the Advisory Group's recommendation and suspend all such pretrial deadlines would cause great confusion and uncertainty with respect to said dates, and would impose upon the Court a substantial administrative and clerical burden in establishing new dates. It would also have the effect of eliminating a firm trial date or month which would disrupt the orderly scheduling of civil matters for trial in this Court.