CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

NOVEMBER 30, 1993

INTRODUCTION

The Advisory Group for the United States District Court for the Southern District of Ohio was appointed, pursuant to 28 United States Code, section 478, on February 28, 1991. In accordance with the Civil Justice Reform Act of 1990, the Advisory Group thoroughly examined all aspects of the Court, and reached insightful conclusions about this Court as an institution, about the practice of law in this District, and about court administration practices which can aid in the reduction of cost and delay in civil litigation. These findings are reflected in the *First Report of the Advisory Group,* dated September 30, 1993.

The members of the Advisory Group represented the various constituencies of the Court and reflected a diversity of age, gender, ethnic, and practice backgrounds found among the 5.1 Million residents of the 48 counties (of 88 in the State) served by this Court. Lawyers serving as members of the Group frequently have had not only substantial experience in this Court but also before state and federal courts outside this District, which offered valuable perspective to the Group's work. The Group was guided by developments under the Act in other Districts, and gave extensive consideration to pending proposals to amend the Federal Rules of Civil Procedure advanced by the Judicial Conference Advisory Committee on Civil Rules. The Court takes this opportunity to express its gratitude to the members of the Advisory Group for the conscientious manner in which they have accomplished their work to date, and for their anticipated contribution to the Court in the future, as they continue their study under the Act.

Because the Court has confidence in the wisdom of the Advisory Group, and in the thoughtful Recommendations set forth in their *Report,* the Court is not only giving consideration to the *Report*, as required by section 472(a) of the Act, but is adopting most Recommendations without change. For simplicity of organization in this Plan, however, some are being renumbered to correlate with the subject of each Recommendation.

CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

The United States District Court for the Southern District of Ohio unanimously adopts the following Expense and Delay Reduction Plan, and shall implement the Plan beginning December 1, 1993. Action will be taken in accordance with the 18 points set forth below.

Section A. ALTERNATIVE DISPUTE RESOLUTION PROGRAMS

The Court has considered the subject of alternative dispute resolution, and adopts unchanged Recommendations 2, 3 and 4 of the Advisory Group respecting the subject of alternative dispute resolution programs, for the reasons set forth in the *First Report of the Advisory Group* at pages 28-33.

Section 473(a)(6) of the Act specifically required the Court to consider the use of alternative dispute resolution programs of various types, and this is addressed in point ❶. The Western Division at Dayton has already begun its study and implementation of point ❷. Section 473(b)(4) specifically required the Court to consider the technique of an early neutral evaluation program. For the reasons fully set forth in the *First Report of the Advisory Group*, at page 31, the Court concurs with the Advisory Group and will not adopt an ENE program applicable to the entire docket at this time. Section 473(b)(5) of the Act required the Court to consider the technique of requiring, upon notice from the Court, that representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference. As the Advisory Group recognized, *Report* at 35, this is current practice of all of the judicial officers in this District and it will be continued.

❶ *The Court will continue its commitment to ADR, and to the flexible approach reflected in Local Rule 53.1. (Recommendation No. 2)*

❷ *The Western Division of the Court at Dayton will undertake, within the limitations of staff and funding, implementation of a formalized ADR program, such as Settlement Week mediation using volunteer mediators. (Recommendation No. 3)*

❸ *The Court will not adopt any new "early neutral evaluation" program. However, the Judge assigned to any case identified by the Court or suggested by a party at or shortly after filing as being "complex" will consider using ENE in specific cases in which it appears desirable. (Recommendation No. 4)*

Section B. CIVIL CASE MANAGEMENT

Section 473(a)(1) of the Act provides that the Court consider systematic differential treatment of civil cases tailored to case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources available for the case. Section 473(a)(2) required the Court to consider the early and ongoing control of the pretrial process through involvement of a judicial officer in certain enumerated tasks. Section 473(a)(3) sets forth guidelines for the management of complex cases.

The Advisory Group recognized that judicial officers in this District have as a matter of course afforded hands-on attention to the pretrial management of civil cases. *Report* at 34 - 35. That is regarded by the Advisory Group and by the Judges of this District as the most appropriate type of case management system.

Questions have been raised (by a Staff Attorney for the Sixth Circuit in a preliminary review of the Local Rules of this Court) about the appropriateness of certain Local Rules, including Rule 23.3 on procedures with class action certification. The Advisory Group, the Local Rules Advisory Committee of this Court, and the Judges of this Court all believe that Local Rule 23.3 is valuable for case management and should be retained. Advisory Group Recommendations No. 5, 6, and 10 are all, therefore, being implemented unchanged.

❹ *The Court will continue to give personalized attention by a judicial officer to the pretrial management of each trial-track civil case, and will not adopt a predetermined "Differentiated Case Management" system. (Recommendation No. 5)*

❺ *The Court will provide some mechanism by which a party can advise the Court at the earliest stage of a case which appears likely to require unusual types of pretrial attention, or other special handling as a "complex" case. The Court will promptly respond in such cases with as much additional attention as the Court's resources permit and the legitimate needs of the case require. In addition, the Court will consider employing in such cases the "Early Neutral Evaluation" technique or other methods of ADR in addition to those afforded all trial-track cases; and to additional monitoring of discovery, such as requiring an early meeting of counsel, joint preparation of a discovery plan, or other techniques likely to contribute to the cost effective management of the* case. *(Recommendation No. 6)*

❻ *Local Rule 23.3, requiring a party to move for class certification within 120 days after filing a pleading asserting the existence of a class, simplifies the processing of such cases and will be retained. (Recommendation No. 10)*

Section C. PRETRIAL DISCOVERY

Sections 473(a)(2)(C) and (a)(3) required each Court to consider the involvement of judicial officers in the early pretrial management of cases, and specifically in controlling the extent of discovery and the time for completion of discovery. As noted in the *Report of the Advisory Group*, at page 34, there has already been such active judicial management in this District. As noted at pages 41-43, Local Rules of this Court already control, to some degree, the extent of certain types of discovery absent agreement among the parties or a judicial order in the specific case. (Point ❼ below.)

473(a)(4) of the Act required the Court to consider encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and similar devices. This Court has done so, and in that regard has also considered the proposed amendment of Rule 26(a), Federal Rules of Civil Procedure, now pending before the Congress. The Court concluded (consistent with Recommendation No. 13 of the Advisory Group) that although committed to cost-effective discovery and to the maximum use of "voluntary" exchange of information among litigants, adoption of a formal system such as proposed in Rule 26(a) is inappropriate, at least at this time.

Section 473(b)(1) of the Act required each District Court to consider the use of discovery plans, and this too is the subject of a proposed amendment to Civil Rule 26(f). However, for the reasons set forth in the *Report* at 35-36 and 53 (consistent with Advisory Group Recommendation No. 14), this will not be required at all locations of Court in the District. The Dayton location, which sits in a major county of nearly 600,00 people and serves 8 of the 48 counties in the District, will continue its use of the discovery plan technique.

Section 473(b)(2) of the Act required each District Court to consider imposition of a requirement that each party be represented at pretrial conferences by an attorney with authority to bind that party. Section 473(b)(3) required that this Court consider a requirement that all requests for discovery deadline extensions or postponement of trial be signed by both an attorney and the party making the request. As noted in their *Report*, at page 35, both suggestions were considered by the Advisory Group. Uniformly this Court already requires counsel participating in pretrial conferences to have authority to act on the issues presented, and that practice will be continued without further action in this Plan. The suggestion that in every instance a client must sign any request to extend deadlines did not commend itself to the Advisory Group, and will not be implemented by this District.

This Court has also reexamined several Local Rules concerned with pretrial discovery, prompted in part by the report of a Staff Attorney of the Court of Appeals for the Sixth Circuit. While Section 473(a)(5) of the Act required each District Court to consider a requirement that any discovery Motion be accompanied by a certification that the moving party had made a reasonable effort to reach agreement with opposing counsel on the disagreement, that was already this Court's long-standing practice as reflected in Local Rules 37.1 and 37.2. Yet, these two Local Rules were among those questioned by the Staff Attorney. The Court, consistent with the *Report* and the views of its Advisory Committee on Local Rules, will retain several such Local Rules as part of this Plan.

❼ *The Court will retain Local Rules 33.1 and 36.1, limiting the number of Interrogatories and Requests for Admission absent agreement to a higher number by the parties or leave of court. (Recommendation No. 7)*

❽ *If Rule 26(a)(1), FRCP, is amended this Court will, at least for the present time, enact a Local Rule which provides that "Except as may be agreed by the parties or as Ordered by a Judge of this Court in a specific case, parties are not obligated to provide the initial disclosures prescribed by Rule 26(a)(1), FRCP, as effective December 1, 1993." (Recommendation No. 13)*

❾ *If Rule 26(f), FRCP, is amended, this Court will adopt a Local Rule which provides that "Parties are encouraged, but not obligated except as Ordered by a Judge of this Court, to meet and confer and prepare a joint discovery plan as prescribed by Rule 26(f), FRCP, as effective December 1, 1993." (Recommendation No. 14)*

❿ *If Rule 26(d), FRCP, is amended, this Court will adopt a Local Rule which provides that "Unless otherwise Ordered or agreed by the parties, discovery may begin at any time notwithstanding Rule 26(d), FRCP." (Recommendation No. 15)*

⓫ *The Court will retain Local Rules 37.1 and 37.2, requiring consultation before a discovery motion is filed, and certification of extrajudicial efforts to resolve the dispute to accompany the motion. (Recommendation No. 8)*

Section D. EXPEDITING MOTION PRACTICE

The Court recognizes the importance of timely motion rulings, discussed in the *Report* at pages 25 - 26, and 45 - 46, in connection with Recommendations Nos. 1 and 9. The Court has given consideration to the guidelines of litigation management for motions set forth in Section 473(a)(2)(D) of the Act.

As the Advisory Group noted, at page 25, motion cut-off dates are in most instances routinely established by judicial officers in this Court, and this need not be further addressed in the Plan. As also recognized, judicial officers often offer estimated dates when motion rulings may be expected, if such goals are relevant to the progress of a specific case. The practice of actually setting a deadline for court action on a motion was not recommended by the Advisory Group, and will not be a part of this Plan.

The Court adopts, with a small modification, Advisory Group Recommendation No. 1. While the Court acknowledges its agreement with the goal of issuing prompt motion rulings, the suggested goal of 60 days after motions are fully submitted seems to the Court a bit too tight given the complexity encountered with some summary judgment motions, and with certain other types of motions. Accordingly, the Court adopts a goal of 90 days. This is one half of the time at which public reporting of pending motions is required by Section 476(a)(1) of the Act, and if

this can be consistently achieved it will be a significant contribution to the reduction of cost and delay by the Court over and above the great progress already made in moving the motion docket noted in the *Report*. Recommendation No. 1 is also being adopted with the grammatical change from 90 days after the motion becomes "at issue" to after it "is submitted." This is not deemed by the Group or by the Court to change the intent of the Recommendation. Similarly, the Recommendation is being clarified to note that the goal of issuing rulings on dispositive motions prior to the final pretrial conference assumes that they are at issue in time to afford the Court a reasonable opportunity to consider the motion prior to the due-date of the Final Pretrial Order.

⓬ *Each judicial officer will set for himself or herself the goal of deciding Motions within 90 days after they are submitted; and the goal of issuing rulings on dispositive Motions not later than one week before the Final Pretrial Order is due to be filed by counsel, provided that the judge has had a reasonable opportunity to rule on the Motion prior to that time. (Recommendation No. 1)*

Recommendation No. 9 also addressed the motion docket. The Court has made one substantive change in adopting it. Prompted again by concerns expressed by the Staff Attorney at the Sixth Circuit, the Advisory Group considered both the wisdom of retaining Local Rule 7.1(c)(2)(B), which allows pending motions to be transferred with the consent of all parties to Magistrate Judges for decision, and the related issue of shortening the time period in that Local Rule (setting out the time at which a motion can be transferred from the docket of a District Judge to the docket of a Magistrate Judge). The Advisory Group recommended the period be reduced from 180 days to 120 days. The Court concurs with the Advisory Group that the Local Rule should be retained. It affords parties an option to consent to transfer a motion if it remains undecided for a long period because of conflicting demands on the District Judge. However, the Court does not concur that shortening the period to 120 days is worthwhile. Excessive transfer of motions may prove disruptive to the effective management of civil cases, and the dockets of Magistrate Judges are not always so open that they can more readily decide a motion than the assigned District Judge.

⓭ *Local Rule 7.1(c)(2)(B) will be retained by the Court as a means to assist in moving the motion docket, notwithstanding that it has been infrequently used in its short history. The threshold time at which parties can consent to use this procedure to transfer a motion to a Magistrate Judge will be retained at 180 days after the motion is submitted. (Recommendation No. 9)*

Section E. THE USE OF UNITED STATES MAGISTRATE JUDGES

Several Recommendations of the Advisory Group dealt with the fine group of Magistrate Judges now serving this District, and are accepted unchanged.

⓮ *Because they can readily enhance the credibility of the Magistrate Judges, the District Judges will continue to communicate with litigants and the bar about the benefits of the "consent" system of civil trials to Magistrate Judges generally, and about the strength of the Magistrate Judges in this District. (Recommendation No. 11)*

⓯ *The Court will, as resources permit, publish a pamphlet setting forth the nature of the Magistrate Judge "consent" system in a manner easily understood by both lawyers and litigants, and setting forth professional and biographical information about each of the incumbent Magistrate Judges of this Court. (Recommendation No. 12)*

Work has already been begun on the pamphlet, which will be published in 1994 using funds appropriated for CJRA activities in this Court.

Section F. TRIAL ASSIGNMENTS IN THIS COURT

Section 473(a)(2)(B) of the Act requires the Court to consider the setting of early, firm trial dates such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless the complexity of the case makes that incompatible with serving the ends of justice, or other docket responsibilities including complex criminal cases preclude such a schedule. The *Report* at page 55 reviews the trial assignment system in this District, and Recommendations 16 and 17 address this subject. The first such Recommendation is adopted unchanged as a part of this Plan. The second is modified in order to clarify the intent of this point somewhat, and in a substantive change to adopt the time goal of 18 months only for non-complex cases. Not having adopted a definitionally predetermined "Differentiated Case Management" system (consistent with the Advisory Group's Recommendation No. 5 against such a DCM program) the Court does not adopt the final portion of Recommendation 17 that "routine trial track cases" should ordinarily be reached for trial within 14 months. The goal of 14 months for "routine" cases necessarily falls within the overall goal of trial in all "non-complex" civil cases within 18 months. We leave for the further attention of each District Judge whether to schedule the civil docket in the order in which cases have been filed, or instead to vary trial assignments so as to accelerate trial in selected cases which appear to be more "routine." If the Court can achieve the resolution of all "non-complex" civil cases within 18 months after filing it will, together with litigants and the bar, have made a substantial contribution toward reducing cost and delay and facilitating access to the courts, consistent with Section 472(c)(3) of the Act.

⓰ *The Court will adopt a practice of uniformly assigning a meaningful trial date early in the progress of each civil case. (Recommendation No. 16)*

⓱ *As a goal, the Court will attempt to assure that the trial of most non-"complex" civil cases occurs within 18 months after filing. (Recommendation No. 17)*

Section G. MISCELLANEOUS

With one minor change the Court adopts Recommendation No. 18. (*Report* at 62.) The Court will schedule internal working meetings or seminars with selected other court personnel, members of the bar, and guest speakers, to examine issues of practical importance in the internal operations of this District Court. However, the Recommendation suggested such meetings be "small in-house" functions. The Court agrees with the general purpose of the Recommendation, but does not desire to suggest that attendance by members of the bar or others will be so restricted as to foster any perception of elitism. As noted in the *Report*, at 8 - 12, and at 62, this Court has a tradition of candor and open communication between the bench and the bar which, in the words of the Advisory Group, "has become well established" and "must, in our view, be nurtured."

⓲ *The Court will, subject to the limits of available funding, conduct at least every two years, a working group meeting focused upon case administration and court management topics of relevance to this District. (Recommendation No. 18)*

The Court would also call attention to the portion of the *First Report of the Advisory Group,* at pages 57 - 61, which addresses the extent to which cost and delay could be reduced by a better assessment of the impact of new legislation on the courts, pursuant to Section 472(c)(1)(D) of the Act. Because the points thoughtfully set forth by the Advisory Group in this portion of its *Report* do not address matters which can be implemented by this District Court, those suggestions are not set forth in this Plan.

ADOPTED UNANIMOUSLY BY THE COURT, EFFECTIVE THIS 30TH DAY OF NOVEMBER, 1993.

JOHN D. HOLSCHUH, CHIEF JUDGE

JAMES L. GRAHAM, JUDGE

CARL B. RUBIN, JUDGE

GEORGE C. SMITH, JUDGE

S. ARTHUR SPIEGEL, JUDGE

SANDRA S. BECKWITH, JUDGE

WALTER HERBERT RICE, JUDGE

JOSEPH P. KINNEARY, JUDGE

HERMAN J. WEBER, JUDGE

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