

**Western District of Tennessee
Report of Advisory Group
Summary--October 21,1991**

I. Assumptions; Miscellany; and Background

- A. The district is a Pilot Court. Therefore it must have a plan in place by December 31, 1991.
- B. The district held a public hearing as part of its attempts to assess the state of the docket
- C. The recommended changes detailed in the report will not effect a substantial change on the Civil Docket. Only increased resources (more Judges) and decreased federalization of crimes will make a real difference.
- D. CAD did a report on case management procedures for the district in August 1991.

II. State of the Docket

- A. Median Time of Disposition
 - 1. Civil
 - a. 1985 - 9 months
 - b. 1990 - 14 months
 - 2. Criminal
 - a. 1986 - 4.5 months
 - b. 1991 - 5.8 months
- B. Filing Trends
 - 1. 60% of all trials in 1990 were criminal as compared with only 40% in 1985.
 - 2. Pro Se prison filings are expected to rise substantially in the near future.
 - 3. Total filings in the district have not fluctuated significantly over the last five years.

4. The output of the Judges in the district has increased significantly over the same period.
5. The percentage of civil cases over three years old dropped in 1990 after several years of steady increases. The change in this trend is partially attributable to targeting older cases for disposition and the assistance of visiting judges.

C. Possible reasons for Increase in Median Time of Dispositions of Civil Cases.

1. General Causes:
 - a. Federal courts are not allotted enough Judgeships.
 - b. Vacancies remain unfilled for more than a year.
2. Criminal Causes:
 - a. Sheer number of criminal cases that are filed.
 - b. High percentage of criminal cases that go to trial because of sentencing guidelines and mandatory sentencing.
 - c. The problem of the criminal docket is especially acute in this district.
 - d. Speedy trial laws give priority to criminal cases.
 - e. If the Violent Crime Control Act is passed the problem of criminal cases squeezing out civil cases would be aggravated.
 - f. The federal courts are losing their "special mission".
 - g. The district, which already has a high incarceration rate, is scheduled to have an additional 1000 bed prison built.
3. Civil Causes:
 - a. The docketing and management of cases has remained unchanged for a number of years.
 - b. There is no internal operation procedures standardized for use throughout the court.
 - c. There is a non-centralized, non-automated system currently in place.
 - d. Lack of staff to carry out the functions of the Clerk's office.
 - e. There are no written standardized cases management procedures.
 - f. Lack of Court facilities.
 - g. There is no system for reassigning cases to account for differences in workload.
 - h. Time limits are extend as a matter of course and the clerks office does not track cases carefully

- i. Cut off dates set in discovery are routinely ignored.
- j. Discovery conferences pursuant to Rule 26(f) are rarely conducted.
- k. Very little informal discovery.
- l. There is no system for calendaring or monitoring motions.
- m. Most Judges in the district stay "aloof" from settlement conferences.
- n. Magistrates are not used to their fullest potential.
- o. Lack of courtroom space limits the usefulness of Visiting Judges.
- p. Courtroom deputies are not used to their fullest potential.

III. Recommendations

- A. Find or construct additional space.
- B. Changes in the Clerk's Office.
 - 1. Develop and reduce to writing specific procedures for all functions of the office.
 - 2. Implement ICMS as soon as possible.
 - 3. Centralize scheduling function.
 - 4. Docket clerks and Courtroom deputies should monitor cases and automatically forward routine orders which can be entered based on non-action.
 - 5. Courtroom deputies should get training and should be an integral part of the judges case management program.
 - 6. Clerk should serve as court administrator.
 - 7. Hold periodic meetings with the court Federal Public Defender, the U.S. Attorney, and U.S. Marshall.
 - 8. Track Pro Se filings.
- C. Cases Assignment should be premised on current workload trial schedules etc. with a separate rotation for complex cases.

D. Pretrial Procedures.

1. Adopt procedures which allow for the systematic, differential treatment of civil cases.
2. Early, active involvement of Judges in planning and controlling cases.
3. Allow for dismissal w/o prejudice for failure to properly prosecute.
4. All requests for continuance must be signed by attorney after communication with the party making the request.
5. Each Judge should conduct his own scheduling conference with a view towards assessing and planning the progress of the cases, setting an early firm trial date(w/in 18 months), controlling discovery, and setting a framework for motions.
6. Counsel for each party should provide a joint discovery-case management plan.
7. Cost-effective discovery(discovery etc.) should be encouraged.
8. Requests for schedule changes should be referred directly to the Courtroom deputy.
9. A motion day should be tried on an experimental basis for at least 6 months.
10. Motions taken under advisement should be carefully monitored. Motions over 6 months old should be flagged and given priority over all other civil matters.
11. Local rules should be amended to provide: all motions must be accompanied by a certification the moving party made a reasonable good faith effort to settle the dispute; a page limit on memoranda; extensions of time for good cause only; time limitations on oral argument; a ten day limitation on motions for reconsideration; and motions should be accompanied by proposed orders w/ authorities.
12. No motions for summary judgement accepted after the motion cut off date, which should be set well in advance of trial.

13. Judges should conduct periodic case management conferences.
14. Settlement conferences should be conducted as needed and must be attended by persons with authority to bind.
15. Appropriate cases should be referred to ADR.
16. Further study of ADR should be conducted.
17. Early Neutral Evaluation should be explored as part of any ADR system.
18. ADR for Pro Se cases should be explored.
19. Complex cases needed specialized procedures for monitoring and assessing the possibility of settlement.

D. Trials.

1. A trailing docket should be used along with the continuation of the accelerated docket.
2. Visiting Judges should be used on the accelerated docket.
3. A system of reassigning cases must be developed.
4. Courtroom deputies should spend less time in the courtroom and more managing cases.
5. Greater use of stipulations and elimination of unnecessary witnesses should be used to reduce the time of lengthy trials.
6. Cases should be bifurcated where appropriate.
7. Basic juror information should be gathered and disseminated to the attorneys before trial.

E. Attorneys.

1. Attorneys should educate themselves in ADR.
2. They should make every effort to use cost-effective discovery methods.

3. Consider consenting to trial by Magistrate.

F. Pro Se.

1. The Pro Se attorney should compile a handbook for pro se litigants.
2. Uniform grievance procedures should be established in all county correctional facilities.
3. Another pro se staff attorney should be requested.

G. Court-general.

1. Type-set and bind revised local rules.
2. Adopt and enforce strict sanctions against attorneys individually as well as those which apply to the case.
3. Review MBA Code of Ethics
4. Explore the possibility of a legal clinic at Memphis State.