

**PLAN FOR THE REDUCTION OF EXPENSE AND DELAY  
IN CIVIL LITIGATION**

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF ILLINOIS**

**DECEMBER 1, 1993**

**EFFECTIVE JANUARY 1, 1994**

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**I. PREFACE**

On February 27, 1991 the court appointed a committee of eleven members to conduct a study of the civil docket of this court and make recommendations to the court pursuant to the Civil Justice Reform Act of 1990, 28 U.S.C. §471, et seq. The committee has submitted a detailed report and recommendations to the court. This Plan incorporates and discusses that report.

The report found that civil cases in this district do not languish on the docket for an unreasonable time. Over 40% terminate within six months of filing, 63% within the first year and 87% within the first two years. Thus, only 13% of all civil cases are not concluded within two years of filing. Many older cases are ready for trial, but have not been tried because of other demands on the court's time.

The court concludes that there is no pressing need for major revisions of the practices in this court with regard to the management of civil cases. The court also recognizes that some areas can be handled more efficiently and that some matters discussed in the report need further study.

## **II. ADDITIONAL MAGISTRATE JUDGE**

The committee's priority recommendation is that an additional full-time magistrate judge be appointed to serve the Danville/Champaign division. The court makes this its highest priority as well. In order to cope with the current demands of the case-load of this court and to implement this Plan thoroughly, there is an immediate need for additional judicial resources. An additional full-time magistrate judge would allow more and better time to be spent on the pre-trial aspects of civil cases. More effort could be made on settlement in appropriate cases, since the magistrate judge would not be the trial judge in most cases. Cases could be more closely monitored<sup>1</sup>, discovery disputes handled more quickly and motions could be heard and decided more promptly.

In order to implement this Plan fully, an additional full-time magistrate judge in the district is essential.

## **III. SYSTEMATIC DIFFERENTIAL CASE MANAGEMENT**

The committee report concluded, and the court concurs, that this district has no particular need for a formal system of differential case management, such as "tracking" of types of cases. However, minor changes can be made in our existing system to assist in more expeditious resolution of complex civil cases, such as multi-party tort actions and civil rights cases. Most of these changes can occur at the initial pre-trial scheduling conference. The court recognizes that each case is unique and deserves individualized evaluation.

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<sup>1</sup> Especially prisoner cases.

The court accepts and adopts the committee's recommendations for improvement of systematic differential case management in toto.

At the initial pre-trial scheduling conference the court will discuss with the parties and establish the following:

1. Firm deadline for amending pleadings;
2. Firm deadline for joining additional parties;
3. A discovery calendar of deadlines which includes disclosure of expert witnesses;
4. Early resolution of initial dispositive motions;
5. A schedule for the filing of dispositive motions; and,
6. The availability of settlement assistance through settlement conference or summary trial.

The court is committed to enforce the deadlines established at the initial pre-trial conference, and will alter or extend them only on a showing of diligence by the attorneys and good cause.

#### **IV. EARLY AND ONGOING JUDICIAL INTERVENTION**

The committee report recognized that the existing case management system used by this court encourages early and ongoing judicial intervention. The court accepts and adopts the recommendations of the committee with one exception. The court rejects the recommendation that all cases be set for periodic status conferences. Such conferences should be set only when the judge determines that the conference would serve some purpose (Local Rule 2.11).

Early and ongoing judicial intervention will be implemented as follows:

1. Pretrial hearings will be set before a magistrate judge whenever practicable.
2. Hearings will be set by telephone conference whenever possible.
3. The court will continue to explore the development of video-conferencing for civil cases.
4. The court will explore the possibility of settlement at every possible stage of each case, including options for settlement conference and summary trial.
5. The judges will periodically review the pre-trial and trial procedures within each division to determine whether more uniform procedures would be appropriate.

#### **V. EARLY AND FIRM TRIAL DATES**

The committee found, and the court concurs, that setting firm trial dates is not always possible in this district due to the mandatory preference given criminal trials and to the geography of the district. Each district judge is assigned to hear both civil and criminal cases. There is no recommendation to alter that system, and the court is not inclined to tinker with the current method of assigning cases. Under the current statutory scheme, civil trials may be held only when there are no criminal cases on the docket for a given trial period. Civil trials are always liable to be "bumped" in favor of a criminal case.

With that preface, the court accepts in part and rejects in part the committee's recommendations on early and firm trial dates. The court rejects the recommendation to explore the possibility of waiving jury. With most trials there will be little, if any, time saved by having a judge rather than a jury decide the facts. In fact a bench trial may

consume more judicial time because of the need for detailed written findings of fact and conclusions of law at the close of the case.

The court also rejects the recommendation that cases ready for trial be reassigned to a judge with available time. First, it is rare that a judge in this district has available time that would not be devoted to cases within his division. Second, each judge stands ready and willing to take any trial from any division at any time. Judges now informally notify each other of open time which becomes available to try cases. There is no need for a formal procedure to reassign cases.

At the final pre-trial conference the court will explore with counsel the following:

1. The possibility of consent to trial before a magistrate judge. The magistrate judges do not have the criminal trial docket to contend with and so can give firm trial dates.
2. Establishment of a short-notice civil trial calendar, meant specifically for cases that could be ready for trial on very short notice, for example cases with only local parties or with most witnesses by deposition. This would help fill any gaps in a judge's trial calendar.

## **VI. PROCEDURES TO CONTROL DISCOVERY**

The committee found, and the court concurs, that there is no need for revision of current practices in this district to control discovery. The local rules already provide for limitation on the number of interrogatories (2.7), mandate that counsel attempt to settle discovery disputes before filing motions involving discovery (2.8), and set discovery scheduling conferences in almost every civil case (2.10).

One of the tasks of the magistrate judge who presides at the initial pre-trial scheduling conference is to evaluate the case and to direct the attorneys to conduct efficient discovery. The court recognizes that each case is unique, but the magistrate

judge can set realistic deadlines in each case that will be tailored to the specific needs and problems in that case.

However, if and when amendments to Rule 26 of the Federal Rules of Civil Procedure become effective, this court will re-examine its procedures under the amended rules.

## **VII. ALTERNATIVE DISPUTE RESOLUTION (ADR)**

This court has been using some alternative dispute resolution techniques for several years. Appropriate cases are referred, usually to a magistrate judge, for settlement conference or for summary trial. These techniques have proven useful and successful in settling cases before trial, often soon after the case is filed. In view of attorney responses to the committee's questionnaire indicating that more judicial emphasis should be placed on settlement, the court will explore within the next twelve months ways to encourage the use of settlement conferences in more cases.

The court finds that the need for any other techniques, neutral evaluation or court annexed arbitration for example, has not been established at this time.

The court therefore rejects the committee's recommendations as to ADR. The committee suggested the appointment of a sub-committee to study and develop a voluntary ADR program in the district, and to request from the Administrative Office an additional position in the clerk's office to coordinate ADR. The court finds these recommendations are premature. The court requests the advisory committee to study the matter further and to report back to the court on the availability of local resources to implement such a program.

## **VIII. CONTROL OF MOTION PRACTICE**

The committee reports that there is no evidence that the court is unreasonably slow in ruling on pending motions or that motion practice is abused by the bar in general. The court recognizes that each judge has a preferred method of dealing with pending motions, and in the absence of evidence of back-logged motions or gross inefficiencies, chooses not to require the use of one method rather than another. Therefore, the court rejects the committee's recommendation that motions should not routinely be set for hearing. Each judge should determine whether any motion on his docket should or should not be set. The court accepts and adopts the remaining recommendations.

The following procedures will be implemented:

1. The court sets a goal of ruling on all pending motions within 60 days of being at issue.
2. All discovery motions or miscellaneous non-dispositive motions will be ruled on as soon as possible, with or without a hearing.
3. All of the judges will entertain emergency oral discovery motions by telephone.
4. Generally, summary judgment motions will be heard and decided by the district judges in the first instance and not by the magistrate judges by report and recommendation.

## **IX. RECOMMENDATIONS TO CONGRESS**

The court heartily concurs with and adopts the committee's recommendations to Congress in toto.

1. The Administration and the Congress should strive to fill all judicial vacancies expeditiously.
2. Congress should consider a broader mandate for Legal Services Corporation and should consider ways to provide for legal services to a broader range of indigent litigants throughout the federal court system.

3. Any new legislation which creates or expands federal civil jurisdiction should be specific in describing the gravamen of any cause of action created and the remedies contemplated. It should also address with clarity the procedures which apply, including the right to jury trial, statutes of limitation, retroactive application and the relationship, if any, to other legislation.
4. Congress should consider the impact on the district courts of the continuing federalization of the criminal law. As more federal crimes are created, additional court staff and judges should be authorized and funded. The failure to do so will inevitably result in unacceptable delay in the handling of civil cases in the federal courts.
5. Congress should consider making the provisions of 42 U.S.C. §1997e mandatory, requiring states to develop formal administrative review procedures for complaints from state prisoners regarding conditions of confinement.
6. Congress should assure that the district courts are fully staffed and funded. Adequate funding for support personnel such as magistrate judges, staff attorneys, additional law clerks, additional clerk staff and automation will have a greater impact on case management and delay reduction than will appointing additional district judges. Essential functions such as juries should be funded without a cap.

## **X. OTHER RECOMMENDATIONS**

The court is advised that all of the committee's recommendations concerning the docketing system, CIVIL, have been implemented by the Systems Manager within the clerk's office.

The court adopts the recommendation to increase access to the system for indigent civil litigants by encouraging the bar of this court to participate in pro bono representation when requested by the court. To that end:

1. The court will develop and maintain a pro bono panel of attorneys pursuant to Local Rule 1.2(H).
2. The court will investigate the implementation of other programs, through available law schools or local bar associations, that will increase the number of available attorneys and will enhance the skills and performance level of attorneys who practice before this court.

## **XI. IMPLEMENTATION OF THE PLAN**

The provisions of this Plan will become effective January 1, 1994. The Advisory Committee will review the docket and this plan on an annual basis and will report back to this court no later than December 1, 1994, and December 1 of each successive year, on its assessment of the docket and recommendations for additional methods for the reduction of cost and delay.

The court will submit to the Committee on Local Rules the following changes to the Local Rules for this district:

1. **AMEND Rule 2.10: (additions underlined)**

(D) The parties and their counsel are bound by the dates specified in the scheduling order absent a finding of diligence by the attorneys and good cause for changing said dates.

(NEW) (E) The scheduling order shall contain deadlines for the following:

- (1) Amendment of pleadings;
- (2) Joining additional parties;
- (3) Disclosure of expert witnesses;
- (4) Completion of discovery;
- (5) Filing of dispositive motions.

2. **AMEND Rule 2.11:**

(NEW) (E)(5)(g) The possibility of trying the case on short notice. If the parties agree, the case will be put on a short-notice calendar and may be called for trial on less than one-week's notice.

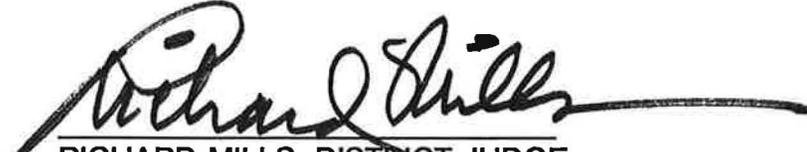
3. **AMEND Rule 2.8:**

(NEW) (B) At the discretion of the presiding judge, the court will entertain emergency oral motions involving discovery. These motions will be heard by telephone conference.

SO ORDERED, this 24th day of November, 1993.

  
MICHAEL M. MIHAM, CHIEF DISTRICT JUDGE

  
HAROLD A. BAKER, DISTRICT JUDGE

  
RICHARD MILLS, DISTRICT JUDGE

  
JOE B. McDADE, DISTRICT JUDGE