

FJC Review of CJRA Reports and Plans
Prepared for the Judicial Conference Committee on
Court Administration and Case Management

(A) Lack of
uniformity
of judges

(B) More atten
to costs

District: Northern District of Illinois

Date: January 11, 1994

The district is one of the largest and is authorized twenty-two judgeships, three of which are vacant. The district has seven senior judges, who together carry the equivalent of a single judge's caseload, and nine magistrate judges.

Summary of Conditions in the District

To analyze the conditions in the district, the advisory group reviewed local and national statistics, as well as case law and literature on civil justice reform. The group also interviewed judicial officers and surveyed lawyers in a random sample of cases terminated in 1991. After publishing the preliminary report, the group invited written and oral comments and held a day of public hearings.

The analysis of the caseload statistics showed a court that has historically had a high level of weighty cases but that has consistently maintained a healthy condition.

- Until the recent time study provided new case weights, the district had one of the country's weightiest caseloads.
- The court has been among the fastest courts for six years, with an SY92 median filing to disposition time of four months (3rd rank nationally). However, it takes longer than average to dispose of the 2-3% of cases that actually go to trial.
- In SY92, less than 6% of the docket was over three years old.
- Civil rights cases make up the greatest single category of the civil docket and are often the most time-consuming. They are less likely to settle and make up half the jury trials conducted in the last five years.
- In SY92, pending criminal cases increased substantially and the median disposition time went up to eight months, the highest in seven years and well above the national average. This was due to a number of multi-defendant and multi-count "megatrials".

In its interviews with the judicial officers, the advisory group found that all agreed that their ability to attend properly to their civil cases has been adversely affected by the ever-increasing demand of the criminal calendar. The judges also identified discovery as a problem in civil litigation.

The attorney survey showed that 21% thought there had been unreasonable delay in their cases and 16% thought the cost had been unreasonable. Both problems were attributed to the same causes: (1) attorney misconduct, primarily failure to resolve issues without court intervention and lack of professional courtesy; (2) judicial inefficiencies, primarily failure to rule on dispositive motions and other motions; and (3) excessive discovery (more often cited for excessive cost than unreasonable delay).

Based on all its inquiries, the advisory group concluded that the principal causes of cost and delay are the following:

- difficult and time-consuming nature of the civil cases filed;
- court resources and number of cases per judgeship;
- criminal caseload;
- conduct of attorneys;
- excessive use of discovery; and
- undecided motions and untried cases.

It then developed a set of recommendations addressed to these problems and to the suggestions of §§ 473(a)(b).

Summary of the Court's Plan

In response, the court adopted nearly every recommendation made by the advisory group. Both the court and the advisory group were mindful throughout the process of the court's long-standing culture of firm case management and of the risk of increasing rather than decreasing costs by ill considered change.

Case Management

1. **Differentiated Case Management.** The court agreed with the advisory group that its current system of exempting classes of cases from the pretrial requirements of FRCP 16, its specialized procedures for prisoner litigation, and the individual treatment given to cases constitute differentiated case management.

2. **Early, On-going Judicial Involvement.** Anticipating amendment of FRCP 16, the court proposed that the Standing Order Establishing Pretrial Procedure be amended to start judicial supervision 60 days after the defendant's appearance and within 90 days of the service of complaint (instead of 120 days after filing). The court noted that this was 30 days less than the limits FRCP 16 sets on entry of a scheduling order. The court also said that its procedures clearly intend for the judge to hold ongoing status hearings to monitor discovery and the pretrial process.

3. **Setting Trial Dates.** Recognizing that a number of factors obviate any mechanical approach to setting trial dates, the court urged its members to set firm trial dates as early as practicable and if possible within 18 months of filing.

4. **Motions.** To address the bar's confusion about judges' motions requirements and to remove the implication that the court's practices are uniform, the court will amend the local rules to state that the judges have varying requirements for motions. To assist the bar, the clerk will maintain a current list of each judge's practices.

The court agreed with the advisory group's recommendation that attorneys be able to seek information anonymously about the status of undecided motions and bench trials. The court will amend a local rule to develop a procedure for parties to anonymously obtain information from the clerk's office. The court also agreed that as often as possible, as has been the case in the past, the court will issue oral rulings on motions and bench trials.

The court agreed with the advisory group that magistrate judges should be authorized to make final decisions on dispositive motions with party consent. Thus, the court will amend a local rule to provide this authority.

5. **Complex Cases.** The statute gives particular attention to management of complex cases. In this court, the Standing Order already urges settlement discussions and requires counsel to have authority to settle, and it provides for a joint written discovery plan. The court's final pretrial order provides for bifurcation at trial. In addition, the court will amend a local rule to provide three additional options for the management of complex cases. (1) In appropriate cases, the judge should set a timetable for filing motions. (2) Judges and litigants should use the Manual for Complex Litigation 2d as a guide. (3) Judges should order phased discovery in appropriate cases.

6. **Presence of Authority to Bind.** The court will amend the Standing Order to require that when a party cannot attend the final pretrial conference, counsel will make sure the client can be contacted (with exceptions for the government if necessary). The Standing Order will also be amended to permit the judge to require representatives with authority to bind to be present or available by telephone during any settlement conferences.

7. **Special Masters.** The court said it was already aware of the benefits of using special masters for complicated cases with technical areas the judicial officer is unfamiliar with, or for continuing, contentious discovery disputes. The court has used specialists for the former and magistrate judges for the latter.

8. **Final Pretrial.** In agreement with the advisory group, the court will amend the Standing Order to eliminate the requirement for a face-to-face final pretrial conference and to encourage, but not require, stipulations to uncontested facts and contested issues of fact and law. Instead of accepting the advisory group's recommendation that all judges use the standard pretrial form, the court will amend the Standing Order to state that judges vary in their forms and procedures and that counsel may contact the judge's minute clerk for copies of any standing orders.

Discovery and Disclosure

The court said it is a proper function of the court to monitor discovery and, after consultation with counsel, to set reasonable time limits. The current Standing Order provides a framework for such. The plan also includes the following:

1. **Voluntary Exchange.** The court encourages the voluntary exchange of materials and other cooperative discovery devices. FRCP 26(f) and the court's Standing Order require parties to prepare a joint written discovery plan. In response to advisory group concerns that preparation of the joint plan can be costly when counsel cannot agree, the court will revise the Standing Order to permit multiple submissions instead of a joint plan and to provide judicial assistance in resolving impasses. If FRCP 26(f) is amended, the court will not revise its local rule but will continue to require a written discovery plan only when ordered by the judge (rather than routinely).

2. **Certification.** A current local rule allows the court to refuse to hear any motion for discovery or production of documents not accompanied by a statement that counsel were unable to resolve the dispute (with details of a meeting or why one did not occur).

3. **Discovery Costs.** The court agreed that judges and litigants should consider cost in planning and ruling on discovery. In response to the advisory group's recommendation that if the court permits broadened discovery it should shift costs when the additional discovery proves unnecessary or particularly burdensome, the court said that it would solicit judges' experiences with this practice in the annual review of the plan's operation.

4. **Depositions.** The court agreed with the advisory group's recommendation that guidelines should be set for deposition conduct and authorized the chief judge to form a committee of attorneys with federal practice experience to develop such guidelines. As part of the guidelines, the committee should consider the issue of the availability of a judicial officer to resolve disputes.
5. **Expert Disclosure.** The advisory group recommended automatic disclosure of experts' qualifications prior to the final pretrial conference. The court said the current final pretrial order requires stipulation or statement of each experts' qualifications and thus amendment is unnecessary.
6. **Mandatory Pre-Discovery Disclosure.** The court did not agree with the advisory group's recommendation that the court opt out of amended FRCP 26(a)(1). Rather, if the rule goes into effect, the court will amend the Standing Order to permit judges to apply the requirements of Rule 26(a)(1) as appropriate, which will be determined on a case-by-case basis at the initial pretrial conference.

Alternative Dispute Resolution

1. **General Approach.** The court encourages the use of ADR and will arrange for judges to receive education in ADR. However, the court agreed with the advisory group that, before implementing a formal district-wide program, it should await the results of the CJRA's ADR experiments.
2. **Early Neutral Evaluation.** The court encourages a neutral evaluation program, but, in the absence of funds and additional staff, it would have to be a small program. Thus the court agrees with the group and will await the results of other courts' CJRA ADR program experiences.
3. **Settlement Conferences.** The court agreed with the group that it should make explicit the authority of judges to offer settlement discussions, and therefore the court will amend the Standing Order to allow judges to offer to preside over settlement talks early in a case. In a bench trial, the preferred method will be, as has been the practice in the past, to send the case to another judicial officer for such discussions. The amended rule will serve to notify parties of the likelihood of judicial presence at settlement discussions.
4. **Summary Jury Trial and Minitrial.** The court agreed that summary jury trials and minitrials are useful in a limited number of cases. Thus, in complex cases where very long trials are expected and more traditional settlement techniques have failed, judges and litigants should consider summary jury trials. In commercial cases with large amounts in controversy, they should consider mini-trials.
5. **ADR Information and Education.** The court agreed with the advisory group on the need for an ADR pamphlet and authorized the chief judge to establish a panel of attorneys to prepare one.

Other

1. **Pro Se Litigation.** The court agreed that prisoner litigation staff attorneys should hold settlement conferences, via telephone, in appropriate prisoner cases. However, the court said it would have to wait for more staff law clerks. The court also agreed with the need to provide assistance to pro se Title VII litigants and said the Advisory Committee on Local Rules has almost finished revisions to the complaint forms for pro se Title VII plaintiffs.

2. **Attorneys' Fees.** The court agreed with the group that standards are needed for preparation of fee petitions and authorized the chief judge to create a committee to draft uniform fee petition standards. The standards, which will be incorporated into a local rule, will take into account revisions to FRCP 54(d)(2).

3. **Other.** The court also responded to a number of other recommendations, agreeing to seek more magistrate judges, declining to ask for more district judges (because the new weighted caseload doesn't justify it), agreeing that new facilities are needed in one division, and disagreeing that a special calendar should be established for mortgage foreclosures (because they take little judicial time).

Implementation

The plan was adopted by the full court in Executive Session on November 15, 1993. It will be implemented through local rules or the Standing Order. The clerk will also make the CJRA plan readily available, even though implementation of its provisions will not, because of the rule revisions, rely on its availability.

The court asked the advisory group to review the docket on December 31, 1994 and to file a report with the court by March 27, 1995, making suggestions or observations that would assist the court in carrying out its duties under § 475.

Consideration of §§ 473(a) and (b)

The court used the structure of §§ 473(a) and (b) to set out the provisions of the plan and adopted nearly every case management principle and technique. The court, along with the advisory group, rejected the suggestion that both counsel and client sign requests for extension of discovery deadlines or trial dates and postponed consideration of ENE until other courts have had more experience.

Comments

The advisory group conducted a thorough analysis of the district and found it to be in very good condition. For the problems it did identify, it prepared focused recommendations for change, many involving amendments to local rules. The court responded with a comprehensive plan that addressed every advisory group recommendation and every requirement of the statute. Most recommendations were adopted and reasons were given when one was rejected or modified.

Historically, the court has been an innovator in case management and has established a culture of firm judicial control. To its current practices it will add several new ones that address current problems, such as a joint motions calendar to provide prompt resolution of motions and a joint trial calendar to provide earlier trials. To address attorney misconduct, particularly in discovery, the court will continue its practice of judicial involvement in planning discovery and will also work with the bar to establish guidelines for conducting depositions.

Conclusion and Recommendation

I see no need to ask this court to take additional actions, and I recommend acceptance of this plan.

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