UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS

CIVIL JUSTICE
EXPENSE AND DELAY REDUCTION PLAN

EFFECTIVE JANUARY 1, 1994

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WESTERN DISTRICT OF ARKANSAS

CIVIL JUSTICE REFORM ACT PLAN

I.

INTRODUCTION

In 1990 the Congress enacted into law the Civil Justice Reform Act.[1] The Act requires, pursuant to Section 471, that each United States District Court implement a civil justice expense and delay reduction plan.

According to the Act, "the purposes of each plan are to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy and inexpensive resolutions of civil disputes". The Act also mandates that the district courts "shall consider and may include the following principles and guidelines of litigation management and cost and delay reduction" in its civil justice expense and delay reduction plan. Summarized below are the principles enumerated in Section 473(a) of the Act. The full text of the Act is included in Appendix A.

1. Systematic, differential treatment of civil cases that tailor case specific management to specified criteria;

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[1]Title I of the Judicial Improvements Act of 1990, Pub.L.No. 101-650(1990) codified at 28 U.S.C. Section 471-482.

2. Early and ongoing control of the pretrial process by the involvement of a judicial officer;

3. Special attention to complex cases, with use of discovery management conferences and other settlement techniques;

4. Encouragement of cost-effective discovery through voluntary exchange of information;

5. Prohibiting consideration of discovery motions unless counsel have made good faith effort to resolve discovery dispute;

6. Utilization of alternative dispute resolution programs.

Additionally, the Act requires that each district court shall consider and may include in its plan the following litigation management and cost and delay reduction techniques. Summarized below are the litigation techniques enumerated in Section 473(b) of the Act. The full text of the Act is included in Appendix A.

1. Requirement that a discovery-case management plan be presented at initial pretrial conference;

2. Requirement that at pretrial conferences all parties be represented by an attorney with authority to bind the party in all matters;

3. Requirement that all requests for extensions and continuances be signed by the attorney and party making the request;

4. Requirement that neutral evaluation programs be established;

5. Requirement that at settlement conferences parties should be present with authority to bind in settlement discussions.

The court, as required by the Act, specifically Sections 472(a) and 473(a) and (b), has consulted with the Advisory Group, has considered the recommendations of the group, and has considered all of the principles, guidelines and techniques set forth in the above Sections 473(a) and (b). Accordingly, the United States District Court for the Western District of Arkansas adopts the following Civil Justice Expense and Delay Reduction Plan and directs that it be implemented January 1, 1994. The Plan shall apply to all civil cases filed on or after that date and may, at the discretion of the court, apply to cases then pending.

Adoption of the court's Plan is a culmination of over two years' efforts by the advisory group. The Court is deeply grateful to the members of the advisory group who have contributed their time and efforts to this process. For this the court extends its sincere thanks and appreciation.

II.

CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

The United States District Court for the Western District of Arkansas unanimously adopts the following expense and delay reduction plan and shall implement the plan effective January 1, 1994.

A. Systematic, Differential Treatment of Civil Cases for Purposes of Case-Specific Management[2]

The Advisory Group recommended to the court that a Differentiated Case Management Program be established in the Western District. (See Appendix B.) This would be limited to "complex" cases. The Court, after careful consideration of the recommendation, respectfully disagrees that a DCM program be established. The Court believes that only a relatively few cases filed in this district would qualify as complex. Thus, it seems unlikely that there would be sufficient justification to warrant the procedural changes necessary to administer such a program. The Court will, however, on an experimental basis, be willing to adopt an element of the DCM program: the case management or scheduling conference. The Court agrees that in certain cases, those generally having "complex" characteristics, e.g. numerous and possible unique legal issues, extensive discovery and greater than usual number of expert witnesses, large number of parties and extended trial days, the scheduling conference would be a useful case management tool.

The ultimate discretion for determining whether a case would benefit from a scheduling conference rests with the Court. In such cases a scheduling conference shall be scheduled by the presiding judge within thirty (30) days after the appearance of the defendant or from the date of the last responsive pleading. The conference may be

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[2]28 U.S.C. Section 473(a)(1)

conducted either telephonically or with counsel in person. Prior to the conference the attorneys shall confer and develop a proposed scheduling plan. The plan shall be submitted to the court seven (7) days prior to the scheduling conference. Within seven (7) days after the scheduling conference, a scheduling order shall be prepared and entered by the Court. The order shall establish the following key intervals:

1. Disclosure of witnesses, including experts;
2. Discovery cut-off date;
3. Amendment of pleadings and joinder of parties;
4. Trial date and estimated length of trial;
5. Settlement conference date, if directed by Court;
6. Pretrial conference date, if deemed necessary by Court.

The scheduling conference may also serve as an opportunity to discuss the appropriateness of consenting to a magistrate judge. Additionally, the conference may serve as a means to discuss other matters relevant to a just determination of the action.

B. Early and Ongoing Control of the Pretrial Process Through Involvement of a Judicial Officer[3]

The Advisory Group did not make a specific recommendation for this principle.

The Court, after careful consideration of the principles outlined in 28 U.S.C. §473(a)(2)(A)(B)(C)(D) of the Act, declines to make any specific changes to the case management policies and procedures of this court. The one exception, however, is the

[3]28 U.S.C. §473(a)(2)

scheduling conference procedure set out in Section A of the Plan herein. The Court believes that the present case management policies and procedures employed in this district are sound, are successful, and adhere to the principles outlined in §473(a)(2) of the Act. This is evidenced by this district's past and present circuit and national workload rankings.

C. Special Treatment of Complex Cases[4]

The Advisory Group recommended to the Court (Appendix B) that deference be granted to "complex" cases by way of a Differentiated Case Management Program. (Section A of Plan.) The Court, as outlined in Section A, declines to establish such a program, but does adopt a policy whereby scheduling conferences may be held in complex cases.

D. Encouragement of Cost-Effective Discovery Through Voluntary Exchange of Information[5]

The Advisory Group recommended to the Court (Appendix B) that the Court "refrain from making any substantive changes to discovery procedure until after the proposed amendments to the Federal Rules of Civil Procedure are approved, modified,

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[4]28 U.S.C. §473(a)(3)

[5]28 U.S.C. §473(a)(4)

or rejected by the United States Congress". Further, the Advisory Group recommended that in the event the proposed rule changes are adopted, the Court have sufficient experience under the new discovery rules before examining the district discovery procedures.

The Court, after careful consideration of the Advisory Group's recommendations and the principles outlined in §473(a)(4) of the Act, agrees with the Advisory Group and declines to adopt any substantive changes to this district's discovery procedures until after the proposals are approved by the Congress and after sufficient experience under the approved rules.

E. Reasonable and Good Faith Efforts of Parties to Resolve Discovery Disputes[6]

The Advisory Group recommended to the Court (See Appendix B) that the "court continue to be sensitive to discovery disputes (including disputes as to the reasonableness of hourly rates charged by expert witnesses for giving discovery depositions) and establish, if necessary, a means whereby disputes could be reasonably resolved during or after business hours". The Advisory Group recognized that nationwide discovery costs, in large part, are a major contributor to the overall cost of litigation. The Advisory Group recognized that this problem exists in this district, but not significantly.

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[6]28 U.S.C. §473(a)(5)

The Court, after careful consideration of the Advisory Group's recommendation and the principle set out in §473(a)(5), declines to establish any new procedures and policies which would address issues of discovery disputes. The Court believes that at this time Local Rule C-7(f)(g) **Motions** contains sufficient authority for the Court to enforce and resolve discovery disputes in this district. (See Appendix C.) Local Rule C-7 requires a moving party to file a statement that the parties have conferred in good faith and that they are unable to resolve their disagreement without court intervention. Further, the Court reaffirms its commitment to the bar and litigants of its sensitivity to discovery disputes, and, in particular, to the issue of the high cost of deposing expert witnesses.

F. Alternative Dispute Resolution[7]

The Advisory Group recommended to the Court that ADR programs not be established in this district. (See Appendix B.) The Advisory Group did recommend, however, that the Court should identify ADR resources in the district or adjacent districts, and make available, if requested, sufficient time to explore ADR options.

The Court, after careful consideration of the recommendations of the Advisory Group, the ADR options enumerated in §473(a)(6)(B) of the Act, and a review of existing ADR programs in place in state and federal courts, concurs with the recommendation and

[7] 28 U.S.C. §473(a)(6)

declines to establish court-annexed ADR programs in the Western District of Arkansas. The Court, will, as recommended by the Advisory Group, prepare a pamphlet listing the various ADR resources and options available in this district and in adjoining districts.

III.

CJRA LITIGATION MANAGEMENT AND COST AND DELAY REDUCTION TECHNIQUES AND OTHER APPROPRIATE MATTERS[8]

Section 473(b) of the Act requires each district court, in consultation with its Advisory Group, to consider certain techniques of litigation management and cost and delay reduction. These techniques are as follows:

A. Joint Discovery-Case Management Plan[9]

The Court, after careful consideration of this technique, declines to adopt any new procedures or rules to address this issue. The Court believes that our present case management procedures and policies are sound. Additional requirements to the parties would only increase costs and would be counterproductive.

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[8]28 U.S.C. §473(b)

[9]28 U.S.C. §473(b)(1)

B. Pretrial Conferences Attended by Attorneys With Authority to Bind[10]

The Court, after careful consideration of this technique, declines to adopt or amend our local rule which would explicitly require counsel attending pretrial conferences to have binding authority. The Court believes that Local Rule D-4 **Pretrial Conference**, which requires trial counsel to attend all pretrial conferences, is satisfactory in its present form.

C. Requirement That Extensions of Time be Signed by Attorney and Party[11]

The Court, after careful consideration of this technique, declines to adopt such a requirement. The proposal, on its face, has merit. Nevertheless, taking into account the geographics of the Western District of Arkansas, and the fact that parties are not always available for signature, it would seem that the potential costs in dollars and lost time far exceeds the benefit.

D. Early Neutral Evaluation[12]

The Court, after careful consideration of this technique, declines to establish such a program in this district. Early neutral evaluation as an ADR option was considered by

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[10]28 U.S.C. §473(b)(2)

[11]28 U.S.C. §473(b)(3)

[12]28 U.S.C. §473(b)(4)

the Court along with other ADR techniques. The Court believes that Early Neutral Evaluation has some usefulness and would benefit certain courts. The Court believes, however, that the Western District's geographics and limited pool of expert attorney evaluators would call into question the practicality of such a program, and further the cost in resources and time.

E. Representative of Party With Authority to Bind to be Present During Settlement Conferences[13]

This Court, by means of the settlement conference scheduling order (See Appendix D), requires that at each settlement conference an individual be present who has binding authority to settle that action. This shall continue to be a requirement in the Western District of Arkansas.

F. Other Appropriate Matters for Consideration[14]

An area of concern identified by the Advisory Group concerned the failure of the Court to promptly act on dispositive motions, particularly motions for summary judgement. (See Appendix B.) The Advisory Group recommended "that the Court examine its current

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[13]28 U.S.C. §473(b)(5)

[14]28 U.S.C. §473(b)(6)

methods for processing these motions and employ its best efforts to promptly dispose of those motions".

The Court, after consideration of this recommendation and criticism, disagrees with the underlying premise. The Court does acknowledge, nevertheless, that an internal review of its dispositive motion procedures may prove useful. Accordingly, the Court agrees to internally review and examine its present methods and procedures for processing such motions, and further, increase court sensitivity to the prompt handling of dispositive motions.

IV.

PERIODIC DISTRICT COURT ASSESSMENT[15]

Section 475 of the Civil Justice Reform Act requires an annual assessment of the condition of the Civil and Criminal docket to determine appropriate actions that will reduce cost and delay in civil litigation and that will improve the litigation management practice of the Court.

To meet the requirements of Section 475 of the Act, the Court, through the district clerk's office, shall on a yearly basis, complete an assessment of the work of the Court. The assessment shall include an analysis of all statistical data - civil and criminal, a survey

[15]28 U.S.C. §475

of attorneys, litigants and court staff, and an internal review of the case management policies and procedures of the Court.

The results of the yearly assessment shall be transmitted to the Advisory Group for comment and/or action. The Advisory Group may, on the basis of the results, offer suggestions for improvement and other appropriate actions that will improve the litigation management practices of the Court.