
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA

CIVIL JUSTICE REFORM ACT

EXPENSE AND DELAY REDUCTION PLAN

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF IOWA

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I. INTRODUCTION

In 1990, the United States Congress enacted the Civil Justice Reform Act. 28 U.S.C. §§ 471-482. Pursuant to that Act:

> There shall be implemented by each United States district court, in accordance with this chapter, a civil justice expense and delay reduction plan. The plan may be a plan developed by such district court or a model plan developed by the Judicial Conference of the United States. The purposes of each plan are to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure justice, speedy, and inexpensive resolutions of civil disputes.

28 U.S.C. § 471.

The Act requires each district court to appoint an advisory group of attorneys and other persons who are representative of major categories of litigants in this court. The judges of this district consulted and chose an advisory group of 16 members (plus ex-officio members) which met the requirement of balance among major categories of litigants.

The Civil Justice Reform Act Advisory Group met on three occasions in 1991 to assess the condition of the docket, identify trends in case filings and demands on the court's resources, identify the principal causes of cost and delay in civil litigation, and to examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts. See 28 U.S.C. § 472(c)(1). The Advisory Group submitted to the court a report on December 30, 1991

in which it provided its assessment of the docket and made numerous recommendations for reducing delay in handling civil case. See 28 U.S.C. § 472(b).

The court notes at the outset its appreciation for the work of the Civil Justice Reform Act Advisory Group. It is obvious from the report itself and attendance at the group's meetings that a very serious study was made of the court's docket and helpful recommendations were made by the group. The court has decided that it will adopt the vast majority of the group's recommendations. The group's report is found as Appendix A to this Plan.

II. DESCRIPTION OF THE COURT

The Northern District of Iowa has five divisions.

1. The Western Division consists of fourteen counties in northwest Iowa with a federal courthouse in Sioux City, Iowa.

2. The Central Division consists of fifteen counties in north central Iowa. It has a federal courthouse in Fort Dodge, Iowa.

3. The Waterloo Division consists of eleven counties in northeast Iowa and has no federal courthouse.

4. The Dubuque Division consists of four counties bordering the Mississippi River. There is a federal courthouse in Dubuque that is technically closed. However, trials and conferences are still conducted in that court on an infrequent basis.

5. The Cedar Rapids Division consists of eight counties south of the other eastern divisions. There is a federal courthouse in Cedar Rapids that houses the court, probation office, the clerk of court, and other federal agencies.

The United States Attorney has its main office for the Northern District of Iowa in Cedar Rapids. Satellite offices of the clerk of court, probation office, and United States Attorney are maintained in Sioux City, Iowa.

There are two district court judgeships authorized for the Northern District of Iowa. The Chief Judge of the District is the Honorable Michael J. Melloy who resides in Cedar Rapids, Iowa. The other position is presently vacant by reason of the taking of senior status by the Honorable Donald E. O'Brien. The District is served by two senior judges, the Honorable Donald E. O'Brien and the Honorable Edward J. McManus. There is one full-time Magistrate Judge in the Northern District of Iowa. This position is filled by Chief Magistrate Judge John A. Jarvey. A part-time Magistrate Judge position exists in Sioux City, Iowa. This position is filled by the Honorable Paul W. Deck, Jr.

III. ASSESSMENT OF CIVIL LITIGATION IN THE NORTHERN DISTRICT OF IOWA

A. ASSESSMENT OF THE DOCKET

As of September 1, 1993, 829 cases were pending in the Northern District of Iowa, of which 118 were criminal cases. This is approximately 100 more cases pending in the district than when the Civil Justice Reform Act Advisory Group studied the docket in 1991. However, the condition of the docket has improved in that

the court has dramatically reduced the number of three-year-old cases.

The court is again operating without the full compliment of authorized judgeships. The court awaits the appointment and confirmation of Judge O'Brien's successor. The court envisions that upon the filling of this vacancy, the court will make dramatic progress in reducing delay in civil litigation.

B. COST AND DELAY

The Civil Justice Reform Act Advisory Group did not determine that there is excessive cost in civil litigation in this District. The Group generally agreed that there are some aspects of civil litigation, notably expert witness fees, that have become exceedingly expensive in recent years. However, the Advisory Group did not attempt to measure the cost of litigation. It was the consensus of the Group that the cost of litigation, while high everywhere, is not excessive in this District.

The Advisory Group found that there is excessive delay in litigation in this District. Citing the age of the average civil cases that went to trial in 1990, the number of three-year-old cases pending and the delay between the completion of discovery and the date of trial, the Group found that there was excessive delay.

The Advisory Group also identified sources of delay in civil litigation. The size of the criminal docket and the priority given to criminal cases were identified as the principal sources of delay for civil litigation. The Advisory Group also listed several other

factors which contributed to delay such as state court trial calendaring procedures, the delay in filling judicial vacancies, and the passage of legislation which increased the work load of the federal court. The Advisory Group also found that several internal practices of the court contributed to delay in civil litigation -- specifically, the practice of delaying the setting of trials until the time of the final pretrial conference, the delay in resolving pretrial motions, and the local rule allowing the parties to file a scheduling report as much as 120 days after the filing of the complaint.

IV. ADVISORY GROUP RECOMMENDATIONS

The Advisory Group made eleven recommendations in its report. See Report at III. The court addresses each of these recommendations.

The first recommendation was that the United States District Court for the Northern District of Iowa should adopt a local rule or enter an administrative order giving authority to the Clerk of Court to rule on ministerial motions that are unresisted. The court has examined the ten motions that the Group recommended be ruled upon by the Clerk if unresisted. The court adopts this recommendation and will enter an administrative order giving authority to the Clerk to rule on the motions identified in the Report at ¶¶ a-h and j with the exception that the Clerk shall have authority to allow no more than ten additional pages for briefs.

The second recommendation was that the responsibility for scheduling hearings and trials and for rescheduling hearings and trials be transferred from the Magistrate Judge to the Clerk of Court. This recommendation is adopted and, commencing January 1, 1994, the Clerk of Court shall have responsibility for setting all trial dates in civil cases at a time, to the extent possible, convenient to both the court and counsel. Criminal trials shall be set at arraignment. Upon a continuance, the Clerk shall reset the trial taking into consideration the demands of the Speedy Trial Act and the convenience of the court, counsel, and the parties. The Clerk of Court is to be guided by the objective of the Civil Justice Reform Act that civil cases should be tried, to the extent possible, within eighteen months of the filing of the complaint. Further, as noted in the third recommendation of the Advisory Group, the trial date should be set, to the extent possible, within sixty days following the final pretrial conference and ninety days following the completion of discovery.

The fourth recommendation of the Advisory Group was that dispositive and other motions that can be resolved by the district court without the need for a hearing should not be routinely referred to the Magistrate Judge for the issuance of a report and recommendation but should be referred only on a case-by-case basis. The Group further noted that the practice of referring applications for injunctive relief and criminal motions to suppress or dismiss should be continued. The court adopts this recommendation and will

enter an administrative order setting aside Administrative Order Number 877 which automatically refers motions to dismiss for lack of personal jurisdiction to the United States Magistrate Judge for the issuance of a report and recommendation. Such motions shall be referred in the future on a case-by-case basis.

The fifth recommendation of the Committee was that court-supervised settlement conferences should be routinely set in all complex cases at the completion of discovery, whether or not requested by the parties. This recommendation is adopted and has been implemented.

The Advisory Group recommended that the court conduct a discovery scheduling conference early in the discovery period for each complex case. At this conference, the court should develop with the parties a comprehensive plan for discovery and encourage the parties to voluntarily exchange information without resort to formal discovery procedures. Action on this recommendation is deferred pending action on the proposed change to Fed. R. Civ. P. 26(f).

In its seventh recommendation, the Advisory Group recommended that the court place mandatory limitations on the amount of discovery that can be conducted in non-complex cases. The court defers action on this recommendation pending a determination on December 1, 1993, as to whether the proposed change to Fed. R. Civ. P. 30 takes effect. The court notes that the recommendation of the Advisory Group to limit depositions to ten per side shall be

specifically incorporated into Fed. R. Civ. P. 30 in the event that the Congress does not act to alter this proposed rule change.

The eighth recommendation of the Advisory Group was that the court should adopt a local rule governing the identification of documents withheld by any party on a claim of privilege. Again, the court defers action on this recommendation pending the proposed amendment to Fed. R. Civ. P. 26(b)(5).

The ninth recommendation of the Advisory Group was that the court should make every effort to rule on all motions within 120 days after the filing of those motions. The court adopts this recommendation and sets this goal for itself.

The tenth recommendation of the Advisory Group is not addressed to the court but to the President, the Congress, and the American Bar Association. The court makes no comment on this recommendation.

The final recommendation of the Advisory Group is that this court institute a mandatory non-binding, court-annexed arbitration program similar to that of the Western District of Missouri. This alternative dispute resolution technique is limited to districts specifically identified as pilot districts. Under present legislation, this court cannot adopt this proposal as the number of districts authorized to have this procedure equals the number that presently have it.

The court does not want to reject this important recommendation of the Advisory Group completely. The court asks

that the Advisory Group again assemble to study the possibility and the advisability of establishing a voluntary court-annexed non-binding arbitration process.

V. PRINCIPLES, GUIDELINES AND TECHNIQUES OF LITIGATION MANAGEMENT FOUND IN 28 U.S.C. § 473(a) and (b)

The Civil Justice Reform Act specifically requires the court to consider the principles, guidelines and techniques of litigation management set forth in 28 U.S.C. § 473(a) and (b). The Advisory Group considered them and their comments on them are found on pages 13 through 15 of its report. The court adopts these comments in their entirety and incorporates them herein by reference.

VI. IMPLEMENTATION

The court hereby implements the foregoing plan to the extent set forth in the text above.

October 7, 1993

MICHAEL J. MELLOY, Chief Judge
UNITED STATES DISTRICT COURT

APPENDIX A

CIVIL JUSTICE REFORM ACT ADVISORY GROUP REPORT

CIVIL JUSTICE REFORM ACT ADVISORY GROUP REPORT

Chairman David J. Blair

Reporter Hon. John A. Jarvey

December 30, 1991

I. Description of the Court

A. Number and location of divisions; number of district judgeships authorized by 28 U.S.C. § 133; number of magistrate judgeships authorized by the Judicial Conference

The Northern District of Iowa has five divisions. The Western Division consists of 14 counties in northwest Iowa with a courthouse in Sioux City, Iowa. The Central Division consists of 15 counties in north central Iowa. It has a federal courthouse in Fort Dodge, Iowa. There are two divisions in northeast Iowa. In the Waterloo Division, there are 11 counties. This division has no federal district courthouse. In the Dubuque Division there are four counties bordering the Mississippi River. There is a federal district courthouse in Dubuque that is technically closed. However, trials and conferences are held there on an infrequent basis because the courtroom is still used and maintained by the bankruptcy court. Finally, the Cedar Rapids Division consists of 8 counties south of the other eastern divisions. There is a federal district courthouse in Cedar Rapids that houses the court, probation office, the clerk of court and other federal agencies. The United States Attorney also has an office in Cedar Rapids. Satellite offices of the clerk of court, probation office, and United States Attorney are maintained in Sioux City, Iowa.

There are two full-time district judgeships authorized for the Northern District of Iowa. The Chief Judge of the District is the Honorable Donald E. O'Brien who resides in Sioux City, Iowa. The other position is presently vacant by reason of the elevation of the

Honorable David R. Hansen to the United States Court of Appeals for the Eighth Circuit. Senior Judge Edward J. McManus also serves the Northern District of Iowa.

There is one full-time magistrate judge in the Northern District of Iowa. This position is filled by Magistrate Judge John A. Jarvey. A part-time magistrate judge position exists in Sioux City, Iowa. Magistrate Judge Paul Deck is the part-time magistrate judge responsible for the handling of search warrants, initial appearances, arraignments, and misdemeanors filed in the Western Division of the Northern District of Iowa.

B. Special statutory status, if any

The Northern District of Iowa will not serve as a pilot court or an early implementation district.

II. Assessment of Conditions in the District

A. Condition of the Docket

1. What is the "condition of the civil and criminal dockets" (28 U.S.C. § 472(c)(1)(A))?

As of September 1, 1991, 720 cases were pending in the Northern District of Iowa. There were 83 criminal cases and 637 civil cases. Thirty-nine of the civil cases were three or more years old. Sixty-two civil cases were between two and three years old. The remaining 536 civil cases were less than two years old.

Of the 637 civil cases pending on September 1, 1991, 182 were filed by the United States government and 455 were filed by private litigants.

The criminal calendar is current and is handled efficiently.

2. What have been the "trends in case filings and in the demands being placed on court resources" (28 U.S.C. § 472(c)(1)(B))?

In 1979, there were 390 total case filings. The number of cases filed increased each year until 1987

when 946 cases were filed. Since 1987, filings have declined each year until 1990 when a total of 666 cases were filed. In 1991, filings increased 10% over 1990. A total 732 cases were filed. The increase was the eighth highest percentage increase of the nation's ninety-four federal judicial districts.

Case terminations remain relatively constant between 1986 and 1989 with approximately 850 terminations per year. In 1990, 734 cases were terminated. In 1991, 674 cases were terminated.

The number of cases in excess of three years old and the percentage of the court's docket in excess of three years old has increased dramatically since 1986. At the end of 1986, there were twelve cases that were three or more years old. As of September 1, 1991, there were thirty-nine pending three-year-old cases. Eight of the three-year-old cases are asbestos cases that were recently transferred to the Eastern District of Pennsylvania pursuant to an order of the Panel on Multi-District Litigation. An additional three have settled. Seven of these old cases involve either prisoner or pro se plaintiff litigants. Three more of these cases are under advisement. The vast majority of the other three-year-old cases are presently set for trial with some of them having been set for trial four or five times in the past. They were continued due to the demands of the criminal docket.

The number of cases filed by prisoners of penal institutions and jails in northern Iowa has increased dramatically. There were 57 prisoner petitions filed in 1981. In 1990, 161 prisoner petitions were filed. In 1991, 223 prisoner petitions were filed.

The number of criminal cases filed has increased dramatically over the years. In 1981, 54 criminal cases were filed. In 1989, 136 were filed. Of the 136 criminal cases filed in 1989, 106 of them were drug cases. The time devoted to sentencing criminal defendants has also increased dramatically. A study conducted by the clerk of court revealed that Judge David R. Hansen conducted 108 sentencings in 1986

and 1987. These sentencings took a total of 123 hours. He conducted 243 sentencings in 1988, 1989 and 1990. These sentencings consumed 543 hours. Accordingly, the Sentencing Guidelines have doubled the time spent in sentencings. Presentencing preparation has also dramatically increased.

3. What have been the trends in court resources (e.g., number of judgeships, vacancies)?

Although the court has recently been authorized to have two full-time district court judges, the court has yet to reap the benefit of this additional authorization. At approximately the same time that Judge O'Brien was relieved of a substantial portion of his responsibilities in the Southern District of Iowa to become full-time in the Northern District of Iowa, Judge Hansen was appointed and confirmed for a position on the Eighth Circuit Court of Appeals. It has been speculated that it would be unrealistic to expect Judge Hansen's vacancy to be filled prior to 1993.

The effect of Judge Hansen's departure is obvious. Extraordinary demands will be placed on existing resources. Without an increase in resources, it is difficult to envision the criminal calendar being adequately addressed. Civil cases will age significantly and the docket will generally deteriorate.

Other resources remain appropriate. Salaries for secretaries and law clerks are sufficient to attract quality applicants. Library resources are good. Personal computers have been purchased for each judge, secretary and law clerk. Automation of clerk of court functions is expected to result in increased efficiency.

B. Cost and Delay

1. Is there excessive cost and delay in civil litigation in this district? What is the supporting evidence for the Group's finding?

The Group has not determined that there is excessive cost in civil litigation in this district. Certain

costs of litigation have been examined superficially by the committee and members of the committee generally agree that some aspects of civil litigation, notably expert witness fees, have become exceedingly expensive in some instances. The committee did not attempt to measure the cost of litigation in this district. However, it was the general consensus of the committee that the cost of litigation, while high everywhere, is not excessive in this district.

There is excessive delay in civil litigation in this district. The average civil case that went to trial in 1990 was 39 months old. The number of pending three-year-old cases alone is evidence of excessive delay. Finally, the delay between the time a case is ready for trial and the time it is actually tried has increased over the years. Cases ready for trial in September 1991 are presently being set for trials in April, May and June 1992. This is evidence of excessive delay.

2. If there is a problem with cost and delay, what are its "principal causes" (28 U.S.C. § 472(c)(1)(C))?

   a. How are cost and delay in civil litigation affected by the types of cases filed in the district?

   b. What is the impact of court procedures and rules (e.g., case scheduling practices; motions practice; jury utilization; alternative dispute resolution procedures such as arbitration and mediation)?

   c. What is the effect of court resources (numbers of judicial officers; method of using magistrates; court facilities; court staff; automation)?

   d. How do the practices of litigants and attorneys affect the cost and impact of litigation (e.g., discovery and motion practice; relationships among counsel, role of clients)?

   e. To what extent could cost and delay be reduced by a better assessment of the impact of

legislation and of actions taken by the executive branch (28 U.S.C. § 472(c)(1)(D))?

3. Sources of delay

a. Despite the same number of district court judgeships authorized for this district, case filings have increased dramatically. The increase in staff at the United States Attorney's Office, the resulting increase in criminal indictments and the additional time spent on cases pursuant to the Sentencing Guidelines have caused civil cases to be delayed.

b. Because of the criminal caseload, the court is presently unable to give early firm trial dates in civil cases.

c. The priority given to criminal cases by reason of the Speedy Trial Act is a source of delay for civil cases.

d. The practice of setting trials at the time of the final pretrial conference is a source of delay due to the large number of civil cases presently ready for trial.

e. The state court practice of setting trial dates early in state court litigation has caused attorneys' trial calendars to be more congested than before that practice was adopted. This is another source of delay in federal civil litigation.

f. The resolution of pretrial motions is a source of delay in the district.

g. The present practice of allowing the parties to file a scheduling report as much as 120 days after the filing of the complaint is a source of delay. This period should be shortened by a local rule.

h. The delay in filling judicial vacancies has been and will be a source of delay for civil litigation in this district.

i. The passage of legislation which increases the workload of the federal court without commensurate increase in judicial resources results in additional delays in civil litigation.

III. Recommendations and Their Basis

A. State the "recommended measures, rules and programs" (28 U.S.C. § 472(b)(3)), such as recommended local rules, dispute resolution programs, or other measures, and for each explain how it relates to an identified condition and how it would help the court reduce excessive cost and delay.

1. United States District Court for the Northern District of Iowa should adopt a local rule or enter an administrative order giving authority to the clerk of court to rule on ministerial motions that are unresisted. Such motions would include:

a. Motion for leave to file an overlength brief

b. Motion to file a reply brief

c. Motion to withdraw as counsel of record (where another attorney has already entered an appearance)

d. Motion for extension of time to file a stipulation for dismissal

e. Motion for extension of time in which to file a brief

f. Motion for leave to amend pleadings prior to the filing of a scheduling report

g. Motion for appointment of counsel in habeas corpus cases involving prisoners in state custody

h. Motion to appear pro hac vice

i. Other motions for additional time to comply with deadlines for the completion of discovery,

designation of experts, to respond to motions, etc. (within limits placed by the court)

j. Motion to extend the time for filing an answer.

2. The responsibility for scheduling hearings and trials and for rescheduling hearings and trials should be transferred from the magistrate judge to the clerk of court. The clerk of court should continue the policy of consulting with counsel prior to setting trials and hearings.

3. Trial dates should be assigned so that the trial takes place, if possible, within 60 days following the final pretrial conference and 90 days following the completion of discovery.

4. Dispositive and other motions that can be resolved by the district court without need for a hearing should not be routinely referred to the magistrate judge for the issuance of a report and recommendation but should be referred only on a case-by-case basis. The practice of referring applications for injunctive relief and criminal motions to suppress or dismiss should be continued.

5. Court-supervised settlement conferences should be routinely set in all complex cases at the completion of discovery whether or not requested by the parties.

6. The court should conduct a discovery scheduling conference early in the discovery period for each complex case. This conference should be conducted in chambers and should be attended by counsel for all parties. At this conference, the court should develop with the parties a comprehensive plan for discovery and encourage the parties to voluntarily exchange information without resort to formal discovery procedures.

7. Mandatory limitations should be placed on the amount of discovery that can be conducted in noncomplex cases. Ordinarily, the plaintiff(s) should be limited to ten depositions. Defendant(s) should be limited to ten depositions. Interrogatories, including subparts, should be limited to 30 as is

presently required by Local Rule 15(c)(2). Requests for production of documents and requests for admissions should not be limited to any particular number but the court should continue to supervise these to avoid unduly burdensome discovery demands. Upon motion, and for good cause shown, the court should allow exceptions to these limitations.

8. The court should adopt a local rule governing the identification of documents withheld by any party on a claim of privilege:

Where a claim of privilege or work product protection is asserted in objecting to any interrogatory or document demand, the party asserting the privilege shall identify with respect to each communication the nature and basis of the privilege claimed. Upon request, the party shall provide as much of the following information as is not encompassed by the privilege: (A) its type; (B) its general subject matter and purpose; (C) its date; (D) the names of persons making or receiving the communication or a copy thereof or, if the communication was oral, of those present when it was made; (E) their relationship to the author or speaker; and (F) any other information needed to determine the applicability of the privilege or protection.

9. There is a significant number of nonappealable pretrial motions for which the speed of resolution is as important as the decision itself. Accordingly, the district court should adopt a local rule whereby the court would file a memorandum decision only when affirmatively requested by a party. Otherwise, a simple order granting or denying the motion would be filed. While the Advisory Group recognizes the extreme burden caused by the heavy civil caseload and inadequate judicial resources, the Group nevertheless requests that the court make every effort to rule on all dispositive motions within 120 days after the filing of those motions.

10. The President of the United States, Congress, the American Bar Association, and all other entities involved in the process of selecting and confirming

a judge to fill the present vacancy in the Northern District of Iowa should act without any undue delay to fill the position and thereby avoid additional delay in civil litigation.

11. We have studied court-sponsored programs of alternative dispute resolution (ADR) which have been established in some federal district courts across the country. We have reviewed the various forms of ADR collected in the Federal Judicial Center's publication entitled "Court-Based Dispute Resolution Programs." We have interviewed representative(s) of WD-MO's program for nonbinding arbitration. We have assessed the willingness of our own district judges and magistrate judge to consider new approaches to civil case management through court-sponsored ADR programs. We have considered the propriety, efficacy and cost of implementing a pilot ADR program in the Northern District of Iowa.

We submit to the court these findings and recommendations:

FINDINGS

a. Court-sponsored ADR is any process established by the court to promote the resolution of litigation other than trial by judge or jury. In this sense, federal courts have always practiced ADR. The traditional settlement conference before a district judge or magistrate judge is a form of ADR. The setting of early, firm trial dates is a form of ADR. The holding of summary jury trials (as presently practiced by our magistrate judge) is a form of ADR. The court's control of discovery, pleading and motion practice by requirements tailored to the individual case (sometimes known as "differential case management," which is practiced by our court) is a form of ADR. Our federal bench and bar are familiar and comfortable with these ADR processes, each of which has assisted the justice system and our litigants in controlling the problems of cost and delay in federal civil litigation.

b. Other ADR programs have been implemented in some federal district courts--either as pilot projects or permanent features of local practice--to address civil calendar congestion. Among the most innovative of these programs are court-sponsored arbitration, early neutral evaluation (ENE), and various forms of mediation. In this regard, the summary jury trial is also considered to be a cutting-edge form of ADR. Each form of ADR has its proponents, and some courts offer a combination of forms in a framework known as the "multi-door courthouse."

c. Although court-sponsored ADR is still clearly in its infancy--and there is no single ADR program which has become preeminent above all others--we think the available evidence strongly suggests the existence of significant user satisfaction and support for ADR in those federal courts which have tested the water. We find no significant evidence to the contrary.

d. This does not mean that one or more programs of court-sponsored ADR will, if implemented, change dramatically the flow of litigation through the federal justice system. Indeed, we cannot say to what extent civil cases may be resolved faster or more economically through ADR processes. (Of course, we do have confidence that significant and valuable case disposition rates will be achieved.) Further, we do not deem it necessary or desirable to work dramatic changes in our courts at one stroke. We think the right approach to court-sponsored ADR is one of cautious, responsible innovation, with zealous attention to safeguarding the fundamental right of litigants to trial by judge or jury.

e. On balance, we think it is important for our court to adopt and promptly implement one or more court-sponsored ADR programs. In this regard, we find that the active, hands-on advocacy and participation of at least one of our judges is absolutely essential to the

success of any ADR program. In our district, we believe that such hands-on responsibility should logically be assigned to our magistrate judge. Further, we think that funding should be sought to establish a new position within the Clerk's office (perhaps known as "ADR Coordinator" or "Arbitration Clerk") with responsibility to assist the Court and our Advisory Group in the design and implementation of an ADR program. This position should report directly to the magistrate judge with hands-on responsibility for the ADR program.

f. The court-sponsored nonbinding arbitration program of the United States District Court for the Western District of Missouri is a valuable model, and we commend it to the attention of our judges. We think that nonbinding arbitration--perhaps more than any other ADR process--is consistent with the traditional temperament of our bench and bar, and thus presents the best chance for success. We also think that a program of court-sponsored nonbinding arbitration, which contemplates the active participation of panels of lawyers throughout the district to serve as arbitrators, presents an excellent opportunity for voluntary participation by lawyers in furthering the work of the court.

ADR RECOMMENDATIONS

1. We recommend that our court should continue the ADR processes which historically have been utilized with success.

2. We believe that lawyers and litigants will respond to the active leadership of our judges. In that spirit, we recommend that our court consider WD-MO's nonbinding arbitration program as an appropriate model for a new ADR program in our district. The Advisory Group's recommendation in this regard is unanimous, and we will actively assist and support the Court in the design and implementation of the new program. Further, we will serve as advocates for the new program with groups of potential users of court services.

3. We recommend that the bar of our court should be invited to participate voluntarily as arbitrators in any new program of court-sponsored ADR.

4. We recommend that any new court-sponsored ADR program should be implemented in such a manner that the right of litigants to trial by judge or jury be safeguarded in spirit as well as law.

5. We recommend that the results of any new court-sponsored ADR program should be tested and evaluated over time, perhaps by our Advisory Group and the Court itself, to verify that some positive result is achieved from the anticipated significant efforts of judges, lawyers and litigants.

B. Explain how the "recommended actions include significant contributions to be made by the court, the litigants, and the litigants' attorneys" (28 U.S.C. § 472(c)(3)). Our recommended actions will require significant contributions to be made by the Court, litigants and counsel. In particular, our Report contemplates the active involvement of all parties in the design, implementation and utilization of the new ADR program. Further, our procedural recommendations (motion practice, scheduling of hearings and trials, assignment of trial dates, dispositive motions, settlement and discovery conferences in complex cases, mandatory discovery limitations in all cases, claiming privilege for discovery documents, and memorandum orders) will impose significant new burdens upon the Court, the Clerk's office, litigants and counsel. We believe that these contributions and burdens are necessary and appropriate.

C. Explain (as required by 28 U.S.C. § 472(b)(4)) how the recommendations comply with § 473, which requires the court, when formulating its plan, to consider six principles and six techniques for litigation management and cost and delay reduction.

1. Systematic, differential treatment of civil cases. 28 U.S.C. § 473(a)(1). This principle of litigation management is being conducted on an informal basis

in the Northern District of Iowa. It must be remembered that there is only one full-time magistrate judge in the district who handles the scheduling and monitoring of the discovery process. The process used by Magistrate Judge Jarvey appears to be an informal recognition of the principles identified in this section of the Act.

2. Early and ongoing control of the pretrial process through involvement of a judicial officer. 28 U.S.C. § 473(a)(2). The court recognized the effectiveness of a judicial officer having early and ongoing contact with each civil case on file. However, there are practical problems associated with conducting such conferences in 400 to 600 civil cases filed annually. Similarly, the process of setting early, firm trial dates was discussed. For example, if 500 civil cases were filed during this year and all set at this time for resolution in 1993, then each week in 1993 would have 5 to 10 civil cases set for trial. Together with the predictable quantity of criminal cases but the unpredictable scheduling of criminal trials, this was not seen as an immediate solution to the problems of delay within the district.

3. The early identification of complex cases. 28 U.S.C. § 473(a)(3). Again, the court described the process by which it identifies, early in the proceedings, complex cases requiring additional judicial attention. It was suggested that these complex cases should be singled out and put on a more intensive plan of judicial supervision.

4. Encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices. 28 U.S.C. § 473(a)(4). This was seen as a lofty goal. No recommendations were made as to how the court can further encourage that which everyone interested in reducing expense wants to achieve.

5. Conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a responsible and good-faith effort to

reach agreement with opposing counsel on the matters set forth in the motion. 28 U.S.C. § 473(a)(5). This technique has already been incorporated into the local rules for the Northern District of Iowa. See Local Rule 14(e).

6. Authorization to refer appropriate cases to ADR programs. 28 U.S.C. § 473(a)(6). The discussion concerning ADR is set forth above.

7. Joint presentation of a discovery-case management plan at the initial pretrial conference. 28 U.S.C. § 473(b)(1). This principle has been considered and adopted, in part, above.

8. Court-sponsored discovery conference. 28 U.S.C. § 473(b)(2). The discussion of this item has been considered and adopted, in part, above.

9. A requirement that all requests for extension of deadlines for completion of discovery and for continuance be signed by the attorney and the party making the request. 28 U.S.C. § 473(b)(3). This technique was considered and squarely rejected by the committee. The committee believed that this suggestion bears unwarranted assumptions about attorney-client relationships in the Northern District of Iowa.

10. An early neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative at a nonbinding conference conducted early in the litigation. 28 U.S.C. § 473(b)(4). The Group's ADR proposal does not include an early neutral evaluation program.

11. A requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference. 28 U.S.C. § 473(b)(5). This has been a requirement at settlement conferences for a long time in the Northern District of Iowa. Magistrate Judge Jarvey routinely requires parties to be present at the conference, allowing few representatives to be available by telephone.

D. Make a recommendation that the court develop a plan or select a model plan and state the basis for that recommendation (28 U.S.C. § 472(b)(2)). If the Advisory Group has drafted a formal plan, please attach it as appendix C. If the recommendations stated under III.A. serve as the recommended plan, please make this clear at III.A.

The foregoing report contains the consensus of the Group as to the reasons for delay and our recommendations to reduce cost and delay. The District Court for the Northern District of Iowa should adopt a plan that incorporates these recommendations. The Group recommends that the plan be adopted immediately.

Respectfully submitted,

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