FJC Review of CJRA Reports and Plans

Prepared for the Judicial Conference Committee on Court Administration and Case Management

District: **Northern District of Iowa**

Date: **January 9, 1994**

The court has two judgeships, one of which has been vacant for two years, and two senior judges. The court has one full-time and one part-time magistrate judge.

Summary of Conditions in the District

To assess the conditions in the district, the advisory group analyzed the court's caseload data and met several times. The caseload analysis revealed a court whose burden is increasing and whose condition appears to be worsening.

- The number of cases filed increased steadily until 1987, then dropped some, and then rose substantially in 1991.
- Case terminations were relatively constant between 1986 and 1989.
- The number of cases over three years old has increased dramatically since 1986. Some of the pending civil cases have been reset for trial four or five times due to the criminal docket.
- The average civil case that went to trial was 39 months old, and cases ready for trial must wait 9-10 months for a trial.
- The number of prisoner cases has increased dramatically.
- The number of criminal cases has increased dramatically, and, based on actual hours recorded, the time needed for sentencings has doubled.

The advisory group concluded that because of the judicial vacancy, extraordinary demands are being made on existing resources. Absent appointment of a second judge, they said, civil cases will age significantly, the docket will deteriorate, and even the criminal calendar might not be adequately addressed.

The advisory group did not undertake a study of litigation costs but concluded, based on their own experiences, that litigation costs are generally high everywhere, but not excessive in this district. They noted that some aspects of civil litigation, notably experts' fees, can be "exceedingly expensive" in some cases.

From the docket analysis, the advisory group concluded that there is excessive delay in this district. They identified the following causes:

- Insufficient judicial resources for the increasing volume of filings;
- demands made by an increasing criminal caseload and by sentencing procedures;
- inability to give firm trial dates because of the number and priority of criminal cases;
- the practice of giving trial dates at the final pretrial conference;
- state court practice of setting trial dates early in the litigation, which makes attorneys' trial calendars congested;
- failure to resolve pretrial motions;

- the practice of permitting counsel to file a scheduling report as much as 120 days after filing the complaint;
- failure to fill judicial vacancies; and
- legislation that increases the federal courts' workload without increasing resources.

To address the problems identified, the advisory group made eleven recommendations to the court.

Summary of the Court's Plan

In response to the advisory group, the court noted that in the time between submission of the advisory group's report and adoption of the plan [nearly two years], the number of pending cases increased by 100 (to over 800). In the meantime, however, the court had "dramatically reduced" the number of three-year-old cases. The court noted that the second judgeship remains vacant, but that when it is filled the court expects to "make dramatic progress in reducing delay in civil litigation." The court agreed with the advisory group's analysis of the causes of cost and delay and adopted "the vast majority of the group's recommendations."

Case Management

Pretrial and Trial Scheduling

1. In light of the burdens on the single district judge and single magistrate judge, the clerk will be responsible, starting January 1, 1994, for scheduling hearings and trials. (The magistrate judge has performed this role in the past.) The clerk will continue the court's policy of checking with counsel prior to setting these events and will be guided by the objective of the CJRA that civil cases should be tried if at all possible within 18 months of filing.

2. Trial dates will be assigned, to the extent possible, within 60 days of the final pretrial conference and within 90 days of completion of discovery.

Motions

1. To ease burdens on the judicial officers, the court will enter an administrative order giving the clerk authority, within limits set by the court, to rule on ministerial motions that are uncontested, such as motions to file an over-length brief, to withdraw as counsel, to extend time to file a brief, and to extend other time limits (e.g., discovery deadlines).

2. To expedite motions rulings, the court will enter an administrative order that dispositive motions and other motions that can be resolved by a hearing will not be routinely referred to the magistrate judge for a report and recommendation.

3. The court will make every effort to rule on dispositive motions within 120 days of filing of the motion. The court did not respond to the second part of this recommendation, that it rule as often as possible with a simple order, using a memorandum decision only when affirmatively requested by the parties.

Discovery and Disclosure

1. The advisory group recommended that the court conduct an in-chambers discovery scheduling conference early in the discovery period for each non-complex case, at which time the court and parties would develop a comprehensive discovery plan and the judge

would encourage the parties to exchange information without resort to formal discovery. The court deferred a decision on this recommendation pending action on amendments to FRCP 26(f).

2. The advisory group recommended that for non-complex cases the court establish mandatory limits on the amount of discovery: 10 depositions and 30 interrogatories, including subparts (as currently required by local rule). The court deferred a decision on this recommendation pending action on FRCP 30.

3. The advisory group recommended that the court adopt a local rule governing identification of documents withheld on a claim of privilege and provided draft language for the rule. Again, the court deferred a decision pending action on FRCP 26(b)(5).

The court has not yet determined what its response to the federal rule changes will be. (Conversation with chief deputy clerk January 10, 1994.)

Alternative Dispute Resolution

As recommended by the advisory group, the court will set a court-supervised settlement conference in all complex cases at the completion of discovery, whether or not requested by the parties. This practice has already been implemented.

In response to the advisory group's recommendation that the court adopt nonbinding arbitration, the court noted that only twenty courts are currently authorized to use arbitration and therefore the court is barred from adopting it. However, the court said it did not want to reject this "important recommendation" completely and therefore asked the advisory group to "again assemble to study the possibility and the advisability of establishing a voluntary court-annexed non-binding arbitration process."

Implementation

The plan was adopted on October 7, 1993. It does not give an implementation date.

Consideration of §§ 473(a) and (b)

In response to the statute's requirement that the court address every provision of §§ 473(a) and (b), the court adopted the advisory group's discussion of this obligation and incorporated that discussion by reference into the plan. In its report, the advisory group discussed each principle and technique set forth in the statute and pointed out those it had incorporated into its recommendations and those that already existed in local rules or practice. The group said two recommendations, early judicial involvement in every case and firm trial dates, are impractical in this district at this time. The group said it considered voluntary exchange of discovery information a "lofty goal" and made no recommendations regarding it (which appears to contradict their recommendation that judges encourage voluntary exchange in complex cases). And the group rejected ENE and attorney and party signatures on requests for extensions of time.

Comments

The report and plan from this district are modest, a reflection perhaps of the difficult situation the court is in - i.e., heavy burdens created by external forces and little internal flexibility, with only a single judge and magistrate judge, to respond to that pressure. The court has adopted several procedures that will shift duties from the judicial officers to the clerk, presumably to free the judicial officers to decide discovery and dispositive motions

and to hold trials. The clerk's new duties will include setting schedules in most civil cases. While under other circumstances we would be skeptical of this practice, perhaps in this instance the court's burden and docket condition justify it.

Neither the advisory group nor the court addressed one of the causes of delay identified by the advisory group: the practice of permitting parties to file a scheduling report as much as 120 days after filing the complaint. The committee may want to suggest to the court that it consider asking counsel to file scheduling reports sooner.

The committee may also want to ask the court to respond to the advisory group's recommendation that where possible rulings on motions be made informally instead of with a memorandum decision. The advisory group made this recommendation as one of several methods for expediting motions, which it identified as a serious cause of delay. It is worth noting that this court, unlike most, responded affirmatively to the advisory group's recommendation that it set a goal for rulings on motions.

Because of statutory limitations on adoption of arbitration, the court rejected the advisory group's recommendation on ADR. The committee may want to suggest to the court that while the advisory group re-examines the possibility of adopting ADR it also consider whether other types of ADR would be useful in the district.

Finally, the committee should ask the court to specify an effective date for the plan.

Conclusion and Recommendation

I suggest that the committee accept this plan, but that its letter to the court make the suggestions set out above and ask the court to specify an effective date for the plan.

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