

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

EFFECTIVE DECEMBER 31, 1991



**CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN
FOR THE EASTERN DISTRICT OF CALIFORNIA**

INTRODUCTION

The Civil Justice Reform Act Advisory Group has completed its statutory task as required by the Civil Justice Reform Act of 1990, and has submitted to this court for its review a series of recommendations designed to reduce cost and delay associated with the adjudication of civil litigation in the Eastern District of California.

The Advisory Group was comprised of a diverse group of lawyers and client litigants representing the spectrum of civil litigants who regularly appear in federal court in this district.

The Advisory Group has been diligent in its efforts to gather information and data from a variety of sources that would afford the group members an opportunity to determine the extent to which civil case management could be enhanced for the benefit of litigants and the court. Through extensive interviews and a questionnaire of judges, counsel, litigants, and other interested parties, the Advisory Group was able to reach consensus and presented to the court its report.

Having reviewed and carefully considered the Advisory Group report, this court adopts the recommended measures, rules, and programs incorporated in its proposed sixteen point Civil

Justice Expense and Delay Reduction Plan (see pp. 93-100 of the report) and directs that the plan be implemented as of December 31, 1991.

THE COURT'S PLAN

A. MEASURES RECOMMENDED FOR INSTITUTIONAL COURT-WIDE ACTION

Point 1 - Amend Local Rule 252

At present, Local Rule 252 (arbitration proceedings) allows for voluntary reference of a case only to binding arbitration. The rule's purpose is to provide an incentive for the just, efficient, and economic resolution of certain controversies by means of informal and expeditious procedures. Consistent with this purpose, Local Rule 252 will be amended to include a voluntary reference of a case to non-binding arbitration.

Point 2 - Establish ADR Advisory Panel

An advisory panel of attorneys and other litigant representatives will be established for the purpose of monitoring the use and success of early neutral evaluation (ENE), court-annexed arbitration (CAA), and other alternative dispute resolution (ADR) programs which may be authorized by the court.

Point 3 - Sponsor Continuing Legal Education (CLE) Programs on Local Federal Practice

Consistent with its present practice, the court, in conjunction with the Federal Bar Association and other such

organizations, will sponsor continuing legal education (CLE) programs on local federal practice and procedure. Such programs will seek to increase the awareness of the court's alternative dispute resolution programs and will promote compliance with local rules and general orders of the district. In addition, the program will also address requirements of practice before individual judges of the court.

Point 4 - Expand Attorney Panels for Pro Se Civil Rights and Habeas Corpus Cases

Consistent with existing court procedures, this court will expand the size of panels of attorneys willing to accept appointment to represent pro se civil rights plaintiffs (incarcerated or not) and habeas corpus petitioners. Expansion of these panels will be achieved with the assistance of the county bar associations, local law schools and legal organizations, and the Federal Bar Association.

Point 5 - Formalize the Scheduling, Planning, and Invitation Process of the Annual Eastern District Meeting

The court's desire to create a forum for open debate and exchange of information to enhance the practice within the district and increase the effective and efficient functioning of the district court has been exemplified in its annual district meeting attended by practitioners and members of the judicial family. The court intends to continue these worthwhile and beneficial annual meetings.

Point 6 - Institute Experimental Screening or Tentative Ruling System Administered by a Volunteer District Judge

The court, under the direction of the Chief Judge, will develop and institute an experimental pre-argument notification program for civil law and motion practice that will be administered by a volunteer district judge. The purpose of the notification is to advise counsel of particular areas in which the judge would like the oral argument to focus. Alternatively, the court may use the notification to advise of a tentative ruling or to submit the matter without oral argument.

B. SUMMARY OF NATION-WIDE INSTITUTIONAL REFORMS TO BE ADDRESSED TO APPROPRIATE NATIONAL FORUMS

While the following (points 7 through 10) are included in the Advisory Group report, they are not made a part of the court's plan since the court has no control over their outcome. The court, however, does support the Advisory Group's position with respect to these four points.

Point 7 - Additional Law Clerks

Upon an appropriate showing of need, district judges in regular active service should be eligible for a third law clerk, while magistrate judges should be eligible for a second law clerk.

Point 8 - Prompt Action to Fill Vacant Judgeships

Responsible political authorities should be made fully

aware of the adverse consequences of delay in the appointment and confirmation of district judges.

Point 9 - Revision of Case-weight Criteria

The Administrative Office of the United States should be asked to place a high priority on updating the case-weight criteria by which judicial productivity is judged and additional judgeships allocated or recommended. In particular, capital punishment habeas corpus cases and prisoner civil rights cases are systematically undervalued by the present system which is rooted in the legal conditions of the 1970's. The present standards have become arbitrary.

Point 10 - Accurate Assessment and Advance Provision for Judicial Impact of New Legislation

The President and the Congress should consider carefully whether proposed legislation will adversely impact the ability of the federal courts to administer civil justice without undue cost and delay. When a legislative initiative will have a foreseeably significant and adverse judicial impact, additional judicial resources necessary to mitigate the foreseeable adverse effect on the federal courts should be allocated in advance.

C. SUMMARY OF MEASURES RECOMMENDED FOR IMPLEMENTATION BY INDIVIDUAL JUDGES INCIDENT TO MANAGEMENT OF THEIR PERSONAL DOCKETS

Point 11 - Staggered Scheduling of Law and Motion Matters

Lengthy proceedings should be specially set or scheduled

at the end of the motion calendar so attorneys on other matters do not have to wait in the courtroom for extended periods of time.

Point 12 - Avoidance of Continuances Except by Stipulation or Motion

While postponed court appearances or trials is only an occasional problem in this district, the court is aware of the cost of preparation by counsel. The court resolves to give close scrutiny to ex parte last minute requests for continuances. Requests for continuance normally should be by stipulation. Moreover, absent extraordinary circumstances, the parties should be required to adhere to the dates set in the pretrial scheduling order and in the local rules.

Point 13 - Setting of Realistic Trial Dates

Relatively few civil trial dates are continued in this district and when done so they are generally the result of priority criminal cases. This court will continue to exercise a fair but firm policy of setting realistic trial dates affording adequate time for pretrial activity. The trial date should be set at a time when the parties can predict accurately their discovery and motion practice requirements.

Point 14 - Bifurcation of Issues and Stated Discovery When Threshold Issues May be Dispositive

The court will explore the staging or staying of

discovery in appropriate cases in which particular issues may be dispositive.

Point 15 - Encourage Alternative Dispute Resolution (ADR)

This court is sensitive to the high cost associated with civil litigation and, as such, encourages and supports the use of alternative dispute resolution programs with positive benefits to litigants and the courts.

Point 16 - Experiment With Early Settlement Conferences

All judges within the Eastern District offer to conduct settlement conferences for the litigants. In addition to the district judges, magistrate judges are also available and willing to assist in civil settlement conferences. In many cases, a settlement conference is not productive until after discovery and motion practice have ended. In some instances, however, settlement conferences at an earlier stage of the litigation would lead to an earlier settlement. The court will seek to provide a judicially-sponsored settlement conference at the earliest appropriate opportunity in every case.