

DELAY & COST REDUCTION PLAN
ADOPTED BY THE
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

OCTOBER 7, 1991

Plan of the Judges
Of the Federal District Court
For the Southern District of California
As required by the
Civil Justice Reform Act of 1990

October 7, 1991

✓ Whereas, the Civil Justice Reform Act of 1990, Pub. L. No. 101-650, 104 Stat. 5090 (codified as amended at 28 U.S.C. §§ 471-82), (the "Statute"), has charged that this Federal District Court assess cost and delay in the adjudication of its civil cases, consider solutions for reducing cost and delay, and adopt a plan to implement those solutions;

✓ Whereas, the Advisory Group for this District has identified a burgeoning criminal calendar caused in significant part by mandatory minimum sentencing and guideline sentencing, unfilled judicial vacancies, the difficulty of setting and keeping early civil trial and motion dates, and delay and abuse of the discovery process by civil litigants, as sources of the cost and delay in civil adjudication; and

✓ Whereas, the Advisory Group has suggested a variety of recommendations to address the various factors increasing cost and delay in this District;

✓ Be it, therefore,

✓ Resolved that we, the Judges of the Southern District of California, adopt the following plan to reduce the cost and delay associated with civil litigation in this District:

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We order that each district judge be excluded on a rotating basis from the criminal draw for a two month period each year so that the judge will be afforded two full months of uninterrupted civil case management time.

We authorize the Chief Judge to increase her efforts to find visiting judges to come to this District to preside over criminal trials.

We authorize the Chief Judge to appoint a committee whose membership will include the U.S. Attorney, a representative of Federal Defenders and a representative of the private criminal defense bar, to recommend settlement procedures in criminal cases.

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We order that early trial dates be set in certain cases. ✓ In Social Security matters, ✓ enforcement of judgments, ✓ prisoner petitions challenging conditions of confinement, and forfeiture and penalty cases, a trial date which falls within twelve (12) months of the filing

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of the complaint should be set. In Federal Tort Claims Act cases, we order a trial date be set that falls within fifteen (15) months of the filing of the FTCA complaint. We also order that twenty-five (25) percent of the remaining civil cases that are not "complex" be given a trial date which falls within eighteen (18) months of the filing of the complaint.

With respect to the foregoing order for early trial dates we further order: (1) that the trial date set be firm and that all requests for continuances of trial and motion dates be granted only for good cause shown; (2) that trial by magistrate judge be encouraged to the parties; (3) that the ability to resolve these cases within the early time limits be tracked and monitored and compared to the adjudication of cases not given early trial dates; (4) that a case be exempted from the trial date requirements only if: it involves complex issues of fact or law requiring greater time for resolution, if new parties are added, or if the trial judge finds such other exceptional reason as may require an extension; and (5) that no trial date will be extended except by written order of the trial judge.

We order that the clerk of court make regular monthly reports to the Chief Judge of all civil cases pending more than eighteen (18) months on the dockets of each judge, and of all criminal cases pending more than six (6) months, in order to assist the Court in assessing the effect and effectiveness of the various recommendations.

We order that the Magistrate Judge, or the District Court Judge should s/he opt to manage pretrial discovery, (hereinafter "Judicial Officer"), closely manage each case from the outset and encourage settlement as early as possible, supervise negotiations and motions to confirm settlements, and control the discovery process.

We order that after a hearing with an opportunity to be heard, the Judicial Officer shall order a non-binding mini-trial or summary jury trial in all cases s/he finds that (1) the potential judgment does not exceed \$250,000 and (2) that the use of this procedure will probably resolve the case.

We order that the Judicial Officer order non-

binding arbitration/mediation¹ in all even numbered simple contract and simple tort cases (excluding FTCA cases) where the Judicial Officer finds the potential judgment does not exceed \$100,000, and in every even numbered trademark and copyright case. Data from this procedure is to be collected and analyzed to evaluate effectiveness. N.W.L.

~~X.~~ We authorize the Chief Judge to establish a committee to seek competent volunteers to staff a panel of arbitrators/mediators who will commit to accept the referral of one case per year without compensation with the expectation of devoting up to eight (8) hours of time to the process. N.W.L.

~~X.~~ We authorize the Chief Judge to supervise the development of a questionnaire to debrief parties and their counsel at the close of each civil case filed after January 1, 1992. The questionnaire should be fashioned to seek information evaluating the effectiveness of the system retrospectively. N.W.L.

~~X.~~ We order that accurate information be generated about the civil caseload and how it is processed through the courts. To this end, an administrator will be employed to implement and supervise this statistical monitoring system implemented in accordance to recommendations in the Advisory Group Report.

~~X.~~ We order that counsel "meet and confer" prior to filing any discovery motion and seek to resolve the matter informally. If counsel are in the same county, they are to meet in person; if counsel practice in different counties, they are to confer by telephone. However, under no circumstances may counsel satisfy the "meet and confer" obligation by written correspondence. N.W.L.

~~X.~~ Beyond the foregoing, we order the implementation of a comprehensive pretrial program to include the following:

~~X.~~ All complaints shall be served within one hundred and twenty (120) days. Any extension shall be granted only upon good cause shown.

¹ This mode of arbitration is not to be confused with the determinations provided for under 28 U.S.C. § 658 since the procedures ordered herein are to be strictly non-binding and no formal judgment will be filed with the clerk or the court pursuant to this procedure.

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~~3.~~ On the one hundred and thirtieth (130th) day following the filing of the complaint, or on the tenth (10th) day following an extension of time to serve, ~~if proof of service has not yet been filed, the clerk shall prepare an order dismissing the case without prejudice and submit it to the assigned district judge for signature.~~

~~4.~~ Extensions of time for answering, or moving to dismiss, a complaint shall only be secured by obtaining the approval of a Judicial Officer, whom shall base his or her decision on a showing of good cause.

~~5.~~ If an answer, or motion to dismiss, is not filed within the original or extended time, ~~the clerk shall enter a default and serve notice thereof on the parties. If plaintiff(s) fail(s) to move for default judgment within thirty (30) days, the clerk shall promptly prepare an order dismissing the complaint without prejudice for filing by the assigned district judge.~~

~~6.~~ A motion for summary judgment, or other non-emergency motion may be displaced to facilitate a hearing of a motion to dismiss within sixty (60) days of its filing.

~~7.~~ When an answer has been filed, the clerk shall notify the assigned district judge.

~~8.~~ Early Neutral Evaluation ("ENE") Conference: Within forty-five (45) days of the filing of an answer, counsel and the parties shall appear before the assigned Judicial Officer supervising discovery for an ENE Conference; this appearance shall be made with authority to discuss and enter into settlement.

~~9.~~ At the ENE Conference, the Judicial Officer and the parties shall discuss the claims and defenses and seek to settle the case.

~~10.~~ The ENE Conference will be informal, off the record, privileged and confidential.

~~iii.~~ Attendance may be excused only for good cause shown and by written order. Sanctions may be appropriate for an unexcused failure to attend.

~~8.~~ If no settlement is reached at the ENE Conference, the Judicial Officer shall do one of the following:

~~i.~~ Encourage the parties and their counsel to confer for the next forty-five (45) days with the objective of reaching an agreement to pursue alternative dispute resolution ("ADR") and set a Case Management Conference for sixty (60) days after the ENE Conference;

ADR + Case Mgmt conf
or
Arbitration + Case Management Conference

~~ii.~~ Refer to non-binding arbitration or mediation to occur within forty-five (45) days (1) every even-numbered simple contract or simple tort action (except FTCA cases) where the Judicial Officer finds the potential judgment is less than \$100,000, and (2) every even-numbered trademark and copyright case. Additionally, a Case Management conference shall be set in these cases approximately sixty (60) days after the ENE Conference.

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~~iii.~~ Where no arbitration or mediation is agreed upon or ordered, the Judicial Officer shall set a Case Management Conference approximately thirty (30) days after the ENE Conference.

Case Management alone

~~10.~~ As the ENE Procedures proceed, no stay in discovery may occur unless specifically ordered by the Judicial Officer on good cause shown.

~~11.~~ Case Management Conference: The parties who have responsibility over the litigation and the counsel who will try the case, will be present at the Case Management Conference. The Judicial Office may approve attendance of a party or counsel by telephonic conference call. At a reasonable time before this Conference:

Party
participation

~~a.~~ ✓ All counsel will discuss discovery and endeavor to resolve any disputes;

- DISCOVERIES

b. ✓ Plaintiff's counsel will in good faith specify in an informal writing the essential detail of the claims asserted, and the identity of the principal witnesses;

~~c.~~ ✓ In response, defense counsel will in good faith specify in an informal writing the essential detail of the defenses to such claims, and the identity of their principal witnesses; and

~~d.~~ ✓ The informal writings will be discussed by counsel at the Conference in order to focus the issues, and the writings shall be provided to the Judicial Officer in advance of the Case Management Conference.

~~e.~~ ✓ At the Conference, the Judicial Officer will (X) discuss the complexity of the case: (2) ~~encourage a cooperative discovery schedule;~~ (3) discuss the likelihood for further motions; (4) discuss the number of anticipated percipient and expert witnesses; (5) evaluate the case and the need for early supervision of settlement discussions; (6) discuss the availability of ADR alternatives; and (7) discuss any other special factors applicable to the progress of the case.

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~~f.~~ ✓ At the end of the Conference, the Judicial Officer shall prepare a Case Management Order which will:

Case Management Order

i. ✓ Set out the issues in the case. (The Judicial Officer may direct the parties to prepare a stipulation setting forth a

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concise statement of the issues);

~~ii.~~ Include a discovery schedule;

~~iii.~~ Set a time for a further Case Management Conference if necessary; and

only Case Management Conferences

~~iv.~~ Set a time for the proponent of each issue to identify expert witnesses; set a time for the responding party to identify expert witnesses in reply; set a time for the depositions of experts; set a time for the supplementation of such expert designation depending on the circumstances;

~~v.~~ Set a deadline for filing pretrial motions;

vi. Set a firm pretrial conference date.

~~g.~~ At the Case Management Conference, the Judicial Officer will set a date for a Mandatory Settlement Conference, unless it is determined that such a conference should be excused.

MAND SETTLEMENT CONF

~~h.~~ If at any time prior to the Mandatory Settlement Conference, a particular case is determined ready for settlement by a Judicial Officer, it may be calendared for a settlement conference, even over the objection of one or more parties or their counsel. In this regard:

~~a.~~ The Judicial Officer handling settlement will be disqualified from trying the case unless there is agreement by the parties to waive

Disqualified Judges

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this restriction;

~~B.~~ The Judicial Officer handling settlement may receive communications in camera from each party and its counsel, and shall maintain such in confidence unless there is a stipulation to the contrary;

~~C.~~ Each party will send a representative to the settlement conference with full authority to enter into an agreement to settle the case unless good cause is shown waiving this requirement;

~~D.~~ The Judicial Officer handling settlement should schedule as many follow up settlement conferences as the Judicial Officer finds appropriate in light of the complexity of the matter or other factors.

~~13.~~ At the conclusion of a case, the Judicial Officer shall issue to the parties and their counsel the questionnaire discussed at Paragraph K of this Plan, supra.

~~14.~~ At the conclusion of a case, the Judicial Officer shall also debrief the parties and counsel in an informal setting to evaluate candid comments, criticism and suggestions. The Judicial Officer will prepare a confidential report to the Chief Judge as to the comments made during this debriefing. This information is to be used by the Chief Judge as an internal management tool to assess and track the success or failures of the new civil case management features.

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