

FJC Review of CJRA Reports and Plans

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

District: Guam

Date: January 9, 1994

The court is an Article I (legislative) court. It has a single judgeship, which was unfilled from January 1991 until December 1992.

Summary of Conditions in the District

The court had no CJRA advisory group until the court's judge took office in December 1992. Since that time the advisory group has met six times, surveyed its own membership and the bar, and analyzed a small collection of statistics prepared by the clerk. The judge, his two law clerks, the clerk and chief deputy clerk comprised five of the twelve-member group.

The caseload statistics show a court with a small and current caseload:

- In March 1993 there were 83 pending civil cases, 36 of which (43%) were over three years old. Only one remains, and it is stayed pending bankruptcy proceedings.
- Of the remaining 47 pending civil cases, 43 are under a year old.

The advisory group also noted that hearing dates and trial dates are readily available, even on short notice. The district's excellent condition may change, however, if the caseload increases as expected due to the appointment of a judge for the district.

The advisory group reported that the results of its survey of the bar were "surprisingly uniform". Most members of the bar said there is no problem with cost and delay in the district. They were in strong agreement that the district's plan should include methods for setting early and firm discovery, pretrial, and trial dates. And the bar, to the surprise of the advisory group, favored exploration of ADR methods for the district.

To assess how the statute's principles and techniques might be incorporated into the district's practices, the advisory group had each of its members complete a survey exploring several ways of implementing each principle and technique. These responses, along with the attorney survey responses, provided the foundation for the recommendations set out below.

Summary of the Court's Plan

Case Management

1. Differentiated Case Management. The advisory group agreed unanimously that differentiated case management is not necessary in a court with such a small caseload and where all civil cases are already treated on a case-by-case basis. Therefore, the plan does not include this provision.

2. **Early and On-going Judicial Involvement.** All advisory group members agreed that early and on-going judicial involvement is necessary. Thus, they recommended that the current local rule on case scheduling be revised to include, among other provisions, a mandatory initial case management conference. The draft rule provided by the advisory group and adopted by the court has the following features:

- Parties must meet and confer and provide the court a proposed case management order within 75 days of filing the complaint. The proposed order should cover such matters as (1) the current status of the case; (2) dates for filing motions and for trial; and (3) whether the parties will submit the case to a neutral settlement conference. The case management plan must also include a discovery plan (see #5 below).
- The clerk of court will schedule a discovery/case management conference to be held by the judge within 90 days of filing the complaint. Each party in attendance must have full authority with respect to the matters on the agenda, including settlement. A case management order will be issued after the conference.
- Failure to cooperate in preparing the proposed case management order may result in sanctions. Filing of motions does not excuse parties from compliance. Absent urgent and unforeseeable circumstances, the dates set by the case management order will not be extended.

3. **Firm Trial Dates.** The court will set early and firm trial dates, with trial scheduled within 18 months of filing unless complexity of the case or docket demands prevent it. The court will also make final pretrial conferences mandatory, rather than at the discretion of counsel. Dates for both the final pretrial conference and trial will be set in the case management order.

4. **Control of Motion Practice.** To control motion practice the advisory group recommended and the court adopted revisions to local rules that control length of motions, provide a procedure for deciding motions without oral argument, and provide a procedure to enable counsel to choose the oral argument date when argument must be held. The last provision serves the goal of stringent enforcement of deadlines: That is, counsel are given a method for setting a realistic date for court appearances; in return, continuances will not be granted.

5. **Discovery and Disclosure.**

The advisory group members agreed with the statute that discovery should be controlled, but unanimously agreed that there should not be standardized limits on interrogatories and depositions. The advisory group recommended and the court adopted a revised local rule that requires counsel to plan their discovery and exchange disclosures at the initial meet and confer session. The proposed case management plan developed at this meeting must include a proposed discovery plan. The discovery plan should include a description of all anticipated discovery, a schedule for discovery, and a consideration of bifurcated discovery.

At the initial meet and confer session counsel must exchange the following items: (1) all documents then reasonably available and contemplated to be used in support of the parties' pleadings; (2) lists of witnesses; and (3) any other evidence then reasonably available that would obviate the need for formal discovery.

To further control discovery, the advisory group proposed and the court adopted an amended local rule with three provisions: (1) mandatory prediscovery disclosure; (2)

preparation by counsel of a joint discovery plan; and (3) certification by counsel that they attempted resolution of a discovery dispute before seeking judicial assistance. Discovery motions may be filed only with permission of the court.

Alternative Dispute Resolution

The advisory group felt that the only viable ADR method at this time is neutral settlement conferences with visiting federal judges. Other methods cannot be used because they are not available on the island. There are, for example, no known mediation professionals on Guam. Arbitration was not considered because the court's experience is that it generates more litigation than it resolves. However, because of the strong interest shown by the bar, the advisory group and court will continue to explore ADR options.

Implementation

The court adopted the plan on November 29, 1993. When the plan has been accepted by the Judicial Conference and Ninth Circuit, the court will adopt the proposed amended local rules by issuing a general order. The court will also "continue to consult with the advisory group, and with others, in its on-going effort to provide full, speedy, and affordable justice in all civil cases".

Consideration of §§ 473(a) and (b)

In adopting the advisory group's proposed rule revisions, which were based on an explicit consideration of each statutory requirement, the court has fully addressed the statute. Only two of its recommended principles and techniques are not included in the plan: Differentiated case management and client signatures on requests for extensions of time. The first was considered unnecessary, the second impractical because many litigants in this district do not reside on the island.

Comments

The advisory group prepared a sound analysis of the district, especially given the short time it had to complete its work. The group then prepared a set of revised local rules that incorporate each of the case management provisions of the statute and also respond to the changes desired by the bar. The recommended rule revisions, which the court accepted, provide for early and active judicial control of litigation and require counsel to conduct as much discovery as possible by informal methods. With these local rules the court has fully met the expectations of the statute.

When the committee has accepted this plan, the court will issue a general order adopting the amended local rules. The committee should ask the court to provide this order to the committee.

Conclusion and Recommendation

I recommend that the committee accept this plan.

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