

**District of Hawaii  
Report of the Advisory Group  
Expense and Delay Reduction Plan**

**Summary**

**PART ONE: REPORT OF THE ADVISORY GROUP**

**I. Assumptions; Miscellany; and Background**

- A. The district serves the entire state of Hawaii. Its military reservations, native American population, and isolation (aptly conveyed in the 2400 mile distance to it's closest sister district) constitute the primary features that shape the legal culture of the island state.
- B. The district maintains one division to serve the seven major populated islands that constitute the state.
- C. The district has three permanent Article III judgeships, and one unfilled temporary judgeship. There are two full-time and two part-time magistrate judges. The district also has two active senior judges.
- D. The Advisory Group conducted interviews of all judicial officers. The Advisory Committee conducted a general survey of the federal bar, examined national and local court statistics, and evaluated procedures utilized in the Office of the Clerk.
- E. Local rules (which were recently revised) bearing on CJRA management concepts include: a requirement of the presence of an attorney with authority to bind at settlement conferences; mediation-oriented settlement conference procedures; a meet and confer requirement prior to the filing of discovery motions; and case management conference protocols that allow for the differential management of all civil cases.
- F. The district is currently running ICMS civil and criminal systems.

**II. State of the Docket**

- A. Status of the Civil and Criminal Dockets

1. Civil case filings have decreased dramatically since 1989 from a high of over 2000 to 794 for FY92, although a slight upward trend was recorded in the last half of that year. Rising prisoner cases and habeas corpus petitions are also seen as contributing to the heavier civil workload.
2. The filing breakdown by categories finds contracts at 15%; personal injury and other torts at 15%; 14% Civil rights; and 17% prisoner complaints/petitions.
3. Civil cases pending over three years in FY92 have decreased by over 65% from the average recorded in the period from 1988 (81 versus 584). This is attributed to the transfer of pending asbestos cases in 1991; improved judicial management techniques; and more effective utilization of magistrate judges.
4. Criminal filings had remained fairly constant over the past five years, averaging below 300 cases; in FY92, this figure rose to 320. This is attributed to the Justice Departments Operation Triggerlock, as well as increasing prosecutions for bank robbery, interstate drug, and alien smuggling cases.
5. Mandatory minimum sentencing statutes and sentencing guidelines are believed to have increased trial activity in criminal cases. While civil trials have remained fairly constant, criminal trials have risen over the past four years from 26 in 1989 to 47 in 1992; these figures have compounded problems regarding juror management, as jurors must be drawn from all the islands, with concomitant increasing costs.
6. Median disposition times for civil cases decreased steadily from 1988 (18 months) through 1991 (11 months) before rising to 13 months in 1992. Criminal filing to disposition times increased gradually over the same period, rising from 6.1 to 7.2 months in 1992.
7. Weighted filings in Hawaii per judge now stand at 276, having declined steadily from 563 in 1988.

### III. Principle Causes of Cost and Delay

- A. The inadequate number of judicial officers.
- B. The volume of criminal cases.
- C. Excessive litigation costs stemming from the lack of good judgement exercised by "second class" attorneys who abuse the system.

- D. Hourly compensation of attorneys serving to increase litigation costs.
- E. The general case backlog.
- F. Discovery abuses.
- G. Case processing delays.
- H. The impacts of the Speedy Trial Act.

#### IV. Recommendations

- A. Trial dates shall be set by the Magistrate Judge at the initial scheduling conference.
- B. Failures of trial dates through no fault of the parties should provoke the notification of the parties and Chief Judge by the trial judge of the problem within 24 hours of his notice.
- C. On notice of a failed trial date, the Chief Judge shall attempt to reassign to another District Court Judge on the original date; failing this, to a Magistrate Judge within the same week, or an earlier, firm date.
- D. Any request for the continuance of a trial date shall contain a statement of the client's concurrence in the request.
- E. One District Court Judge shall be designated to handle civil trials exclusively on a rotating schedule provided that a fourth judge is appointed.
- F. The Clerk shall maintain a log for nine months containing all civil cases with reset trial dates, the reasons for the reset, and the availability another trial judge for reassignment.
- G. The current practice of placing trial ready cases on the Readiness Calendar one week prior to their trial dates subject to call with one day's notice should be changed, so that a case "trails" its fixed date by one week.
- H. Mandatory settlement conferences shall be held in all cases.
- I. At least once every six months, each district judge shall set aside one full week for the exclusive purpose of holding settlement conferences on civil cases assigned to that judge.

- J. The processing of traffic violations occurring on United States Military Reservations shall be studied to determine whether the use of full time Magistrate Judges for such cases can be reduced or eliminated.
- K. Increase, where feasible, the retention of prisoner petitions by Article III judges.
- L. Establish the position of staff attorney to the United States District Court.
- M. Prepare a pro se litigant handbook which addresses solely procedural matters for distribution to pro se litigants.
- N. Nominate and fill the fourth judgeship for the District of Hawaii.
- O. Current state of the art communications equipment should be provided by the Court and available for use in the courtroom.
- P. Rulings on motions for summary judgement and motions to dismiss shall be made within ten days of argument, or submission for decisions without argument, absent extraordinary circumstances.
- Q. The Court shall make greater use of partial summary judgement rulings.
- R. The Court shall consider and impose nonmonetary sanctions where appropriate.
- S. Creation of a program of continuing legal education for practitioners in the United States District Court.
- T. A pilot study to determine whether a form of arbitration could be effectively utilized by the Court in reducing both costs and delays in civil litigation is recommended.
- U. In the event Federal Rule of Civil Procedure 26 is modified to require disclosure of attorney-client privileged information, a local rule should be adopted to opt out of the requirement to disclose attorney-client privileged information.
- V. At the initial scheduling conference or as soon thereafter as is practical under the circumstances, the Magistrate Judge shall establish limitations on the taking of depositions. Specific limitations shall be set on the number of depositions, the scope of the depositions, the number of hours for depositions, and the time within which all depositions must be completed.

- W. Adoption of a pilot project in which senior or retired litigators serve as settlement masters to conduct settlement conferences in civil cases selected for referral to them by the District Judges or Magistrate Judges.
- X. Adoption of a pilot project for a period of one year which would require parties in litigation to make written offers of settlement at a time designated by the Magistrate Judge in the initial Scheduling Conference or later conference. At the conclusion of the trial of the matter, the court may award attorney's fees and costs against the party whose settlement offer is farthest from the final judgement.

V. **Minority Report on Recommendation X** (pilot project using offers of settlement, above)

Although its goals are laudable, this proposal advocates a step which the court is not empowered to take, and which is unlikely to achieve the desired end. Limitations imposed by Congress under the Rules Enabling Act on the authority of courts to write their own cost-shifting rules would probably be violated under this proposal. It is also unnecessary to the extent it duplicates the intent of portions of existing FRCP rules 11, 15, 54, and 68. Finally, despite its intent, it is likely to generate substantial satellite litigation.

VI. **Other Findings and Comments**

- A. **Differential Case Management:** after review of this management approach, and its use in other districts, it was determined that insufficient resources exist in the Court for its implementation at this time. A consensus judgement did emerge for its informal use by Magistrate Judges.
- B. **Local Rules:** as the local rules were recently revised, the Advisory Group will make no comment on them.

VII. **Other Techniques Considered**

- A. **Requirement of a the submission of a joint discovery/case management plan:** present practices under Rule 16 are sufficient in this regard.
- B. **Require the presence of a representative with the authority to bind at each pre-trial conference:** this was favored, but with reservations due to prior experience with government representatives on federal, state, and local levels; merits consideration in discovery and procedural matters.

- C. Signature of attorney and party on requests for extensions: this requirement would raise questions of the integrity of counsel, but may have limited utility in trial continuance requests.
- D. Neutral evaluation program: results of such programs are deemed inconclusive at this time, and therefor they are not recommended.
- E. Require the presence of a representative with the authority to bind at settlement conferences: this is the current practice in this district.

## **PART TWO: THE COURT PLAN**

### **I. General Principles**

- A. This plan is not limited to procedural matters.
- B. The Court, in conjunction with the Advisory Group, will periodically reexamine its workload to determine what additional actions it may require.
- C. The court will direct the Clerk to proceed with the present plan of automation to reduce time spent on administrative tasks.
- D. The Court will retain flexibility in its implementation of this plan to ensure that a rigid enforcement posture does not result in increased costs or injustice to any party.

### **II. Specific Actions to be Taken by the Court**

- A. Early and ongoing involvement of all judicial officers in the pretrial process, discovery, settlement, and maintenance of firm trial dates.
  - 1. The Court will continue to emphasize current policies, procedures and orders to insure that judicial actions are completed in a timely manner; Rule 16 conferences will continue to be scheduled within 90 days of the filing of the complaint.
  - 2. Trial dates shall be set at the earliest available calendar date not more than 12 months from filing, whenever possible, absent extraordinary circumstances.

3. Mandatory pretrial and settlement conferences shall be held on a regularly scheduled basis; all parties must comply with the district's scheduling order.
4. The Court shall exercise greater control over depositions to prevent abuse by counsel.
5. The Court will continue to develop procedures for determining alternate judges to preside in the event of a conflict preventing the assigned judge from reaching the trial on the scheduled date; parties will also be encouraged to consent to trial before a Magistrate Judge.
6. The Clerk shall be directed to ensure initial notification to all parties of Rule 71, FRCP, and Local Rule 403-2 (a) which allows the parties to consent to trial by Magistrate Judge; such notice shall again be given in each instance where a trial date is vacated due to unavailability of the presiding Article III Judge.
7. The Court shall continue to emphasize early disposition of motions, including summary judgement and dismissal; courtroom deputies and other clerks will be instructed to carefully monitor such motions to insure that they are properly placed on the court's calendar at the earliest practical time.
8. Local rules shall be amended to include a client concurrence to any trial continuance request.
9. Judicial officers shall continue to encourage greater civility and collegiality, and to ensure there is no gender, racial, or ethnic, or religious bias; the court will encourage counsel to comply with reasonable discovery request without resort to the court.
10. The judicial officers shall meet periodically to discuss such issues as the state of the docket and innovative cost or delay reduction techniques or procedures.
11. The Court will expect counsel to be familiar with local rules, and will impose sanctions to insure compliance and to control abuses; the court will encourage all judicial officers to consider alternative forms of sanctions to include those recommended by the Advisory Group.

B. Resource Needs: Court Personnel and Equipment

1. The Court continues to support the appointment of a judge to fill the vacant temporary judgeship established by the Judicial Improvements Act of 1990.
2. As the CJRA plan will require greater utilization of existing staff, the Court shall direct the Clerk of Court to reevaluate existing administrative procedures and practices, and provide the Court with a restructuring plan to alleviate the impact of staff reductions.
3. The Court will continue to seek the position of staff attorney to be assigned to pro se and prisoner case administration, and other duties as directed by the Chief Judge.
4. The Court shall direct the Clerk of Court to seek funds for the upgrading of equipment, to include visual aid equipment, which can be quickly and efficiently interchanged between courtrooms.
5. The Court, through its Magistrate Judges, shall continue to evaluate the impact of U. S. Military traffic and related cases presently heard by the Magistrate Judges to determine alternate cost effective methods of handling these cases.

C. Continuing Utilization of the Advisory Group

The Advisory Group shall be declared to be an ongoing Group which shall meet periodically, but not less than twice per year, to provide additional assistance to the Court as requested or required by the Act.

III. Court Directed Pilot Studies

The Court has considered several recommendations of the Advisory Group that will require additional study. These recommendations can best be accomplished through the establishment of pilot studies of each recommendation.

- A. Offers of settlement to be submitted at settlement conferences, followed by a discretionary award of costs to that offeror whose offer of settlement was closest to the final judgement: the Standing Committee on Local Rules shall evaluate this recommendation; in the interim, parties in litigation shall be offered this option on a voluntary basis, with the results analyzed over a nine month period.

- B. Undertake a study to determine the effectiveness of arbitration to reduce costs and delay: the Court directs the Advisory Group to continue to study this option, and to submit a report to the court not later than June 30, 1994.
- C. Establish a pilot program in which senior or retired litigators serve as settlement masters to conduct settlement conferences in selected civil cases: the Court directs the Advisory Group to prepare a template study as to whether such a pilot program, if implemented, would serve as an effective and efficient augmentation of the present settlement conference procedure.

**IV. Other Actions Requested by the Court**

- A. The Court shall request the federal bar and the lawyer representatives to the Ninth Circuit Judicial Conferences to coordinate in establishing continuing legal education programs.
- B. The Court shall call upon the state bar and the federal bar to assist in establishing a pro bono referral service for pro per litigants; the court shall continue its efforts to through the state law school to provide faculty supervised law student pro bono services, particularly in prisoner cases.
- C. The Clerk of Court shall obtain copies of pro se handbooks from other districts and with the Magistrate Judges, determine whether such a handbook should be distributed in this district.