CIVIL JUSTICE

EXPENSE AND DELAY REDUCTION

PLAN

DECEMBER 1993

CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

United States District Court
Eastern District of Washington

INTRODUCTION

In accordance with the Civil Justice Reform Act of 1990, 28 U.S.C. §§471-482, Chief Judge Justin L. Quackenbush appointed in 1991 the members of the CJRA Advisory Group for the Eastern District of Washington. The 17-member committee is comprised both of attorney members, several of whom have active federal litigation practices, and non-lawyer members who represent constituent groups commonly involved in or affected by federal court litigation. Over a two year period, the Advisory Group met and made a thorough study. Based upon the information gathered from the many surveys, judicial interviews, and the major case panel presentation, the Advisory Group prepared its recommendations. The Advisory Group Report, a copy of which is attached, was delivered in April 1993. A supplement to that Report was submitted on November 1, 1993.

The Court addresses herein each of the recommendations contained in the Advisory Group Report.

The Civil Justice Expense and Delay Reduction Plan, effective December 1, 1993, is adopted by the Court. All civil cases, pending and filed hereinafter in this district, shall be governed by the provisions of this Plan.

PLAN

The Court adopts, effective December 1, 1993, the following plan which reflects the substance of the Advisory Group's recommendations.

Case Management and Discovery

1. The judicial officers will continue to take a strong and active role in the general case management of each civil case assigned to them.

Discussion: The Advisory Group concluded from the data gathered from all sources that a correlation exists between aggressive case management on the part of individual Article III judges and significant achievements in greater efficiencies in time and cost. The assignment of all cases on filing to individual judges, rather than a master docket system, allows individual judges to take responsibility for overseeing cases to resolution at the earliest appropriate time.

2. The Court will insure that scheduling conferences are routinely held within 90 days of filing, and will consider at that conference the appropriateness of discovery management and apprise the lawyers and the litigants of available ADR processes.

Discussion: The Rule 16 status conference is regularly and appropriately used in this district to develop an early case management plan. By current local practice, lawyers are required to submit, prior to the initial status conference, a proposed scheduling order covering various aspects of case management, such as the scheduling of dispositive motions, setting of discovery cut-off dates, appointment of referees or masters, if appropriate, the setting of a date for filing a proposed pretrial order, and the setting of a trial date. Additional matters appropriate for review at the initial scheduling conference would be the rescheduling of, or the imposition of limitations on, discovery and distribution of materials on ADR procedures offered by or through the Court to clients as well as counsel.

Neither a differential case management plan nor a special tracking system for managing and monitoring complex cases is an appropriate case management tool in this district.

Because the Supreme Court is considering a proposed rule providing for mandatory exchange of information between litigants, a local rule on voluntary or cooperative discovery would be premature.

3. The Court will consider, and impose on a case-by-case basis, discovery management techniques which streamline discovery so as to achieve cost and time efficiencies so long as those techniques do not intrude on basic interests of the parties in the litigation.

Discussion: Even though discovery does not currently appear to be a general factor causing excessive cost or delay, certain additional techniques to streamline and facilitate discovery could reduce current time and cost inefficiencies. The Advisory Group recommended against the establishment of any set of particular discovery management rules according to any rigid categorization of cases. Nonetheless, a number of discovery management techniques exist which the Court should consider on a case-by-case basis. A non-exhaustive list of discovery management techniques is included in the Advisory Group's Report any one or more of which the judicial officers might impose in an appropriate case.

4. The Court will encourage litigants and their attorneys to submit their disputes to ADR.

5. The Court shall, in appropriate cases, at the time of the pretrial conference or at any date prior thereto determined by the Court, and after the parties have completed substantial discovery, schedule a conference for the purpose of discussing settlement prospects of the case, which the parties and counsel are required to attend. At this conference the Court will advise the parties directly of the advantages of ADR and actively encourage them to submit to one of the ADR procedures available.

Discussion: The Advisory Group determined that the district's present ADR rule, Local Rule 39.1 which affords counsel and litigants ADR mechanisms, was not being adequately used. Additionally, the Advisory Group Report concluded that ADR procedures, particularly mediation and arbitration, are most effective when compensated mediators or arbitrators are used.

6. The Court shall, in appropriate cases, encourage parties and counsel to utilize summary jury trials to facilitate negotiated settlements, and establish mechanisms appropriate to making summary jury trials available.

Discussion: The Advisory Group reported that the Eastern District utilized the summary jury trial approach successfully on at least one occasion and concluded that its broader use would likely aid in encouraging a larger number of settlements.

7. The Court shall, in appropriate cases, encourage experimentation with the use of early neutral evaluation and the mini trial as promising ADR mechanisms.

Discussion: Early neutral evaluation and the mini trial are two ADR procedures that have not been used extensively in this district, but have been successfully employed elsewhere. Both approaches can enhance settlement.

8. The Court shall study and consider the possible amendment of Local Rule 39.1 to provide that the mediator shall be compensated by the parties and in the event a party participating in mediation cannot afford the cost of the mediator, the mediator shall be compensated from Appropriated Court Funds, if available for that purpose. If such funding is not available, such mediation could be contributed pro bono, recognizing that payment by one side and not the other could raise an issue of the appearance of fairness.

Discussion: While the supplement to the Report of the Advisory Group recommended amendment of Local Rule 39.1 to mandate payment of court appointed mediators, the propriety of the adoption of such a rule and the lack of available funding caused the Court to study this matter further.

9. The Court will commit sufficient resources for the coordination and administration of the ADR options that are available.

Discussion: The Advisory Group concluded that the design and administration of an effective ADR program in the district would require the commitment of adequate resources, particularly staff resources.

10. The Court will request funding to implement a pilot program that would establish an ombudsperson position to evaluate prisoner complaints of a constitutional nature and act as an independent mediator in an effort to resolve such matters without the institution of a federal court action.

Discussion: Because of the number and complexity of pro se prisoner cases and the interconnection between the institution's grievance process and the court's function in deciding federal claims, the addition to the court's staff of a prisoner ombudsperson would likely result in a more efficient resolution of prisoner complaints.

11. The Administrative Office has provided networking and training for pro se law clerks.

Discussion: The Court determined that sufficient networking and training of the pro se law clerk exists. Therefore, recommending such networking and training to the Judicial Conference or Administrative Office was not necessary.

12. The Court shall assign more of the prisoner rights cases to the magistrate judges if the calendars of the magistrate judges permit.

Discussion: Conduct of a larger share of pro se prisoner cases by magistrate judges would expedite disposition of prisoner cases.

13. The Court will consider updating the current federal courtroom located in the Post Office Building in Walla Walla. Travel and inconvenience to the Court must be considered.

Discussion: Conduct of prisoner proceedings involving Walla Walla inmates in a court facility located in that community would be time and resource efficient.

14. The Court will continue to review prisoner complaints that are filed in federal court to determine whether the grievance has been completely exhausted with the Department of Corrections. Lack of exhaustion should be raised by the Department of Corrections.

Discussion: The prison grievance procedure can be used to resolve prisoner disputes without resort to litigation, but it cannot solve non-grievable issues.

15. The Court and/or the Department of Corrections shall convene a task force to evaluate the issue of prisoner grievances and litigation.

Discussion: The prison population in the district is substantial and, with the construction of new and planned facilities, will grow significantly in the near future. That population increase will lead to an increase in the filing of pro se prisoner cases.

While the results of the Advisory Group's surveys of litigants and lawyers showed prisoners to be among the most critical regarding delays in resolution of their cases, prisoners view the federal court as a trusted source of external authority, and prefer a dispute resolution process more closely associated with the Court than with prison authorities.

Recent United States Supreme Court decisions, while they may ultimately reduce the number of habeas corpus filings in federal courts, are not likely to reduce the time spent on habeas cases at the district court level.

The number and complexity of prisoner pro se civil rights and habeas corpus petitions filed with this district make a screening pro se staff attorney to assist the court a necessary support staff position.

Other Areas for Study

The Court incorporates in this Plan for reference the following Advisory Group conclusions:

That the increased volume of criminal prosecutions in the Eastern District, together with determinate and mandatory minimum sentencing for federal crimes, have had and continue to have a substantial effect on the court's handling of civil litigation;

That a mechanism is needed to provide earlier and better assessments of the effects of new legislation on the federal trial court system. The recently created Judicial Impact Office of the Administrative Office of the U.S. Courts may fill that need;

That the Court's functioning and its ability to manage and adjudicate civil litigation expeditiously and without undue cost to litigants, may be seriously affected by budget reductions currently under consideration; the Advisory Group should remain informed on the issue of the continuing adequacy of court resources, and should take such steps as are appropriate to its role to insure the adequacy of court funding.

CONCLUSION

This Plan is adopted to achieve the goals of the Civil Justice Reform Act of 1990. The administration of justice is an ongoing and changing process. The provisions of this Plan will need to be periodically reviewed. The Court, in consultation with the Advisory Group, shall conduct an annual assessment of the condition of the Court's civil and criminal dockets.

The efforts of the Advisory Group confirm that in this district civil cases are heard and disposed of on a timely basis.

So ordered this 24th day of November, 1993.

JUSTIN L. QUACKENBUSH
Chief United States District Judge

ALAN A. MCDONALD
United States District Judge

WM. FREMMING NIELSEN
United States District Judge

FRED L. VAN SICKLE
United States District Judge

The Court's Actions on the Recommendations contained in the CJRA Advisory Group Report

Recommendations 1, 2 and 3 were adopted in full.

Recommendation 4 was adopted in substance. The Court shall encourage alternative dispute resolutions and will discuss the availability of ADR and the ADR processes. However, the Court concluded that it was inappropriate to *require* that an attorney submit a certificate stating that he/she had fully explained to the client the various ADR procedures available, etc. The Court concluded that once the judicial officers had encouraged ADR and discussed its availability, how the case was handled after that point was a matter for the attorney and client to agree upon.

Recommendations 5, 6 and 7 were adopted and modified slightly to include "in appropriate cases." The Court concluded that the recommendations were not appropriate in *every* case and the Court should have the flexibility to make that determination.

Recommendation 8 to amend Local Rule 39.1 to implement the ADR proposals was modified. The ADR proposals adopted by the Court are included in this Plan and will be effective pursuant to the Plan.

Recommendation 9 was adopted and modified to provide that the Court will commit sufficient resources to the coordination and administration of the ADR options that are available pursuant to the Plan.

Recommendation 10 was adopted and modified. The Advisory Group recommended that the Court request funding to implement a pilot program that would establish an ombudsman position to evaluate and mediate all prisoner rights petitions that are filed in the federal Court. The Court will request funding to implement a pilot program that would establish an ombudsperson position to *evaluate prisoner complaints of a constitutional nature and act as an independent mediator in an effort to resolve such matters without the institution of a federal court action.* The Court shall thoroughly review the ombudsperson position and discuss further with the state Attorney General and Department of Corrections the recommendations contained in the Report regarding this position.

Recommendation 11 was not adopted by the Court. The Court concluded that a network or exchange between the Administrative Office and pro se law clerks currently exists and therefore it was not necessary to recommend to the Judicial Conference or the Administrative Office that such a program be established.

Recommendation 12 was adopted provided the calendars of the magistrate judges permit.

Recommendation 13 was adopted in part. The Court will consider updating the current federal courtroom located in the Post Office Building in Walla Walla. The Court noted that the prisoner civil rights and habeas cases were time consuming but that there were not enough of them to warrant building a joint-use courtroom.

Recommendation 14 was adopted by the Court. The Court noted that it was *also* the responsibility of the Department of Corrections to determine whether the grievance had been completely exhausted.

Recommendation 15 was adopted by the Court. The language was modified to reflect that it was the responsibility of *the Court and/or the Department of Corrections* to convene a task force to evaluate the issue of prisoner grievances and litigation.