

District of Colorado
Report of Advisory Group
Cost and Delay Reduction Plan
Summary

I. Assumptions; Miscellany; and Background

- A. The district consists of 104,247 square miles and has a population of 3,470,216.
- B. There are 7 authorized judgeships and no vacancies. There are also 1 senior judge and 4 full-time and two part-time magistrate judges. Vacancies have been a significant problem in the recent past.
- C. The district has a significant federal government presence including military bases and a new federal prison under construction.
- D. The advisory group used statistics, questionnaires, interviews, and written comments to assess the docket. A public hearing was also held in conjunction with the adoption of new local rules in June of 1992.

II. State of the Docket

A. Filing Trends

- 1. Civil cases take 8 months from filing to disposition ranking the court 15 of 94 courts in this category. The court has a median time of 15 months from issue to trial in civil cases compared with a nation figure of 14 months.
- 2. The number of 3 year old cases continues to decline and is currently 4.9% of the docket.
- 3. Criminal felony cases take a median time of 4.2 months from filing to disposition ranking the court 10th in this category.
- 4. The court has a concentration of complex civil and criminal cases including civil rights, contract actions, and multiple defendant drug cases. As reflected by the rise in weighted filings this concentration is increasing. Time dealing with criminal cases is escalating.
- 5. The number of cases terminated per year has declined recently. Pending cases are up by 21% over last year. The court ranked 69 in terminations.
- 6. Civil filings have increased by nearly 22% over the last year. Prisoner cases now make up 27% of the civil docket.

B. Causes of cost and delay.

- 1. Underutilization of case screening and magistrate judges.
- 2. Motion practice and judicial handling of motions

3. Underutilization of ADR
4. Discovery practices
5. Lack of competence and professionalism in some lawyers.

III. Recommendations

- A. The court should broaden the scope of matters referred to magistrate judges.
- B. Each district judge should review their procedures of handling motions to determine if speedier rulings are possible. The resources of the clerk's office should be utilized to meet this end.
- C. Pretrial conferences should be held no more than 60 days and not less than 30 days before trial. All motions, except evidentiary motions, should be filed 30 days before the final pretrial conference.
- D. Local rules should be modified to provide the court should rule on non-dispositive motions within 60 days after they are at issue. Dispositive motions should be ruled upon within 90 days.
- E. PACER should be expanded.
- F. Parties should be required to file, no later than the Rule 16 conference, stipulations or individual written statements as to their plans to use ADR or reasons why they believe ADR is not appropriate.
- G. The court should develop and implement a pilot program by which cases might be focused or streamlined and suitability for ADR is determined.
- H. ADR should be included in education programs presented for attorneys practicing before the court. Judges and magistrate judges should be given opportunities to learn more about ADR. The court should take the lead in establishing a practice resource group to provide attorneys with training, mentoring, and practice development skills.
- I. The court should monitor the new programs designed to combat discovery abuse.
- J. The court should assume early and ongoing control of the pretrial process through the involvement of a judicial officer in setting deadlines for filing motions, at the earliest practicable time.
- K. The court should require each party, including state and federal governmental agencies, must be represented by a person with authority to bind as to all issues previously identified for discussion. The court should require the

presence of the parties at settlement conferences. Parties who reside out of state can be present by telephone if they show it would be an undue financial hardship to attend in person.

- L. The court should provide for Early Neutral Evaluation (ENE) on stipulation of the parties, motion of a party, or the judge's own motion.
- M. Rules governing bankruptcy matters should be in a separate article within the local rules.
- N. The court should hold status conferences, if requested by one or more parties, for any bankruptcy matter.
- O. Congress should draft legislation with more precision to avoid litigation-causing errors or omissions. Congress should expand the resources available to the judiciary when creating additional areas of federal jurisdiction.
- P. The executive branch should evaluate the effectiveness of, and work towards, further implementation of the executive order encouraging ADR in cases involving the United States.
- Q. The executive branch should nominate candidates for judicial vacancies in a timely manner and the Senate should act promptly on such nominations.
- R. The court should request additional judgeships.

IV. Plan

- A. Civil case management should be tailored to the complexity of the individual case. Uniform pretrial orders provide case management tools for all cases. Discovery is managed at a level appropriate to the individual case.
- B. A scheduling conference will be held within 45 days after a defendant enters an appearance. The attorneys responsible for the case shall attend the conference and be prepared to address all matters relating to discovery, motions, settlement, and other aspects of litigation. Attorneys must meet in advance and attempt to agree on a proposed scheduling order. If counsel can not agree they must submit a proposed order setting forth those elements on which they agree and each shall separately set forth the elements upon which they could not reach agreement. ADR will be discussed at the pretrial conference. A scheduling order will be issued and it will control the case unless modified. Any counsel appearing at conferences and hearings are held responsible for and must be authorized to bind their clients on all matters that arise.

- C. The court may limit the number of depositions, interrogatories, requests for admissions, and requests for production.
- D. Informal, voluntary discovery is encouraged. Before scheduling discovery the attorneys must meet and confer to limit time and expense.
- E. The court has outlined prohibited behavior and activity. Sanctions will be used to enforce proper conduct.
- F. All motions shall contain a certification of a good faith attempt to resolve disputed matters. Motions for summary judgment and motions to dismissed are exempt from this requirement.
- G. The court may order the parties to engage in settlement discussions. The court may call a time-out and stay non-settlement aspects of the action at any stage of the proceedings.
- H. Proof that a copy of any request for extension of time have been served upon the moving attorney's client, all attorneys of record, and all pro se litigants must be filed.
- I. Any judicial officer may require a person with full settlement authority to be present at any hearing or conference.
- J. The court recognizes the importance of prompt rulings on motions but also recognizes the obligation to apply judicial resources under priorities in the public interest.
- K. Greater coordination between state and federal courts shall be promoted by requiring attorneys to list related pending cases in any state or other federal court.