CIVIL JUSTICE REFORM ACT

EXPENSE AND DELAY REDUCTION PLAN

FOR THE DISTRICT OF KANSAS

ADOPTED BY THE COURT DECEMBER 31, 1991

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The judges of the United States District Court for the District of Kansas hereby adopt and implement the Court's existing local rules, standing orders, and internal procedures, as modified or supplemented by a number of specific measures, rules, and programs, described below, as its Civil Justice Reform Act Expense and Delay Reduction Plan, as required by the provisions of section 471 of the Civil Justice Reform Act, 28 U.S.C. § 471. The measures, rules, and programs discussed below are intended to address the specific causes of expense and delay described in the final Report of the Civil Justice Reform Act Advisory Group for the District of Kansas (October 25, 1991). To the extent that implementation of any measure, rule, or program described below would require the Court to promulgate a local rule or standing order, the Court either has begun initiating the procedures for promulgating such rule or order, or shall begin such process, prior to December 31, 1991.

Monthly Status Reports on Cases and Motions

The Clerk's office has recently acquired the capacity to report to the Court on the status of all cases and motions pending in the district through the integrated case management system ("ICMS"), and has already begun making status reports to the Court on a monthly basis. The Court directs that the Clerk's office continue and expand this practice, and that status reports be compiled monthly and circulated to all judges and magistrate judges in the district. Such reports should cover all civil cases

and the pro se prisoner docket, and should address all areas identified in the discussion of "goals" below. This status report shall be an internal document not available to the public except to the extent required by the reporting requirements of section 476 of the CJRA.

This measure is intended to address those problems of delay that stem merely from a lack of awareness by judicial and parajudicial personnel of case and motion status.

Articulation of Case Management Goals

The Civil Justice Reform Act speaks of "expense" and "delay" in abstract terms. The CJRA offers little guidance to the district courts concerning the "goals" for which its expense and delay reduction plan ought to strive. Nevertheless, the Act requires the Court to report yearly on whether the district's Plan has achieved reductions in expense and delay within the district court. Accordingly, the Court believes that it is appropriate to identify and articulate quantitative case management goals. Such goals have been developed for the district as a whole, and shall apply to each district judge, senior judge, and magistrate judge who maintains a caseload within the district. Each judge in the district should periodically review his or her docket and compare its status to that of other judges in the district and to national case management statistics. The Court also directs the Advisory Group for this district to identify, prior to June 30, 1992, peer districts whose case management statistics might serve as a basis for comparison.

The Court believes that the following quantitative case disposition goals are

appropriate in the District of Kansas given the nature of the Court's civil caseload and accordingly adopts the following such goals: (1) the median time from filing to disposition (currently 11 months) should approximate the national median (currently 9 months) at the end of statistical year (SY) 1993; (2) the median time from issue to trial (currently 20 months) should approximate the national median (currently 14 months) at the end of SY 1993; (3) the average life expectancy and indexed average lifespan of a civil case in this district (currently 14 months) should equal the national lifespan reference (currently 12 months) at the end of SY 1993. In articulating these goals, the Court is aware that national medians and averages may decrease over the seven years of the CJRA's lifespan due to the impact of the CJRA on case management procedures. The current national median or average is presently the goal intended for SY 1993, but the Court will reconsider all case management goals in future years after consultation with each judge of the Court and the Advisory Group.

The Court adopts the following case disposition goals respecting three special categories of civil cases: (1) a social security appeal should be decided no more than 60 days after it is deemed submitted under D. Kan Rule 503; (2) a bankruptcy appeal should be decided no more than 120 days from when the reply brief is filed or when the time for filing a reply brief has expired; and (3) as interim goals, prisoner habeas corpus cases should generally be resolved within 180 days of filing, and non-dispositive motions in prisoner cases should be ruled upon within 90 days of filing. Highest immediate priority should be given to reducing the back log of habeas corpus cases. Eventually, pending motions in prisoner cases should be resolved

within the time frame applied to other civil motions.

The Court adopts the following motion disposition goals with respect to civil motions: (1) with respect to most nondispositive motions, including discovery related motions, disposition within 60 days of filing; and (2) with respect to most dispositive motions, including motions to dismiss and motions for summary judgment, disposition within 120 days from when the reply brief is filed or when the time for filing a reply brief has expired.

The Court believes that the goals articulated above are achievable without detracting from the standard of justice available in the District of Kansas and observes that the quality of justice must never yield to temporary goals of efficiency.
In addition, the Court directs the clerk's office to devise methods for retrieving data from the chambers of judges, magistrate judges, and the integrated case management system (ICMS) so that the Court and the CJRA Advisory Group periodically may assess whether implementation of the CJRA Plan adopted by the Court has had an impact on the delay and expense associate with civil litigation in this district.

These measures are intended to address the expense and delay associated with lengthy disposition times for individual motions and for cases, and to allow periodic assessment of whether the Court is achieving its articulated goals. The establishment of institutional goals, coupled with individual judges' and magistrate judges' routine evaluation of the status of their caseloads, will encourage timely rulings on motions, which will in turn eventually improve the Court's overall management statistics.

Expanded Judicial Control Over the Management of Civil Litigation

The Court believes that the key to successful case management and expense and delay reduction is early and ongoing intervention in the pretrial process by an Article III judge, either acting alone or in conjunction with a magistrate judge, coupled with a well-considered and articulated discovery plan, developed jointly by counsel for all litigants with the guidance of the Court. The Court accordingly has determined that it shall undertake to ensure such early and ongoing judicial intervention and discovery planning as follows:

(1) The judges and magistrate judges in each district office shall jointly establish a procedure for the entry of an initial scheduling order tailored to particular cases, such as requiring the attorneys to develop such an order within thirty days of the date the defendant appears in the case. See Amendments to Fed. R. Civ. P. 16 (effective July 1, 1990) and Proposed Amendments to Rule 16, Preliminary Draft of August 1991. The order, which will constitute the order required by Rule 16 of the Federal Rules of Civil Procedure, shall be reviewed, modified, and entered by the Court, after conducting actual initial scheduling conferences in those cases which the Article III judge, either acting alone or in conjunction with a magistrate judge, deems may require a conference to control the cost and duration of discovery. In addition to those items that Fed. R. Civ. P. 16 requires be included in the initial order, the initial scheduling order should address:

(a) whether a limited amount of discovery would enable the parties to present

substantive issues for the Court's resolution which would narrow the scope of remaining discovery;

(b) how potential dispositive motions can be presented for the Court's determination at the earliest appropriate opportunity;

(c) whether an exchange of documents should be required without formal discovery request; and,

(d) whether issues should be bifurcated.

(e) potential dispositive or discovery issues;

(f) the placing of cases in categories for case management by identifying, inter alia,

(i) cases that should be pretried within four months of issue;

(ii) cases in which only limited discovery will be permitted prior to the filing of motions;

(iii) cases in which discovery will be stayed pending resolution of a substantive issue; and

(iv) cases requiring longer than four months of discovery;

(g) the setting, at the earliest appropriate time, of a definite date for the final pretrial conference and trial; and

(h) raise the issue of the best time to consider mediation or settlement.

The goal of this initial scheduling order should be a preliminary but realistic discovery plan and time frame for the case, embodied in a meaningful Rule 16 order.

(2) The Article III judge assigned to a case, either acting alone or in

conjunction with a magistrate judge, shall conduct additional conferences with counsel where necessary to eliminate or minimize delays and expense in the discovery or trial process. In complex cases, the Article III judge should conduct the final pretrial conference to finalize issues, complete the final pretrial order, narrow the issues to be tried where appropriate, and, if possible, establish a firm trial date.

(3) To facilitate better coordination between Article III judges and magistrate judges, the Court contemplates that each district office shall institute a practice that judges and magistrate judges meet on a frequent and regular basis to discuss cases in which case management responsibilities are shared and otherwise facilitate the efficient and effective management of the civil caseload. These meetings could also address ways in which magistrate judges might be better utilized, including the trying of civil cases where counsel consent and the making of recommendations on dispositive motions or other matters deemed beneficial to the early and thorough resolution of the case.

(4) To the extent that implementation of any of the above measures requires the Court to adopt the local rule or standing order, the Court expects that the process of promulgating such rule or order shall be initiated prior to December 31, 1991.

The Court believes that the measures described in this section will partially address problems of expense and delay associated with the absence of adequate judicial control over the timing and scope of discovery. These measures may also help reduce the number of discovery and other motions filed in some cases, and facilitate earlier settlement discussions in appropriate cases.

Modify Local Rules Regarding Discovery and Summary Judgment Motions

The Court believes that some changes in discovery and motion practice would benefit all litigants in the District of Kansas. The Court notes the Advisory Group's conclusion that there is some concern among attorneys and litigants about inconsisten. practice in the district in some areas, including the following: (1) definitions of terms used in interrogatories; (2) where witness depositions may be taken; (3) the circumstances in which a witness may be instructed not to answer a question during a deposition; (4) standardized protective orders; and (5) obtaining medical records through discovery. The Court accordingly directs the Rules Committee to consider these issues, and make such recommendations for modifications of the local rules as it deems appropriate.

In addition, the Court has initiated procedures to modify Local R. 206 to provide that a moving party has additional time to file a reply memorandum. The following language shall constitute the amended rule:

RULE 206
MOTIONS IN CIVIL CASES

(a) **Form and Filing.** All motions, unless made during a hearing or at trial, shall be in writing and shall be filed with the clerk. An original and one copy of all motions shall be filed and, except for motions pursuant to Local Rules 114 and 115, shall be accompanied by a brief or memorandum unless otherwise provided in these rules. With the approval of the Court, parties may be relieved from the requirement of serving and filing written briefs or memoranda in support of motions, responses, and replies.

(b) **Responses and Replies.** A party opposing a motion other than one to dismiss or for summary judgment shall, within ten days after service of the motion upon him, file an original and one copy with the clerk and serve upon all other parties a written response to the motion containing a short,

concise statement of his opposition to the motion, and if appropriate, a brief memorandum in support thereof. A party shall have twenty days to respond to a motion to dismiss or for summary judgment. The moving party may, within ten days after the service of such statement in opposition upon him, file an original and one copy with the clerk and serve upon all other parties a copy of a written reply memorandum.

The suggestion that certain discovery practices be standardized is intended to address problems stemming from a perceived lack of consistent practices throughout the district as to some issues, which has encouraged discovery disputes and the motions that inevitably result from such disputes.

The Court believes that some modifications to Local R. 214 are necessary to codify the practices that have evolved in Wichita under this rule, and that the rule should be amended to require that a party representative must attend in person any settlement/mediation conference held pursuant to this rule. The amended rule shall provide:

RULE 214
ALTERNATIVE DISPUTE RESOLUTION

Consistent with Fed. R. Civ. P. 16, the judge to whom a case has been assigned may encourage the counsel and the parties, at the earliest appropriate opportunity, to resolve or settle their dispute using such extrajudicial proceedings as mediation, mini-trials, summary jury trials or other alternative dispute resolution programs. The judge shall not make this a requirement in a case where it would be futile.

The judge may refer a case to a settlement conference before a mediator, an attorney-mediator chosen from a panel of local attorneys, a magistrate judge, or any trial judge consenting thereto. The settlement conference shall be conducted in such a way as to permit an informative discussion between counsel, the parties, and the judge, magistrate judge, attorney-mediator, or mediator of every possible aspect of the case bearing on its settlement, thus permitting the judge, magistrate judge, attorney-mediator, or mediator to privately express his views concerning the settlement of the case. Attendance by a party representative with settlement authority at such

conferences is mandatory, unless the Court orders otherwise. In cases where the United States is a party, attendance at the conference by the United States Attorney for the District of Kansas will satisfy this rule.

The Civil Justice Reform Act Advisory Group for the District of Kansas shall develop the initial panel of attorneys after consultation with all interested bar associations. The list of attorneys shall be approved after additions and deletions, and maintained by the Court. The Court may thereafter add names to or strike names from the list, after consultation with the Advisory Group or interested local bar associations.

Settlement conference statements or memoranda submitted to the Court or any other communications that take place during the settlement conference shall not be used by any party in the trial of the case. The judge, magistrate judge, attorney-mediator, or mediator presiding over the settlement conference shall not communicate to the trial judge the confidences of the conference except to advise whether or not the case has been settled. If the conference is conducted by a mediator, an attorney-mediator, or panel of attorney-mediators, the costs of the conference, including the reasonable fees of the mediator, attorney-mediator or panel of attorney-mediators, shall be assessed to the parties in such proportions as shall be determined by the trial judge.

The Court does not intend that alternative dispute resolution methodology be used solely for its sake. It does, however, encourage attorneys and judges to use their creativity to develop procedures appropriate in this District for each particular case to encourage the fair, just and efficient resolution of disputes in order to better serve party litigants and to improve the trial system.

The modification of Rule 214 is intended to facilitate and expedite pretrial settlement of cases without unnecessary discovery expense or delay where such settlement is a realistic possibility.

Enforcement of Local and Federal Rules

The Court directs that henceforth pleadings and briefs which fail to comply with applicable rules may be dismissed or otherwise returned to the filing party

without action. Because most noncompliance with local rules appears to be inadvertent rather than deliberate, the Court also directs that the Rules Committee, with the assistance of the Advisory Group and such other representatives of the Court's litigation constituencies as may be appropriate, devise a means for providing additional lawyer education concerning the local rules of civil practice in the District of Kansas.

This measure is intended to reduce expense and delay stemming from noncompliance with local rules.

Additional Staff Resources for Pro Se Caseload

The Court has acknowledged the Advisory Group's observations about the backlog of cases and motions caused by the inadequacy of staff committed to the processing of pro se prisoner petitions. As a result of the group's observations the Court directed the Clerk to explore the possibility of adding staff from funds provided through the Civil Justice Reform Act.

The Clerk responded by adding one additional Pro Se Law Clerk and one Paralegal. The Court recommends that the Advisory Group revisit the prisoner pro se operation in one year to ascertain whether or not the addition of staff has been sufficient to clear up the backlog and adequately process future prisoner petitions or whether other methods need to be implemented.

FOR THE COURT

December 16, 1991
Date

Earl E. O'Connor, Chief Judge