UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

CIVIL JUSTICE REFORM ACT COST AND DELAY

REDUCTION PLAN

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I. INTRODUCTION

What follows is the Civil Justice Expense and Delay Reduction Plan for the Middle District of Alabama. The plan is the result of the cooperative effort of the bench, bar, and citizens of this district. Pursuant to the dictates of the statute, a Civil Justice Reform Act Advisory Group was appointed to assess the court's docket and make appropriate recommendations. The Advisory Group provided its assessment and recommendations to the court on July 15, 1993, through a formal report. In adopting this plan, the court has considered all of those recommendations of the Advisory Group as well as all of the principles, guidelines, and techniques of litigation management which the court is required to consider under the provisions of 28 U.S.C. § 473.

II. DIFFERENTIATED CASE MANAGEMENT

28 U.S.C. § 473(a)(1)

The Act requires that the court consider for inclusion in its plan a case management system based on the "systematic, differential treatment of civil cases. ..." The Act calls for a system that tailors the level of case-specific management "to such criteria as case complexity, the amount of time

reasonably needed to prepare a case for trial, and the judicial and other resources required and available for the preparation and disposition of the case." 28 U.S.C. § 473(a)(1).

Under the system currently in effect in this district, the judge to whom the case is assigned is entirely responsible for scheduling. In scheduling cases, the judges of this district routinely take into account the complexity of the case. They extend discovery and motion deadlines and grant continuances to ensure that the parties have adequate time for preparation. This present system provides judges the necessary flexibility to tailor scheduling to the needs of the case. It is important to note that there was no sentiment in the report of the Advisory Group for a formalized differential case management system. The Advisory Group and the judges of this court believe that such a system would inject unnecessary complexity and work into scheduling for no good purpose. The current system of case management works well for lawyers, litigants, and the court, and there is no need to change it.

III. EARLY AND ONGOING JUDICIAL CONTROL OF THE PRETRIAL PROCESS

28 U.S.C. § 473 (a)(2)

The Act requires the court to consider the implementation of a pretrial management system which assesses the case, sets early and firm trial dates within 18 months of the filing of

a complaint, and controls discovery and the filing of motions. The court's current practices provide for the setting of firm trial dates and control of discovery. Every civil case is assigned to a district judge and a magistrate judge. The district judge or, in cases where consent under 28 U.S.C. § 636(c) has been given, the magistrate judge holds a scheduling conference either in chambers or by conference call within 80 days of the filing of an answer in all cases which are not prisoner or Social Security cases.* In cases which have been removed, the conference is held within 80 days of the date of removal or the filing of an answer, whichever is later.

Immediately following that scheduling conference, a scheduling order is entered which sets discovery cut-off dates and deadlines for filing dispositive motions. Firm pretrial and trial dates are also set. The trial date is always within 18 months of the filing of the complaint. During the pretrial phase of the case, all dispositive motions are sent to the judge exercising case-dispositive jurisdiction. In cases assigned to district judges, all non-dispositive motions are referred to the magistrate judges. The magistrate judges manage the pretrial discovery phase.

While the Advisory Group expressed global concerns about excessive discovery, it did not recommend that this court

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*Prisoner and Social Security cases are automatically referred to the magistrate judges for a report and recommendation.

adopt any limitations on discovery. The court has considered that issue and concludes that there is no reason, at this time, to place specific limitations on discovery. The court's current practice would allow for such limitations in an appropriate case and the court intends to place limits on discovery where appropriate.

IV. EARLY NEUTRAL EVALUATION AND CASE MANAGEMENT

28 U.S.C. § 473(a)(3), (b)(1) & (b)(4)

The Act recommends that the court consider implementing a series of conferences with counsel which would provide for an early neutral evaluation of cases as well as intense case management. An important part of case management would be the development of a discovery-case-management plan. The Advisory Group recommended that the court adopt such a process. The court agrees. Early involvement by the court in case management and scheduling should result in further reduction of expense and delay.

Pursuant to the general order which will implement this plan, a discovery-case-management plan will be discussed at the scheduling conference. If the judge believes that such a plan should be formalized, it will be included in the scheduling order. In addition, if the judge, after conducting the scheduling conference and reviewing the discovery-case-management plan, determines that an early neutral evaluation may lead to resolution of the case, the case may be referred

to a senior district judge or magistrate judge to conduct such an evaluation. The court must note, however, that the use of an early neutral evaluation process may be limited because of the already excessive workloads of the judicial officers in this district.

V. VOLUNTARY EXCHANGE OF INFORMATION AND THE USE OF COOPERATIVE DISCOVERY DEVICES

28 U.S.C. § 473(a)(4)

The Act requires the court to consider procedures which encourage the litigants to exchange information voluntarily and to use cooperative discovery devices. Although the Advisory Group made no specific recommendations in that regard, the court wholeheartedly endorses the concept. At the scheduling conference, the judge will specifically discuss with the parties the voluntary exchange of information and the use of cooperative discovery devices to determine whether such devices would be helpful. In appropriate cases, voluntary exchange of information and the use of cooperative discovery devices may be required by the court's scheduling order.

VI. CERTIFICATION

28 U.S.C. § 473(a)(5)

The Act requires the court to consider a procedure which prohibits the consideration of a discovery motion unless "accompanied by a certification that the moving party has made a reasonable good faith effort to reach agreement with

opposing counsel on the matters set forth in the motion." The guidelines for civil discovery in this district currently suggest such a practice and the judges of this court routinely require such certification. The procedure, however, has never been formally adopted. The Advisory Group recommends certification and the judges of the court agree that such a procedure is appropriate.

VII. ALTERNATIVE DISPUTE RESOLUTION PROGRAMS (ADR)

28 U.S.C. § 473(a)(5)

The Act requires the court to consider providing the authority to refer certain cases to ADR. This court has developed an informal, voluntary program through which appropriate cases are referred to the senior district judges or the magistrate judges to conduct mediation. The decision whether to mediate is left up to the judge to whom the case is referred. Under the informal program currently in place in this district, judges make inquiries of the parties, usually at pretrial, about their interest in ADR. If the parties indicate that they are interested in ADR, the case is referred to a senior district judge or magistrate judge. That judge contacts the parties about the ADR process. If the parties agree to participate in ADR, the senior district judge or magistrate judge facilitates the process through a conference. Follow-up conferences are utilized where necessary. Each senior district judge or magistrate judge is given total

discretion in how the conferences are to be conducted. During the next assessment period, the court intends to study this current informal mediation program to determine whether it should be continued, modified, or discontinued. Formal authorization for the court's ADR program will be included in the General Order accompanying the plan.

VIII. REPRESENTATION AT THE PRETRIAL CONFERENCE

28 U.S.C. § 473(b)(2)

The Act requires that the court consider implementing a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters. The court currently has such a practice and the court intends to adopt the recommendation of the Advisory Group that the practice become a formal part of the court's plan.

IX. EXTENSIONS OF TIME AND CONTINUANCES

28 U.S.C. § 473(b)(3)

The Act requires that the court consider adopting a practice which requires that all motions seeking extensions of discovery deadlines and all motions for continuances of trial settings be signed by the attorney and the party making the request. The Advisory Group has recommended such a practice.

The court has considered the Act and the recommendation of the Advisory Group and declines to follow their recommendation. The judges of this court unanimously agree that adopting such a practice would increase rather than reduce the cost of litigation and would do nothing to reduce delay. There are no problems in this district which would be minimized or resolved by the adoption of this practice.

X. SETTLEMENT CONFERENCES AND MEDIATION

28 U.S.C. § 473(b)(5)

The Act mandates that the court consider a requirement that representatives of parties with authority to bind them in settlement discussions be present or available by phone during settlement conferences. The court has already implemented this requirement in practice and will formally adopt the practice in the plan. The court uses the term "mediation" to include "settlement conferences."

XI. OTHER FEATURES

SOCIAL SECURITY CASES

The study of the court's docket indicated that in past years, Social Security cases were not being processed as fast as some other types of cases. Accordingly, the magistrate judges agreed that Social Security cases would be given a priority and that every attempt would be made to conclude

Social Security cases within nine months of the date of filing.

XII. SCHEDULE FOR IMPLEMENTATION

The attached General Order will implement this plan. All provisions of the plan will become effective on December 1, 1993.

DONE, this the 22nd day of November, 1993.

CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

GENERAL ORDER

Pursuant to the provisions of this court's Civil Justice Expense and Delay Reduction Plan, the following procedures are hereby adopted effective December 1, 1993. The procedures apply to all civil cases, except cases filed by prisoners under the provisions of 42 U.S.C. § 1983 and Bivens actions, petitions for writs of habeas corpus filed under 28 U.S.C. §§ 2241, 2254, and motions for post conviction relief under 28 U.S.C. §2255, and Social Security cases. The deadlines contained in this order may be extended by the court in individual cases for good cause.

1. Within 80 days of the filing of an answer or the date of removal, whichever is later, the court will conduct a scheduling conference either face-to-face or, in appropriate cases, by conference call. At that conference, the court shall discuss the possibility of referring the case to a senior district judge or a magistrate judge for scheduling an early neutral evaluation conference. The court shall also discuss the need for a discovery-case-management plan. If the court requires that the parties submit a discovery-case-management plan, the plan may consist of the following:

(a) identification of the principal factual and legal issues which the parties dispute;

(b) a schedule of the time and length of discovery, including:

(i) limitations on the kind and amount of discovery, including but not limited to limitations on the number of depositions, interrogatories, or requests for production of documents;

(ii) the desirability of conducting phased discovery in which the first phase is limited to developing information needed for realistic assessment of the case and, if the case does not terminate, the second phase is directed at information needed to prepare for trial;

(iii) the desirability and feasibility of the voluntary exchange of information and the use of cooperative discovery devices; and

(iv) a proposed schedule for the filing of motions.

The court anticipates that the parties should and will reach agreement on the matters to be presented in the discovery-case-management plan. To the extent that the parties disagree, they shall set forth separately the terms on which they disagree and indicate the nature of the disagreement. The purpose of the discovery-case-management plan is to provide the court with the estimates and views of the parties. The discovery-case-management plan submitted by the parties shall be considered by the judge as advisory only.

2. Within ten days of the scheduling conference, the district judge to whom the case is assigned will issue a

scheduling order. The order will contain, but not be limited to, deadlines for the completion of discovery and deadlines for the filing of dispositive pretrial motions. In the scheduling order, the court will also schedule the final pretrial conference and set a firm trial date. In appropriate cases, the court may also place limitations on discovery and include a formal discovery-case-management plan.

3. Each party must be represented at the scheduling conference and the final pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters.

4. The judge to whom a case is assigned may, with the agreement of the parties, refer a case to a senior district judge or a magistrate judge for mediation. Upon notice from the senior district judge or the magistrate judge that their presence is required at the mediation proceeding or settlement conference, representatives of the parties with authority to bind them in settlement discussions must be present or available by telephone.

5. The court will not consider any motion relating to discovery, such as a motion to compel or a motion for protective order, unless the motion is accompanied by a written certification that the moving party has made a

reasonable good-faith effort to reach agreement with opposing counsel on the matters set forth in the motion.

6. Social Security cases shall be given a priority by the magistrate judges with the goal of concluding all such cases within nine months of the date of filing.

DONE, this the 22nd day of November, 1993.

CHIEF UNITED STATES DISTRICT ~~JUDGE~~

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE