

**Middle District of Alabama  
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 23 primarily rural counties in the southeastern part of the state with a population of approximately 940,000.
- B. ~~The district contains three major military installations, seven state prisons, and one major population center in Montgomery.~~
- C. The district maintains northern, eastern and southern court divisions, located in Montgomery, Dothan, and Opelika.
- D. The district has three authorized Article III judgeships, all of which are currently filled (i.e., no vacancies). There are three full-time magistrate judges, and two active senior judges.
- E. The advisory group conducted interviews of all judicial officers, It also interviewed members of the federal bar and litigants. Data analysis was performed utilizing court data and national data. Public meetings were held in each of the three divisions to receive comment. Two special civil case samples were also drawn for further analysis.
- F. The district has fully implemented ICMS civil and criminal systems. Pacer is also currently running in this district.

**II. State of the Docket**

**A. The Civil Docket**

- 1. Civil case filings increased from 1320 in 1987 to 1596 in 1991, an increase of 20% over this period.
- 2. Civil case terminations have remained relatively constant over the past several years, while pending cases have increased; from 1990 to 1991,

pending cases increased by almost 17%. A significant increase in vacant judgeship months in both 1991 and 1992 is seen to contribute to this problem. Case terminations per judgeship stood at 511 for the period ending in June, 1991, well above the national average of 399.

3. Civil filings per judgeship for 1992 had increased over 27% above the previous year, ranking the district first in the nation.
4. Pending civil cases over three years old decreased from 5.7% to 4.7% in 1992, although total cases pending have increased over each of the past six years.
5. Median time from filing to disposition for civil cases for 1992 increased from seven to eight months, while the median time from issue to trial decreased from ten months to nine over the same period.
6. Civil cases filed by prisoners comprised over half (51.62%) of all civil case filings in 1992.
7. 1992 statistical data show weighted filings per judgeship growing to 498; this figure has consistently exceeded 400 since 1988.
8. Trials completed per judgeship increased from 42 to 55 in 1992.

#### B. The Criminal Docket

1. Criminal filings have generally increased over the past several years in this district after bottoming out in 1986. The district stands at 24th nationally in total criminal filings for 1992.
2. Trials in criminal cases increased steadily from a low of 31 in 1986 to 70 in 1991.
3. Drug prosecutions constitute 36% of total criminal filings; the remainder of the criminal docket is primarily composed of fraud (14%); embezzlement (11%); forgery and counterfeiting (9%); and weapons and firearms cases (7%).
4. The median time to disposition of criminal matters was 4.4 months in 1992, ranking the district 11th nationally.
5. The proliferation of complex criminal cases, mandatory minimum sentences, and the application of the federal sentencing guidelines will

probably insure that time spent on criminal matters will continue to increase.

### **III. Factors Contributing to Delay (from lawyer surveys)**

- A. Case management by the court.
- B. Dilatory actions by counsel.
- C. Dilatory actions by litigants.
- D. The court's failure to rule promptly on motions.
- E. The backlog of cases on the court's calendar.
- F. The low priority given to social security cases.
- G. Time lapses in the issuance of magistrate judge recommendations.
- H. Cases not promptly set for oral argument.

The attorney responses that comprised the survey above were investigated by the Advisory Group. Many appeared to be limited responses to particular individual cases, and not representative court-wide criticisms. No problems regarding excessive costs were uncovered in the assessment of the docket or the individual analysis sample cases, although a majority of judges felt costs to be too high, especially regarding discovery. The district's performance on the time measures of issue to trial (nine months) and filing to disposition (eight months) for civil cases are well below the national average, ranking it 8th and 15th, respectively in these indices. In summary, the Advisory Group finds no major cost or delay problems in this district.

### **IV. Recommendations**

- A. The Administrative Office should establish a procedure for soliciting specific comments from the district courts about pending legislation.
- B. Congress and other agencies of government involved in the judicial selection process should adopt procedures which will accelerate the process for appointing federal judges to insure that vacancies only exist for the minimum time necessary for the selection process.
- C. Endorsement of the recommendation of the Judicial Conferences Subcommittee on Judicial Statistics, the Eleventh Circuit Judicial Conference, and the Judicial

Conference of the United States, for the authorization of an additional District Court Judge for the Middle District.

- D. Differential treatment of civil cases should be left to the discretion of the trial judge.
- E. Early and On-Going Control of the Pretrial Process
  - 1. A scheduling conference should be conducted by a judicial officer as soon as possible after the filing of an answer before the pretrial order is entered.
  - 2. The scheduling conference should be used to assess and plan the progress of the case, and establish a firm trial date.
- F. Controlling the Scope and Timeliness of Discovery
  - 1. The court should monitor discovery as part of its early and on-going control of the pretrial process.
  - 2. The court should determine how the discovery process is to be monitored.
- G. Continuation of current practice of the certification of reasonable and good faith efforts to reach agreement with opposing counsel before discovery motions issue.
- H. While the Advisory Group supports the use of ADR, no formal program of ADR is recommended at this time.
- I. Counsel should present a discovery/case management plan at the initial scheduling conference.
- J. Parties should be represented by an attorney with the authority to bind at each pretrial conference.
- K. All requests for extension of deadlines for discovery or continuance of trial should be signed by the attorney and the party making the request.
- L. Provision should be made for an early neutral evaluation (ENE) program for the presentation of the legal and factual basis of a case to a judicial officer.

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

### **I. Plan Provisions**

- A. Introduction: the court has considered all recommendations of the Advisory Group as well as the principles, guidelines, and techniques of Act.
- B. Differentiated case management: there is no sentiment on the court, or within the Advisory Group, for the adoption of such a provision; the court will not, therefore, adopt such a program.
- C. Early and on-going control of the pretrial process: currently, all cases are assigned to a District and Magistrate Judge; scheduling conferences are held within 80 days of the answer; a scheduling order is entered after the conference which sets discovery cut-off dates, deadlines for the filing of dispositive motions, and trial dates within 18 months of the filing of the complaint. The Advisory Group did not recommend, and the court does not endorse, any limitations on discovery beyond those currently dictated by judicial discretion in individual cases.
- D. Early neutral evaluation and case management: discovery case management plans will be discussed at the scheduling conference and included in scheduling orders at the discretion of the assigned judge; after judicial assessment of the case, a case may be referred to a senior judge or magistrate judge for one or more early neutral evaluation sessions.
- E. Voluntary exchange of information and the use of cooperative discovery devices: at the scheduling conference, the judge will specifically discuss voluntary information exchanges and the use of cooperative discovery devices, and incorporate these in the court's scheduling order.
- F. Certification: the court shall formally adopt the current informal but routine practice of requiring the certification by counsel of good faith attempts to resolve all discovery disputes prior to their submission to the court.
- G. Alternative dispute resolution programs: the court will formalize the current informal, voluntary program of referral of cases to senior district or magistrate judges for mediation. During the coming assessment period, the court will consider whether this program should be continued, modified, or discontinued.

- H. Representation at the pretrial conference: the court will continue the current practice of requiring the presence of attorneys with the power to bind parties at such a conference.
- I. Extensions of time and continuances: the court declines to adopt the recommendation of the Advisory Group to require the signature of attorney and party seeking the extension.
- J. Settlement conferences and mediation: the court will formalize its current practice of requiring the presence of representatives at such conferences with the authority to bind the parties.
- K. Other features; social security cases: the magistrate judges have agreed to give priority to these cases, and will attempt to conclude all such cases within nine months of filing.