

**Middle District of Florida
Report of Advisory Group
Cost and Delay Reduction Plan
Summary**

I. Assumptions; Miscellany; and Background

- A. The district encompasses 35 of Florida's 67 counties, including 7 of the states most populous counties. The district has over 7 million permanent residents. There are 5 divisions, including 3 with resident judges. The district has several building projects underway.
- B. There are 11 authorized judgeships and 2 vacancies. There are 9 full-time magistrate judges and 3 senior judges. Vacancies have been a major problem in recent years. The district has relied heavily on visiting judges. The district expected an additional magistrate judgeship in the summer of 1993.
- C. The advisory group surveyed attorneys and held several public hearings.
- D. Florida has the highest crime rate of any state in the country.
- E. There are a substantial number of state correctional facilities in the district and a new federal prison is under construction.
- F. Senior citizens account for 57% of the district's population and receive huge amounts of government transfer payments.
- G. Civil case trials were temporarily suspended in 1991 due to the heavy criminal workload and judicial vacancies.

II. State of the Docket

- A. Filing Trends.
 - 1. 5,814 cases were filed in 1992. 5,447 cases were pending at the end of 1992. There were 529 filings and 495 pending cases per judgeship.
 - 2. Total filings have increased by 27.5% since 1981. Civil filings were up 17.1% from 1991.
 - 3. Median time from filing to disposition has increased from 9 months in 1987 to 11 months in 1992. Median time from issue to trial ranged between 13 and 16 months.
 - 4. From 1986 to 1991 the life expectancy of pending cases increased from 9 months to 16 months. In 1992 the life expectancy fell to 12 months.
 - 5. The district has a very high percentage of criminal (14.4%) and prisoner (28.8%) cases. Criminal trials have tripled since 1981.

6. Over half of the cases that went to trial took over 18 months. Half of all civil cases tried were tried by visiting judges.

B Causes of cost and delay.

1. Criminal caseload (federalization of traditional state crimes, Speedy Trial Act, Sentencing Guidelines and mandatory minimums, increases in US Attorneys, and an increase in multi-defendant drug cases).
2. Expansion of federal jurisdiction in civil cases.
3. Prisoner petitions.
4. Inadequate management of cases.
5. Excess or abuse of discovery (protracted, unnecessary discovery, excessive reliance on formal discovery, inattention to cases early in their lives, the number and length of depositions, and discovery on issues marginally involved in the litigation).
6. Population growth.
7. Arbitration program contributes to excess cost and delay.
8. The court's use of a trailing calendar.
9. Failure to rule promptly on motions, especially dispositive motions.
10. Inadequate funding of the judiciary and delay in filling vacancies.
11. Under utilization of magistrate judges to conduct trials with the consent of the parties.

III. Recommendations

A. The court should adopt civil and criminal divisions. The civil division should consist of at least one judge in each of the 3 divisions with judges in residence. The chief judge will coordinate judges in the civil division to insure civil litigants have fair access to the courts throughout the district. No civil division judge should try a criminal case unless no criminal division judges or visiting judges are available, and the case is subject to dismissal with prejudice under the Speedy Trial Act.

B. Prisoner Pro Se Cases

1. The court should require a prisoner pro se complainant to:
 - a) state administrative remedies have been exhausted; and
 - b) attach the Department of Corrections grievance response to the complaint.
2. The court should:
 - a) require a special report be filed in all pro se prisoner cases
 - b) adopt a standardized form special report, based on the FJC's recommended Order Requiring Special Report.

3. Prisoner petitions should be subject to mandatory arbitration at the institution where the prisoner resides.
- C. Congress should increase the diversity amount to \$100,000 in compensatory damages and prohibit forum-state citizens from instituting original diversity cases against diverse defendants.
 - D. The court should temporarily reassign all cases involving plaintiffs from Hardee and Polk counties from the Tampa division to the Orlando division.
 - E. The court should adopt a 2 tiered tracking system.
 1. Track 1: Diverted Cases-would include all cases not requiring active judicial management.
 2. Track 2: Standard Cases-would include all trial track cases. They will receive active judicial management including a joint response to court interrogatories, early voluntary disclosure, and a case management conference at which the following will be discussed: specific motions and their resolution; discovery limits; settlement; ADR possibilities; and a firm trial date.
 - F. Motions.
 1. Motions should be decided within 60 days of the responsive pleading.
 2. Dispositive motions should be so designated. Dispositive motions undecided after 90 days should be brought to the attention of the judge by the movant. Additional notices should be filed every 30 days if the motion remains undecided. The Chief Judge should be copied on each notice.
 3. The court should adopt a motion day at which non-dispositive motions pending over 30 days could be brought to the attention of the magistrate judge.
 4. Motions to continue trials should be signed by counsel who shall certify a copy of the motion was furnished to the moving party.
 - G. Telephonic conferences should be encouraged whenever possible. The court should permit the use of fax machines as a means of service.
 - H. Arbitration should no longer be mandatory (except in prisoner cases). Mediation should be provided in those case the parties and the court believe it would be useful.
 - I. Congress should authorize two additional judgeships for the district. Congress should adopt the Judicial Nomination and Confirmation Reform Act of 1991. The formula for determining magistrate judge needs should accord greater

weight to criminal cases. Two visiting judges should be secured at all times for the Tampa division.

- H. Trial by magistrate judge should be encouraged at every case management conference. A date certain for trial should be set to encourage consent.
- J. Congress should provide all bankruptcy court final orders are appealable directly to appropriate circuit court of appeals. In the alternative, the 8th circuit should establish a bankruptcy appellate panel.
- K. Full computerization of the dockets should be accomplished immediately.
- L. The district should urge the other districts in Florida to adopt reciprocal attorney admission standards.
- M. The advisory group should assist the court in performing the annual assessment. A CJRA staff position should be sought to accomplish the assessment. A questionnaire should be developed.
- N. The Chief Judge should appoint new members to the advisory group on a staggered basis.
- O. The court should require disclosure of core information prior to discovery.
- P. The court should encourage parties to agree to use computer technology to the maximum extent possible in all phases of litigation.
- Q. Litigants and attorneys should conduct themselves with civility and in a spirit to reduce unnecessary cost and delay.
- R. Congress should not adopt legislation federalizing all crimes committed with a hand gun that travels in interstate commerce, and crimes of domestic violence.
- S. Congress should provide that all future federal statutory causes of action may be brought in either state or federal court, and removal on the basis of federal question should not be permitted.
- T. Congress should have all legislation with an impact on the judiciary reviewed by the Congressional Budget Office and the GBO review should accompany proposed legislation.
- U. Congress should create an Article I court for review of denial of Social Security benefits. Alternatively, Congress should provide that magistrate judges render final decisions in social security cases with appeal to the circuit court.

IV. Plan

The court will amend its local rules to reflect the follow provisions.

- A. Service of a pleading or subsequent paper may be transmitted by facsimile with a cover sheet. Service by fax constitutes a method of hand delivery.
- B. Litigants and attorneys should conduct themselves with civility and in a spirit to reduce unnecessary cost and delay.
- C. All dispositive motions must be so designated. All dispositive motions not decided within 180 days of the responsive pleading shall be brought to the attention of the district judge by the movant. An additional notice shall be filed every 30 days while the motion is pending. Each notice shall be provided to the chief judge.
- D. Telephonic conferences and hearings are encouraged.
- E. Litigants and attorneys should utilize computer technology to the maximum extent possible in all phases of litigation.
- F. Case Management
 - 1. The clerk shall designate all civil cases for future management on 1 of 3 tracks. The judge may direct at any time a case be redesignated.
 - 2. Track 1: habeas corpus proceedings; prisoner pro se cases; administrative review cases; bankruptcy appeals; student loan cases; and other civil proceedings which by their nature do not require a trial.
 - a) Government foreclosure cases, recovery cases, and bankruptcy cases will be managed by the presiding judge through notices and orders.
 - b) Other Track 1 cases will be referred to the magistrate judge at the time of filing for management in accordance to local rules or standing orders.
 - 3. Track 2 : cases not designated Track 1 or Track 3. Non-complex actions which require a trial absent early settlement or other disposition.
 - a) All Rule 12 motions will be considered promptly and usually decided within 60 days.
 - b) Counsel shall meet within 60 days of service, or the first appearance of any defendant, to prepare and file a Case Management Report.
 - c) Parties are permitted but not required to attend the case management meeting.
 - d) The Case Management Report must included:
 - 1) date of meetings; and identity of those present;

- 2) date parties have agreed to exchange disclosures;
 - 3) discovery plan including a description of discovery each party intends to pursue; the time for each form of discovery; and a cut-off date;
 - 4) a motion cut-off date
 - 5) a statement concerning ADR intentions and the date the parties will file a report concerning settlement prospects or apply for an arbitration or mediation order.
 - 6) date the parties will be ready for the pretrial conference and trial; and
 - 7) an assessment of the need for a preliminary pretrial conference prior to entry of the Case Management and Scheduling Order.
- e) The court will either schedule a preliminary pretrial conference or enter a Case Management and Scheduling Order.
- f) It is a goal to have all Track 2 cases tried within 2 years of filing and most within 1 year. Motions to amend pleadings or for a continuance are distinctly disfavored.
4. **Track 3: class actions; anti-trust; securities litigation; multiple parties, multiple claims; and cases imminently effecting the public interest.**
- a) The provisions for Track 2 cases also apply to Track 3 cases.
 - b) The court will establish a discovery management plan and schedule a preliminary pretrial conference to discuss the issues listed in Rule 16.
 - c) It is a goal to have all Track 3 cases tried within 3 years of filing and most within 2 or on an acutely accelerate schedule if the public interest requires. Motions to amend pleadings or for a continuance are severely disfavored.
- G. Motions to continue trial must be signed by the attorney who will certify the moving party has been informed of the motion and has consented to it.
- H. **Prisoner pro se cases must:**
1. State administrative remedies have been exhausted prior to filing; and
 2. Attach a copy of the Department of Corrections grievance response to verify exhaustion.
- I. **Mediation may be substituted for arbitration by the presiding judge.**
- J. **The court will secure the services of 2 visiting judges for the Tampa division.**
- K. The court will encourage trial by magistrate judge at every case management conference or preliminary pretrial conference. Magistrate judges will set a date certain for trial.

- L. The court will request the 11th Circuit to establish a bankruptcy appellate panel.
- M. The court will complete full computerization of the docket as soon as possible.
- N. The court endorses the following advisory group recommendations to Congress or others: C, I, J, R, T, and U of section III above.