Chapter 9

CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

FOR THE

UNITED STATES DISTRICT COURT

OF THE

SOUTHERN DISTRICT OF FLORIDA

November, 1991

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INTRODUCTION

Last December, Congress passed the Civil Justice Reform Act of 1990 with the intent of decreasing cost and delays in civil litigation in federal courts. The Act recognizes that various participants in the judicial system--the courts, attorneys, litigants, Congress and the Executive Branch--contribute in some way to the ability of the system to offer timely and proper judicial relief. The Act charges each of those participants to make significant contributions to reducing cost and delays. This Court seeks to carry out its own charge through the implementation of the following Civil Justice Expense and Delay Reduction Plan ("Plan").

This Plan contains only actions or procedures which are within the jurisdiction of this Court to implement. Many procedures in the Plan have been used for years by various members of this Court. Those procedures are now formalized and given uniformity. Some procedures are new and represent the Court's recognition that improvements can be made even in the most efficiently run courtroom. Most of the measures require incremental, not radical change. They are in the nature of fine-tuning the system. It is not that the system requires only fine-tuning; rather, it is not within this Court's power to redress the primary factors which cause unreasonable cost and delay in this District.

The Court concurs with the finding of the Civil Justice Advisory Group that the two factors which have the greatest impact on the timely resolution of civil cases in this district are: (1) the failure to fill authorized judgeships within a reasonable time; and (2) the burgeoning criminal caseload. The Court hopes that Congress and the Executive Branch, in the course of carrying out their charges under the Act, will examine their actions which contribute to cost and delay and will address these two factors.

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CHAPTER 1

STATEMENT OF PURPOSE AND FINDINGS

1.0 Title.

The following is the Civil Justice Expense and Delay Reduction Plan for the United States District Court of the Southern District of Florida (the "Plan").

Reporter's Note: The Civil Justice Reform Act ("CJRA") refers to the plan as an "expense and delay reduction plan." 28 U.S.C. § 471.[78]

1.1 Statement of Purpose.

The purpose of this Plan is to "facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes."[79]

1.2 Findings.

The United States District Court for the Southern District of Florida (the "Court") makes the following findings:

(1) This Plan has been developed after careful consideration of the Report and recommendations of the Civil Justice Advisory Group ("Advisory Group") appointed pursuant to the Civil Justice Reform Act of 1990, 28 U.S.C. § 478. Public hearings on the Plan were held by the Advisory Group before it submitted a proposed Plan for the Court's consideration. All local and federal bars in this District in addition to the

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[78]Reporter's Notes will appear only in the draft version of the Plan and not in the final Plan. Footnotes will appear both in the draft and final Plan.

[79]See Fed. R. Civ. P. 1; Civil Justice Reform Act ("CJRA") § 471.

general public were invited to attend the public hearings and comment on the proposed Plan.

(2) In formulating the Plan, the Court and the Advisory Group have considered all the principles and guidelines of litigation management and cost and delay reduction techniques contained in Section 473 the Civil Justice Reform Act.

Reporter's Note: The CJRA requires the Advisory Group's Report to include an explanation of the manner in which the recommended plan complies with Section 473 which lists various case management techniques.

(3) The Court concurs in the finding of Congress that "[t]he courts, the litigants, the litigants' attorneys, and the Congress and the executive branch, share responsibility for cost and delay in civil litigation and its impact on access to the courts, adjudication of cases on the merits, and the ability of the civil justice system to provide proper and timely judicial relief for aggrieved parties."[80]

(4) The Court additionally adopts the Congressional finding that "[t]he solutions to problems of cost and delay must include significant contributions by the courts, the litigants, the litigants' attorneys, and by the Congress and the executive branch.[81]

(5) This Plan focuses specifically on actions and procedures which the Court shall take to reduce the time and cost involved in civil litigation in the Southern District of Florida.

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[80]CJRA §102(2).

[81]Id. § 102(3).

(6) The Court encourages the other participants in the civil justice system to likewise examine their actions or inactions which adversely affect the timely and fair resolution of civil cases and to take appropriate corrective measures.

(7) Consistency and uniformity in the management of civil cases throughout the District is one of the desired goals of this Plan. In unusual circumstances, a judicial officer may deviate from the procedures in this Plan as may be reasonably required for an individual case pending before that judicial officer.

1.3 Early Implementation District.

It is the intent of the Court to qualify as an Early Implementation District under the Act. The Court certifies that the Advisory Group has filed its Report required by 28 U.S.C. §472(b) and this Court has reviewed that Report. This Plan shall be considered to be adopted by the Court as of the date of the Administrative Order so stating. It is the Court's intent to make the various components of this Plan fully operational as promptly as feasible.

Reporter's Note: The statutory deadline for adopting a Plan is December, 1993. Any court, however, which "develops and implements" a civil justice expense and delay reduction plan two years earlier (December 31, 1991) shall be designated an Early Implementation District. Early Implementation Districts are eligible for additional resources, including technological and personnel support and information systems to assist in the implementation of the Plan. CJRA § 482(c).

The Judicial Conference Committee on Court Administration and Case Management has interpreted the statutory requirement of "implementing" a Plan before as satisfied if the following occur prior to December 31, 1991:

- *The Advisory Group has filed a Report and the Court has reviewed it;*
- *The Court has adopted a Plan;*
- *The Plan contains a schedule for its effectuation which shows a good faith effort to make the Plan fully operational as promptly as feasible; and*
- *The Plan and Report are transmitted to the Director of the Administrative Office; the Judicial Council of the 11th Circuit and the Chief Judge of each district court in the 11th Circuit.*

CHAPTER 2

PRETRIAL CASE MANAGEMENT PROCEDURES

2.0 Finding.

(1) This Court is ranked fourth among the 94 district courts nationwide in the median time for disposing of all civil cases.[82] The percentage of civil cases over 3 years old in this District is well below the national average of 10.4% and has steadily decreased from 5.8% in 1985 to 3.9% in 1990.[83]

(2) A cornerstone of the Court's ability throughout the years to process civil cases faster than the national average has been an informal case management system which relies on the following principles:

(a) The Court must assert early and ongoing control of the pretrial process;

(b) The Court must set early and firm pretrial conference and trial dates;

(c) A discovery schedule must be set according to the complexity of the case;

(d) The Court must rule promptly on all motions; and

(e) The Court should generally set civil trials on a fixed calendar of two or three weeks of duration with up to 12-14 civil and criminal cases per calendar.

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[82] See Federal Court Management Statistics for fiscal year 1991.

[83] Id.

(3) Setting realistic and firm discovery schedules and trial dates is a key element of an effective case management system.

(4) Counsel for the parties should have an opportunity to suggest an appropriate discovery schedule; the Court will consider that suggestion, along with other factors, in setting the discovery schedule.

2.1 Scheduling Order.

(1) Within 40 days after the filing of an answer, or within 120 days after the filing of the complaint (whichever shall first occur), each judge shall in all civil cases (except those expressly exempted below) enter a Scheduling Order.

(2) It is within the discretion of the judge whether to hold a Scheduling Conference with the parties prior to entering a Scheduling Order pursuant to the deadlines set forth in section 1 above.

(3) The Scheduling Order shall include a date certain for the following:

a) completion of all discovery;

b) filing all pretrial motions;

c) resolution of pretrial motions;

d) the pretrial conference (if one is to be held); and

e) trial date.

(4) Counsel for the parties (or any pro se party) may, pursuant to Local Rule 14, and prior to the time prescribed in section 1 above, submit a proposed Scheduling Order for the Court's consideration.

Reporter's Note: The CJRA requires each court to consider assuming early and ongoing control of the pretrial process by setting early, firm trial dates, controlling the time for

compeletion of discovery, and setting a time framework for disposing of motions. CJRA § 473(2).

Local Rule 14 requires the parties to meet within 20 days after the filing of the answer (or within 90 days after the filing of the complaint) to exchange documents, witness lists, etc. and to agree on a discovery schedule. (This local rule satisfies the requirement under CJRA that there be "encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices.") CJRA § 473(a)(4). The parties have 10 days after this scheduling conference to file a proposed scheduling order. The deadlines set in this section are coordinated with the deadlines set in Local Rule 14 and Fed. R. Civ. P. 16.

2.2 Exempt Actions.

The following types of cases will generally be exempt from the requirements of this chapter:

a. Cases filed in or removed to this Court on or before the date of adoption of this Plan;

b. Habeas corpus cases;

c. Prisoner Civil Rights cases;

d. Motion to vacate sentence under 28 U.S.C. § 2255;

e. Social Security cases;

f. Foreclosure matters;

g. Civil forfeiture actions;

h. IRS summons enforcement actions;

i. Bankruptcy proceedings, including appeals and adversary proceedings;

j. Land condemnation cases;

k. Default proceedings;

l. Student loan cases;

m. VA loan overpayment cases;

n. Naturalization proceedings filed as civil actions;

o. Cases seeking review of administrative agency action;

p. Statutory interpleader actions;

q. Truth-in-Lending Act cases not brought as class actions;

r. Interstate Commerce Act cases (freight charges, railway freight claims, etc.);

s. Labor Management Relations Act and ERISA actions seeking recovery for unpaid employee welfare benefit and pension funds; and

t. Any other case expressly exempted by Court order.

A judge shall have the discretion to enter a Scheduling Order or hold a Scheduling Conference in any civil case even if such case is in an exempt category.

Reporter's Note: These exempt actions are identical to those actions exempted from the requirements of Local Rule 14. See Local Rule 14A.9.

2.3 Guidelines for Setting Deadlines in Scheduling Order.

(1) Uniform discovery schedules.

Each civil case shall be assigned a discovery deadline within one of the following three time periods:

- 90-179 days for expedited cases;
- 180-269 days for standard cases;
- 270-365 days for complex cases.

Discovery deadlines shall be set based on the complexity of the case, number of parties, volume of evidence, problems locating or preserving evidence, time reasonably required for discovery, time estimated by parties for discovery (in the Civil Cover Sheet,[84] and in the proposed scheduling order submitted by all parties pursuant to Local Rule 14) and time reasonably required for trial, among other factors. The Court shall consider the following general guidelines in determining the most appropriate and fair discovery period:

a. Expedited Cases (90-179 days).

A relatively non-complex case requiring only one to three days of trial may be assigned a discovery deadline within the period of 90 to 179 days from the date of the Scheduling Order.

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[84]The Clerk of the Court is directed to amend civil cover sheet, Form JS-44, to include an estimate by the plaintiff for the number of months required for completion of discovery and for the days estimated for both sides to try the case. The civil cover sheet shall instruct plaintiff to select one of the following three periods for discovery: 90-179 days; 180-269 days; or 270-365 days.

b. Standard Cases (180-269 days).

A case requiring 3 to 10 days of trial may be assigned a discovery deadline within the period of 180 to 269 days from the date of the Scheduling Order. Examples of cases which may be included in this category are: torts, contracts, civil rights, discrimination cases, asbestos, admiralty, labor, copyright and trademark, etc. It is anticipated that the majority of civil cases subject to a Scheduling Order will be assigned a standard discovery deadline.

c. Complex Cases (279-365 days).

An unusually complex case requiring over 10 days of trial may be assigned a discovery deadline within the period of 270-365 days from the date of the Scheduling Order. Examples of cases which may be included in this category are: antitrust, patent infringement, class actions, major disasters, environmental, securities, and tax suits. It is anticipated that less than 10% of the civil cases subject to a Scheduling Order will be assigned to the complex discovery schedule.

Reporter's Note: The uniform discovery schedules rely on a modified form of "tracking" or "differential case management." This particular litigation management technique has been used quite successfully by individual judges of this Court and other Courts as well. CJRA directs each court to consider including some form of differential case management in its Plan and specifically requires two demonstration courts to experiment with tracking.

(2) Setting date certain for filing and disposition of pretrial motions.

The Scheduling Order shall set a date certain for filing all pretrial motions and a time framework for their disposition.

Reporter's Note: One of the case management techniques mentioned in the CJRA is "setting, at the earliest practical time, deadlines for filing motions and a time framework for their disposition." CJRA § 473(a)(2)(D). Currently, almost all scheduling orders now used by the Court set deadlines for the parties to file motions but do not contain a time for the disposition of those motions.

(3) **Setting date certain for pretrial conference and trial.**

The Scheduling Order shall set a date certain for a pretrial conference, if one is to be held, and trial.

Reporter's Note: Many judges do not currently hold a pretrial conference. The judges have varying deadlines after the completion of discovery for filing motions and setting pretrial conferences. It is critical that each judge's Scheduling Order have a pretrial conference date (if one is to be held) and the trial date in addition to a discovery deadline. The legislative history of the CJRA and the Act emphasize that the key to effective case management is the setting of early, firm trial dates. CJRA § 473(a)(2)(B).

2\4 **All Civil Trials Set Within 18 Months.**

The goal of the Court is to set a trial date in the Scheduling Order no later than 18 months after the filing of the complaint unless:

a. The complexity and demands of the case require a later trial date; or

b. The trial cannot reasonably be held within such time due to the pending criminal caseload of the Court; or

c. The trial cannot reasonably be held within such time due to the number of vacant authorized judgeships.

Reporter's Note: One of the case management guidelines set forth in the CJRA is to set early, firm trial dates occurring within 18 months after the filing of the complaint unless a judicial officer "certifies" that either subpara a. or b. above is applicable. This version adds subpara c. and deletes the certification requirement. The Advisory Group does not believe that setting trials in most cases within 18 months is an unrealistic goal for this Court. In fiscal year 1991, with only 11 out of 16 authorized judges, 90% of all civil cases were disposed of within 18 months.

2.5 Certificate of Counsel Regarding Discovery.

A Local Rule shall be enacted requiring all discovery motions to include a statement from movant's counsel that a good faith effort was made to resolve by agreement with opposing counsel the issues raised and whether there was any objection to the motion.

Reporter's Note: Under Local Rule 10I.7, counsel must now certify that a good faith effort has been made to resolve by agreement the issues raised prior to filing a motion to compel or motion for protective order. The CJRA suggests that courts consider requiring counsel to consult with opposing counsel prior to filing any discovery motion. CJRA §473(a)(5). The Advisory Group concurs with this suggestion.

2.6 Mandatory Hearing for Motions Pending Longer than 90 Days.

The Court encourages counsel and litigants to follow the provisions of Local General Rule 10B.3 which requires the Court to set a hearing on any motion or other matter which has been pending and fully briefed with no hearing for 90 days or longer upon written notice by counsel at the expiration of 60 days.

CHAPTER 3

TRIAL PROCEDURES

3.0 Setting Civil Trial Calendars.

(1) In general, civil trial shall be scheduled on a fixed calendar no longer than 2-3 weeks duration.

(2) In general, no more than 12-14 criminal and civil trials shall be set on any trial calendar of 2-3 weeks duration.

3.1 Consent to Trial by Magistrate Judge.

Pursuant to 28 U.S.C. § 636(c), parties in civil cases are encouraged to consent to trial before a Magistrate Judge.

CHAPTER 4

ALTERNATIVE DISPUTE RESOLUTION PROGRAMS

4.0 Findings.

(1) The Civil Justice Reform Act of 1990 authorizes the Court to make available certain alternative dispute resolution programs including mediation.[85]

(2) The Local Rules Committee of this Court has made a separate recommendation consistent with the recommendation of the Advisory Group that the Court adopt a voluntary mediation program.

(3) The approval of adoption of a voluntary mediation program does not represent a departure from the Court's conviction that trial by jury remains the bedrock of this nation's dispute resolution system.

(4) Nonetheless, to the extent that voluntary mediation has become an increasingly useful tool by which parties may resolve their differences in an expeditious and less costly fashion, the Court desires to have such a program available.

(5) Nothing contained in this chapter shall limit or otherwise discourage an individual judges' use of any type of alternative dispute resolution procedure currently permitted under the law.

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[85]CJRA § 473(a)(6).

8.1 Implementation of Mediation.

The chief judge, after consultation with the other judges of the Court, shall by December 1, 1991 appoint a Mediation Committee. The Mediation Committee shall include judges, magistrate judges, lawyers, and others who are representative of those categories of civil litigants who may utilize the mediation program.

The Mediation Committee shall by April 1, 1992 deliver a report and recommended plan to the Court for implementing a mediation program in this District. The Mediation Committee shall consider the following issues:

(a) The proposed local rule for court annexed mediation;

(b) Goals of a mediation program;

(c) Projected budget for cost of program;

(d) Cost, if any, to the user of the program;

(e) Criteria for identifying cases appropriate for referral to mediation;

(f) Juncture in the case when referral to mediation is appropriate;

(g) Rules governing the mediation;

(h) Whether the program should be voluntary or mandatory;

(i) Whether the program should carry incentives for participation;

(j) Who should administer the program;

(k) Where should the sessions be held;

(l) Who should serve as mediators;

(m) Who should determine the eligibility of mediators;

(n) Who should select the mediators;

(o) Education of the bar and the public about the program;

(p) Training of mediators;

(q) Collecting data and assessing efficacy of program;

(r) Consider the use of mediation in prisoner civil rights cases; and

(s) Recommendations for any other types of alternative dispute resolution programs or procedures for the Court's consideration.

Reporter's Note: The CJRA directs all courts to consider a Plan which includes "authorization to refer appropriate cases to alternative dispute resolution programs that . . . the Court may make available, including mediation, mini-trial, and summary jury trial." CJRA § 473(a)(6).

CHAPTER 5

JUDICIAL OFFICERS

5.0 Judicial Vacancies.

(1) The Court concurs with the finding of the Advisory Group that a primary cause for any cost and delay in civil litigation in this District is the failure to fill the authorized vacant judgeships within a reasonable period of time.

(2) The Court adopts the recommendations made to Congress and the Executive Branch by the Advisory Group regarding more expeditious filling of judicial vacancies, and will assist as may be appropriate in the effort to carry out those recommendations.

(3) In recognition of the burdens borne by the entire Court and the attorneys and litigants in the District as a result of the slow process of filling vacancies, the individual judges of this Court severally have agreed to give at least six months' written notice, whenever reasonably possible, to the appropriate person or authorities of his or her decision to take senior status, resign, or in the case of Magistrate Judges, to not seek reappointment.

CHAPTER 6

CIVIL CASE ASSIGNMENT SYSTEM

6.0 Objectives of the Civil Case Assignment System.

The Civil Case Assignment System procedures set forth in this Chapter are designed to meet the following objectives:

- Assign all cases on an impartial basis, free from any influence or manipulation by any litigant, counsel, or member of the court system;
- Allocate the work of the District equitably among all District Judges and Magistrate Judges;
- Encourage the development of specialized expertise in particular areas of law by Magistrate Judges.

6.1 Random Case Assignment.

Except as indicated elsewhere in this Chapter, all civil cases will continue to be randomly assigned to both a District Judge and Magistrate Judge under the blind assignment system currently in use.

6.2 Consideration of Direct Criminal and Certain Civil Case Assignments.

The Chief Judge, after consultation with the other judges of the Court, shall by December 1, 1991 appoint a committee to consider whether criminal cases in the Southern Division of this District should be assigned directly to certain Magistrates and whether certain civil actions such as social sercurity, ERISA, forfeitures, employment discrimination, or other approperiate types of civil cases, should be assigned directly to certain Magistrates.

CHAPTER 7

AUTOMATED CASE MANAGEMENT INFORMATION SYSTEM

7.1 Findings.

(1) The Administrative Office of the United States Court has developed an automated Integrated Case Management System ("ICMS") for both civil and criminal cases. Various Case Management Reports may be generated under this computerized docketing system.

(2) The civil ICMS System was implemented in this District in October 1990, replacing another automative system (SIRS) formerly used. Because of inadequate funding, not all pending cases were transferred to the new civil ICMS System. The Clerk's office has been forced to work with both systems, resulting in duplication of effort, inefficiencies, and delays in docketing.

(3) Various case management reports are available on civil ICMS which would be useful to the Court in monitoring the progress of civil cases. These reports are currently unavailable because the entire civil case docket has not been transferred to ICMS.

7.2 Implementation of Civil ICMS.

The Court directs the Clerk of the Court to take whatever measures are necessary and reasonably available to implement fully the civil ICMS including, but not limited to the following:

a) Transfer all open civil dockets to ICMS;

b) Ensure accuracy of civil ICMS database;

c) Provide training for Courtroom deputies, law clerks and secretaries on use of civil ICMS and reports available;

d) Become current on all civil docketing and ICMS; and

e) Docket all pleadings, motions, orders, and other papers in civil cases within at least 48 hours of the file date on such documents.

Reporter's Note: A recent report by the Administrative Office of the U.S. Courts indicated the Clerk's office was, in general, making favorable progress toward implementing the Civil ICMS. The report noted that 22% of all papers filed were not docketed until a week later. The report contained recommendations that the Court begin to take advantage of Civil ICMS as a case management tool in addition to using it as a computer docketing system.

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