Plan to Minimize Cost and Delay of Civil Litigation

In the Middle District of Georgia

As Adopted by the United States District Court

for the Middle District of Georgia

Pursuant to The Civil Justice Reform Act of 1990

United States District Court
for the
Middle District of Georgia

Order

After considering

(1) the report of the Civil Justice Reform Advisory Group appointed pursuant to the Civil Justice Reform Act of 1990 at 42 U.S.C. § 478,

(2) the principles and guidelines of litigation management and cost and delay reduction listed in 28 U.S.C. § 473(a), and

(3) the litigation management and cost and delay reduction techniques listed in 28 U.S.C. § 473(b),

and

after consulting with the Civil Justice Reform Advisory Group pursuant to 28 U.S.C. § 473(a), (b), the District Court hereby adopts, for implementation effective December 1, 1993, the following Plan to Minimize Cost and Delay involving civil matters arising before the Court. The Plan's provisions will apply to all cases pending on the Court's docket on and after December 1, 1993, but will not necessitate re-litigation of those aspects of pending cases that have already been processed in the normal course of litigation under procedures then in effect.

So ordered for the Court this 24th day of November, 1993.

s/
Wilbur D. Owens, Jr., Chief Judge

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I. FINDINGS

This Court has carefully reviewed the "Report of the Advisory Group to the United States District Court for the Middle District of Georgia Pursuant to the Civil Justice Reform Act of 1990." The Court's findings, together with its plan to minimize expense and delay, are based in part on that report, as well as on the Court's experience with the delivery of civil justice in this district.

The Court generally endorses the Advisory Group's characterization of the Middle District's setting, its rather typical civil caseload for such a setting, the condition of the Court's docket, and the views of litigants, attorneys and court personnel about the administration of civil justice here. The Court takes note of the irony, observed by the Advisory Group, that although the level of delay in civil lawsuits here exceeds the ideal, participants appeared to the Advisory Group to express an unusual degree of satisfaction with the cost and time needed to litigate civil matters in this district.

The Court joins the Advisory Group in suspecting that two primary factors may contribute to these counter-intuitive findings.

First, as noted by the Advisory Group, the district's cases receive a relatively high level of close judicial scrutiny. Although judicial familiarity with the particulars of individual cases may slow the process, such attention may be something that participants find on balance worth waiting for. Win or lose, an invaluable dignity is bestowed on all litigants and attorneys who feel that the specifics of their claims, defenses and arguments are genuinely heard. Moreover, close judicial scrutiny discourages runaway discovery.

Second, also as noted by the Advisory Group, the relative informality of local procedure may permit some cases here to be delayed that on the merits may not be wholly appropriate for standard adjudication. In districts with rigid processing parameters, such cases may be forced prematurely through steps that might have proven unnecessary if the cases had been permitted to proceed in more appropriate ways, and at more particular paces.

Both of these possible sources of past participant satisfaction -- close judicial scrutiny, and informal, customized procedure -- apparently require relatively intensive judicial attention to be effective. Because a new judgeship and a new magistrate judgeship have recently been authorized for this district, and will soon both be filled, there is reason to believe that this district can in the future reasonably expect still closer judicial scrutiny, more particularized processing of civil matters, and (if past be prologue) enhanced levels of participant satisfaction. At the same time, the addition of judicial resources will help this district to focus more intently on minimizing cost and delay along the lines proposed by this plan.

So, even without radically altering the ways in which this Court processes civil

litigation, there is reason to expect future improvement in the levels of speed, cost and satisfaction experienced by participants, all in keeping with the objectives of the Civil Justice Reform Act of 1990.

The increased number of judges in this district, and the siting of the newest judge and magistrate judge in Albany, may also help to alleviate the pressure to restructure and consolidate the district's six divisions, a topic that was discussed briefly by the Advisory Group in its report. The Court will postpone any consideration of reconfiguring the district until after the new staffing arrangements have been fully implemented, and the effects of a less centralized district are felt.

The Advisory Group has identified at least three causes of excessive delay and expense in this district:

(1) the length of time spent by judges in deciding dispositive motions;

(2) the level of fees charged by attorneys; and

(3) the tendency for attorneys and litigants to engage in over-discovery.

As to the first issue of excessive delay in issuing rulings on dispositive motions, the Court fully acknowledges the ideal of rendering judgment promptly. The Court also recognizes the tendency for complex motions to be followed by delays in judgment. Furthermore, the Court sees that slow rulings on dispositive motions detract from the satisfaction of litigants and their attorneys with the delivery of civil justice in the Middle District.

Nevertheless, the Court cannot endorse the Advisory Group's recommendation of setting a presumptive time limit on the issuance of rulings by the district's judges. By

limiting the way that those judgments are made, the Court risks elevating one goal, speed, above the paramount goals of civil adjudication: accuracy, reliability, integrity, wisdom and fairness. Any one of those factors is a more critical single measure of a court's worth than the laudable, but secondary, factor of speed.

Of course, speed need not inherently conflict with the more central goals of the civil process. This Court will therefore urge its judges to maximize the value of their work from the perspective of litigants and attorneys by paying heed to the alacrity with which the judges render dispositive judgments. In particular, the Court will recommend as an aspirational goal that its judges attempt to issue rulings on dispositive motions within 90 days after the close of briefing. But to the limited extent that the fundamental goals of the civil process conflict with the goal of quickness, this Court will not impose a firm mandate on its judges to raise speed to the level of an overriding imperative until it can be more clearly demonstrated that lack of speed in this district threatens the very integrity of the process.

As to the Advisory Group's note of alarm about the high level of attorney fees in certain cases, this Court shares that concern. Nonetheless, as the Advisory Group indicated, this Court is relatively powerless to effect economic reform in the legal profession. This plan, therefore, like the Advisory Group's report, ventures no specific proposal to foster reductions in attorneys' fees, other than to monitor carefully any application for attorneys' fees under a fee-shifting statute. See Local Rule 3.8.

As to the third apparent cause of excessive expense and delay pointed to by the Advisory Group, over-discovery, this Court feels freer to take direct remedial action,

because the administration of discovery is clearly within this Court's power to control (unlike monitoring of attorneys' fees across the board), and relatively few countervailing concerns present themselves (unlike the issue of whether to set a presumptive limit on the issuance of dispositive rulings). Therefore, in the specifics of the following plan, as well as in the local rules that this Court adopted June 2, 1993 (included here as Appendix A), the Court undertakes to assist litigants and their counsel in extricating themselves from the insidious web of escalating discovery.

Finally, the Court joins with the Advisory Group in identifying, and seeking to remedy in the following plan of action, a number of miscellaneous problems with the delivery of civil justice in the Middle District that also appear to contribute to excessive cost and delay.

II. ACTIONS

The following discussion of actions that this Court will undertake to minimize excessive cost and delay in civil litigation in the Middle District of Georgia follows the sequence in which the various actions were addressed in the Advisory Group's report, and, in turn, the sequence of consideration under the Civil Justice Reform Act.

A. Differential Case Management

The close judicial scrutiny of cases in this district already constitutes an informal type of differential case management that this Court has found helpful in streamlining civil litigation. Moreover, the Court already provides customized procedures for four substantive categories of civil litigation: prisoner petitions, bankruptcy appeals, social security appeals, and habeas corpus petitions.

However, the Court joins with the Advisory Group in preferring not to formalize a trans-substantive differential case management system (i.e., a tracking system for all civil cases), primarily because it would probably interfere with the efficacy of the informal system of close judicial scrutiny that is already in effect.

The Court recognizes the Advisory Group's concern about the need to provide fair hearings of valid pro se prisoner petitions. In accord with the Advisory Group's recommendation, the Court has already taken a major step to improve those procedures by hiring a pro se law clerk to assist pro se litigants in better meeting the procedural requirements of this Court. Moreover, the Court is working informally with Georgia's

Attorney General to institute a better grievance procedure in the Georgia prison system that would reduce the volume of prisoner petitions to this Court, while increasing the proportion of more serious cases.

B. Early and Ongoing Control of the Pretrial Process

Early judicial involvement in the pretrial process is seen as a hallmark of this district's practice, which the Court will seek to continue and enhance.

The recent adoption of local rules in this district memorializes some of the routine control procedures in effect, addressing the Advisory Committee's concern that the terms of judicial control be made more explicit. In particular, Local Rule 4.1 explains the procedures for developing discovery plans and orders. Local Rule 4.2 explains this Court's presumption that all discovery materials are to be filed. Local Rules 4.3, 4.4 and 4.5 set presumptive limits on interrogatories, requests for production, and requests for admission.

A careful review of these new rules, however, reveals that at least some of them may not be binding on judges who opt out of their provisions. Recognizing this feature of many of the local rules, the Advisory Group has recommended that the Court standardize the pretrial control procedures used by the district's judges.

The Court understands the Advisory Group's preference for a more predictable set of assumptions about judicial management. Surprising variations in the procedures followed by the various judges within a district may indeed result in inefficiencies, and at least the appearance of unfairness.

At the same time, the Court is cognizant of its responsibility to preserve what the

Advisory Group also emphasized as one of the district's greatest existing strengths -- close judicial supervision. This desirable characteristic of civil litigation in this district has blossomed in part because the district has been small and flexible enough for each judge here to have been accorded substantial responsibility for supervising his own docket.

The Court harbors the concern that, under a more standardized procedure, the sense of personal accountability felt by the judges in this district may be diminished to the net detriment of the overall system. Therefore, the Court chooses at this time to proceed cautiously by making the range of local procedure more explicit, and by articulating advisory parameters for local judicial practice, without adopting mandatory standards that might deprive the judges of their capacities to implement effective, if occasionally idiosyncratic, systems for pretrial control.

Thus, the Court does not support the Advisory Group's recommendation that deadlines for the completion of discovery be adopted, given the particularized treatment of cases in this district. However, informally, in the letters sent by those judges in this district who do invite case management proposals, a six-month discovery period is already suggested. In the next revision of the local rules, this goal will be stated explicitly.

The Court has considered whether to adopt deadlines for the filing and disposition of motions, as suggested by 28 U.S.C. § 473(a)(2)(D). The motion process, which in most civil cases serves as the modern alternative to trial, is critically important to the quality of justice achieved in this district. Because the Court is reluctant to interfere with the complex, case-specific decisions of litigants and counsel about when to present issues by motion for judicial resolution, the Court will not at this time opt to set deadlines for the

filing of motions.

However, the Court is willing to adopt as an aspirational goal the suggestion of the Advisory Group that the district's judges endeavor to issue rulings on dispositive motions within 90 days of the close of briefing. This goal will be memorialized in the next revision of the local rules.

In the next revision of the local rules, the Court will also state the goal, recommended by the Advisory Group, that a trial date normally be set within 12 to 18 months of a case's filing. In the meantime, the Court's judges will experiment with setting early and firm trial dates as part of their individual case management practices.

After the fourth judge in this district has been seated, the Court will further facilitate the setting of more reliable trial dates by establishing regular, planned terms of court, as urged by the Advisory Group. Although those terms will of necessity be devoted first to criminal matters, their predictability and regularity may still help improve the ability of attorneys and litigants to anticipate possible trial dates for civil matters.

C. Case Management Conferences

Local Rule 4.1(b) provides that case management conferences may be held at the individual judge's discretion. To the extent that an individual judge has not sought a case management conference and an attorney feels that such a conference would be desirable, the individual judge may be presumed to invite a motion for the conduct of such a conference. This standing invitation will be memorialized in the next revision of the local rules.

D. Voluntary Exchange of Information

In general, this Court shares the Supreme Court's view that quicker and cheaper civil lawsuits could lead to noticeably fairer results, especially if opponents shared basic case information more readily, without engaging in customized discovery. Following the lead of the Northern District of Georgia (a pilot district under the Biden Bill), the Court had intended to adopt a local rule mandating early exchange of basic information when, at the end of April, 1993, the Supreme Court proposed its own mandatory disclosure provisions as possible amendments to the Federal Rules of Civil Procedure. This Court then withdrew its analogous proposed local rule so as to avoid confusion if both had taken effect.

Now, however, Congress appears poised to veto the Supreme Court's proposed amendments to Rule 26 of the Federal Rules of Civil Procedure, involving mandatory disclosure. If such a veto does issue, this Court will seek the advice of the Middle District's Committee on local rules on whether to adopt mandatory interrogatories. Otherwise, the mandatory disclosure provisions under the Federal Rules of Civil Procedure are expected to take effect on December 1, 1993, in accord with the objectives of the Civil Justice Reform Act.

E. Pre-Certification of Discovery Disputes

In Local Rule 3.6, the Court now requires pre-certification that discovery disputants have consulted with one another before any disputant moves to compel discovery.

F. Handling of Dispositive Motions

As discussed in its findings above, the Court will endeavor to monitor the speed of its judges in ruling on dispositive motions. Moreover, the Court has adopted Local Rule 3.7 to help movants systematize submissions in the context of motions for summary judgment. Furthermore, to the extent that the Court can additionally facilitate the research needs of its judges as they consider dispositive motions, it will endeavor to do so.

However, the Court is loath to interfere with any judge's procedures for reaching judgment, and hence will set no arbitrary limits on the time for judgment in any particular case.

G. Referral to Alternative Forms of Dispute Resolution

If funding remains available, the Court will continue its current pilot program of voluntary court-annexed arbitration.

The Court will also develop expertise and procedures to help its judges to identify, recommend, and, where appropriate, help facilitate various dispute-resolution alternatives that may be more appropriate than traditional adjudication in particular cases, including a nonbinding neutral evaluation conducted early in the litigation.

H. Settlement Conferences

In any form letters used by this district's judges to attorneys in advance of pretrial conferences, the judges will require that counsel certify that they have met by telephone or in person with their opponent's counsel prior to the pretrial conference to discuss

settlement. The judges will also be expected to require that counsel report to the Court at the pretrial conference on the status of those discussions. These requirements will be made explicit in the next revision of the local rules, specifically in Local Rule 5.1.

I. Attendance of Party Representatives at Key Conferences

The Court will adopt the requirement suggested in 28 U.S.C. § 473(b)(2) that each party be represented at the pretrial conference by someone 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, including settlement. In cases in which a non-party may contribute to settlement (e.g., an insurer), the non-party must be present or available for phone consultation during the conference. These changes will be implemented initially by modifying the form letters sent by the judges to counsel in advance of the pretrial conference, and will later be reflected in a revision to Local Rule 5.1.

The Court joins the Advisory Group in its lack of enthusiasm for the suggestion in 28 U.S.C. § 473(b)(3) that parties be obliged to sign requests for extensions. Extension practice has recently been addressed and limited by Local Rules 6.1 and 6.2.

J. Voir Dire

In the interest of efficiency, and also given the diversity of practice among this Court's judges on the handling of voir dire, the Court will not require in every case that voir dire questions be proposed at the pretrial conference. Many cases that go through pretrial conferences do not actually try. The propagation of voir dire questions at such an early

date would probably result in substantial unnecessary labor.

However, as recommended by the Advisory Group, the Court will consider revising its standard juror questionnaire to incorporate questions more particularly of interest to civil litigants. Furthermore, the Court will direct the Clerk to send the questionnaire to all prospective jurors throughout the district, including prospective jurors in divisions in which the existing questionnaire is not presently used.

K. Court Reporting

The Court will generally support efforts by counsel to use electronic taping of depositions in lieu of typed memorials.

M. The Role of Magistrate Judges

With the addition of a new magistrate judge in this district, the Court anticipates that it will employ its magistrate judges more fully to the limits of their statutory powers, leading to faster resolutions of, and greater focus on, particular matters. In keeping with practice in this district, the Court plans to direct entire matters to the magistrate judges for reasons of efficiency, rather than splitting off particular elements of cases that are simultaneously being monitored by other judges.