FJC Review of CJRA Reports and Plans

Prepared for the Judicial Conference Committee on Court Administration and Case Management

District: **Middle District of Georgia**

Date: **December 15, 1993**

The district is authorized four judgeships (three of which are filled), two full-time magistrate judgeships (one occupied), and one half-time magistrate judgeship.

Summary of Conditions in the District

The advisory group examined the court's caseload statistics and surveyed judges, magistrate judges, court personnel, lawyers, and litigants in the district. The analysis of the caseload revealed that "the volume of the district's civil caseload appears relatively light, and the pace of its handling of that civil workload appears relatively slow." This is shown in the figures below:

- In SY91, there were 311 total filings per judgeship and 264 weighted filings. In total filings, the district ranked 71st nationally.
- In SY91, civil median time from filing to disposition was 13 months compared to a national average of 9 months (last in Circuit and 81st nationally). The district's criminal median time was 8.7 months (last in Circuit and 88th nationally). The civil figure did improve in SY92, to 11 months, because the judges terminated substantially more cases than were filed.

In its survey of attorneys and litigants, the advisory group used the same questionnaire used by the Southern District of Florida, one of the most efficient courts in the federal system, which permitted the advisory group to compare the two districts. The group found that 50% of FL-S attorneys felt their case took too long or much too long, compared to 35% of GA-M attorneys, and that 24% of the litigants in FL-S felt that the length was about right, compared to 46% in GA-M. The advisory group concluded that "although attorneys and litigants are by no means entirely happy with the pace of civil litigation in the Middle District, they remain markedly more satisfied than attorneys and litigants in at least one of the nation's statistically fastest districts. ... In short, civil justice may take a while in the Middle District, but the results appear to be worth the wait, from the perspective of the population being served."

The advisory group also noted that without any systemic change at all, the district's median disposition time has gone down since enactment of the CJRA. They attributed this change to "heightened judicial awareness of the issue of timeliness."

Although the advisory group concluded that the pace of litigation is generally satisfactory, the advisory group noted that high attorney fees drive up costs and may deprive some potential litigants of access to federal court. The group also said that expense and delay are increased in the district by unreasonable attempts to avoid full disclosure of information relevant to the subject matter of the litigation. And, finally, the group cited as a prominent cause of delay the excessive length of time often required to rule on dispositive motions, particularly summary judgment motions.

To address these concerns the advisory group made a number of recommendations. In response, the court generally endorsed the group's findings, noting the irony that, although cases take longer than the ideal, participants appear to express "an unusual degree of satisfaction with the cost and time needed to litigate civil matters . . ." The court said this may be due to two primary factors: cases receive a relatively high level of judicial scrutiny, which gives dignity to the participants and discourages excessive discovery; and local procedure is relatively informal, allowing for attention that is tailored to the case's needs. The court said that the recently authorized judgeships (one district and one magistrate) will provide even closer judicial scrutiny, further enhancing participant satisfaction. Consequently, the court adopted many of the advisory group's recommendations, but also rejected several.

Summary of the Court's Plan

Case Management

The court said it agrees with the group that a formal "trans-substantive differential case management system" would only interfere with the efficacy of the court's informal system of close judicial scrutiny. The court will therefore maintain only its current system of differentiating prisoner, bankruptcy, and social security cases from others. To enhance the scrutiny already given to these cases - and in response to the advisory group's recommendation - the court hired a pro se law clerk to help pro se litigants meet the procedural requirements of the court. The court is also working informally with Georgia's attorney general to institute a better grievance procedure for Georgia prisoners.

Local rules currently provide that case management conferences may be held in any case at the judge's discretion. In the next local rule revision, the court will explicitly state the presumption that the rule is a "standing invitation" for a motion to hold a case management conference. This provision appears to be in response to the advisory group's desire that more time limits be set for the pretrial process and that the pretrial process be standardized across the district's judges.

The court declined, however, to set a deadline for filing motions, preferring not to interfere with the decisions of litigants. In response to the advisory group's concern about delayed rulings on dispositive motions, the court declined to set the 90 day limit suggested by the group, saying it preferred not to risk elevating speed over the integrity of the decisions. Instead, the court will in the next local rule revisions establish a goal of 90 days for these rulings.

To further improve motions practice, the court adopted a local rule to help movants systematize submissions of summary judgment motions. The court also said that, to the extent it can additionally facilitate the research needs of its judges as they consider dispositive motions, it will do so.

To facilitate timely trial settings, as desired by the advisory group, the court will in the next local rule revisions state a 12-18 month goal for the trial date. In the meantime, the court will experiment with setting early and firm trial dates. Also, after the fourth judge is appointed, the court will establish official terms of court to facilitate the setting of more reliable trial dates.

The court will modify form letters sent to counsel in advance of the pretrial conference and will later revise a local rule to require that each party be represented at the pretrial conference by someone with authority to bind. If a non-party may contribute to settlement (e.g., an insurer), the non-party must be present or available by phone.

The court recently used the local rules to address and limit requests for extensions, and therefore the court rejected a signature requirement for extensions.

Discovery

The court has adopted a number of measures to improve discovery. New local rules adopted on June 2, 1993 explain the procedures for developing discovery plans and orders; explain the court's presumption that all discovery materials are to be filed; and set presumptive limits on interrogatories and on requests for production and admission. Through submission of the discovery plan and the judge's response to it, a schedule is established for the case, including discovery deadlines.

The court said it prefers the current "particularized treatment of cases", including the right of judges to opt out of the discovery provisions, but it also recognizes the advisory group's desire for more standardization across judges, particularly regarding presumptive time limits for discovery. Since the judges who invite case management proposals generally use a six-month discovery cutoff, the court will in its next revision of the local rules state explicitly a goal of six months for completion of discovery.

The court considered adopting mandatory disclosure in the form of mandatory interrogatories, but withdrew its proposed local rule to avoid confusion between it and the proposed federal rule on disclosure. At the time the plan was written, the court was awaiting Congressional action on the federal rule amendments, but the plan implies that the court will follow the federal rule. (Subsequently, the rule amendments have gone into effect and the court has said it intends to follow the federal rules. Telephone conversation with clerk, 12/30/93.)

A local rule already requires certification that the parties have attempted to resolve their differences before filing motions to compel discovery.

Alternative Dispute Resolution

The court will continue its voluntary court-annexed voluntary arbitration pilot program if funding remains available. In response to the advisory group, the court will also develop expertise and procedures to help its judges identify, recommend, and, where appropriate, help facilitate various ADR techniques (including non-binding ENE) that may be more appropriate than traditional adjudication.

To further facilitate settlement efforts, the court will, in any form letters sent to attorneys before the pretrial conferences, require counsel to certify that they have met in person or by phone to discuss settlement. The judges will require that counsel report the status of those discussions to the court at the pretrial conference. In the next local rule revisions, the court will make these requirements explicit.

Other

Although recommended by the advisory group, the court will not require that voir dire questions be proposed at the pretrial conference, on the grounds that many cases in which such conferences are held do not proceed to trial. However, the court will consider revising its standard juror questionnaire to incorporate questions more particularly of interest to civil litigants and will direct the clerk to send the juror questionnaire to all prospective jurors in all divisions throughout the district, including those currently not using a questionnaire.

With the addition of a new magistrate judge, the court plans to employ its magistrate judges more fully to the limits of their statutory powers. This will entail directing entire matters to them, rather than splitting off particular elements.

Finally, the court will generally support efforts by counsel to use electronic taping of depositions in lieu of typed materials.

Implementation

The plan applies to all cases pending on the court's docket on and after December 1, 1993, but will not require parties to re-litigate aspects of pending litigation already processed under procedures previously in effect.

Consideration of §§ 473(a) and (b)

The court's plan follows the order of the provisions in §§ 473(a) and (b) and addresses each one of them.

Comments

The plan addresses each of the advisory group's recommendations, adopts most of them, and explains why its rejects those it finds unnecessary. Although acknowledging the problems identified by the advisory group, the court places considerable emphasis on the satisfaction expressed by respondents to the survey, on discretion of the individual judge, and on discretion of attorneys and litigants. It therefore generally shies away from specific limits or mandatory controls on most aspects of the litigation process. Where it accepts the principle of limitations or deadlines, the court promises to establish them as "goals" when the local rules are next revised.

Given the general satisfaction expressed by those who litigate in this court, perhaps "goals" are sufficient and perhaps they can be delayed until the next revision of the local rules. To some extent, also, additional controls will be provided by the new federal rule amendments, which this court intends to follow. On the other hand, the court does not seem to have responded to the advisory group's desire for greater standardization of the pretrial process, including presumptive time limits for discovery. The committee may want to suggest that the court act earlier and more directly to establish standardized procedures for the pretrial process.

Conclusion and Recommendation

I suggest the committee approve the plan, although the committee may want to suggest to the court that it provide greater control over the scheduling of the pretrial process. The committee may also want to ask the court to send the committee a copy of the local rules after they are revised to include the goals stated in the plan.

Principal Reviewer: John A. Thawley, Research Division, Federal Judicial Center