UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

First Annual Assessment of the Condition of the Court's Docket

Part II

Recommendations of the Advisory Group Appointed Pursuant to the Civil Justice Reform Act of 1990

July 14, 1993

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA
2211 United States Courthouse
75 Spring Street, SW
Atlanta, Georgia 30335

July 14, 1993

The Honorable William C. O'Kelley
Chief Judge, United States District Court
for the Northern District of Georgia
1942 United States Courthouse
75 Spring Street, S.W.
Atlanta, Georgia 30303

Dear Judge O'Kelley:

RE: Part II, Recommendations: First Annual Assessment of the Condition of the Court's Docket

The Civil Justice Reform Act of 1990, 28 USC §475, requires each United States District Court, upon adoption of a Civil Justice Expense and Delay Reduction Plan, to ". . . assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court." The statute further directs that the Court's Advisory Group be consulted in making this assessment.

A statistical update of the Court's docket for the period July 1, 1991, through June 30, 1992, with selected updates through September 30, 1992, was prepared at the direction of the Court in consultation with the Court's Advisory Group. This report, which represented Part I of the Northern District of Georgia's first annual assessment under the Civil Justice Reform Act of 1990, was presented to the Advisory Group for review and comment at a meeting held April 2, 1993. In addition to reporting on changes reflected in the Court's docket statistics, Part I also updated the Court's status with regard to its judicial and staff resources.

The Advisory Group's initial response to the docket report related to the two judgeship vacancies on the United States District Court for the Northern District of Georgia. Each of these vacancies has existed for longer than one year following the assumption of senior status by two of the Court's judges. The Advisory Group communicated its concern in writing to Senator Sam Nunn on April 16, 1993, stating as follows:

> There are presently two vacancies on the Court reflecting the decisions of Judge Marvin H. Shoob and Judge Richard C. Freeman to assume senior status on September 30, 1991, and December 31, 1991, respectively. The Advisory Group respectfully requests that the filling of these vacancies be accomplished as quickly as possible. There is little question that these vacancies severely impact the ability of the Court to make additional progress in reducing cost and delay as mandated by the CJRA which Act contemplates and requires more judicial involvement in case management.

The Advisory Group also noted from the annual assessment and from information publicly available the severe funding problems which presently exist in the Federal Courts System. As this portion of the first annual assessment is being prepared, a substantial question exists as to whether funds will be available in the Northern District to pay jurors in civil cases. The funding problem is further compounded by the severe staffing limitations which have developed in the Clerk of Court's office. As noted in Part I of the annual assessment:

> In October 1991, the Clerk of Court added a new position, Personal Computer Systems Administrator, to his staff. A temporary freeze on the hiring of District Court staff was imposed on July 21, 1992. The hiring freeze was subsequently converted in October 1992 to an indefinite hiring freeze. The effects of the hiring freeze during the time period of this report were limited, but staffing shortages in the Clerk of Court's office are likely to be experienced in SY93. There have been no staffing changes in the District Court Executive's office in SY92.

It is ironic that while CJRA-90 imposes on the Advisory Group the duty to consider additional recommendations to expedite disposition of civil cases, the Northern District of Georgia is facing the possibility of having to suspend civil jury trials for lack of funds and that the Court's ability to try out new procedures is severely restricted by the reduction in its staff which it is currently experiencing as the result of lack of funding.

The inescapable conclusion of the Advisory Group, based on the data it has reviewed, is that the increases in both civil and felony filings reflected in the most recent docket statistics challenge the ability of the Court to increase the speed at which the Court processes its civil docket unless it is provided additional resources. As noted by John Shapard, Federal Judicial Center, Research Division, reduction of a heavy pending caseload is not easily accomplished. If, he concludes, the methods necessary to accomplish such a reduction ". . . require a drastic increase in trials or other activities that place major demands on court resources, then the pending caseload cannot be quickly cut . . . without a major increase in those resources."

The data in Part I of this report with respect to case terminations shows a marked increase (15.2%) in the number of cases terminated. Notwithstanding this increase in the number of terminations, the substantial increase in filings referred to above (24.3%) contributed to there being considerable growth (15.5%) in cases pending at year end. These statistics

highlight the Court's need for additional resources to avoid the development of a heavy backlog of cases despite the Court's best efforts to expeditiously dispose of its pending cases.

In this letter, which constitutes Part II of the Court's Annual Assessment under CJRA-1990, the Advisory Group offers recommendations in five areas, all of which are believed to be consistent with the present limitations on funding.

Recommendation 1

The Advisory Group is persuaded that, if funded and implemented in accordance with the Court's plan, ADR alternatives could be of assistance to the Court in addressing its need to expedite disposition of pending cases. ADR has drawn increased attention from the state courts in Georgia and pilot projects have been initiated in a number of judicial districts in the state. Not only are members of the Bar becoming increasingly educated regarding the benefits that flow from the reasoned use of ADR alternatives, training programs regarding the use of ADR alternatives (such as arbitration, mediation, early case evaluation and others) have become increasingly available so that more attorneys are now trained in the skills that are particularly applicable to resolution of cases through alternative means. It is recommended that the Court continue its efforts to obtain funds for the ADR initiatives outlined in the Court's plan. In the meantime and until funds are obtained to allow implementation of the Court's ADR programs, the Court might well emphasize as part of its case management efforts the present availability of ADR options that are not part of a court-annexed plan. While the Court's suggestions with respect to ADR alternatives would not be mandatory, the increased emphasis upon ADR procedures at the state level might be useful in promoting the use of voluntary ADR alternatives by litigants and lawyers in federal court litigation.

Recommendation 2

The Advisory Group recommends that the Court review the suggestions contained in the "Model Civil Justice Expense and Delay Reduction Plan" adopted by the Judicial Conference of the United States in October 1992. Some of the suggestions and options contained in the Model Plan might assist the Court in determining whether additions or modifications to this Court's Plan are desirable.

Recommendation 3

The Advisory Group recommends that, consistent with available resources, additional efforts be made to establish a data base that provides statistical measurements for the key elements of the management procedures adopted by the Court as part of its Civil Justice Expense and Delay Reduction Plan. For example, it would be helpful to the Advisory Group in subsequent evaluations to have data with respect to the number of cases assigned to each of the three tracks adopted in the Court's Plan; the mean disposition times for cases and various types of motions; data regarding the type, age and status of pending motions; measurements relating

to the length of discovery; and explanations with respect to cases which are inactive for periods over 180 days.

Recommendation 4

The Advisory Group recommends that the Court consider soliciting on a routine basis the views of each judge with respect to the effectiveness of procedures contained in the Court's existing Civil Justice Expense and Delay Reduction Plan and with regard to problems which may have arisen in the judges' application of the Plan and as to suggestions which the judges may have for improvements to the Court's Plan.

Recommendation 5

Finally, for whatever benefit it may be to the Court, the Advisory Group has included as an attachment to this report a summary of attorney questions and comments regarding the Court's Civil Justice Expense and Delay Reduction Plan which have been received by members of the Advisory Group.

The Advisory Group is prepared to meet on a quarterly or more frequent basis to consult with respect to any issues submitted to it by the Court. Please feel free to contact the Advisory Group at any time it can be of service.

Sincerely,

Trammell E. Vickery
For the Advisory Group

Attachment to Recommendation 5
Part II, Annual Assessment of the
Condition of the Court's Docket, July 1, 1993

LR 201-2: Mandatory Interrogatories for All Parties

201-2(a)(b): Attorneys are unsure of the time frame that the Court wishes them to follow for answering mandatory interrogatories and commencing discovery in *removed* cases. The time provisions for answering mandatory interrogatories in removed cases [for plaintiffs (201-2(a)) and for defendants (201-2(b))] do not mesh with the time provisions in FRCivP 81(c) (time for answering complaint in removed actions) and LR 225-1(a) (commencement of discovery). Compliance with FRCivP 81(c) and LR 225-1(a) can, in removed cases, result in general discovery commencing before the parties' answers to mandatory interrogatories are due under LR 201-2.

201-2(d)(1)(2): Some defense lawyers are concerned that subsection (d) has expanded their exposure to sanction for failure to produce evidence in a timely manner.

LR 220: Motion Practice

220-1(a)(2): Attorneys have requested that the Court provide direction in the local rules for the proper procedure to be followed in filing a motion in a 0-months discovery case, and the correct time period for filing motions in such cases. LR 235-1 exempts 0-months discovery cases from filing a preliminary statement so the general rule stated in LR 220-1(a)(2) does not work.

220-5(c): Set a time for filing summary judgment motions in cases assigned to the 0-months discovery track (20 days after the close of discovery does not work in these cases).

LR 225: Discovery Practice

225-1(a): There is concern among the bar regarding the risk, if any, of contempt for noncompliance with the Federal Rules of Civil Procedure if an attorney does not respond to discovery that is served by the opposing party prior to the time set for commencement of discovery in LR 225-1(a), but which has been served consistently with the timing provisions set forth in FRCivP 30(a), 31(a), 33(a), and 34(b).

LR 235: Pretrial and Setting for Trial

235-3(8): Attorneys are very concerned that the correct calculations are made with regard to discovery in the preliminary statement. It has been suggested that section (8) be rewritten to provide spaces for the attorneys to indicate the actual date on which discovery commenced in the case, the case's discovery track assignment, and the date on which discovery will end under the track assignment. This information usually ties in with requests for extensions of discovery in the preliminary statement.