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October 25, 1993

K. White  
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA

IN RE: CIVIL JUSTICE REFORM ACT, )  
28 U.S.C. §471, ET SEQ. )

**WISC493-80**  
**ORDER**

The District Court,

after considering (1) the recommendations of the Civil Justice Reform Advisory Committee ("Committee") appointed pursuant to 28 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 Committee, pursuant to 28 U.S.C. §473(a), (b),

adopts this **CIVIL JUSTICE DELAY AND EXPENSE REDUCTION PLAN**, pursuant to 28 U.S.C. §§471, et seq.

**SECTION ONE: DIFFERENTIAL CASE MANAGEMENT [28 U.S.C. §473(a)(1)].**

(A) Existing Procedures:

The Court shall retain the existing Local Rules (L. R.) which provide for specialized treatment for certain types of litigation. These are the following:

- L. R. 7.1: An exemption from the four month limit on discovery for antitrust and patent cases.
- L. R. 8.5: Exemptions from the standard "voluntary" discovery exchange required by L. R. 8.6. The exemptions currently apply to thirteen categories of cases specified in L. R. 8.5.<sup>1</sup>

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<sup>1</sup> The exemption in L. R. 8.5(c) in employment cases will be eliminated in accordance with the Committee's recommendation.

- L. R. 14: This Local Rule provides special requirements for pleading and disposition of cases brought as class actions.
- L. R. 25: This rule provides for court intervention in the disposition of cases involving minors, wards and incompetents.
- Standing order of October 2, 1989: This order requires in-depth investigation and specialized pleadings in any case alleging a civil violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§1961, et seq. This standing order shall be incorporated into the Local Rules of Court.

(B) Special Case Management Order:

The Court concurs with recommendation 14 of the Committee that provision be made in the Local Rules of Court for the adoption and implementation of special case management orders to facilitate the disposition of cases where the court, sua sponte, or upon motion of the parties, determines that individualized and case specific management will be appropriate. The Local Rules of Court shall be amended to provide the following:

- That the use of special case management orders be referenced in Local Rule 8.6 and ~~addressed~~ by the parties in the responses required by Local Rule 8.6.
- That special case management orders may be entered by the court, sua sponte, or upon motion. The rule shall specify the types of issues that may be addressed in a special case management order, and provide a sample form of a special case management order.

This approach will be the technique used in this district to address the concern noted in 28 U.S.C. §473(b)(1).

(C) Litigant's Bill of Rights:

The Court concurs in recommendation 19 of the Committee that after the appearance of each party, they should be provided with a notice of case management procedures which the Committee referred to as a "Litigant's Bill of Rights." The purpose of this notice, which will be sent by the Clerk, is to apprise counsel and parties of alternative dispute resolution opportunities, the availability of the use of a Magistrate Judge, the period of time expected for the

completion of discovery, the opportunity to request a special case management order, and to alert the parties that they may be required to appear at a pretrial conference.

A Local Rule of Court shall be adopted which incorporates the text recommended by the Committee in its report. The Local Rule shall provide that the document shall be furnished to each party through counsel upon the appearance of the party in the case, and that the completed form be returned within fifteen days. The Rule shall also provide that the Clerk of Court shall have authority to grant extensions of time of up to ten business days to return the completed form.

Use of the "Litigant's Bill of Rights" will be the technique used in this district to address the concern noted in 28 U.S.C. §473(b)(3).

**SECTION TWO: EARLY AND ONGOING CONTROL OF THE PRETRIAL PROCESS [28 U.S.C. §473(a)(2)]**

**(A) Assessing and Planning the Progress of a Case [§473(a)(2)(A)]:**

The Court will continue to use the existing procedures set forth in the preceding section of this Plan,, and the new special case management order in appropriate cases.

**(B) Setting Early, Firm Trial Dates [§473(a)(2)(B):**

The Court concurs with the Committee that existing procedures to schedule the disposition of cases should be retained. These are the following:

- L. R. 8.5: Implements Rule 16, FRCP. A scheduling order issued by the Clerk of Court sets sixty days to add parties or amend the complaint; four months to complete discovery; and twenty days after the completion of discovery to file dispositive motions.
- L. R. 8.1: Provides for the convening of status conferences as directed by the Court.
- L. R. 8.2 and 8.3: Provides for the submission of consolidated pretrial orders and the holding of pretrial conferences as directed by the Court.

**(C) Controlling the Extent of and Time for Discovery [§473(a)(2)(C):**

The Plan addresses discovery in Section Four, infra.

(D) Filing and Disposition of Motions [§473(a)(2)(D):

1. Existing Procedures:

The Court concurs with the Committee that existing procedures already expedite the filing and disposition of motions. These procedures are the following:

- L. R. 6.8: Requires the filing of dispositive motions within twenty days after the close of discovery.
- L. R. 6.10: Requires motions to add a party or amend the pleadings to be filed within sixty days after issues are joined by the filing of an answer.
- L. R. 6.1: Memoranda of law are required for every motion. Affidavits are required for allegations of fact.
- L. R. 6.2: Opposition to a motion requires a reply memorandum, affidavits to support contentions of fact, and a response within ten days of service except that twenty days are allowed to respond to a summary judgment motion.
- L. R. 6.6: Motions for summary judgment must be accompanied by a statement of undisputed material facts, to which the opposing party must respond.

2. New Procedures:

The Court concurs with Committee recommendations 16 and 20 and shall incorporate them into practice in the Local Rules as follows:

- L. R. 6.1 shall be amended to add the requirement that a proposed order accompany all motions except summary judgment motions or motions to dismiss.
- The Court shall instruct the Clerk to revise the report of pending motions for each judicial officer in the district. The new format shall be distributed monthly and will readily identify the motions that have been pending the longest time by listing the

motions for each judicial officer in chronological order, oldest first.

**SECTION THREE: MONITORING OF COMPLEX AND OTHER APPROPRIATE CASES THROUGH DISCOVERY-CASE-MANAGEMENT CONFERENCES [28 U.S.C. §473(a)(3)]**

(A) Existing Procedures:

The Court concurs with the Committee that existing procedures are already in place to involve the Court in management of appropriate cases. These procedures are the following:

- L. R. 8.5: Implements Rule 16, FRCP. A scheduling order issued by the Clerk of Court sets sixty days to add parties or amend the complaint; four months to complete discovery; and twenty days after the completion of discovery to file dispositive motions.
- L. R. 8.1: Provides for the convening of status conferences as directed by the Court.
- L. R. 8.2 and 8.3: Provide for the submission of consolidated pretrial orders and the holding of pretrial conferences as directed by the Court.
- L. R. 6: This rule provides a time limit for filing responses to motions; a deadline for filing dispositive motions within twenty days after the close of discovery; a deadline for filing motions in criminal cases within ten days of arraignment; and a deadline of sixty days to file motions to amend or add or join another party within sixty days of the filing of an answer.
- L. R. 8: Requires the plaintiff to file with his complaint, and the defendant with responsive pleadings, voluntary discovery disclosures by answering standard interrogatories.

(B) New Procedures:

The Court agrees with the recommendations of the Committee that this process be supplemented by Local Rules of Court providing for the entry of special case management orders where appropriate, and for the service and return by each party of a Litigant's Bill of Rights, supra.

The combination of a special case management order, where appropriate, and the Litigant's Bill of Rights will



serve to satisfy the concerns identified in §473(a)(3)(A) - (D). They alert the parties and their counsel to the availability of alternatives to litigation, and provide mechanisms to enhance issue identification, implement discovery schedules and plans, and set deadlines for completing the various stages of preparation which are required in a given case.

**SECTION FOUR: COST EFFECTIVE DISCOVERY AND VOLUNTARY EXCHANGE OF INFORMATION [§473(a)(4)]**

(A) Existing Procedures:

The Court agrees with the assessment of the Committee that existing Local Rules have had a positive impact on the efficiency of discovery in the district, and that they should be continued. These existing provisions are the following:

- L. R. 8: Requires the plaintiff to file with his complaint, and the defendant with responsive pleadings, voluntary discovery disclosures by answering standard interrogatories.
- L. R. 6.5(d): This rule requires a party to certify that it has attempted to resolve a discovery dispute before a discovery motion is filed with the Court.
- L. R. 7: In cases except those specifically exempted, a four month limit is set on the time for discovery.
- L. R. 7.4: This rule limits the number of interrogatories, including subparts, to a total of twenty-five.

(B) New Procedures:

The Court agrees with the recommendation 15 of the Committee that the Local Rules be amended to make additional provisions to expedite and control discovery. The Local Rules of Court shall be amended to provide the following:

- The requirement in L. R. 8.6(7) for plaintiffs to set forth a discovery plan shall be extended to the responses to the standard interrogatories made by defendants.
- The standard interrogatory responses of each party shall include the identification of documents and

tangible things relied upon to support the contentions of that party in its pleadings.

- The Local Rules shall be amended to require that for each expert expected to be used at trial, a written report of expected testimony for the expert must be served upon opposing counsel. The identification of the expert and the service of the written report must be made with sufficient time to allow depositions within the four month discovery period.
- The responses to standard interrogatories of each party shall include the requirement that for each expert expected to be used at trial, a written report of expected testimony from the expert must be served upon opposing counsel. Also, all experts must be identified with sufficient time to allow depositions within the four month discovery period.
- The exemption in L. R. 8.5 for responding to standard interrogatories in employment discrimination cases shall be eliminated.

**SECTION FIVE: REQUIREMENT THAT COUNSEL CERTIFY TO GOOD FAITH EFFORTS TO RESOLVE DISCOVERY DISPUTES [§473(a)(5)]**

This is already required in the district by Local Rule 6.5. Also, discovery disputes which do result in the filing of a motion are referred initially to a Magistrate Judge for disposition. L. R. 6.4.

**SECTION SIX: ALTERNATIVE DISPUTE RESOLUTION [28 U.S.C. §473(a)(6) and §473(b)(4)]**

The Court concurs with recommendation 21 of the Committee that a mandatory program of alternative dispute resolution not be instituted at the present time in this district. However, the Court concurs with the assessment of the Committee that the Litigant's Bill of Rights should include a discussion of the availability of alternative dispute resolution options and the requirement that the parties express any interest in proceeding by such a method at an early stage of the case.

On its own motion, or at the request of the parties, the Court will be alert for opportunities to resolve or expedite the resolution of cases through alternative methods tailored to the individual case where a request is made or where the Court deems it appropriate.

*No Mand. ADR in L.R. 8.5 "Bill of Rights" But note: CA may order ADR*

SECTION SEVEN: OTHER FEATURES [28 U.S.C. §473(b)(6)]

(A) Criminal Prosecutions:

The Court concurs in recommendation 13 of the Committee that informal consultation continue between the Judges and the United States Attorney's Office to assure the exercise of appropriate discretion when cases subject to concurrent state and federal jurisdiction are selected for federal criminal prosecution, and that the number of parties indicted and the counts of the indictment are efficiently and appropriately determined.

(B) Pending Motions:

The Court concurs with recommendation 20 of the Committee and directs the Clerk of Court to furnish a monthly report to each Judge of the District listing in chronological order, oldest first, pending motions for each judicial officer.

(C) Criminal Sentencing:

The Court concurs with recommendation 22 of the Committee, and hereby instructs the Probation Office to furnish presentencing reports within thirty days after the entry of a plea of guilty or a verdict of guilty after trial.

(D) Attendance at Pretrial Conferences [28 U.S.C. §473(b)(2), (5)]:

The Court concurs with Committee recommendations 17 and 18. The Local Rules shall be amended to provide that parties, or their representatives with settlement authority, may be required to attend a pretrial conference. Where the United States is a party, the United States Attorney or lead counsel with settlement authority may be required to attend.

(E) Recommendations to Congress [28 U.S.C. §472(c)]:

Fifteen of the twenty-four recommendations of the Committee are addressed in whole or in part to Congress. They cover the following subjects:

(1) State prisoner suits brought under 42 U.S.C. §1983;

(2) The filing and disposition of habeas corpus petitions;

(3) Social Security Act appeals;



(4) Mediation and arbitration of Title VII, EEOC cases and other specialized employee claims;

(5) Retaining diversity jurisdiction;

(6) Creating special diversity jurisdiction in multi-district litigation;

(7) Expanding the powers of Magistrate Judges;

(8) Enactment by Congress of a "safety valve" exception to mandatory minimum sentences;

(9) Enactment of legislation to require both pre-passage and post-passage consideration of the impact of legislation on the federal courts;

(10) Enactment of a statute to provide for fee shifting in private civil litigation modelled after the Equal Access to Justice Act;

(11) Legislation authorizing the federal trial courts to approve fees of attorneys and expert witnesses to prevent excessive and unreasonable charges in civil cases;

(12) Opposing the amendment to Rule 11, FRCP, that would create a twenty-day "safe harbor" for frivolous filings;

(23) A Recommendation to Congress and the Judicial Conference that the mission of the United States Marshal Service be clarified to establish its foremost duty to provide security for the courts and judges; and

(24) That Congress and the Judicial Conference provide funding for personnel in the Clerk's office of the Southern District of Georgia at the level called for by the authorized formula.

These recommendations are acknowledged by the Court to be the product of serious and careful study by a committee comprised of able and conscientious attorneys and representatives of industry and government. These recommendations deserve equally serious consideration by the Congress and the Judicial Conference. Accordingly, the Chair of the Committee is directed to forward copies of the Committee report and these recommendations to the Judiciary Committees of the United States House of Representatives and the United States Senate.

## ADDENDUM

### CROSS REFERENCE BETWEEN THE RECOMMENDATIONS OF THE CIVIL JUSTICE ADVISORY COMMITTEE AND CIVIL JUSTICE REFORM PLAN ADOPTED BY THE COURT

Committee Recommendations 1-12 (Recommendations to Congress): pp. 8-9

Committee Recommendation 13 (Concurrent criminal jurisdiction): p. 8

Committee Recommendation 14 (Special case management order for complex cases): p. 2

Committee Recommendation 15 (Discovery): pp. 6-7

Committee Recommendation 16 (Motion practice): p. 4

Committee Recommendation 17 (Pretrial conferences):  
p. 8.

Committee Recommendation 18 (Pretrial conferences):  
p. 8

Committee Recommendation 19 (Notice of case management procedures): p. 2

Committee Recommendation 20 (Disposition of motions):  
pp. 4, 8

Committee Recommendation 21 (ADR): p. 7

Committee Recommendation 22 (Pre-sentencing reports):  
p. 8

Committee Recommendations 23-24 (Recommendations to Congress): p. 9

(F) Annual Reassessment [§475]:

At least on an annual basis, this Court will request the Committee or the standing lawyer advisory committee on the Local Rules of Court to compare the condition of the Court's docket with the findings of the Committee and to make any recommendations it may have for modification of this Plan and/or the Local Rules of Court.

(G) Dissemination of this Plan:


Upon the adoption of this Plan, the Clerk of Court shall coordinate with the Chair of the Committee and furnish a copy of the Plan with an appropriate introductory letter to each bar association functioning within the district. Also the Clerk shall post a notice at each of its offices that the Plan has been adopted by this Court and that copies are available for members of the public and the bar upon request at each office of the Clerk.


The Chair of the Committee and the Clerk of Court shall also make copies of the Committee report available to the daily newspapers published within the District.

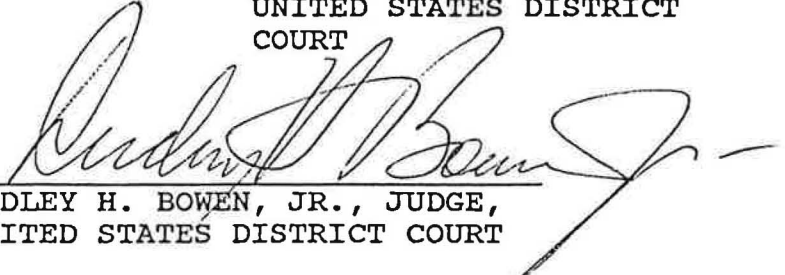
(H) Implementation Schedule:

Upon the adoption of this Plan, it shall be made available to the standing attorney advisory committee on the Local Rules of Court for the Southern District of Georgia. That committee is charged with the ongoing task of reviewing and revising the Local Rules of Court. It shall be charged with drafting the text of the changes in the Local Rules of Court to implement this Plan. The Court suggests to the committee that its drafting be completed so that its work can be considered for adoption by the Court as early as January 1, 1994.

ENTERED AT SAVANNAH, GEORGIA, this 25<sup>th</sup> day of October, 1993.

  
E. AVANT EBENFIELD, CHIEF  
JUDGE, UNITED STATES  
DISTRICT COURT

  
ANTHONY A. ALAIMO, JUDGE,  
UNITED STATES DISTRICT  
COURT

  
DUDLEY H. BOWEN, JR., JUDGE,  
UNITED STATES DISTRICT COURT