

**Southern District of Georgia
Report of the Advisory Group
Expense and Delay Reduction Plan**

Summary

PART ONE: REPORT OF THE ADVISORY GROUP

I. Assumptions; Miscellany; and Background

- A. The district serves 43 rural and urban counties, and the cities of Savannah and Augusta in the southern part of the state.
- B. The district contains two port cities, several large military bases, and a number of both state and federal corrections facilities.
- C. The district maintains six divisions, located in Augusta, Brunswick, Dublin, Savannah, Waycross, and Statesboro; six of these sites house full-time staff.
- D. The district has three authorized Article III judgeships, two of which are currently filled (i.e., one vacancy). There are three full-time magistrate judges, and one active senior judge, supplemented by a visiting senior judge who carries a 4% caseload.
- E. The Advisory Committee conducted interviews of all judicial officers. It also interviewed members of the federal bar and litigants. Data analysis was performed utilizing court and national data. In addition, special case samples were drawn and analyzed. Personnel from the Federal Judicial Center and the University of Georgia were enlisted to assist the Advisory Committee in its sampling, data gathering, and analysis.
- F. The district is described as being "in the vanguard" of automation innovation, and has fully implemented ICMS civil and criminal systems. PACER and CHASER will soon be operational in this district.
- G. The district has a number of local rules in place which foster CJRA goals, including rules regarding discovery deadlines; controls on the number of discovery devices; a certification requirement for a joint conference prior to a motions filing; automatic core information discovery through prescribed interrogatories issued on filing the complaint; and the requirement of the presence of an attorney with the authority to bind at pretrial conferences.

II. State of the Docket

A. The Civil Docket

1. Through June 30th, 1991, this district ranked 2nd in the nation in the number of civil filings per judge.
2. Filing to disposition time for civil cases, which was eight months from 1987 to 1989, rose to ten months in 1990 and 1991.
3. Only during the peak filing periods of 1990-91 did the life expectancy of a new civil filing exceed the national average of 12 months; this figure has dropped to seven months for the 12 month period ending in March, 1993.
4. Pending civil cases over three years old were non-existent from 1989-1991, and allowed the district to lead the nation in this indice. In SY1992, the district recorded seven cases over three years old, or 0.7% of its caseload.
5. Civil cases terminated have approached or exceeded civil cases filed for the six year period from 1986 to 1992.
6. The median time from issue to trial for civil cases tried averaged 10 months from 1987 to 1989; it rose to 12 months in 1990, and averaged 13 months in 1991 and 1992.
7. Prisoner cases have constituted 14-22% of the civil docket for the last decade; they now constitute 19%, and over 24% of all private civil case filings in the district. New prison facilities opening in 1994 will exacerbate this problem.
8. Although few in absolute numbers, ERISA, patent, trademark, and copyright cases are rising; social security cases show declines.
9. Civil trials have declined from 136 in 1987 to 80 in 1992, but still account for two-thirds of total trials.
10. The impacts of the Sentencing Reform Act, the sharp increase in criminal cases and defendants, and the Uniform Sentencing Guidelines virtually assure that the criminal docket will be a key determinant in the condition of the civil docket.

B. The Criminal Docket

1. The median time from filing to disposition for criminal cases rose steadily from 3.2 months in 1987 to 6.3 months in 1992.
2. Since 1986, the number of criminal cases commenced in the district has increased from 310 to 424, an increase of 36%; the number of criminal defendants has increased in the same period from 380 to 594, an increase of 56%.
3. Larceny prosecutions constituted the largest of the recent increases in criminal cases; the Justice Department's "Operation Triggerlock" for weapons offenses, and traffic cases also contributed to the criminal case increase.
4. The number of criminal trials from 1987 to 1992 has averaged 32-35, or one-third of total trials.

III. Causes of Cost and Delay

- A. The perceived risk by one side in not matching the level of resources committed by the other.
- B. The fostering of the growing cottage industry of experts-for-hire.
- C. The non-productive time spent reviewing cases after long lapses of activity.
- D. The pursuit of repetitive and unnecessary discovery, or discovery of marginal utility.
- E. The need for earlier action regarding terminations through dispositive motions or settlements.
- F. The steep rise in the number of criminal cases and criminal defendant filings, along with the expanded time for holding sentencing hearings under the Sentencing Guidelines.
- G. The longer sentences offered under the federal Sentencing Guidelines promote the "federalization" of crime by enforcement officers.
- H. The demands in judge time for prisoner cases.

IV. Recommendations

- A. 42 U.S.C. § 1983 should be amended to withdraw jurisdiction over suits by state prisoners claiming damages arising out of the conditions of confinement except for collateral review in federal court; in the alternative, a requirement of the expiration of a period of 120 days after filing for the exhaustion of state institutional remedies in these actions in state correctional grievance systems previously certified as fair and effective by the district court.**
- B. The statutes governing habeas corpus should be amended to include a timeliness requirement; a limitation in the number of petitions filed per prisoner; and a codification of Teague v, Lane, 489 U.S. 288 (1989), prohibiting federal courts from entertaining petitions based on law in place after state court affirmance of the judgement of conviction under which the prisoner is in custody.**
- C. A new Article I court and administrative structure should be created to handle Social Security Act cases, with questions of law appealable to the U.S. Courts of Appeals.**
- D. Mechanisms for court-annexed mediation and arbitration should be employed in Title VII, Equal Pay Act, Age Discrimination in Employment Act, and other specialized worker claims.**
- E. Diversity of jurisdiction should be retained.**
- F. The multi-district litigation statute (28 U.S.C. §1407) should be broadened to permit consolidated trials as well as pretrial proceedings, and to create a special diversity jurisdiction. This jurisdiction would be based on minimal diversity, to make possible the consolidation of major multi-party, multi-forum litigation.**
- G. The jurisdiction and powers of magistrate judges under 26 U.S.C. §636 should be expanded to permit a magistrate judge to entertain actions to enforce IRS summonses, to issue appropriate orders, and hold appropriate hearings.**
- H. A careful evaluation of the impact on federal courts of mandatory sentences and of the sentencing guidelines promulgated by the U.S. Sentencing Commission should be undertaken.**
- I. Appropriate methods to establish both pre-passage and post-passage impacts of legislation on the federal courts should be initiated.**

- J. A statute modeled after the Equal Access to Justice Act, 28 U.S.C. §2412, should be enacted to curb abuses of litigation by providing for fee shifting in private litigation. The standard applied by the court should be one of lack of substantial justification in pursuit of claims or defenses by the non-prevailing party.
- K. Legislation to control fees paid to experts should be enacted to permit the judge at the request of a party, or sua sponte, to review and adjust attorney's fees and fees paid to experts in civil litigation.
- L. Present proposed changes to F.R.C.P. 11 should be rejected as unnecessarily weakening judicial oversight in providing a 21 day period during which frivolous filings can be withdrawn to avoid sanctions.
- M. Informed consultation should continue between the Court, the Justice Department and the U.S. Attorney's Office to insure that appropriate discretion is exercised in determination to prosecute under federal versus state statutes.
- N. Either by local rule or General Order, a track for complex cases should be established incorporating a Special Case Management Order subjecting discovery disclosure, requests, deadlines, issue identification, and all other pretrial developments to it. The Special Case Management Order should be patterned after Form 35 of the F.R.C.P..
- O. Local Rule 8.6 should be revised to require:
1. that litigants furnish within 45 days of filing copies or descriptions by category of all documents or compilations parties intend to rely on to establish claims or defenses;
 2. the timely identification of expert witnesses to avoid late disclosures;
 3. the advance written disclosure of all expert testimony (extending this requirement beyond that stated in proposed F.R.C.P. 26(a)(2) in demanding all testimony); and
 4. the defendant must respond to plaintiff's discovery plan by either agreeing to it, or proposing modifications.
- P. Local Rule 6.1 should be amended to add the requirement that a proposed order accompany all motions except motions for summary judgement or to dismiss.

- Q. Local Rule 8.3 should be revised to include, as an option, the attendance at a pretrial conference of the client or representative with settlement authority.
- R. The Court, the U.S. Attorney, and the Justice Department should set up procedures to facilitate the attendance at pretrial conferences of a lead U.S. Attorney with settlement authority.
- S. By Local Rule or General Order, a Notice of Case Management Procedures, the so-called Litigant's Bill of Rights, should be sent by the Clerk to counsel for each party filing an appearance notifying them of alternatives to litigation and the steps in the litigation process. The client should be required to sign this notice.
- T. A protocol for monitoring pending motions should be established to encourage prompt rulings.
- U. The Advisory Committee recommends against the establishment of mandatory alternatives to litigation in the Southern District because the docket is current. It may simply build another layer of cost and delay, and attorneys surveyed in the district are concerned about the efficacy of ADR. Early Neutral Evaluation (ENE) and non-binding mediation should be allowed on a case by case basis, and litigants should be informed of their ADR options.
- V. The U.S. Probation Office should be instructed to furnish the requisite pre-sentence reports within 30 days after trial or entry of plea to shorten criminal case disposition time.
- W. Congress and the Judicial Conference should clarify the mission of the U.S. Marshall's Service to establish security for courts and judges as its first and foremost duty.
- X. Funds should be provided to the Clerk's Office to staff that office at the level called for by the authorized formula.

PART TWO: THE COURT PLAN; PLAN PROVISIONS

I. DIFFERENTIAL CASE MANAGEMENT [CJRA, §473(a)(1)]

A. Existing Procedures

The Court shall retain the existing local rules providing for specialized case management:

-L.R. 7.1: exemption from the 4 month limit on discovery for antitrust and patent cases;

-L.R. 8.5: exemptions from voluntary discovery exchange of L.R. 8.5 for specified case categories;

-L.R. 14: special requirements for pleadings and disposition of class actions;

-L.R. 25: providing for Court intervention in cases involving minors, wards, and incompetents; and

-Standing Order of 10/2/89 dealing with RICO cases.

B. Special Case Management Order

The court concurs with the Committee (Rec. "N" above) and will adopt the use of this Order sua sponte or on motion of the parties; local rules will be amended accordingly (re: CJRA, §473(b)(1)).

C. Litigants Bill of Rights

This notice of court procedures will be adopted by the court, to be sent by the Clerk to the parties, and shall be returned signed within 15 days. Its purpose is to inform litigants of ADR options, magistrate judge trial possibilities, discovery deadlines, special case management orders, and the possible requirement for their appearance at pretrial conferences. Local Rules shall be amended accordingly.

II. EARLY AND ONGOING CONTROL OF THE PRETRIAL PROCESS [CJRA, §473(a)(2)]

A. Assessing and Planning Case Progress [CJRA, §473(a)(2)(A)]

The court will continue to use procedures previously set forth in this plan with the special case management order, as appropriate.

B. Setting Early, Firm Trial Dates [CJRA, §473(a)(2)]

Existing procedures within Local Rules to schedule case disposition shall be retained: L.R. 8.5, scheduling order and management deadlines for discovery, amendments, and dispositive motions; L.R. 8.1, covering the convening of status conferences; and L.R. 8.2 and 3, providing for the submission of consolidated pretrial orders and the holding of pretrial conferences.

C. Controlling the Extent and Timing of Discovery [CJRA, §473(a)(2)(C)]

Addressed in Section IV, *infra*.

D. Filing and Disposition of Motions [CJRA, §473(a)(2)(D)]

The Court concurs with the Committee that existing procedures already expedite the filing and disposition of motions (Local Rules 6.1, 6.2, 6.6, 6.8, and 6.10). The Court will incorporate the Committee's additional recommendations on this topic in Local Rule amendments as follows: a proposed order shall accompany all motions; and the court shall instruct the Clerk to amend the motions report to list all outstanding motions by judicial officer, in chronological order.

III. MONITORING OF COMPLEX AND OTHER APPROPRIATE CASES THROUGH DISCOVERY CASE MANAGEMENT [CJRA, §473(a)(3)]

The Court concurs with the Committee regarding the continuance of current Local Rules 6, 8, 8.1-3, and 8.5-6, governing special case motions, monitoring, and case conference management. The court also adopts the Committee's supplementation to these rules in its adoption in this plan of the so-called "Litigants Bill of Rights" with its noticing features regarding court case management procedures, case processing deadlines, and ADR.

IV. COST EFFECTIVE DISCOVERY AND VOLUNTARY EXCHANGE OF INFORMATION [CJRA, §473(a)(4)]

The Court concurs with Advisory Committee recommendations to continue the use of existing local discovery rules 6.5(d) (certification by counsel of good faith negotiation prior to a motions filing); 7 (four month limits on the discovery phase of the case); 7.4 (limiting the number of interrogatories to 25, including sub-parts); and 8 (standard discovery interrogatories for both sides on the filing of the complaint and response).

The Court agrees to the following amendments/additions to these rules as proposed by the Committee:

-the requirement for plaintiffs to present a discovery plan shall be extended to the defendants in their responses to the standard interrogatories;

-the standard required interrogatories shall include the identification of documents and tangible things relied upon by the parties to support contentions in their pleadings;

-a written report on the testimony of each expert expected to be used at trial must be served on opposing counsel with sufficient time for a response within the four month discovery period; and

-the present exemption to the standard interrogatories for employment discrimination cases shall be eliminated.

V. REQUIREMENT THAT COUNSEL CERTIFY TO GOOD FAITH EFFORTS TO RESOLVE DISCOVERY DISPUTES [CJRA, §473(a)(5)]

This is already required by local rule.

VI. SECTION SIX: ALTERNATIVE DISPUTE RESOLUTION [CJRA, §473 (a) (6) and (b) (4)].

The Court concurs with recommendations of the Committee against mandatory ADR, and in favor of the informational approach of the Litigant Bill of Rights adopted in this plan to inform litigants of ADR availability, and assist tailoring methods chosen to case needs.

VII. SECTION SEVEN; OTHER FEATURES [CJRA, §473(b)(6)].

A. **Criminal prosecutions:** the Court concurs with the Committee in its view that informal consultation with the U.S. Attorney's Office should continue on its use of prosecutorial discretion in federal criminal charging decisions.

B. **Pending motions:** the Court concurs with the Committee, and orders the Clerk to furnish a chronological listing of pending motions by judge on a monthly basis.

C. **Criminal sentencing:** the Court agrees with the Committee on the impact of early presentence reports on criminal case processing time, and instructs the Probation Office to produce reports within 30 days of guilty plea or verdict.

- D. Attendance at pretrial conferences [CJRA, §473(b)(2), (5)]: the Court, concurring with the Committee, shall amend local rules to require parties or their representatives with settlement authority shall be required to attend pretrial conferences. This also may apply to the U.S. Attorney, or his designee.
- E. Recommendations to Congress [CJRA, §472(c)1]:

The following fourteen recommendations of the Advisory Committee to Congress are commended to the Judicial Conference and Congress for their serious consideration:

1. 42 U.S.C. § 1983 should be amended to withdraw jurisdiction over suits by state prisoners claiming damages arising out of the conditions of confinement except for collateral review in federal court; in the alternative, a requirement of the expiration of a period of 120 days after filing for the exhaustion of state institutional remedies in these actions in state correctional grievance systems previously certified as fair and effective by the district court.
2. The statutes governing habeas corpus should be amended to include a timeliness requirement; a limitation in the number of petitions filed per prisoner; and a codification of *Teague v. Lane*, 489 U.S. 288 (1989), prohibiting federal courts from entertaining petitions based on law in place after state court affirmance of the judgement of conviction under which the prisoner is in custody.
3. A new Article I court and administrative structure should be created to handle Social Security Act cases, with questions of law appealable to the U.S. Courts of Appeals.
4. Mechanisms for court-annexed mediation and arbitration should be employed in Title VII EEOC, Equal Pay Act, Age Discrimination in Employment Act, and other specialized worker claims.
5. Diversity of jurisdiction should be retained.
6. The multi-district litigation statute (28 U.S.C. §1407) should be broadened to permit consolidated trials as well as pretrial proceedings, and to create a special diversity jurisdiction. This jurisdiction would be based on minimal diversity, to make possible the consolidation of major multi-party, multi-forum litigation.

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 8. A careful evaluation of the impact on federal courts of mandatory sentences and of the sentencing guidelines promulgated by the U.S. Sentencing Commission should be undertaken.
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 10. A statute modeled after the Equal Access to Justice Act, 28 U.S.C. §2412, should be enacted to curb abuses of litigation by providing for fee shifting in private litigation. The standard applied by the court should be one of lack of substantial justification in pursuit of claims or defenses by the non-prevailing party.
 11. Legislation to control fees paid to experts should be enacted to permit the judge at the request of a party, or sua sponte, to review and adjust attorneys fees and fees paid to experts in civil litigation.
 12. Present proposed changes to F.R.C.P. 11 should be rejected as unnecessarily weakening judicial oversight in providing a 21 day period during which
 13. Congress and the Judicial Conference should clarify the mission of the U.S. Marshall's Service to establish security for courts and judges as its first and foremost duty.
 14. Funds should be provided to the Clerk's Office to staff that office at the level called for by the authorized formula.
- F. Annual assessment [§475]: the Court will call upon the Committee or its standing attorney advisory committee on the local rules of court to review the plan and its recommendations with the state of the docket at least annually.
- G. Dissemination of this plan: the Clerk and the Committee Chair shall coordinate the distribution of the plan to the bar and the local newspapers; the Clerk shall also have copies available for individual attorneys and members of the public.
- H. Implementation schedule: the plan shall be made available to the standing attorney advisory committee on the local rules of court to draft appropriate

local rules changes as stated in this plan; these changes should be ready for the Court's adoption as of 1/1/94.