FJC Review of CJRA Reports and Plans

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

District: **District of Columbia**

Date: **January 7, 1994**

The court is authorized fifteen judgeships, of which five are vacant. The judges receive substantial assistance from seven senior judges. The court has three magistrate judges.

Summary of Conditions in the District

The advisory group interviewed all the district's judicial officers, surveyed 5000 attorneys who appeared before the court over the last three years (achieving a 25% response rate), interviewed courtroom clerks and senior staff of the clerk's office (including the clerk and the circuit executive), examined caseload statistics, docket sheets, and case files, and studied relevant reports and articles on civil justice reform. The group released a draft report in February, 1993, and requested and received comments from the bench, bar, and public. The group also held a hearing and received testimony from several organizations. The group was determined, it explained in its report, to make recommendations that were firmly based in empirical evidence and not on anecdote.

From its examination of the docket, the advisory group found that:

- From SY85-92, civil filings, terminations, and pendings fell.
- The median time to disposition for civil cases has gone up and in SY93 was nine months, which remains below the national average.
- From SY85-91, pending cases over three years old generally rose, but 58% are from two sets of claims. Per judgeship, the district is below the national average.
- The U.S. is a party in 40% of cases, and 8% involve DC.
- From SY85-91, criminal filings jumped 50% but, on a per judgeship basis, remain lower than the national average.
- From SY85-91, trials and contested proceedings in criminal cases more than doubled.
- From SY85-92, median disposition time for criminal cases rose but at 5.7 months remained just below the national average.
- Total filings have been dropping and in SY91 were 20% below SY85. Total filings per judgeship were 254 last year, compared to 372 nationally. Weighted filings have also dropped. The advisory group said these data do not reflect case complexity.
- Overall pendings have risen, but at 299 per judgeship remain well below the national figure of 422.
- In SY91, 48 trials and contested proceedings were held per judgeship, compared to 31 nationally.

Although these data seem to suggest a court with a declining burden, the advisory group noted the impact of the five judicial vacancies and the complexity of the cases. They also reported that their analysis of the docket sheets in a random sample of cases showed that some cases are unnecessarily delayed and that there are identifiable case management lapses that cause these delays: referral of discovery motions to magistrate

judges; long delays in rulings on dispositive motions and bench trials; and frequent extensions of time. Judges who managed their cases actively had few problems of delay.

The survey of attorneys also revealed bar concerns about cost and delay, with nearly 60% saying they had experienced unnecessary cost or delay in cases litigated in the court. Based on all its sources of data, the advisory group identified four principle causes of excessive cost:

- unnecessary delay almost always means excessive cost;
- abusive or improper discovery practices, such as unnecessary interrogatories, depositions that take too long, and motions arising out of disputes;
- judicial insistence that parties meet deadlines not carefully tied to an actual trial date or other firm dates; and
- federal and local rules requiring formal motion filing to resolve routine discovery disputes.

The advisory group also identified four principle causes of excessive delay:

- unrealistic civil trial dates are set, and civil trials are frequently bumped by criminal cases, leaving little incentive for meaningful settlement discussions;
- failure of judges to promptly rule on dispositive motions, discovery disputes, and bench trials;
- parties' unnecessary or repeated requests for additional time for discovery or to file pleadings, motions, oppositions, or pretrial statements; and
- improper discovery practices that unnecessarily lengthen depositions or delay their completion.

In making its recommendations, the advisory group acknowledged the demand of the criminal caseload and the judges' strong feelings about the difficulties this creates for them, but proceeded to propose changes in civil case management because of its belief that strong judicial management and control are essential under any circumstances and especially so when the court must handle more cases with no increase in judges. The group made 49 recommendations, each accompanied by a rationale.

Summary of the Court's Plan

The court responded by adopting most of the advisory group's recommendations. The plan provides for differential treatment of cases, early and on-going judicial involvement, case schedules and controls on discovery, greater efficiency in motions practice and trials, and ADR. The description below notes where the plan differs from the advisory group's recommendation.

Case Management

1. Preliminary Pretrial Procedures. The clerk will mail to party or counsel filing a complaint (1) a description of the court's ADR program, (2) a list of items on which counsel must confer prior to the scheduling conference, and (3) notice that the case may be dismissed unless proof of service of process is filed within 125 days of the filing of the complaint.

2. Case Tracking. The court adopts in principle the concept of case tracking and a three track case management system: Fast Track, Routine Track, and Complex Track. The court will assign a track after the case management conference. There is a presumption of limits on interrogatories and depositions, but the precise limits will be set at the case management conference. The plan has one less track than the advisory group proposed and provides less detail about each (e.g., presumed time to disposition).

3. Meet and Confer Conferences. Within 15 days of the appearance of the defendant parties will meet in person or by telephone to discuss the case in preparation for the initial scheduling conference. The requirement does not apply to pro se cases in which a dispositive motion is filed prior to the meet and confer date. This discussion must cover such matters as the appropriate track, whether parties will consent to magistrate judge trial, the likelihood of settlement, motions likely to be filed, whether the parties can agree on exchange of core information, whether ADR would be useful, and whether the trial date can be set a the scheduling conference. The parties must then file a joint statement with the court setting out their positions on each issue.

4. Scheduling Conference. The court will hold a scheduling conference and issue a scheduling order. The plan does not include the advisory group's firm language that time frames will be extended only for good cause shown.

5. Final Pretrial Conference. The court will seek to ensure that no more than 30-60 days lapse between the final pretrial conference and the trial.

6. Motions and Hearings; Findings in Bench Trials. (1) Judges will carefully consider whether in limine motions, if decided prior to trial, might warrant granting of a summary judgment motion or might lead to trial and will endeavor to resolve these motions prior to trial. (2) Each judge will establish a policy that all motions will be heard and decided promptly and decisions will be rendered promptly in bench trials. As to deadlines, the court believes the reporting requirements of the CJRA are sufficient (motions and decisions pending more than six months). (3) Each judge will require that dispositive motions be filed far enough in advance of the final pretrial conference so they can be ruled on before the conference and thus permit parties to avoid unnecessary preparations. (4) Each judge will require counsel to confer before filing a nondispositive motion and to include in the motion a statement about that discussion. The court accepted all the recommendations on motions and other rulings except the two goals recommended by the advisory group: 60 days to rule on dispositive motions and 90 days to rule on bench trials.

7. Special Masters. The court will appoint special masters wherever suitable and the clerk will maintain a list of eligible individuals.

Discovery

1. The court adopted the position that there should be limits on interrogatories and depositions, which counsel must discuss at their meet and confer meeting and the judge will set after the case management conference. This corresponds to the advisory group's desire not to have blanket limits.

2. Judges may, in their discretion, refer discovery and pretrial matters to the magistrate judges. The advisory group had recommended that judges refer all such matters to magistrate judges, particularly all matters in a single case so the magistrate judge would have on-going familiarity with the case. The advisory group also recommended that the court adopt a policy, announced to the bar, of giving great deference to magistrate judge decisions on pretrial matters.

3. The court's local rules committee will study the problem of deposition and discovery misconduct.

4. At the discretion of the judicial officers, discovery disputes may be resolved by telephone or other informal methods. Judges will endeavor to decide all routine discovery motions within seven days of submission.

The advisory group had recommended that the court not adopt mandatory disclosure as a blanket rule for all cases but instead tailor it to the case and include it in the scheduling order. The plan, though it does not address disclosure directly, appears to follow this recommendation, by including disclosure as one of the items to be discussed by counsel at their first meet and confer session, which forms the basis for their case management submission to the court. Subsequent to the effective date of the federal rules amendments, the court has decided to follow the federal rules but has postponed the effective date of Rule 26(a)(1) to March 1, 1994, to coincide with the effective date of the plan. (Conversation with CJRA analyst, January 7, 1994.)

Alternative Dispute Resolution

The plan does not identify the ADR types available, but states that parties will have three options for selecting neutrals: a qualified volunteer from the court's roster of neutrals; a magistrate judge, or a private neutral. The court will require that attorneys certify that they are familiar with the ADR processes available, and the court will require that whenever possible representatives with authority to bind be present at settlement negotiations and ADR sessions. The court did not accept the recommendation that it conduct a three-year experiment in which randomly selected cases would be required to select from a menu of ADR options.

Other

1. Magistrate judges. The court will seek to educate the bar on the role of magistrate judges; magistrate judges will continue to have primary responsibility for adoption petitions; and the court will invite magistrate judges to attend certain executive sessions. The court did not accept the advisory group's recommendation for an experiment in expanding the role of magistrate judges (inclusion in the initial random assignment of personal injury and contract cases), nor did it agree to stop referring dispositive motions to magistrate judges.

2. Trial Procedures. Each judge will try to schedule trials so they are not interrupted by pretrial conferences. Judges will also try to hold trials during regular business hours and will set strict timetables for submission of proposed findings of fact and conclusions of law. The court did not accept the recommendation that they encourage use of written juror questionnaires, nor the recommendation that a formal procedure of backup judges be established to take trials that are "bumped" (using senior judges, who would then be given an expanded role in court policy making).

3. Pro Se Cases. In eligible cases, the court will grant a 90-day stay to permit the District of Columbia grievance procedure to run its course and will make an early determination whether appointment of counsel is necessary.

4. The court will seek sufficient space for every judge, including senior judges.

Implementation

The plan was adopted on November 30, 1993, is effective on March 1, 1994, and applies to all civil cases filed on or after that date. It may, at the discretion of the individual judge, be applied to civil cases then pending. The court will annually assess the condition of the docket to determine what additional steps should be taken to reduce cost and delay and to improve the litigation management techniques of the court.

The plan will be incorporated into the local rules. Until that time, the court's order will serve as authorization that the plan is to be treated as an amendment to the local rules.

Consideration of §§ 473(a) and (b)

The court considered every principle and technique described in the §473(a) and (b). The plan includes each one in whole or in part, except for the rejection of one (party signatures on requests for extension of time were rejected, as recommended by the advisory group).

Comments

The advisory group provided a thorough analysis of the district and a comprehensive response to the problems they identified. Their recommendations, with the supporting rationales, constitute almost a "bible" on case management. In accepting nearly all the advisory group's recommendations, the court has also responded to the problems identified by the group and has committed itself to strong case management.

For most of the recommendations it did not accept, the court provided an explanation:

- Recommended prescribed time limits for certain judicial actions. The court is handling a full docket, with five vacancies, and maintaining a median disposition time of nine months. Recommendations for better performance should not impinge on judicial discretion but should focus on encouraging judges to use the case management methods established in this plan.

- Recommended experimental pilot programs providing greater involvement of magistrate judges in civil cases, a backup role for senior judges in "bumped" trials, use of juror questionnaires, and greater use of the court's ADR program. The judges already have discretion to refer cases to magistrate judges and ADR and to use juror questionnaires. The senior judges already informally provide backup support to the district judges.

- Recommendation that the clerk hire additional staff. There are no funds.

- Recommendations concerning judicial vacancies, statistics, sentencing guidelines, mandatory minimum sentences, and additional resources for the clerk's office. No action by the court is required because these recommendations are directed to others.

Although responsive in nearly every way, the plan does not include three recommendations that addressed quite specific problems: (1) firm language, as recommended by the advisory group, saying that extensions of time would be granted only for good cause shown, (2) a formal backup mechanism for handling bumped trials, and (3) in cases referred to magistrate judges, referral of all pretrial matters so magistrate judges would have on-going familiarity with the case. Since the advisory group had identified repeated requests for extension of time as a cause of delay, the committee may want to ask the court to consider a firm statement about such requests in its anticipated new rule on scheduling orders. And since bumped trials appear to be a substantial problem is this court, the committee may wish to ask the court to consider a formal mechanism for addressing the problem. Regarding magistrate judges, the court appears to prefer a policy of limited use of these judicial officers, reflected not only in its response to the advisory group but in the small number of magistrate judges - three - in a court this size.

Conclusion and Recommendation

I recommend that the committee accept this plan.

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