

## U.S. JUDICIAL CONFERENCE STATEMENT

ON

### CASE MANAGEMENT

The past two decades have seen a virtual revolution in the role of federal district judges; to be sure, it is a role that is still developing. Trial judges are no longer passive umpires in the litigative process. The early involvement and active intervention in the management of civil litigation - facilitated by the 1983 amendment to Federal Rule of Civil Procedure 16 - have helped prevent the development of severe backlogs and have helped parties avoid unproductive, costly pretrial activity. During this same period there has been a dramatic increase in the quantity and complexity of litigation in federal court: more causes of action and more affirmative defenses are pled, more subtle theories are invoked, and more parties are named. This increased complexity, coupled with the exponential growth in demands on judges' time imposed by criminal cases, has intensified the difficulty of securing "the just, speedy, and inexpensive determination of every action" -- the promise of Rule 1.

The Conference believes that district courts will be able to cope with the mounting pressures they are facing with respect to their civil caseloads, only if they continue to apply and improve active case management techniques.

1. The Conference recommends an intensified commitment to individualized case management.

a. Most civil cases, not merely those labelled "complex," benefit from early and individualized judicial attention. While the amount of that attention should vary with the complexity of the case and with the professionalism of counsel, it is a serious mistake to permit even less complex suits to proceed toward disposition without early judicial attention and monitoring. The time judicial officers<sup>1</sup> invest early in the pretrial period in planning, with counsel, efficient case development saves both judges and parties considerable time during all subsequent stages of the litigation. Such planning assures that cases are positioned as quickly as possible for disposition by settlement, motion, or trial.

b. Case management should be case-specific. There is a wide range of cases in federal court, and even cases that appear, superficially, to be similar can be served best by quite different pretrial plans. It would therefore be counterproductive for district courts to forsake their management responsibilities by establishing mechanistic tracking methods consisting of packages of rules and procedures for entire categories of matters (except in limited classes of highly routinized matters). And because case management decisions made early in the pretrial period can have profound effects on how the remainder of the litigation evolves,

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<sup>1</sup> This includes both judges and United States magistrates. Magistrates manage effectively civil cases in place of district judges in many jurisdictions.

district courts should not delegate any important case management work to clerical personnel.

c. Early in the life of most civil cases, district judges should work actively with counsel to assure truly useful communication, (1) to clarify the parties' respective positions; (2) to isolate legal issues that must be addressed through motions and factual issues that should be explored through exchanges of information; (3) to limit discovery; (4) to shape case development that efficiently meets the specific needs of the case; and (5) to fix dates for settlement negotiations, discovery cut-off, and trial.

d. It is imperative that district judges exercise control over discovery. In fashioning case-specific plans, district judges should consider, among other management approaches, two-stage discovery (the first of which is confined to core matters necessary to evaluate the case for settlement, followed by a settlement conference), bifurcation, confining early discovery and motion work to a pivotal legal issue, scheduling an early settlement conference before a magistrate or judge, and/or referring the parties to an appropriate form of alternative dispute resolution.

e. The Conference recommends that Congress provide sufficient additional funds to permit the Judicial Conference, with the assistance of the Federal Judicial Center, to develop and implement new, in-depth training programs in case management techniques for

district judges, bankruptcy judges, magistrates, and importantly, clerks, and courtroom deputies.

f. The Conference also recommends that Congress provide funds sufficient to permit every district court to convert to electronic docketing and to support the development of software programs that will permit judges to monitor pretrial activity in all their cases. District courts need prompt access to more information not only about what counsel are doing in their cases but also about the relative productivity of various uses of judicial time.

2. The Conference recommends that each district court should consider convening an advisory group, representative of bench, bar, and the users of the court's services, to study the court's procedures and the lawyer's practices and to develop plans for attacking the problems of cost and delay.

a. The Conference recommends that each district court convene a representative group of judges, lawyers, and users of the court's services to assess the state of the civil docket and to consider openly all possible means for reducing cost and delay in civil litigation. Each such group should be asked to prepare a report and to recommend improvements in the litigative process that the court might adopt. Each planning group should consider, among other things, what forms of alternative dispute resolution, if any, the courts and/or local bars should sponsor.

b. The districts wherein it is concluded that benefits would obtain from a formal plan should devise and forward a copy of the plan adopted by the court from the report and recommendations of its planning group, to the Federal Judicial Center, which promptly should prepare a comprehensive report for the Judicial Conference. The Judicial Conference, in turn, should devise a means to share with all district courts the product of these dialogues and planning efforts.

c. Districts that conclude, as a result of this process of dialogue and reporting, that it would be appropriate to experiment with innovative approaches to case management and/or alternative dispute resolution, are encouraged to undertake such experiments and to establish means to evaluate them. The Conference urges Congress to provide funds necessary to implement and evaluate such experiments.

3. The Conference recognizes its responsibility through the appropriate committee(s) to review periodically the plans and experiments of the districts and proposals for case management and ADR improvements from bar members, judges, and legal scholars and, where found to have merit for system-wide adoption, propose an amendment to the appropriate Federal Rule of Civil Procedure in accordance with the provisions of the Congressionally-mandated Rules Enabling Act.