CAC

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

L. RALPH MECHAM
DIRECTOR

CLARENCE A. LEE, JR.
ASSOCIATE DIRECTOR

DUANE REX LEE
CHIEF COURT ADMINISTRATION
DIVISION

January 19, 1994

MEMORANDUM TO SUBCOMMITTEE ON CASE MANAGEMENT

SUBJECT: Final Mailing of Staff Reviews and Summaries of CJRA Plans and Reports

Enclosed are copies of all remaining staff reviews which have been completed since our mailing of January 6. You will already have received copies, by fax, of the staff reviews and summaries for the districts which have been assigned to you for review. Hard copies of those reviews and summaries are also enclosed for your convenience.

Please let me know if there is anything we can do at this time to be of assistance to you in the review process. We look forward to seeing you on January 24.

Abel J. Mattos

AO Review of Reports and Plans
For the Judicial Conference Subcommittee on Court Administration

District: Central District of California

Date: January 14, 1994

Upon reviewing the Advisory Group Report and the Expense and Delay Reduction Plan for the Central District of California, staff has the following observations. The Advisory Group made a study of local and national court statistics, and surveyed judges, attorneys, and parties. The Court considered the Advisory Group's recommendations, and adopted some of them. The recommendations and the plan do address identified areas of concern relative to cost and delay, although the Court and the Advisory Group sharply disagreed in approach. The Court rejected the Advisory Group's systematic approach to case management, preferring the use of the District's existing comprehensive set of Local Rules applied through the discretion of individual judgesd on a case by case basis. The Court did directly address many of the guidelines, principles, and techniques of the Act, in addition to the Advisory Group's recommendations.

- This plan is largely responsive to the report of the Advisory Group, and adopts a minority of its recommendations, while echoing many of its concerns.

- The plan specifically provides for early and firm trial dates.

- The plan specifically addresses rules covering presumptive limits on the amount of discovery, rejecting them in favor of an individualized case by case approach.

- The plan adopted the Advisory Group approach to ADR, deciding not to adopt a formal ADR program, but incorporating ADR options in its adoption of the Advisory recommendation of a mandatory settlement conference.

- The Court rejected the Advisory Group's recommendation regarding differential case management (while supporting the concept) as not in conformance with its conception of the delivery of differential case management through the exercise of individual judicial discretion.

Frederick M. Russillo, Senior Program Analyst, CAD-CPB

Central District of California
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 the city of Los Angeles and its surrounding counties. The population served in this district is larger than that of all but three states: California, Texas and New York. This district receives approximately 13% of all civil cases filed in the entire country.

B. The district maintains two divisions. The first, located in Los Angeles, is housed in two buildings, the second is located in Santa Ana.

D. The district has 27 authorized Article III judgeships, of which 23 are currently filled (i.e., four vacancies). There are eleven full-time and seven part time magistrate judges. The District is also served by seven active senior judges.

E. The Advisory Group conducted interviews of all judicial officers. It also conducted six separate surveys of bar members and litigants. Data analysis was performed utilizing court and national data, as well as data generated by the Advisory Group. A special sub-sample of cases was also drawn for analysis. The services of researchers at the University of Southern California were used to assist in survey research.

F. The district has implemented ICMS civil and criminal. Neither CHASER or PACER are currently running in this district, although applications are planned.

G. The district has a number of Local Rules in place which foster CJRA goals.

1. Exchange of information: rules 9.5, 9.5.3 and 9.4.10 require each party to make known to the other by memorandum its contentions regarding applicable law and fact not less than 21 days in advance of the pretrial conference; rule 9.4.3 requires parties to make every effort to stipulate to facts for the purpose of simplifying issues of fact for trial;

2. Discovery/scheduling: rule 6 contains an early general "meet and confer" requirement; rule 6,4.2 calls for a report to be delivered at a status conference discussing the state of discovery including a detailed schedule for further discovery, a discovery cut-off date, a schedule for law and motions matters, and a proposed date for pretrial conference and trial; rule 6.1.2 provides for the exchange of preliminary schedules of discovery;

3. Differential case management: rule 26 and General Order 224 provide specialized procedures for the disposition of prisoner petitions and habeas corpus actions;

4. Witnesses: rules 9.4 and 9.4.6 require a meeting 40 days prior to the pretrial conference to exchange narrative statements on the qualifications and likely testimony of experts; rule 9.6 requires the filing of a witness list 21 days in advance of the pretrial conference;

5. Settlement: rules 6.1 and 6.1.5 require a meeting to discuss settlement within 20 days of service of answer; rules 9.4 and 9.4.11 also require a settlement discussion within 40 days of the pretrial conference.

## II. State of the Docket

### A. Overall Workload Statistics

1. The Indexed Average Life Span (ILA) and life span for civil cases in this district were 10.1 and 10.8 months, respectively, for 1992. The district ranked 28th and 22 nationally in these two indices for that year.

2. Filing to disposition times for civil cases in this district stood at four months in 1992, ranking the district fourth nationally in this indice; This relatively short time frame can be explained, in part, by the large numbers of student loan cases filed in the district which end in default.

3. Criminal case filing to disposition times for the same statistical period were 4.5 months, for a national ranking of 12.

4. Despite relatively fast disposition times, rising civil case life expectancy, and rising numbers of cases over 3 years old are causes for concern.

5. Pending civil cases over three years old have increased rapidly over the past eight years, from 4.1% in 1984 to 10.5% in 1992. These increases are explained in part by a large block of products liability cases against the A.H. Robbins Company, and a number of lingering veterans benefit cases. Filings, however, have remained relatively steady, and have shown changes only in the number of type I or less time consuming civil cases. The bulk of three year old cases are tort and contract cases.

6. Since 1988, one clear trend to emerge is the gradual rise in criminal jury trials, which have recently (1990) become more numerous than civil jury trials. A total of 61% of all jury trials are now criminal jury trials. These figures cannot be explained in filings changes, as criminal filings have remained relatively constant over several years.

7. A second indice of changed case processing activity involves the increasing incidence of longer trials.

## III. Causes of Cost and Delay

A. Survey responses by attorneys on the primary causes of excessive costs included:

1. Excessive court appearances;

2. Compliance with Local Rule 9 (requiring submission of a joint discovery and case management document);

3. Frivolous motions;

4. Postponements of trial when witnesses have been scheduled.

5. Unnecessary or unfinished discovery;

6. Requests for additional discovery on peripheral issues;

7. Unnecessary discovery disputes;

8. Failure to make comprehensive response to discovery requests on first request;

9. Discovery gamesmanship; and

10. Failure to conduct timely discovery.

B. Judicial survey responses on the principle causes of excessive costs included:

1. Discovery;

2. Overly litigious attorneys;

3. Attorneys fees; and

4. Over lawyering.

C. Attorney survey responses on the causes of delay:

1. Recent federal legislation;

2. Failure of the President to promptly fill judicial vacancies;

3. The use of different rules in different Central District courtrooms;

4. Judges holding motions without decision for over 30 days;

5. Civil trials postponed by court order;

6. Unrealistically long periods of discovery;

7. The lack of a discovery plan;

8. The lack of firm trial dates;

9. The lack of a decision immediately after oral argument;

10. The lack of active judicial case management; and

11. Judges declining to consider seriously dispositive motions.

D. Judicial survey responses to the causes of delay:

1. Criminal trials forcing the continuance of civil trials;

2. Fewer criminal case settlements/pleas before trial;

3. The increasing number of sentencing disputes;

4. Attorney practices (unspecified); and

5. The Sentencing Guidelines.

E. Advisory Group summary causes of cost and delay:

1. Too few judges; and

2. Congressional failure to consider the impact of new legislation on the Judicial System.

## IV. Recommendations

A. Overview: Four classes of recommendations

1. Tools for effective case management by the court.

2. Actions to control discovery costs and delays.

3. Other methods for controlling costs and delays.

4. Availability of ADR mechanisms.

5. Improvement in lawyer-litigant deportment.

B. Prompt filling of judicial vacancies

The Advisory Group notes that the four pending vacancies in the Central District were pending prior to the passage of the Civil Justice Reform Act.

C. More Effective Case Management

1. The court should set realistic, firm trial dates and adhere to them.

2. The Court should divide into criminal and civil divisions.

3. The Court should adopt a three-tier tracking system.

4. The Court should adopt early neutral evaluation (ENE) for standard cases.

5. The Court should increase the number of status conferences and hear them telephonically.

6. The Court should require mandatory settlement conferences before any civil case goes to trial.

7. The mandatory settlement conference should be heard by a judicial officer.

8. The Court should use special masters in complex cases.

D. Controlling discovery costs and delays

1. The Courts adoption of the suggested tracking system will place presumptive limits on the quantity of discovery.

2. The Court should issue a standing order defining inappropriate conduct during depositions,

3. Court procedures should permit the parties to raise deposition disputes with the court during the course of the deposition.

4. District Judges should be relieved of initially deciding discovery disputes; these matters should be assigned to Magistrate Judges in simple and standard cases, and to Special Masters in complex cases.

5. the Court should endorse a rules change restricting the permissible scope of discovery.

E. Other methods for controlling costs and delays

1. The Court should use telephone conferencing and eliminate personal appearances of counsel in simple nd standard cases, except for case dispositive motions

2. The Court should use split calendars.

3. The Court and the parties should continuously evaluate the appropriateness of bifurcation.

4. The Court should require cover sheet identification of certain facts and legal issues.

5. The court should encourage, but not require, alterative dispute resolution.

F. Methods for judicial control of lawyer conduct

1. The Court should continue to strongly endorse and should also enforce the County Bar Association Guidelines for the Conduct of Litigation.

2. The Court should adopt a consistent approach to enforcement of Rule 11.

3. The Court should consider the continuing problem of frivolous pleadings.

V. Conclusion

VI. Minority Report Supporting Legislation Authorizing the Prevailing Party to Recover Attorney's Fees

## PART TWO: THE COURT PLAN

### I. Plan Principles and Commentary

A. The Court will make every effort to maintain firm trial dates.

Commentary: if trial dates are threatened a judge may call upon the Chief Judge or the committee designated by the Chief Judge for assistance. Among the forms of assistance available are the services of senior judges or visiting judges.

B. The Court hereby adopts as part of its Local Criminal Rules, Local Criminal Rule 13, which provides a rule to govern settlement conferences in complex criminal cases.

Commentary: this rule will provide a judicial officer not involved in the case or its rulings to assist the parties reach a plea agreement in complex or economic crime cases; this rule should not be violative of F.R.Crim.P. 11(e)(1)(c) as drafted (see appendix exhibit "A").

C. The Court hereby adopts as part of its Local Rules, Local Rule 23, providing for the holding of a mandatory settlement conference in every civil case.

Commentary: this rule authorizes a mandatory settlement conference and authorizes resort to various ADR techniques as a means of satisfying that requirement.

D. The Court hereby adopts as a part of its Local Rules, Local Rule 27A, which provides protection for litigants from vexatious litigation by adopting this rule as a principle of differential case management.

Commentary: this rule responds to Advisory Group concerns that the Court be cognizant of unfounded and frivolous complaints; after a finding of abuse, the court may impose a condition of security deposits against costs, refuse filings, or resort to the state statute dealing with vexatious litigation.

E. The judges of this Court shall refrain from adopting their own rules in the form of Standing Orders or otherwise, that are inconsistent with or conflict with the Local Rules or the FRCP.

Commentary: the Rules Committee of the Court will have the responsibility to monitor all "local-local" rules for compliance with this principle.

F. In cooperation with the Lawyer Delegate of the District to the Ninth Circuit Judicial Conference, the Court, through its Committee on Civility and Professionalism, has developed guidelines to guide the conduct of lawyers and judges in this District. The Civility and Professionalism Guidelines have been approved by the Court and adopted as part of this Plan.

Commentary: this principle is responsive to the Advisory Group recommendations, and the Conference resolution on this topic.

G. The Court hereby adopts, as part of its Local Rules, an amendment to Local Rule 3.11, which provides that certain stipulations will no longer require court approval.

Commentary: this rule will ease the burden on counsel and reduce cost to litigants of seeking court approval of the most routine of stipulations- the first extension of time to answer a complaint, or extensions of time for discovery responses or continuing depositions. The Court will continue to require approval of all other stipulations effecting the progress of the case, and this amendment will not interfere with the Court's case management objectives.

**AO Review of Reports and Plans**
**For the Judicial Conference Subcommittee on Court Administration**

**District:** District of New Hampshire

**Date:** January 12, 1994

Upon reviewing the Advisory Group Report and the Expense and Delay Reduction Plan for the District of New Hampshire, staff has the following observations. The Advisory Group made a study of local and national court statistics and interviewed all judicial officers. Attorneys and parties surveyed. The Group also published its draft and held a public comment session. The Court carefully considered the Group's individual recommendations, and adopted almost all of them. The recommendations and the plan do address identified areas of concern relative to cost and delay. The Court did directly address all guidelines, principles and techniques of the Act, in addition to the Advisory Group's recommendations.

- This plan is responsive to the report of the Advisory Group, and adopts all of its recommendations for immediate implementation.

- The plan specifically provides for early and firm trial dates.

- The plan specifically addresses rules covering presumptive limits on the amount of discovery.

- The plan reaffirms specific certification burdens on counsel regarding continuance motions.

- The Court has expanded the scope of rules in place requiring that only counsel with authority to bind appear at pretrial conferences, and extended the requirement to all conferences.

- The plan departed from the Advisory Group approach to ADR, deciding not to adopt a formal ADR program. The Court will assist interested parties It obtaining their own neutral.

- The Advisory Group recommended, and the Court will create, a four track DCM system.

Frederick M. Russillo, Senior Program Analyst, CAD-CPB

**AO Review of Reports and Plans**
**For the Judicial Conference Subcommittee on Court Administration**

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Upon reviewing the Advisory Group Report and the Expense and Delay Reduction Plan for the District of New Hampshire, staff has the following observations. The Advisory Group made a study of local and national court statistics and interviewed all judicial officers. Attorneys and parties surveyed. The Group also published its draft and held a public comment session. The Court carefully considered the Group's individual recommendations, and adopted almost all of them. The recommendations and the plan do address identified areas of concern relative to cost and delay. The Court did directly address all guidelines, principles and techniques of the Act, in addition to the Advisory Group's recommendations.

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- The plan departed from the Advisory Group approach to ADR, deciding not to adopt a formal ADR program. The Court will refer assist interested parties It obtaining their own neutral.

- The Advisory Group recommended, and the Court will create, a four track DCM system.

Frederick m. Russillo, Senior Program Analyst, CAD-CPB

District of New Hampshire
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 the entire state.

B. The district maintains one division, located in Manchester.

D. The district has three authorized Article III judgeships, all of which are currently filled (i.e., no vacancies). There is one full-time magistrate judge, and two active senior judges.

E. The Advisory Group conducted interviews of all judicial officers. It also surveyed members of the federal bar, litigants, jurors, and created special survey sub-samples for those involved in criminal and complex litigation. Data analysis was performed utilizing court and national data, as well as data generated by the Advisory Group. The draft report was published for comment, and a public comment meeting was held.

F. The district has implemented CHASER and PIP, a customized public inquiry program. PACER is scheduled for implementation in January, 1994. The Clerk's Office will also soon test an automated assignment system for court-wide application.

G. The district has a number of local rules in place which foster CJRA goals, including rules regarding a certification requirement for a joint conference prior to a motions filing and a requirement of the presence of an attorney with the authority to bind at pretrial conferences.

### II. State of the Docket

A. Overall Workload Statistics

1. Filings in this district steadily declined from 1984 through 1987, and leveled off thereafter before surging in 1990-1992, rising by 45% in 1992 alone.

2. Civil filings increases are believed to result from increased FDIC and Social Security cases, as well as the general effects of the regional recession.

3. Tort cases consistently dominate the docket, constituting one quarter of the docket until 1992; contract cases have stood at approximately 17% of civil filings over the past twelve years; prisoner cases represent the third largest case category, comprising approximately 9% of civil filings.

4. Pending civil cases over three years old were less that 5% of the total caseload before 1984; these cases averaged over 11% of the caseload through 1989, declining to their present 8%. The filing surge from 1990, coupled with reduced judicial hours due to a bench vacancies, served to increase these older cases. Visiting judges have been extensively used to reduce this burden through the time of the appointment of the third Article III judge.

5. Civil case processing time increased substantially for the period of 1989-1991 before declining in 1992. Time from issue to trial declined in 1992 from 26 months to 23, ranking the district 75th on this indice nationally; time from filing to disposition declined drastically in the same period, from 13 to 8 months, dropping this districts national ranking in this indice from 81st to 15th.

6. Federal cases are growing more complex; Congress' impact on the federal court docket is significant through the creation of new causes of action, agency action reviews, the federalization of crime, and procedural initiatives (e.g., Sentencing Guidelines); and the judicial selection process.

## III. Causes of Cost and Delay

A. The current facilities are inadequate to provide a courtroom for each judge; judges must now share state courtroom facilities.

B. Frivolous lawsuits or claims.

C. Over-broad discovery requests.

D. The conduct of clients.

E. The lack of firm trial dates.

F. The lack of civility displayed by a minority of the bar.

G. The inability of the U.S. Attorney's Office to provide counsel at pretrial conferences with the ability to bind principals.

H. The amount of time devoted to prison condition cases.

I. The time devoted to implementing federal procedural initiatives such as Sentencing Guidelines, and state agency reviews.

## IV. Recommendations

A. Court Resources

1. Congress and the GSA should proceed with the appropriation for m and the completion of, the new courthouse.

2. Until the new courthouse is complete, judicial non-courtroom time should be minimized through, among other means, the use of state courtroom facilities.

B. Court Procedures

1. Random case assignment procedures should be continued, and new statistical data should be added on the implementation of differential case management.

2. Only one extension of time to file an answer should be granted prior to Court review of subsequent requests; extensions should be for 40 days only.

3. Magistrate judges should screen pro se complaints by local rule, and the court should consider the following for magistrate judges:

   a. assign more social security cases;

   b. assign summary jury trials;

   c. assign, by consent, part of the "rocket docket" to the magistrate judge;

   d. consider trials by consent at the pretrial conference; and

e. explore magistrate judge involvement in any ADR program considered.

C. Senior and Visiting Judges: every effort should be made to accommodate visiting judges; the A.O. should have the ability to reassign staff and judges where temporary needs exist.

D. Communications and coordination

1. Local rules should be available on Lexis and CD ROM.

2. Judges should continue to participate in CLE and bar association activities.

3. Bar and public input should be sought in conjunction with the plan's 18 month evaluation.

4. Judges should maintain their traditional collegiality and cooperation.

E. Litigant and Attorney Practices

1. Representatives with authority to bind should attend all pretrial conferences unless absent by motion.

2. ADR timing and feasibility should be subjects at the preliminary pretrial conference.

3. Judicial officers should handle all pretrial conferences.

F. Page limits on memoranda: a 25 page limit for legal argument, and a 50 page limit on memoranda on dispositive motions in complex cases.

G. Civility: lawyers should strive for civility.

H. Pro se litigation

1. Pro se cases should be screened by the magistrate judge before service.

2. Pro se practice should be monitored by the Attorney General's Office and the bar under their state statutory authority to prevent unauthorized practice.

3. The Court should consider a close relationship with the bar's Pro Bono Program to tap its resources to screen and resolve pro se complaints.

4. The Clerk's Office and the bar should develop and distribute a pro se handbook.

I. U.S. Litigation

1. The state Corrections Commissioner should consider the adoption of an ombudsman-type system to review prisoner complaints.

2. Public officials and counsel should be aware of the changes advocated in this report to allow them to consider case impacts and settlement options before investing in litigation.

J. Impacts of new legislation on the Court

1. Congress should submit impact statements on new civil legislation.

2. Impact statements should always answer the following: "is there a private right of action?" and "if so, who is allowed to bring suit?"

K. Assessment of Criminal Docket and Legislation

1. Congress must balance resources in legislative initiatives between the courts, Justice Department, and enforcement agencies.

2. The sentencing guidelines and mandatory minimums should be reconsidered on the grounds of efficiency.

3. The Speedy Trial Act should be reconsidered for those not incarcerated.

4. The U.S. Attorney's Office should institute an open discovery policy.

5. The U.S. Attorney should work with the Probation Office to increase the use of pretrial diversion.

l. Alternate Dispute Resolution (ADR)

1. Summary jury trials (SJT) should be a last resort; when allowed, juror interviews should be permitted.

2. Bar examinations should be updated to include ADR matters; CLE should be offered on ADR subjects; an ADR pamphlet should be developed for litigants; and the new lawyer training program should include an ADR component.

J. Trial and its Antecedents

1. Pretrial statements should be detailed, accurate tools containing:

   a. identified exhibits and lists of witnesses that will actually be called;

   b. a brief, jointly stipulated statement of the case;

   c. stipulations are binding on the parties;

   d. prior statements should be updated at least 30 days before trial;

   e. requests for jury instructions should be filed with the pretrial statement; and

   f. motions in limine should be filed, whenever possible, with the pretrial statement for consideration at the pretrial conference.

2. Trial scheduling should continue to rely on the use of stacked cases for trial.

3. Final pretrial conferences should use uniform procedures; should continue to be held two weeks prior to trial to encourage settlement; and should not be limited to 30 minutes.

4. To reach settlements at pretrial conferences:

   a. attorneys with authority to bind should be present;

   b. attendance by clients, or telephone availability is required;

   c. judges training should emphasize settlement promotion;

   d. counsel should give more accurate estimates of trial length;

   e. no continuances should be granted absent extraordinary circumstances; and

   f. local rules and definitions should be clarified on exhibit-related issues such as disclosure versus marking, impeachment versus cross-examination exhibits, and rebuttal versus impeachment exhibits.

5. counsel drawing juries should reach court at least 45 minutes early on the day of the draw.

K. Systematic differential treatment of cases (DCM)

1. The present system for differential case treatment should be expanded into a formal system of three tracks;

2. These tracks are: a voluntary six month "rocket docket" track, a one year track from complaint to trial, and a two year complex track; and

3. Tracks should be phased in.

L. Involvement of judicial officers in the pretrial process:

1. Assessing and planning case progress should be accomplished under the auspices of FRCP Rule 16; judge hosted pretrial conferences should be held in all cases except those with any existing track assignment.

2. Early, firm trial dates should be the rule; complex case trial dates should be set after a settlement conferences held six months after the filing.

3. The tools of FRCP Rule 26 should receive attention in discovery control, and the preliminary pretrial conference form should require the discussion of discovery limits.

M. Deadlines for the filing and disposition of dispositive motions

1. The timing, filing, and oral argument of dispositive motions should be discussed at the pretrial conference.

2. A guideline of 60 days for ruling should be adopted by the court, and the Chief Judge should have the discretion to reassign motions to avoid late rulings.

3. Counsel should carefully consider the efficacy of dispositive motions.

N. Managing complex cases

1. Judges should explore settlement with the parties at preliminary pretrial conferences.

2. Up to five pretrial and status conferences would be held on the two-year complex case track under the DCM system proposed.

3. A case management order should issue at the end of the pretrial conference, and be revised only if necessary.

4. Appropriate sequencing and limitations on discovery should be considered.

O. Voluntary exchange of information

1. By local rule, the district should opt out of proposed Rule 26.

2. The Court should develop standing discovery orders for ^T case types to be considered at the preliminary pretrial.

3. The Court should reconsider its decision regarding Rule 26 after sufficient experience from other jurisdictions allows re-evaluation.

P. Meet and confer requirements on discovery motions: the requirements of the existing local rule should be continued.

Q. A system of alternate dispute resolution

1. This system should be utilized on a case by case basis.

2. Parties should fill out a simple ADR form in advance of the pretrial conference to expedite referral to an agreed upon neutral, unless otherwise ordered.

3. Parties without preference in neutrals should be referred to approved neutrals meeting certain specified criteria, and whose names are kept by the Clerk's Office.

4. Neutrals should be paid one half their fee by each party (with a reasonable cap), providing the neutral agrees to take some pro bono and half-fee cases.

5. Results should be confidential and inadmissible by rule.

6. Sessions should be held in the courthouse, if possible.

7. The ADR Program should be evaluated after 18 months, and annually thereafter.

8. Referrals to ADR should come from the Court or the parties.

9. ADR discussions should be scheduled at an intermediate pretrial conference if not possible at the preliminary pretrial conference.

R. Litigation management techniques

1. Joint presentation of discovery case management plans: the Court should opt out of this proposal, if congress adopts it.

2. Representation at each pretrial conference by a lawyer with authority: present Local Rule 10(a) should be amended to include attendance at all conferences.

3. All extensions signed by attorney and party: adopt modified state court rule requesting certification by attorney of client's consent, rather than client's signature.

## PART TWO: THE COURT PLAN; PLAN PROVISIONS

### I. Introduction, Principles, and Implementation

A. Statement of purpose: the Court adopts this Civil Justice Expense and Delay Reduction Plan (plan) pursuant to the CJRA, §471, after consideration of the report of the Advisory Group and its recommendations.

B. Acknowledgement: the Court is grateful to the Advisory Group for its time and effort.

C. General principles

1. Efficient use of resources: success depends heavily on the efficient use of the Court's resources and Clerk's Office staff.

2. Consistency and flexibility: plan provisions will be applied to balance the needs for both consistency and flexibility to avoid adverse consequences to parties.

3. Contributions by all participants: the Court, counsel, and litigants must contribute to the success of the plan.

4. Civility: the maintenance of civility is essential to the efficient and fair administration of justice; the court will strive to maintain a high level of courtesy toward all, and expects the same in response.

D. Availability of the plan: the plan will be available it litigants and attorneys through the Clerk's Office, and electronically through the Court Information System (CIS).

E. Implementation of plan

1. Effective date: all provisions unless otherwise noted are effective 3-1-94; those involving rules amendments are effective on the date of those amendments.

2. Annual assessments and the role of the Advisory Group: the Advisory Group will meet periodically to assist the Court in assessing the condition of the docket.

## II. Litigation Management Principles and Guidelines

A. Systematic differential treatment (DCM) of civil cases

1. The Court will create a four track DCM system; in most cases, trial dates will be set from the date of the preliminary pretrial conference, rather that the filing date.

2. The system will have four tracks: administrative, expedited, standard, and complex.

3. Definitions:

   a. administrative: discovery not permitted without leave of court; cases resolved within six months of filing; case types include Social Security, student loans, bankruptcy appeals, etc.

   b. expedited: voluntary agreement to trial in six months, and assignment with approval of a judicial officer; estimated trial length of five days or less.

   c. standard: trial within 12 months of the preliminary pretrial conference; for the first two years of its use, this track will anticipate trial within 18 months, and the Court will evaluate this track's performance; and

   d. complex: trial within two years of the preliminary pretrial conference.

4. Evaluation and assignment: cases will be assigned at the preliminary pretrial conference, and may be reclassified by the assigned judge.

5. Initial case assignment: the Clerk's Office will continue to randomly assign cases to judges, and will begin to keep caseload statistics by track.

6. Date of application: shall apply, with stated limitations, to all cases filed after 1-1-94; may be applied to other cases at the discretion of the judicial officer.

B. Involvement of judicial officers in pretrial process

1. Pretrial conferences

a. judicial handling of conferences: judges will screen cases and determine if the assigned judge or a magistrate judge will handle the case conference;

b. consideration of ADR: the ADR referral will not be to a formal ADR program, and will be the product of judicial consultation with attorneys and parties;

c. contents of final pretrial statements:

1) identified exhibits and lists of witnesses that will actually be called;

2) a brief, jointly stipulated statement of the case;

3) stipulations are binding on the parties;

3) prior statements should be updated at least 30 days before trial;

4) requests for jury instructions should be filed with the pretrial statement; and

5) motions in limine should be filed, whenever possible, with the pretrial statement for consideration at the pretrial conference

d. pretrial statements shall be filed 30 days prior to the pretrial conference.

2. Setting of trial dates

a. trial dates will be set at the preliminary pretrial conference.

b. the Court will continue to stack cases for trial,and will implement an integrated, automated calendar system accessible by the public and bar.

c. the scheduling of judges for courtroom time, utilizing magistrate and state courtroom facilities, will be maximized.

d. the Court supports the Advisory Group's call for the completion of a new courthouse.

3. Discovery and motions

   a. the Court will give increased attention to discovery limitations under Rule 26, and will discuss these limitations at the preliminary pretrial conference.

   b. the filing and timing of dispositive motions will be discussed at the preliminary pretrial conferences.

   c. the Court will weigh requests for oral argument on motions, and will allow them if helpful, with appropriate time limitations.

   d. the court will not accept a guideline of 60 days to rule on dispositive motions as recommended, but will continue to make efforts to reduce time to disposition.

   e. the Court recognizes, with the Advisory Group, that some dispositive motions are dilatory, and recommends that they be carefully considered.

4. Final pretrial conference

   a. final pretrial conferences governed by uniform procedures shall cover the following:

      1) the marking and exchange of exhibits;

      2) admissibility of exhibits not agreed upon by counsel prior to the conference;

      3) voir dire;

      4) special questions; special case problems;

      5) view arrangements;

      6) challenges, jury lists, and problems with specific jurors;

      7) motions in limine;

      8) order of witnesses (arrangements and scheduling problems);

      9) order of presentation in multi-party cases; and

10) jury instructions.

b. final pretrial conferences will be held two weeks before trial.

c. the length of the conference will not be limited, and will be at the judge's discretion.

d. judicial officers will place more emphasis on settlement, the court will develop an integrated scheduling system with the state courts, and adopts the following to facilitate settlement:

1) attorneys with authority to bind should be present;

2) attendance by clients, or telephone availability is required; and

3) no continuances should be granted absent extraordinary circumstances.

5. Magistrate judge utilization

a. magistrate judges will be assigned, by consent, part of the "rocket docket";

b. counsel/parties will be encouraged to consider trials by consent at the pretrial conference;

c. magistrate judges involvement in the ADR option adopted by the court will be considered; magistrates will be responsible for summary jury trials, at which jurors may be polled; and

d. Social Security cases will continue to be assigned to all judicial officers, but the court will review this practice at a later date.

6. Attendance by those with settlement authority: the court reserves the right to require party presence at pretrial conferences on a case by case basis; the presence of a representative of the U.S. or the state of New Hampshire may be required upon special notice.

C. Managing complex cases

1. The Court's DCM approach contemplates the use of a variety of case management devices.

2. Case Management Devices:

   a. preliminary pretrial conferences at which settlement is explored;

   b. multiple status and pretrial conferences held in a two year period per case, depending on circumstances;

   c. a case management order issued after the initial conference,and modified only as absolutely necessary; or, in the alternative, parties to prepare and submit a joint proposed case management order; and

   d. the consideration of the appropriate sequencing of, and limitations on, discovery.

D. Voluntary exchange of information

   1. By local rule, the district should opt-out of proposed Rule 26;

   2. The Court should develop standing discovery orders for ^T case types to be considered at the preliminary pretrial;

   3. The preliminary pretrial conference form should specifically require that discovery limitations be discussed at the preliminary pretrial conference;

   4. The Court should reconsider its decision regarding Rule 26 after sufficient experience from other jurisdictions allows re-evaluation; and

   5. In each case, the court will pay increased attention to judicial limitations of discovery under FRCP Rule 26.

E. Reaching agreement before filing discovery motions: the court will not adopt a certification requirement; the court will, however, amend Local Rules to require the moving party to serve, and receive service from, the opposing party. The moving party will then be responsible for filing both motion and response. The Court feels that this amendment will compel parties to consider each others claims.

F. Alternative dispute resolution

   1. The Court endorses the concept of ADR and will make a menu of ADR options available on a voluntary, case by case basis, primarily private providers. The magistrate judge will be available for the conduct of summary trials, as time permits.

2. The Court will not develop a formal ADR program at this time, but will review this decision in the course of its annual assessment.

3. The Court will promote settlement at every stage of the proceedings, but only insofar as is consistent with fairness to the litigants.

## III. Litigation Management Techniques

A. Joint presentation of discovery/case management plans: the Court will opt out of this provision if adopted by Congress.

B. Representation at each pretrial conference by a lawyer with authority: local rules will be amended to include mandatory appearances by a lawyer with authority to bind at all conferences.

C. All extensions signed by attorneys and parties: the Court adopts the state rule requiring counsel to certify that the client has been notified.

D. Neutral evaluation program: the Court will not maintain a list of neutrals, but will encourage counsel to obtain their own.

E. Availability of parties with authority to bind at settlement conferences: the Court will require party presence at final pretrial conferences.

## IV. Miscellaneous Recommendations and Provisions

A. Time limits to answer: the Clerk will grant only one extension of 40 days for filing an answer.

B. Pro se/prisoner litigation:

1. The magistrate judge will screen cases pre-service, according to a new rule.

2. The Court will make use of various pro bono services available for possible referrals of pro se and prisoner litigants.

3. The Court encourages the state to consider the establishment of a procedure for in-house, non-binding review of prisoner complaints before an independent board.

C. Criminal docket

1. The Court has sought an expansion of the Massachusetts Defender Program, and it is scheduled to begin in early 1994.

2. The Court is now developing a standard discovery order to eliminate the need for many discovery motions.

3. The Court will continue to hold final pretrial conferences two weeks before trial.

D. Communications and coordination

1. The Court will make local rules available on Lexis, CD ROM, and the Court Information Service.

2. The Court will continue to participate in CLE, and to exchange ideas and concerns with the various committees of the bar.

3. The Court will seek input from the bar nd the public prior to evaluation of the plan, and will do so as part of its annual evaluation.

F. Page limits on memoranda: the Court will impose a 25 page limit on memoranda for all motions, including dispositive motions; exceptions will be considered upon motion by counsel.

**FJC Review of CJRA Reports and Plans**

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

**District:** **Northern District of Illinois**

**Date:** **January 11, 1994**

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The district is one of the largest and is authorized twenty-two judgeships, three of which are vacant. The district has seven senior judges, who together carry the equivalent of a single judge's caseload, and nine magistrate judges.

## Summary of Conditions in the District

To analyze the conditions in the district, the advisory group reviewed local and national statistics, as well as case law and literature on civil justice reform. The group also interviewed judicial officers and surveyed lawyers in a random sample of cases terminated in 1991. After publishing the preliminary report, the group invited written and oral comments and held a day of public hearings.

The analysis of the caseload statistics showed a court that has historically had a high level of weighty cases but that has consistently maintained a healthy condition.

- Until the recent time study provided new case weights, the district had one of the country's weightiest caseloads.
- The court has been among the fastest courts for six years, with an SY92 median filing to disposition time of four months (3rd rank nationally). However, it takes longer than average to dispose of the 2-3% of cases that actually go to trial.
- In SY92, less than 6% of the docket was over three years old.
- Civil rights cases make up the greatest single category of the civil docket and are often the most time-consuming. They are less likely to settle and make up half the jury trials conducted in the last five years.
- In SY92, pending criminal cases increased substantially and the median disposition time went up to eight months, the highest in seven years and well above the national average. This was due to a number of multi-defendant and multi-count "megatrials".

In its interviews with the judicial officers, the advisory group found that all agreed that their ability to attend properly to their civil cases has been adversely affected by the ever-increasing demand of the criminal calendar. The judges also identified discovery as a problem is civil litigation.

The attorney survey showed that 21% thought there had been unreasonable delay in their cases and 16% thought the cost had been unreasonable. Both problems were attributed to the same causes: (1) attorney misconduct, primarily failure to resolve issues without court intervention and lack of professional courtesy; (2) judicial inefficiencies, primarily failure to rule on dispositive motions and other motions; and (3) excessive discovery (more often cited for excessive cost than unreasonable delay).

Based on all its inquiries, the advisory group concluded that the principal causes of cost and delay are the following:

- difficult and time-consuming nature of the civil cases filed;
- court resources and number of cases per judgeship;
- criminal caseload;
- conduct of attorneys;
- excessive use of discovery; and
- undecided motions and untried cases.

It then developed a set of recommendations addressed to these problems and to the suggestions of §§ 473(a)(b).

**Summary of the Court's Plan**

In response, the court adopted nearly every recommendation made by the advisory group. Both the court and the advisory group were mindful throughout the process of the court's long-standing culture of firm case management and of the risk of increasing rather than decreasing costs by ill considered change.

Case Management

1. Differentiated Case Management. The court agreed with the advisory group that its current system of exempting classes of cases from the pretrial requirements of FRCP 16, its specialized procedures for prisoner litigation, and the individual treatment given to cases constitute differentiated case management.

2. Early, On-going Judicial Involvement. Anticipating amendment of FRCP 16, the court proposed that the Standing Order Establishing Pretrial Procedure be amended to start judicial supervision 60 days after the defendant's appearance and within 90 days of the service of complaint (instead of 120 days after filing). The court noted that this was 30 days less than the limits FRCP 16 sets on entry of a scheduling order. The court also said that its procedures clearly intend for the judge to hold ongoing status hearings to monitor discovery and the pretrial process.

3. Setting Trial Dates. Recognizing that a number of factors obviate any mechanical approach to setting trial dates, the court urged its members to set firm trial dates as early as practicable and if possible within 18 months of filing.

4. Motions. To address the bar's confusion about judges' motions requirements and to remove the implication that the court's practices are uniform, the court will amend the local rules to state that the judges have varying requirements for motions. To assist the bar, the clerk will maintain a current list of each judge's practices.

The court agreed with the advisory group's recommendation that attorneys be able to seek information anonymously about the status of undecided motions and bench trials. The court will amend a local rule to develop a procedure for parties to anonymously obtain information from the clerk's office. The court also agreed that as often as possible, as has been the case in the past, the court will issue oral rulings on motions and bench trials.

The court agreed with the advisory group that magistrate judges should be authorized to make final decisions on dispositive motions with party consent. Thus, the court will amend a local rule to provide this authority.

5. Complex Cases. The statute gives particular attention to management of complex cases. In this court, the Standing Order already urges settlement discussions and requires counsel to have authority to settle, and it provides for a joint written discovery plan. The court's final pretrial order provides for bifurcation at trial. In addition, the court will amend a local rule to provide three additional options for the management of complex cases. (1) In appropriate cases, the judge should set a timetable for filing motions. (2) Judges and litigants should use the Manual for Complex Litigation 2d as a guide. (3) Judges should order phased discovery in appropriate cases.

6. Presence of Authority to Bind. The court will amend the Standing Order to require that when a party cannot attend the final pretrial conference, counsel will make sure the client can be contacted (with exceptions for the government if necessary). The Standing Order will also be amended to permit the judge to require representatives with authority to bind to be present or available by telephone during any settlement conferences.

7. Special Masters. The court said it was already aware of the benefits of using special masters for complicated cases with technical areas the judicial officer is unfamiliar with, or for continuing, contentious discovery disputes. The court has used specialists for the former and magistrate judges for the latter.

8. Final Pretrial. In agreement with the advisory group, the court will amend the Standing Order to eliminate the requirement for a face-to-face final pretrial conference and to encourage, but not require, stipulations to uncontested facts and contested issues of fact and law. Instead of accepting the advisory group's recommendation that all judges use the standard pretrial form, the court will amend the Standing Order to state that judges vary in their forms and procedures and that counsel may contact the judge's minute clerk for copies of any standing orders.

Discovery and Disclosure

The court said it is a proper function of the court to monitor discovery and, after consultation with counsel, to set reasonable time limits. The current Standing Order provides a framework for such. The plan also includes the following:

1. Voluntary Exchange. The court encourages the voluntary exchange of materials and other cooperative discovery devices. FRCP 26(f) and the court's Standing Order require parties to prepare a joint written discovery plan. In response to advisory group concerns that preparation of the joint plan can be costly when counsel cannot agree, the court will revise the Standing Order to permit multiple submissions instead of a joint plan and to provide judicial assistance in resolving impasses. If FRCP 26(f) is amended, the court will not revise it's local rule but will continue to require a written discovery plan only when ordered by the judge (rather than routinely).

2. Certification. A current local rule allows the court to refuse to hear any motion for discovery or production of documents not accompanied by a statement that counsel were unable to resolve the dispute (with details of a meeting or why one did not occur).

3. Discovery Costs. The court agreed that judges and litigants should consider cost in planning and ruling on discovery. In response to the advisory group's recommendation that if the court permits broadened discovery it should shift costs when the additional discovery proves unnecessary or particularly burdensome, the court said that it would solicit judges' experiences with this practice in the annual review of the plan's operation.

4. Depositions. The court agreed with the advisory group's recommendation that guidelines should be set for deposition conduct and authorized the chief judge to form a committee of attorneys with federal practice experience to develop such guidelines. As part of the guidelines, the committee should consider the issue of the availability of a judicial officer to resolve disputes.

5. Expert Disclosure. The advisory group recommended automatic disclosure of experts' qualifications prior to the final pretrial conference. The court said the current final pretrial order requires stipulation or statement of each experts' qualifications and thus amendment is unnecessary.

6. Mandatory Pre-Discovery Disclosure. The court did not agree with the advisory group's recommendation that the court opt out of amended FRCP 26(a)(1). Rather, if the rule goes into effect, the court will amend the Standing Order to permit judges to apply the requirements of Rule 26(a)(1) as appropriate, which will be determined on a case-by-case basis at the initial pretrial conference.

Alternative Dispute Resolution

1. General Approach. The court encourages the use of ADR and will arrange for judges to receive education in ADR. However, the court agreed with the advisory group that, before implementing a formal district-wide program, it should await the results of the CJRA's ADR experiments.

2. Early Neutral Evaluation. The court encourages a neutral evaluation program, but, in the absence of funds and additional staff, it would have to be a small program. Thus the court agrees with the group and will await the results of other courts' CJRA ADR program experiences.

3. Settlement Conferences. The court agreed with the group that it should make explicit the authority of judges to offer settlement discussions, and therefore the court will amend the Standing Order to allow judges to offer to preside over settlement talks early in a case. In a bench trial, the preferred method will be, as has been the practice in the past, to send the case to another judicial officer for such discussions. The amended rule will serve to notify parties of the likelihood of judicial presence at settlement discussions.

4. Summary Jury Trial and Minitrial. The court agreed that summary jury trials and minitrials are useful in a limited number of cases. Thus, in complex cases where very long trials are expected and more traditional settlement techniques have failed, judges and litigants should consider summary jury trials. In commercial cases with large amounts in controversy, they should consider mini-trials.

5. ADR Information and Education. The court agreed with the advisory group on the need for an ADR pamphlet and authorized the chief judge to establish a panel of attorneys to prepare one.

Other

1. Pro Se Litigation. The court agreed that prisoner litigation staff attorneys should hold settlement conferences, via telephone, in appropriate prisoner cases. However, the court said it would have to wait for more staff law clerks. The court also agreed with the need to provide assistance to pro se Title VII litigants and said the Advisory Committee on Local Rules has almost finished revisions to the complaint forms for pro se Title VII plaintiffs.

2. Attorneys' Fees. The court agreed with the group that standards are needed for preparation of fee petitions and authorized the chief judge to create a committee to draft uniform fee petition standards. The standards, which will be incorporated into a local rule, will take into account revisions to FRCP 54(d)(2).

3. Other. The court also responded to a number of other recommendations, agreeing to seek more magistrate judges, declining to ask for more district judges (because the new weighted caseload doesn't justify it), agreeing that new facilities are need in one division, and disagreeing that a special calendar should be established for mortgage foreclosures (because they take little judicial time).

Implementation

The plan was adopted by the full court in Executive Session on November 15, 1993. It will be implemented through local rules or the Standing Order. The clerk will also make the CJRA plan readily available, even though implementation of its provisions will not, because of the rule revisions, rely on its availability.

The court asked the advisory group to review the docket on December 31, 1994 and to file a report with the court by March 27, 1995, making suggestions or observations that would assist the court in carrying out its duties under § 475.

Consideration of §§ 473(a) and (b)

The court used the structure of §§ 473(a) and (b) to set out the provisions of the plan and adopted nearly every case management principle and technique. The court, along with the advisory group, rejected the suggestion that both counsel and client sign requests for extension of discovery deadlines or trial dates and postponed consideration of ENE until other courts have had more experience.

## Comments

The advisory group conducted a thorough analysis of the district and found it to be in very good condition. For the problems it did identify, it prepared focused recommendations for change, many involving amendments to local rules. The court responded with a comprehensive plan that addressed every advisory group recommendation and every requirement of the statute. Most recommendations were adopted and reasons were given when one was rejected or modified.

Historically, the court has been an innovator in case management and has established a culture of firm judicial control. To its current practices it will add several new ones that address current problems, such as a joint motions calendar to provide prompt resolution of motions and a joint trial calendar to provide earlier trials. To address attorney misconduct, particularly in discovery, the court will continue its practice of judicial involvement in planning discovery and will also work with the bar to establish guidelines for conducting depositions.

## Conclusion and Recommendation

I see no need to ask this court to take additional actions, and I recommend acceptance of this plan.

Principal Reviewer: Donna Stienstra, Research Division, Federal Judicial Center

**AO Review of Reports and Plans**
**For the Judicial Conference Subcommittee on Court Administration**

District: Northern District of Florida

**Date:** January 9, 1993

Upon reviewing the Advisory Group Report and the Expense and Delay Reduction Plan for the Northern District of Florida staff has the following observations. The Advisory Group reviewed data reflecting past case filings, trends in case filings and the use of court resources. They also surveyed the members of the Northern District's bar. The court carefully considered each recommendation and explained why it did or did not adopt each one.

Comments:

- The plan retains many features of previous case management routines but adjusts them to account for the causes of cost and delay the Advisory Group identified.

- The plan specifically rejects requiring parties to sign requests for continuances.

Principle reviewer: Mark D. Shapiro, Administrative Office

**Northern District of Florida**
**Report of Advisory Group**
**Cost and Delay Reduction Plan**
**Summary**

## I. Assumptions; Miscellany; and Background

A. The district encompasses 23 counties and is divided into four divisions.

B. There are 4 authorized judgeships and no vacancies. There are also 2 full- time and 2 part-time magistrate judges. There is also 1 senior judge.

C. The Advisory Group reviewed data reflecting past case filings, trends in case filings, and the use of court resources. The advisory group also surveyed the members of the Northern District's bar.

## II. State of the Docket

A. Filing Trends.

1. Over a six year period civil cases per judgeship have remained constant. In 1992 there were 388 civil cases per judgeship; in 1987 there were 397.
2. The district has a disproportionate number of prisoner pro se cases. In 1992 they accounted for over 35% of all civil filings.
3. Median time from issue to trial in 1992 was 19 months; in 1987 it was 15 months.
4. Median time from filing to disposition was 9 months in 1992; 8 months in 1987.
5. The percentage of cases over 3 years old has decreased slightly to 3.0% in 1992.
6. The median time from filing to disposition for criminal cases is 5.4 months.
7. Life expectancy of a civil cases is approximately 14 months.
8. The district has a high percentage of criminal cases go to trial. 70% of trials in the district are criminal.
9. The district ranked first in the country in the number of defendants tried by a jury in 1992.

B. Causes of cost and delay.

1. Criminal caseload: Increased federalization of crime; federal sentencing guidelines; speedy trial act; and the policy of the Justice Department not to negotiate a plea absent unusual circumstances.
2. Prisoner petitions.
3. Judicial resources have not kept pace with the increasing caseload.
4. Excess or abuse of discovery.
5. The lack of greater judicial involvement.
6. Delay in ruling on dispositive motions.
7. Inefficient procedures for determining court awards of attorney fees.
8. Lack of a mechanism for establishing early trial dates.

## III. Recommendations

A. With the exception of prisoner and administrative cases the district does not warrant DCM.

B. Pretrial Conference

1. There should be an initial pretrial conference where the court meets with the parties prior to issuance of the scheduling order.
2. The parties should confer prior to the conference to discuss:
    a) the merits of the case;
    b) chances of settlement; and
    c) any matters to be addressed in the scheduling order.
3. Where appropriate additional case management conferences should be held.

C. There should be a presumptive time limit for ruling on motions. the clerk should monitor motions to ensure they are expeditiously resolved.

D. The parties and the court should consider phased discovery.

E. Discovery

1. The district should opt-out of Rule 26(a)(1) of the Federal Rules of Civil Procedure. Disclosure relating to expert witnesses should continue. Disclosure pursuant to Rule 26(a)(3) should be required.
2. Routine use of depositions of experts without court order should be allowed. Video testimony of experts should be considered over live testimony.
3. The district should continue its 50 interrogatory limit, and no limits on depositions.
4. Methods for early resolution of discovery disputes should be encouraged. Greater use of sanctions should be made.

F. The court should address the issue of liability for attorney fees before addressing the issue of appropriateness of the fees charged. Rules regarding the parameters of discovery on attorney fee issues should be developed. Parties should be allowed 30 days for filing cost and fee motions.

G. Prior to the pretrial conference the parties should attempt in good faith to arrive at an estimated trial date. This date should be included in the scheduling order.

H. Magistrate Judges

1. The court should seek an additional magistrate judge.
2. The chief judge should appoint a prisoner pro se counsel committee charged with recommending a pro bono plan to identify counsel willingly to represent prisoners, after an initial screening.
3. The US attorney should initiate discussions with state and military authorities to determine if certain criminal and non-criminal petty offenses could be resolved without involving the magistrate judges.
4. Magistrate judges should become more involved in the resolution of civil cases. Parties should be encouraged to consent to trial by magistrate judge. Parties should be informed of the trial date they could have before a magistrate as compared with before an Article III judge. The magistrate judge should be present at any court conference where trial dates are likely to be discussed.
5. More motions, dispositive and non-dispositive should be referred to the magistrate judge. Parties should indicate on the motion whether they object to such a referral.

I. Alternative Dispute Resolution

1. The court should offer an ADR program consisting of Early Neutral Evaluation (ENE) and mediation. Other mechanisms should be encouraged when appropriate.
2. The court should designate an ADR administrator.

3. An ADR advisory committee should be formed to measure the success of the ADR program.

## IV. Plan

A. With the exception of prisoner and administrative cases, the district does not warrant DCM.

B. Case Management Conference.

1. The current scheduling order will be maintained with minor changes.
2. Attorneys for the parties shall meet within 30 days of entry of the order and shall:
   a) discuss the nature and basis of their claims, and try to identify the principle factual and legal issues;
   b) discuss possibility for prompt settlement and whether mediation or other ADR technique would be helpful, either currently or after some discovery;
   c) discuss proposed time tables and cut-off dates for joinder of parties, amending pleadings, and filing of motions and whether the scheduling order should be amended;
   d) discuss the respective discovery requirements of the case, and if necessary develop a discovery plan specifically addressing timing and form of discovery, phased discovery, and whether any changes are need to the initial scheduling order, local rules, or FRCP; and
   e) make a good faith estimate of when the case will be ready for trial. If the estimate is not within 18 months of filing, an explanation must be included.
3. The parties shall disclose core information at this initial meeting.
4. Disclosure of expert witness information shall continue under the current order and as required by the FRCP.
5. Within 14 days of the meeting the parties shall file a joint report addressing each item above. If the parties are unable to agree the report should set out each parties position. The court will promptly consider the report and modify the scheduling order accordingly or call a pretrial conference. Telephone attendance will be permitted. If the court takes no action within 14 days the original scheduling order is in effect.
6. The parties estimated trial date will be the presumptive time the case will be set for final pretrial conference and trial.
7. At all pretrial conferences each party must be represented by an attorney with authority to bind.

C. Motions

1. Rulings on non-dispositive motions will occur within 60 days of the response.
2. Rulings on dispositive motions will occur within 120 days of the response.
3. If oral argument is granted, motions shall be ruled on within these time limits or 30 days after oral argument, whichever is later.
4. The clerk shall monitor motions and notify each judge on a monthly basis of the status of the judge's caseload.

D. Discovery

1. The current limitations on interrogatories will remain in effect.
2. The court will enforce the limitations on depositions in the FRCP and will consider increasing them after a short time.
3. The court will continue is longstanding requirement of certification of a good faith effort to resolve discovery disputes.
4. The court will use magistrate judges to resolve discovery disputes if it appears to be a realistic and practical alternative.

E. The court will address the issue of liability for attorney fees before addressing the issue of appropriateness of the fees charged. The scheduling order will be amended to minimize evidently hearings necessary in determining attorney fees.

F. Alternative Dispute Resolution

1. It is the intent of the court to utilize ADR at the most opportune time in each case. The parties joint report will assist the court make this determination.
2. Although ENE may be useful in some cases, a required ENE program does not appear warranted.
3. The existing mediation program is effective; therefore, the formal ADR plan recommended by the advisory group will not be adopted.

G. The court will seek an additional magistrate judge.

H. If the plan conflicts with local rules, the plan prevails. If the plan conflicts with the FRCP the conflict shall be resolved in favor of the plan if the federal rule involved allows opting out or local exception.

**AO Review of Reports and Plans**
**For the Judicial Conference Subcommittee on Court Administration**

District: Eastern District of Washington

**Date:** January 6, 1994

Upon reviewing the Advisory Group Report and the Expense and Delay Reduction Plan for the Eastern District of Washington staff has the following observations. The Advisory Group contracted for an extensive professional survey of all types of consumers of the civil justice system. Judicial interviews were also conducted by members of the Advisory Group. The Group took the innovative step of interviewing both sides and the court involved in a particular very complex case which recently settled in the district. Each recommendation was carefully considered by the court.

Comments:

- The court and Advisory Group recognize the court's docket is current, therefore, both the recommendations and the plan call for the status quo in most instances.

- The recommendations and the plan address two areas with room for improvement: prisoner pro se litigation and utilization of ADR with specific changes.

- A third area where some improvement may be necessary is discovery. The plan reminds judges they have a number of options at their disposal when needed. The Advisory Group report contains a list of discovery case management tools.

Principle reviewer: Mark D. Shapiro, Administrative Office

**Eastern District of Washington**
**Report of Advisory Group**
**Cost and Delay Reduction Plan**
**Summary**

## I. Assumptions; Miscellany; and Background

A. The district is largely rural, covers 43,000 square miles, and has a population 1,100,000.

B. Four Native American reservations are located within the district. There is also a significant Hispanic population.

C. The economy is primarily agricultural. Mining and timber have been significant, but are declining in importance.

D. The district contains the state's principal male prison in addition to several smaller prisons. There are 2 new prisons under construction within the district.

E The district has a federal nuclear plant which is causing concern about toxic waste cleanup. The district has 3 other nuclear power plants, 2 large military installations, 1 National Park, and 6 National Forests.

F. There are 4 authorized judgeships and no vacancies. There are also 2 full-time magistrate judges.

G. The Advisory Group hired Washington State University to conduct a survey of the "Consumers of Civil Justice." The Advisory Group also conducted formal interviews with the judicial officers. The Advisory Group also did an in depth study of a particular highly complex litigation recently settled in the district.

## II. State of the Docket

A. Filing Trends.

1. Civil filings have decreased by 38% in the last 10 years. Social security, student loan, and veteran's filings have accounted for most of this decrease.
2. Criminal filings have more than doubled in the same period. The criminal caseload per judge in this district is twice the national average and the 8th highest in the country.
3. Prisoner filings make up 38% of the civil docket. Contract and personal injury cases represent 11% and 7% respectively.
4. Life expectancy of a civil case in the district is between 8 and 9 months. The national average is 12 months. Approximately 9% of cases terminated in the past three years were three years or older.

5. 35% of cases were dismissed or settled before an answer was filed, 22% were dismissed or settled after an answer was filed and before the pretrial conference, 8% were dismissed or settled after pretrial but before trial, and 17% were terminated by judgment on pretrial motion. Approximately 87% of cases are settled or dismissed before trial.
6. Criminal trials increased by 1/3 from 1986 to 1991. They now represent almost 90% of trials in the district.

B. Causes of cost and delay.

1. Causes related to case management as indicated by the survey (top 5 only):
    a) too much time allowed for discovery;
    b) dilatory action by counsel;
    c) dilatory actions by litigants;
    d) complexity of case; and
    e) backlog of cases on court's calendar.
2. Prisoner petitions.
3. Criminal caseload, sentencing guidelines, and mandatory minimum
4. Mega cases.
5. Ineffective ADR utilization.

## III. Recommendations

A. Case Management and Discovery.

1. Judicial officers are encouraged to continue to take a strong and active role in case management.
2. The court should routinely hold scheduling conferences within 90 days of filing. The appropriateness of discovery management and the availability of ADR should be discussed.
3. The court should consider on a case-by-case basis, discovery management techniques which streamline discovery so as to achieve cost and time efficiencies so long as those techniques do not intrude on the basic interests of the parties to the litigation.

B. Alternative Dispute Resolution.

1. The court should actively encourage use of ADR.
2. Counsel should be required to certify s/he has explained to the client all the ADR procedures available, and that they may save substantial time and money. Pro se parties will be given an ADR brochure.
3. The court should schedule a settlement conference. Parties and counsel should be required to attend. The advantages of ADR should be discussed and actively encouraged. The conference should take

place at the time of the pretrial conference or other appropriate time after the parties have completed substantial discovery.

4. The court should encourage parties and counsel to use summary jury trials to facilitate settlement.
5. The court should encourage experimentation with Early Neutral Evaluation (ENE) and mini trials.
6. The court should commit sufficient resource to establish, coordinate, and administer the court's ADR program.

C. Pro Se Litigation

1. The court should request funding to implement a pilot program establishing an ombudsman position to evaluate and mediate prisoner petitions. The ombudsman would meet directly with the prisoners and state officials to determine whether the case can be settled. Recommendations of the ombudsman should be sent to the judicial officer assigned the case.
2. The court should recommend the Administrative Office or Judicial Conference create a network regarding developments in the area of prisoner litigation.
3. More prisoner cases should be assigned to the magistrate judges.
4. The court should update or replace the courtroom in Walla Walla.
5. The court should continue to review complaints to determine if the grievance procedure has been exhausted.
6. The court should encourage the formation of a task force to address prisoner grievance and litigation. The task force should consider:
    a) whether additional issues could be resolved by grievance procedures;
    b) whether an independent professional should hold grievance hearings;
    c) evaluate lawyer access;
    d) monitor the retaliation concerns that prisoners have; and
    e) study how best to provide interpreters to inmates.

## IV. Plan

A. Judicial officers will continue to take a strong and active role in case management.

B. The court will insure scheduling conferences are routinely held within 90 days of filing, will consider the appropriateness of discovery management and discuss ADR with lawyers and litigants.

C. The court will consider on a case-by case basis discovery management techniques which will streamline discovery so long as they do not intrude on the basic interests of the parties.

D. Alternative Dispute Resolution.

1. The court will encourage parties and attorneys to submit cases to ADR.
2. When appropriate the court will schedule a conference to discuss settlement of the case. Parties and counsel are required to attend. The court will advise parties of the advantages of ADR and actively encourage them to submit to an ADR procedure. The conference will take place at the time of the pretrial conference or other appropriate time after the parties have completed substantial discovery.
3. When appropriate the court will encourage parties and counsel to use summary jury trials to facilitate settlement. The court will establish procedures to make summary jury trials available.
4. When appropriate the court will encourage experimentation with Early Neutral Evaluation (ENE) and mini trials.
5. The court shall study possible amendments to local rules providing for compensation of mediators by the parties. If a party can not afford to pay the mediator the court will pay from Appropriated Funds, if available, otherwise the mediator shall serve pro bono.
6. The court will commit sufficient resources to the coordination and administration of ADR options.

E. Pro Se Petitions

1. The court will request funding to establish an ombudsperson to evaluate prisoner complaints and act as a mediator in an effort to resolve such matters without the institution of a federal court action.
2. The court will assign more prisoner cases to the magistrate judges if the calendars of the magistrate judges permit.

**AO Review of Reports and Plans**
**For the Judicial Conference Subcommittee on Court Administration**

District: Middle District of Tennessee

**Date:** January 11, 1994

Upon reviewing the Advisory Group Report and the Expense and Delay Reduction Plan for the Middle District of Tennessee staff has the following observations. The Advisory Group thoroughly analyzed filing trends within the district. The Advisory Group reporter statistics one many categories by individual judge. It also surveyed attorneys and litigants in 180 closed cases. The court adopted, without change, almost the entire proposed plan.

Comments:

- One judge dissented from the order adopting the plan. He felt the present system was working and did not want to change it for an unknown set of rules.

- The plan is labor intensive in almost every case except prisoner and administrative cases.

- Trial dates are not set until late in the process.

Principle reviewer: Mark D. Shapiro, Administrative Office

**Middle District of Tennessee**
**Report of Advisory Group**
**Cost and Delay Reduction Plan**
**Summary**

## I. Assumptions; Miscellany; and Background

A. The district encompasses 32 counties and is divided into 3 divisions, including 2 with resident judges.

B. There are 4 authorized judgeships and no vacancies. There are 2 full-time magistrate judges and 1 senior judge.

C. A survey of a 180 cases closed between July 1989 and March 1991 was conducted by the Advisory Group.

## II. State of the Docket

A. Filing Trends.

1. Between 1985 and 1992, the number of criminal trials has doubled, as has the time judges spend in court on criminal matters.
2. Time spent in court has shifted from a 3:1 ratio (civil:criminal) to an approximately equal distribution.
3. Civil filings have decreased by nearly 12% since 1988. Filings in 1988 were effected by 355 product liability cases filed against the same defendant. Filings have otherwise remained fairly constant.
4. The life expectancy in this district is approximately 12 months.
5. Prisoner cases accounted for approximately 29% of civil cases in 1992.

B Causes of cost and delay.

1. Current scheduling practice under Local Rules.
2. Referring dispositive motions to magistrate judges.
3. Delays in ruling on dispositive motions cause undue delay and expense, especially if they remain unresolved as the trial date approaches.
4. Continuing discovery during the pendency of dispositive motions.
5. Discovery practices including lack of staged discovery.
6. Lack of a formal system of exploring settlement early in the case.

7. Cases are rarely tried when set.
8. Criminal cases and sentencing guidelines.

**III. Recommended Plan and Plan**

Note: The Advisory Group proposed Cost and Delay Reduction Plan and Operating Procedures which was adopted almost "as is" by the court. The plan and proposed plan are set out as one item below.

A. Customized Case Management

1. Customized case management provides mandatory, Court-supervised, case management tailored to the individual needs of each case that is subject to the plan.
2. It is applicable to all cases except those generally specifically exempted by local rule. On a case-by-case basis the court may exempt any case.
3. Each case will be assigned a judicial officer with responsibility and authority for case management.
   a) The Article III judge assigned the case will elect whether the magistrate judge randomly assigned to the case shall act as case manager for all cases assigned or on a case-by case basis.
   b) Responsibility for dispositive motions remains with the Article III judge when a case is assigned to a magistrate judge.
   c) Senior judges may be assigned as case managers if they consent to the assignment.
4. Case Management Procedures
   a) All cases shall have at least 1 early status/case management conference scheduled within 45 days of filing. The date will be provided to the filing party by the clerk. The filing party must serve the notice on the defendants.
   b) The case management order (CMO) will be entered, scheduling and outlining the purposes of the first case management conference.
   c) The contents of the CMO will be tailored to each case.
   d) Counsel shall be required to confer before the initial case management conference to prepare a proposed CMO to be submitted at the conference for review and discussion with the case manager.
   e) Parties can not stipulate to amendments to the CMO without consent of the case manager.
   f) The CMO will contain deadlines for filing dispositive motions. If a dispositive motion not

contemplated by the CMO is filed the case manager may call an additional conference.

g) Subsequent conferences will be scheduled in the CMO. Most cases will have more then 1 conference.

h) A final conference will be held after completion of all stages of the case to determine that all possibility of settlement has been exhausted and to set the case for trial.

5. Discovery

a) There will be no arbitrary limits on discovery. Any limitations on the number of interrogatories, document requests, or depositions will be based on the needs of each case.

b) Discovery will be staged based on the needs of each cases.

c) Discovery will be stayed during the pendency of any dispositive motion filed in accordance with the CMO. If the dispositive motion filed was not planned for in the CMO discovery will not be automatically stayed.

d) Although discovery request can be made prior to the initial conference, response are not required prior to the conference.

6. Dispositive motions will generally be resolved by the Article III judge. A judge my identify a case which will benefit from having a dispositive motion referred to a magistrate judge. The clerk will prepare a list of dispositive motions pending before each judge on a monthly basis.
7. A trial date will not be set until it is known a trial will most likely be needed.

B. Alternative Dispute Resolution

1. Applicable to all civil cases.
2. The case manager may refer cases for any method of ADR provided by the court, with or without the consent of the parties. The court takes notice of *In re NLO Inc.*
3. The case manager may refer cases to ADR methods not provided by the court with the parties consent.
4. Settlement conferences will be available for every case.
5. In cases covered by the customized case management plan, any party may request a settlement conference in the course of the case management conference or by motion to the case

manager, or the case manager may direct a case to a settlement conference.

6. Settlement conferences will be conducted by a judicial officer other than the case manager.
7. The settlement judge may order that representatives of the parties with settlement authority attend a settlement conference or be available by phone. This includes the US Attorney or his designee.
8. The procedure for party statements at settlement conferences will track current procedures.
9. No part of any settlement discussion or statement shall be used by any party for any purpose outside of the settlement conference.
10. The district will create an ADR Committee to consider potential uses of ADR.

C. Scheduling Trial Weeks

1. Each active judge will designate 1 week per month as a "civil trial week."
2. If a proposed trial is anticipated to be short additional trials may be scheduled for the same week. These cases must be scheduled back to back.
3. Cases without out-of-town attorneys or witnesses and few experts may be given non-firm trial dates. Such cases may opt for quicker but non-firm dates by electing to be set in 1 of the criminal trial weeks.
4. Jury trials set during the "civil trial week" shall start on monday.
5. To optimize juror utilization, judges will normally set their "civil trial weeks" in pairs, with 2 judges scheduling their civil weeks at the same time.

**AO Review of Reports and Plans**
**For the Judicial Conference Subcommittee on Court Administration**

District: Southern District of Georgia

Date: January 7, 1994

Upon reviewing the Advisory Committee Report and the Expense and Delay Reduction Plan for the Southern District of Georgia, staff has the following observations. The Advisory Committee made a study of local and national court statistics and interviewed all judicial officers. Attorneys and parties surveyed. Two special case samples were drawn for further analysis. While the Committee found few areas to critique within their area of review, their recommendations were expansive and national in scope. The Court carefully considered the Committee's individual recommendations, and adopted all of them. The recommendations and the plan do address identified areas of concern relative to cost and delay. This district's performance statistics would lend reasonable support to the conclusion that many of its existing rules anticipated CJRA concerns. While the Court in many instances merely reaffirmed existing policies and rules, it did directly address all guidelines, principles and techniques of the Act, in addition to the Advisory Committee's innovative recommendations.

- This plan is completely responsive to the report of the Advisory Committee, and adopts all of its recommendations for immediate implementation.

- The plan specifically provides for early and firm trial dates.

- The plan specifically reaffirms existing rules covering presumptive limits on the amount of discovery.

- The plan reaffirms specific certification burdens on counsel regarding discovery motions, and places a similar burden on parties in regard to the noticing intent of the "Litigants Bill of Rights" adopted by the Court.

- The Court has reaffirmed rules in place requiring that only counsel with authority to bind appear at pretrial conferences, and extended the requirement to settlement conferences as well.

- The plan also comported with the Advisory Committee approach to ADR, deciding not to adopt a formal ADR program. It did adopt the Litigant Bill of Rights, which

will require litigant certification of familiarity with its ADR provisions; the Court will also assist interested parties in seeking ENE and mediation services.

- The Advisory Committee recommended, and the Court will create, a complex litigation track governed by a Special Case Management Order.

- The Advisory Committee and Court both endorsed a number (14) of innovative proposals directed at the Judicial Conference, Congress and the Executive Branch to reduce litigation cost and delay.

Frederick M. Russillo, Senior Program Analyst, CAD-CPB

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 exiting 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.

7. 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 insure appropriate orders, and hold appropriate hearings.

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.

9. Appropriate methods to establish both pre-passage and post-passage impacts of legislation on the federal courts should be initiated.

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.

**FJC Review of CJRA Reports and Plans**

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

**District:** **Eastern District of Missouri**

**Date:** **January 7, 1994**

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The court is authorized eight judgeships, including two new ones in 1990. Two positions are currently vacant. The court has seven magistrate judges.

**Summary of Conditions in the District**

The advisory group analyzed the court's caseload, interviewed the judicial officers, and received bar comment after placing notices in newspapers. From the analysis of the docket the advisory group concluded that the court is "drowning" in cases due to the convergence of increasing case filings and judicial vacancies. The caseload analysis showed that:

- There have been two major filing trends since SY87: (1) Prisoner filings have doubled and are now 34% of the civil docket; (2) tort and contract filings have dropped substantially.
- The percentage of civil cases resolved with no court action has declined dramatically since SY87; thus more cases are requiring attention from the judges.
- The time from issue to trial has risen and in SY92 was 20 months.
- Criminal cases represent 10% of the filings but 30% of the trials.
- Since SY87, the court's total filings have risen slightly, but terminations have decreased and thus the number of pending cases "have risen at an alarming rate." At the same time the number of cases terminated per actual judge has increased, indicating the judges are each working harder.

Based on the docket analysis, its interviews with the judicial officers, and comments received from the bar, the advisory group identified the following as interfering with efficient case processing:

- Judicial vacancies and the volume of cases filed. As a result, the judges "simply lack the time to be any more involved in case management" or, when the criminal docket is demanding, to provide timely rulings on motions.
- Criminal docket. Though criminal filings are only 10% of the docket, they must come before civil cases and they require more time than in the past for sentencing.
- Prisoner filings. In addition to volume, these cases consume excessive time because prisoners file many, often redundant, motions and because under current procedures a case is handled by a pro se law clerk, then a magistrate judge, and then a judge.
- Pretrial case management and use of magistrate judges. (1) In the past the civil calendar was driven by a firm trial date, but these dates now cannot be met because of criminal cases, leading to multiple trial preparations and reducing the incentive to settle. (2) Lack of predictability and uniformity in judges' practices and use of magistrate judges, resulting in duplication of effort (e.g., matters handled first by a magistrate judge, then a judge). (3) Delayed rulings on motions.

- Attorney practices. Cost and delay are increased by abusive discovery, unwarranted summary judgment motions, and failure to make a good faith effort to resolve discovery disputes before filing motions (as required by local rule).
- New legislation. The sentencing guidelines cause cost and delay in civil cases.

Based on these findings the advisory group made ten recommendations.

**Summary of the Court's Plan**

In response, the court adopted a plan "designed to address those principal causes of cost and delay ... with which the Court concurs and which are under the Court's control." Therefore, the court's plan is limited to implementation of a standardized pretrial case management plan, reform of pretrial litigation practices, and processing of prisoner cases, and does not address such matters as judicial vacancies or the impact of legislation.

Case Management and Discovery/Disclosure

To make better use of magistrate judges, improve pretrial management of cases, control discovery, and expedite motions rulings, the court adopted the following provisions:

1. Case Assignment. All civil cases will be randomly assigned at filing to judges and magistrate judges. The expected benefits are: (1) distribution of cases across all judicial officers, which will reduce the caseloads of the district judges and will permit them to engage in pretrial case management; (2) elimination of the delays inherent in judicial review of magistrate judge decisions; and (3) creation of a uniform and efficient caseflow system because a single judge will handle all facets of a case. Party consent is required for assignment to a magistrate judge.

2. Differential Case Management. The court will adopt a case management system for managing each case according to its individual requirements. Cases filed on or after January 1, 1994 will be assigned to one of five tracks based on factors such as the time required for pretrial events, the preparation required for discovery and disclosure, and the degree of court involvement needed. The tracks are:

- expedited: disposition within 12 months;
- standard: disposition within 18 months, uniform scheduling order;
- complex: disposition within 24 months, individualized case management plan, parties to design a detailed case management plan, periodic conferences, and trial date set later when case readiness is known;
- administrative: disposition in accordance with court's ability to issue prompt orders, uniform scheduling order; and
- pro se prisoner: depending on the demands of the case, disposition may be within 12 months (routine claims) or up to 24 months (e.g., class-wide claims).

Parties in all civil cases, except prisoner pro se cases, will file a track information statement with their complaint, and the clerk's office will make an initial assignment. In standard and complex cases, the assigned judge will hold a scheduling conference in person or by telephone. For other cases the clerk's office will issue scheduling orders that are binding unless altered by the judge. The clerk's office will monitor compliance with scheduling orders and noncompliance can lead to dismissal.

3. Case Scheduling, Early Judicial Involvement. Parties in all standard and complex track cases must meet either in person or by telephone to prepare a joint proposed

scheduling order within 30 of appearance of all defendants. Within 40 days of appearance of all defendants, plaintiff is responsible for submitting the proposed scheduling order to the court. Within 14 days of submission the assigned judge will schedule a conference and after the conference will issue an order setting: dates for disclosure; limits on the number of interrogatories and depositions; deadline for filing dispositive motions; dates for additional pretrial conferences to dispose of unresolved issues, including outstanding motions; and trial date. The judge may establish a procedure to use telephone conferences to resolve discovery motions. The judge may make an ADR referral at or after the scheduling conference and may stay other proceedings until the ADR is completed, but every case will have milestone dates, including for the ADR process, and compliance will be monitored.

4. Discovery. The court decided, as the advisory group recommended, not to implement the mandatory initial disclosure provisions of FRCP 26(a)(1). The court retains the authority to order parties to disclose information. The amount of disclosure and discovery will be determined on a case-by-case basis through use of pretrial case management conferences and scheduling orders.

5. Motions. To avoid delays caused by unresolved motions, the moving party shall notify the clerk of any motion not decided within 60 days of submission.

Alternative Dispute Resolution

The court adopted, as recommended by the advisory group, ENE and mediation. The plan authorizes the judicial officers to refer cases either after the parties request ENE or mediation or by order of the judge after the initial scheduling conference. The court will create a panel of neutrals.

Implementation

The plan was adopted on November 30, 1993 and applies to cases filed on or after January 1, 1994. If a local rule conflicts with the plan, the plan will govern. Consultation with the advisory group will continue and the plan may be amended at any time. For each provision adopted, the court spelled out the process by which it would be implemented.

Consideration of §§ 473(a) and (b)

The court stated at the outset that it had considered each case management principle and technique set out in the statute. The plan, together with an existing local rule, includes every provision of the statute except client signatures on requests for extension of time.

**Comments**

The advisory group provided a careful analysis of conditions in the district and developed recommendations specifically focused on the problems identified. One of these is not commonly found among the federal courts: inclusion of magistrate judges in the assignment of newly filed cases. This provision, however, speaks directly to a major concern of the group, the redundant use of judicial resources, which must be particularly problematic in this district because of the large prisoner caseload (34% of the civil docket).

In its plan the court adopted nearly all of the advisory group's recommendations, including its most radical one, inclusion of magistrate judges in the assignment of cases.

The court did not, however, accept two recommendations nor explain their rejection of them: Monthly "law days" for bench rulings on non-dispositive motions and a request that after a year of experience with the plan the court consider adoption of a settlement week procedure. Also, as the court noted in its introduction to the plan, it did not include in the plan items over which it has no control (e.g., volume of filings and additional judicial and staff resources).

**Conclusion and Recommendation**

This is generally a responsive and innovative plan. I recommend that the committee accept this plan, although the committee may wish to ask the court why it rejected two of the advisory group's recommendations, particularly the one designed to provide earlier rulings on motions.

Principal Reviewer: Donna Stienstra, Research Division, Federal Judicial Center

**FJC Review of CJRA Reports and Plans**

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

**District:** **Northern District of Iowa**

**Date:** **January 9, 1994**

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The court has two judgeships, one of which has been vacant for two years, and two senior judges. The court has one full-time and one part-time magistrate judge.

## Summary of Conditions in the District

To assess the conditions in the district, the advisory group analyzed the court's caseload data and met several times. The caseload analysis revealed a court whose burden is increasing and whose condition appears to be worsening.

- The number of cases filed increased steadily until 1987, then dropped some, and then rose substantially in 1991.
- Case terminations were relatively constant between 1986 and 1989.
- The number of cases over three years old has increased dramatically since 1986. Some of the pending civil cases have been reset for trial four or five times due to the criminal docket.
- The average civil case that went to trial was 39 months old, and cases ready for trial must wait 9-10 months for a trial.
- The number of prisoner cases has increased dramatically.
- The number of criminal cases has increased dramatically, and, based on actual hours recorded, the time needed for sentencings has doubled.

The advisory group concluded that because of the judicial vacancy, extraordinary demands are being made on existing resources. Absent appointment of a second judge, they said, civil cases will age significantly, the docket will deteriorate, and even the criminal calendar might not be adequately addressed.

The advisory group did not undertake a study of litigation costs but concluded, based on their own experiences, that litigation costs are generally high everywhere, but not excessive in this district. They noted that some aspects of civil litigation, notably experts' fees, can be "exceedingly expensive" in some cases.

From the docket analysis, the advisory group concluded that there is excessive delay in this district. They identified the following causes:

- Insufficient judicial resources for the increasing volume of filings;
- demands made by an increasing criminal caseload and by sentencing procedures;
- inability to give firm trial dates because of the number and priority of criminal cases;
- the practice of giving trial dates at the final pretrial conference;
- state court practice of setting trial dates early in the litigation, which makes attorneys' trial calendars congested;
- failure to resolve pretrial motions;

- the practice of permitting counsel to file a scheduling report as much as 120 days after filing the complaint;
- failure to fill judicial vacancies; and
- legislation that increases the federal courts' workload without increasing resources.

To address the problems identified, the advisory group made eleven recommendations to the court.

**Summary of the Court's Plan**

In response to the advisory group, the court noted that in the time between submission of the advisory group's report and adoption of the plan [nearly two years], the number of pending cases increased by 100 (to over 800). In the meantime, however, the court had "dramatically reduced" the number of three-year-old cases. The court noted that the second judgeship remains vacant, but that when it is filled the court expects to "make dramatic progress in reducing delay in civil litigation." The court agreed with the advisory group's analysis of the causes of cost and delay and adopted "the vast majority of the group's recommendations."

Case Management

Pretrial and Trial Scheduling

1. In light of the burdens on the single district judge and single magistrate judge, the clerk will be responsible, starting January 1, 1994, for scheduling hearings and trials. (The magistrate judge has performed this role in the past.) The clerk will continue the court's policy of checking with counsel prior to setting these events and will be guided by the objective of the CJRA that civil cases should be tried if at all possible within 18 months of filing.

2. Trial dates will be assigned, to the extent possible, within 60 days of the final pretrial conference and within 90 days of completion of discovery.

Motions

1. To ease burdens on the judicial officers, the court will enter an administrative order giving the clerk authority, within limits set by the court, to rule on ministerial motions that are uncontested, such as motions to file an over-length brief, to withdraw as counsel, to extend time to file a brief, and to extend other time limits (e.g., discovery deadlines).

2. To expedite motions rulings, the court will enter an administrative order that dispositive motions and other motions that can be resolved by a hearing will not be routinely referred to the magistrate judge for a report and recommendation.

3. The court will make every effort to rule on dispositive motions within 120 days of filing of the motion. The court did not respond to the second part of this recommendation, that it rule as often as possible with a simple order, using a memorandum decision only when affirmatively requested by the parties.

Discovery and Disclosure

1. The advisory group recommended that the court conduct an in-chambers discovery scheduling conference early in the discovery period for each non-complex case, at which time the court and parties would develop a comprehensive discovery plan and the judge

would encourage the parties to exchange information without resort to formal discovery. The court deferred a decision on this recommendation pending action on amendments to FRCP 26(f).

2. The advisory group recommended that for non-complex cases the court establish mandatory limits on the amount of discovery: 10 depositions and 30 interrogatories, including subparts (as currently required by local rule). The court deferred a decision on this recommendation pending action on FRCP 30.

3. The advisory group recommended that the court adopt a local rule governing identification of documents withheld on a claim of privilege and provided draft language for the rule. Again, the court deferred a decision pending action on FRCP 26(b)(5).

The court has not yet determined what its response to the federal rule changes will be. (Conversation with chief deputy clerk January 10, 1994.)

Alternative Dispute Resolution

As recommended by the advisory group, the court will set a court-supervised settlement conference in all complex cases at the completion of discovery, whether or not requested by the parties. This practice has already been implemented.

In response to the advisory group's recommendation that the court adopt nonbinding arbitration, the court noted that only twenty courts are currently authorized to use arbitration and therefore the court is barred from adopting it. However, the court said it did not want to reject this "important recommendation" completely and therefore asked the advisory group to "again assemble to study the possibility and the advisability of establishing a voluntary court-annexed non-binding arbitration process."

Implementation

The plan was adopted on October 7, 1993. It does not give an implementation date.

Consideration of §§ 473(a) and (b)

In response to the statute's requirement that the court address every provision of §§ 473(a) and (b), the court adopted the advisory group's discussion of this obligation and incorporated that discussion by reference into the plan. In its report, the advisory group discussed each principle and technique set forth in the statute and pointed out those it had incorporated into its recommendations and those that already existed in local rules or practice. The group said two recommendations, early judicial involvement in every case and firm trial dates, are impractical in this district at this time. The group said it considered voluntary exchange of discovery information a "lofty goal" and made no recommendations regarding it (which appears to contradict their recommendation that judges encourage voluntary exchange in complex cases). And the group rejected ENE and attorney and party signatures on requests for extensions of time.

## Comments

The report and plan from this district are modest, a reflection perhaps of the difficult situation the court is in - i.e., heavy burdens created by external forces and little internal flexibility, with only a single judge and magistrate judge, to respond to that pressure. The court has adopted several procedures that will shift duties from the judicial officers to the clerk, presumably to free the judicial officers to decide discovery and dispositive motions

and to hold trials. The clerk's new duties will include setting schedules in most civil cases. While under other circumstances we would be skeptical of this practice, perhaps in this instance the court's burden and docket condition justify it.

Neither the advisory group nor the court addressed one of the causes of delay identified by the advisory group: the practice of permitting parties to file a scheduling report as much as 120 days after filing the complaint. The committee may want to suggest to the court that it consider asking counsel to file scheduling reports sooner.

The committee may also want to ask the court to respond to the advisory group's recommendation that where possible rulings on motions be made informally instead of with a memorandum decision. The advisory group made this recommendation as one of several methods for expediting motions, which it identified as a serious cause of delay. It is worth noting that this court, unlike most, responded affirmatively to the advisory group's recommendation that it set a goal for rulings on motions.

Because of statutory limitations on adoption of arbitration, the court rejected the advisory group's recommendation on ADR. The committee may want to suggest to the court that while the advisory group re-examines the possibility of adopting ADR it also consider whether other types of ADR would be useful in the district.

Finally, the committee should ask the court to specify an effective date for the plan.

**Conclusion and Recommendation**

I suggest that the committee accept this plan, but that its letter to the court make the suggestions set out above and ask the court to specify an effective date for the plan.

Principal Reviewer: Donna Stienstra, Research Division, Federal Judicial Center

**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**

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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.

Principal Reviewer: Donna Stienstra, Research Division, Federal Judicial Center

**FJC Review of CJRA Reports and Plans**

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

**District:** Guam

**Date:** January 9, 1994

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The court is an Article I (legislative) court. It has a single judgeship, which was unfilled from January 1991 until December 1992.

## Summary of Conditions in the District

The court had no CJRA advisory group until the court's judge took office in December 1992. Since that time the advisory group has met six times, surveyed its own membership and the bar, and analyzed a small collection of statistics prepared by the clerk. The judge, his two law clerks, the clerk and chief deputy clerk comprised five of the twelve-member group.

The caseload statistics show a court with a small and current caseload:

- In March 1993 there were 83 pending civil cases, 36 of which (43%) were over three years old. Only one remains, and it is stayed pending bankruptcy proceedings.
- Of the remaining 47 pending civil cases, 43 are under a year old.

The advisory group also noted that hearing dates and trial dates are readily available, even on short notice. The district's excellent condition may change, however, if the caseload increases as expected due to the appointment of a judge for the district.

The advisory group reported that the results of its survey of the bar were "surprisingly uniform". Most members of the bar said there is no problem with cost and delay in the district. They were in strong agreement that the district's plan should include methods for setting early and firm discovery, pretrial, and trial dates. And the bar, to the surprise of the advisory group, favored exploration of ADR methods for the district.

To assess how the statute's principles and techniques might be incorporated into the district's practices, the advisory group had each of its members complete a survey exploring several ways of implementing each principle and technique. These responses, along with the attorney survey responses, provided the foundation for the recommendations set out below.

## Summary of the Court's Plan

### Case Management

1. Differentiated Case Management. The advisory group agreed unanimously that differentiated case management is not necessary in a court with such a small caseload and where all civil cases are already treated on a case-by-case basis. Therefore, the plan does not include this provision.

2. Early and On-going Judicial Involvement. All advisory group members agreed that early and on-going judicial involvement is necessary. Thus, they recommended that the current local rule on case scheduling be revised to include, among other provisions, a mandatory initial case management conference. The draft rule provided by the advisory group and adopted by the court has the following features:

- Parties must meet and confer and provide the court a proposed case management order within 75 days of filing the complaint. The proposed order should cover such matters as (1) the current status of the case; (2) dates for filing motions and for trial; and (3) whether the parties will submit the case to a neutral settlement conference. The case management plan must also include a discovery plan (see #5 below).

- The clerk of court will schedule a discovery/case management conference to be held by the judge within 90 days of filing the complaint. Each party in attendance must have full authority with respect to the matters on the agenda, including settlement. A case management order will be issued after the conference.

- Failure to cooperate in preparing the proposed case management order may result in sanctions. Filing of motions does not excuse parties from compliance. Absent urgent and unforeseeable circumstances, the dates set by the case management order will not be extended.

3. Firm Trial Dates. The court will set early and firm trial dates, with trial scheduled within 18 months of filing unless complexity of the case or docket demands prevent it. The court will also make final pretrial conferences mandatory, rather than at the discretion of counsel. Dates for both the final pretrial conference and trial will be set in the case management order.

4. Control of Motion Practice. To control motion practice the advisory group recommended and the court adopted revisions to local rules that control length of motions, provide a procedure for deciding motions without oral argument, and provide a procedure to enable counsel to choose the oral argument date when argument must be held. The last provision serves the goal of stringent enforcement of deadlines: That is, counsel are given a method for setting a realistic date for court appearances; in return, continuances will not be granted.

5. Discovery and Disclosure.

The advisory group members agreed with the statute that discovery should be controlled, but unanimously agreed that there should not be standardized limits on interrogatories and depositions. The advisory group recommended and the court adopted a revised local rule that requires counsel to plan their discovery and exchange disclosures at the initial meet and confer session. The proposed case management plan developed at this meeting must include a proposed discovery plan. The discovery plan should include a description of all anticipated discovery, a schedule for discovery, and a consideration of bifurcated discovery.

At the initial meet and confer session counsel must exchange the following items: (1) all documents then reasonably available and contemplated to be used in support of the parties' pleadings; (2) lists of witnesses; and (3) any other evidence then reasonably available that would obviate the need for formal discovery.

To further control discovery, the advisory group proposed and the court adopted an amended local rule with three provisions: (1) mandatory prediscovery disclosure; (2)

preparation by counsel of a joint discovery plan; and (3) certification by counsel that they attempted resolution of a discovery dispute before seeking judicial assistance. Discovery motions may be filed only with permission of the court.

Alternative Dispute Resolution

The advisory group felt that the only viable ADR method at this time is neutral settlement conferences with visiting federal judges. Other methods cannot be used because they are not available on the island. There are, for example, no known mediation professionals on Guam. Arbitration was not considered because the court's experience is that it generates more litigation than it resolves. However, because of the strong interest shown by the bar, the advisory group and court will continue to explore ADR options.

Implementation

The court adopted the plan on November 29, 1993. When the plan has been accepted by the Judicial Conference and Ninth Circuit, the court will adopt the proposed amended local rules by issuing a general order. The court will also "continue to consult with the advisory group, and with others, in its on-going effort to provide full, speedy, and affordable justice in all civil cases".

Consideration of §§ 473(a) and (b)

In adopting the advisory group's proposed rule revisions, which were based on an explicit consideration of each statutory requirement, the court has fully addressed the statute. Only two of its recommended principles and techniques are not included in the plan: Differentiated case management and client signatures on requests for extensions of time. The first was considered unnecessary, the second impractical because many litigants in this district do not reside on the island.

## Comments

The advisory group prepared a sound analysis of the district, especially given the short time it had to complete its work. The group then prepared a set of revised local rules that incorporate each of the case management provisions of the statute and also respond to the changes desired by the bar. The recommended rule revisions, which the court accepted, provide for early and active judicial control of litigation and require counsel to conduct as much discovery as possible by informal methods. With these local rules the court has fully met the expectations of the statute.

When the committee has accepted this plan, the court will issue a general order adopting the amended local rules. The committee should ask the court to provide this order to the committee.

## Conclusion and Recommendation

I recommend that the committee accept this plan.

Principal Reviewer: Donna Stienstra, Research Division, Federal Judicial Center

**FJC Review of CJRA Reports and Plans**

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

**District:** **Eastern District of Tennessee**

**Date:** **January 7, 1994**

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The district is authorized five judgeships; the fifth, authorized in 1990, has not yet been filled. The district has four magistrate judges.

**Summary of Conditions in the District**

The advisory group analyzed statistical data from the AO, FJC, the clerk's office, and a random sample of civil and criminal cases filed in the district. It also surveyed attorneys and litigants involved in litigation in the district and interviewed judicial officers and court personnel.

The analysis of the docket revealed a court in good condition, but recent trends may indicate that problems could develop:

- Civil case filings had been decreasing but rose by 23% in SY92. Pendings also increased.
- In SY92, the district's median civil disposition time was 10 months and its issue to trial time was 12 months, both better than the national average. Civil case life expectancy and indexed average life span were just under the national average of 12 months, but have been rising.
- In SY92, 4.6% of the civil cases were more than three years old, well below the national average but substantially higher than the 0.6% of SY85.
- Felony filings and the number of defendants per case have been rising, as has the median disposition time. At 5 months in SY92, it is still below the national average.

Surveys of attorneys and litigants generally supported the conclusion that the court is in good condition. Attorneys in particular reported that the time from filing to disposition was reasonable; litigants were somewhat less satisfied.

Although generally cost and delay are not unreasonable in the district, the group said, too frequently litigation is too costly and delayed. Based on all its analyses, the group identified ten principal causes:

- Failure to fill the district's judicial vacancy, which not only increases the per judge caseload, but has caused substantial unnecessary travel for the incumbent judges.

- Court procedures that contribute to delay. (1) Inadequate case management: Judges should hold regular status conferences or in some way monitor cases; judges should set discovery, pretrial, and trial dates early in the case; judicial officers rather than law clerks should hold the scheduling conferences (only one judge does). (2) Resetting trial dates: Substantial cost is incurred by postponed trials. (3) Motion practice: Unnecessary cost and delay are created by delayed rulings on motions; formal briefings and rulings instead of informal decisions; judicial generosity in

setting briefing schedules and attorney failure to meet deadlines; and failure to hold status conferences that explore anticipated pretrial motions. (4) Use of magistrate judges: To the extent their work must be reviewed by the judges, it is inefficient. Better use of their time would be more cases on consent.

- Ways litigants and their attorneys approach and conduct litigation. (1) Discovery abuse: Too little joint planning of discovery and an ineffective local rule limiting interrogatories. (2) Problems of lawyer competence and failure to cooperate. (3) Lawyer and litigant choice for delay to gain advantage (which results, among other things, in too few consents to magistrate judge trials).

- Impact of new legislation. Impact of criminal cases upon the civil docket and newly created, substantially revised, and complex civil causes of action (e.g., ERISA, CERCLA).

The group said that it would be remiss if it did not stress, at the outset, that the court "is an excellent court by any measure." Therefore, the group offered its recommendations only to "help the court operate even better and more efficiently."

**Summary of the Court's Plan**

In response, the court adopted most of the recommendations of the advisory group. The plan provides a number of new local rules and internal operating procedures.

Case Management

To address concerns about inadequate judicial involvement in case management, the court adopted the following provisions.

1. Early Judicial Involvement. The court will revise a local rule to require the assigned judicial officer to ensure that FRCP is complied with and that by means of a scheduling conference (by phone, mail, etc.) a scheduling order is entered as soon as practicable but not later than 120 days after complaint service. Certain case types, such as social security cases, are exempted. Each party must be represented by properly authorized counsel. If settlement is discussed, the court may require the parties or representatives to be present or available by phone. A judicial officer or designee of the court will hold the conference.

2. Motions. To address concerns about delays in motions practice, the court's plan includes the following provisions regarding motions.

- To reduce delays caused by party failure to file timely motions, the court will adopt a new local rule on motion briefing schedules.

- To reduce the filing of unnecessary motions, the court will adopt a new local rule requiring counsel to certify, when filing non-dispositive motions, that the parties consulted but could not resolve the dispute.

- To make greater use of magistrate judges for dispositive matters, a new local rule will provide that, with the imprimatur of the assigned district judge, parties may agree to have a dispositive motion decided by a magistrate judge. Unless otherwise specified, appeal will be to the court of appeals. Consent does not waive any party's right to have a district judge hear other matters.

- To reduce the number of routine motions that are generally granted, a new local rule will provide, if all parties agree, a 20-day initial extension of time to respond to the complaint, cross-claim, or counter-claim. Any further extensions of time will require a court order. At its discretion, the court may require written, signed certification that counsel has communicated with the client and has made the client aware of the ramifications of the request for delay.

- To improve processing of summary judgment motions, a new local rule will require opening summary judgment briefs to contain either (1) a separate, concise, numbered listing of material facts as to which the moving party contends there is no genuine issue to be tried or (2) a statement why the motion should be granted even if all the opponent's facts are true. Answering briefs should include a similar statement of material facts with genuine issues or the reason why the motion is unwarranted even if all the allegations are true. Failure to comply may result in denial or entry of judgment.

3. Discovery. To address attorney and litigant abuse of discovery, the court will adopt or amend several local rules.

- The court will adopt a new local rule to require each party to disclose to every other party the name of experts expected to be called at trial and to provide a copy of the experts' curriculum vitae. The court, in agreement with the advisory group, declined to adopt the mandatory pre-discovery disclosure provided by the federal rules amendments.

2. To control use of depositions, the court will adopt a new local rule to prohibit any party from taking more than ten depositions (or a single deposition for more than eight hours) without prior leave of the court or agreement of the parties on the time limit. Any request for more depositions must be accompanied by a motion for a discovery conference. The motion should include a statement of the issues, a proposed discovery plan/schedule, and a statement that the attorney has made a reasonable effort to reach agreement with opposing counsel.

3. To control use of interrogatories, the court will amend a current local rule to limit interrogatories to 30 without prior leave of court. Subparts will be counted as one interrogatory if they are closely related to the original question. If it appears to the court, through motion or otherwise, that a party has used subparts to circumvent this limit, the party and filing attorney may be subject to sanctions.

4. The court recommends the adoption of the proposed amendment to FRE 702, which would require an individual to substantially assist the trier of fact in order to qualify as an expert witness.

Alternative Dispute Resolution

In response to attorney interest in expanded ADR opportunities, the court will adopt a new local rule authorizing judges to refer any civil case to any ADR method deemed appropriate. A new local rule will also authorize a judge to refer any civil case, with party consent, to a judicial settlement conference. The conference will be informal, flexible, non-coercive, and voluntary. The settlement judge may require the attendance of parties and their representatives and will not play any role in the adjudication of the case once designated as settlement judge. The new rule spells such matters as the kinds of submissions parties must make and the confidentiality afforded participants.

Other Provisions

1. To address the judicial vacancy, Congress and the Executive should fill the existing vacancy at once and should establish and act upon written, defined time limits in filling vacancies.

2. To increase the use of magistrate judges for dispositive matters, the court will adopt a new local rule that will provide plaintiff's counsel at the time of filing with copies of Form 34 ("Consent to Proceed Before a United States Magistrate Judge"). Plaintiff's counsel will be required to serve a copy of this form on each defendant and to confer with each regarding consent to a magistrate judge. Within 20 days after the defendant's appearance, plaintiff's counsel must file with the clerk a statement that counsel have conferred but not consented or must file the signed consent form. The rule will also provide that if a district judge cannot hold trial on the date set, counsel will be informed as soon as possible. The notice will include the option of trial before a magistrate judge.

3. To implement the plan and educate the bar, the court adopted several provisions. By June, 1994 the clerk will prepare a brochure describing the plan and the court's operating procedures. This brochure and the plan will be sent to all attorneys admitted to practice in the district. The court also recommended that the Tennessee Bar Association and other bar groups increase their focus on federal practice and the federal courts by sponsoring CLE programs and devoting articles in their publications to such. And the court encouraged attorneys in the district to join or consider forming bar associations with a focus on federal practice.

Implementation

The court adopted the plan on December 1, 1993. One year after its adoption the court, in consultation with the advisory group, will review the operation of the plan and the condition of the dockets.

Consideration of §§ 473(a) and (b)

The court responded to each of the provisions of the statute. The court said existing rules or contemplated new rules provide for differential case treatment, early judicial involvement, monitoring of complex cases, cost effective discovery, and ADR. The court rejected the idea of case management conferences and plans in cases other than complex cases, on the grounds that such conferences would increase litigant cost. Going beyond the advisory group, the court said it will when necessary require party signatures on extension requests. The court rejected an ENE program because it said the plan allows referral to any ADR method.

## Comments

The advisory group provided an exceptionally thorough report and proposed plan. The group was especially attentive to procedures to implement the plan's provisions. In response, the court accepted most of the advisory group's recommendations and explained its response to each case management principle and technique suggested by the statute.

The court did not, however, respond to a number of advisory group recommendations nor explain why it was silent on these recommendations. The most significant of these is the court's apparent decision not to amend that part of its local rule on pretrial conferences that permits a non-judicial "designee" to hold pretrial conferences. The advisory group specifically asked that this practice not continue. The court also did not address several

recommendations made to expedite motions practice: that motion briefing schedules be set at the initial pretrial conference; that the court set a goal of 60 days for ruling on motions; and that the judges explore methods for more informal resolution of motions.

Motions practice was identified by the advisory group as a central problem and, although the court adopted a number of measures to improve motions practice, the Committee may want to ask the court to explain why it rejected the additional measures. And because the advisory group identified a need for greater judicial involvement in setting and enforcing case schedules, the Committee may want to ask the court to explain its decision not to hold scheduling conference in non-complex cases and its decision to continue the practice of using law clerks to hold pretrial conferences.

Less significant perhaps, but nonetheless worth noting, is the court's silence on the following recommendations, many of them made to ensure implementation of the CJRA plan and the new local rules (but none of which are required by the statute):

- Judicial officer attendance at an ADR seminar;
- Judicial participation as speakers in CLE seminars at least once a year;
- Appointment of an ADR committee to meet two to three times per year to disseminate ADR information to judicial officers and court personnel and to consider semi-annual reports by the clerk's office on the district's ADR operations;
- Formal swearing-in ceremonies at the court's three main divisions, with short orientations to the court by the clerk's office, court, and bar;
- Recommendation to federal prosecuting authorities to limit federal prosecutions to drug trafficking and charges that cannot or should not be brought in state court, and to forge federal-state partnerships for coordination of prosecution; and
- Recommendation that Congress direct additional funds to the states for the war on drugs and more carefully consider the impact of proposed legislation on the judiciary, and
  Recommendation that the judiciary create an Office of Judicial Impact Assessment.

The court's silence is particularly interesting in light of the advisory group's explicit statement to the court that it consider each recommendation, as required by the statute, and explain its rejection of those it did not adopt.

**Conclusion and Recommendation**

The Committee may want accept this plan provisionally, with a request to the court that it respond to the advisory group recommendations not addressed in the plan.

Principal Reviewer: Donna Stienstra, Research Division, Federal Judicial Center

**FJC Review of CJRA Reports and Plans**

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

**District:** **Eastern District of Oklahoma**

**Date:** **December 29, 1993**

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The district is comprised of 26 counties, all of which were originally assigned to five different Native American nations. This history creates unique jurisdictional issues for the federal district court. Today the population is about 640,000. The district is authorized 1.33 judges, with the work of the partial judgeship done by two non-resident roving judges. One of the roving positions was converted to a full-time judgeship for the Western District in 1990. The other roving judge took senior status at the end of 1991, and the position has been vacant since. Thus, the court currently has one active judge. It also has one full-time and one part-time magistrate judge.

## Summary of Conditions in the District

The advisory group analyzed the court's caseload statistics, drew on their practical knowledge and experience, and surveyed more than 500 lawyers and party litigants (receiving 122 responses). "As a general conclusion, the group determined that the civil litigation process in the Eastern District has been efficient and timely in delivering judicial services and remains so to date." Despite increasing civil filings, a high per judge weighted caseload, and judicial vacancies, the court has maintained a speedy disposition time and current caseload, as shown below:

- From SY87-92, civil median disposition time fell from 5 months (3rd nationally) to 4 months (1st nationally), compared to an increase from 8 to 9 months nationally. Criminal median disposition time rose from 2 to 3 months (compared to a national rise from 4 to 6 months), placing the court 4th nationally.
- The percentage of cases over 3 years old fell from 2.3% to 1.2% (9 cases to 6).
- From SY89-92, the number of trials declined significantly from SY87-88 levels, which coincides with the ADR efforts initiated in mid-1989.

The conclusions drawn from the docket analysis were confirmed by the attorney survey, which showed that the vast majority of attorneys do not find delay in civil litigation. To the extent that cost is related to delay (a problematic relationship, the advisory group acknowledged), there appears to be no problem with excessive cost. Two trends, however, were of concern to the advisory group: (1) an increase in pendings, due to the judicial vacancies and (2) the possibility that an increasing criminal caseload could upset the balance the court has achieved.

Finally, the advisory group noted that "This court embraced the precepts of efficiency and delay reduction long before the codification of the Civil Justice Reform Act of 1990.... Therefore, the following recommendations ... only refine what already appears to be a very efficiently managed civil docket."

In response, the court said it was "pleased that the Advisory Group identified the unique pressures associated with managing the ... docket [due to the tribal lands]. The

CJRA Report correctly identifies difficulties associated with managing a higher than average per judge caseload with only one resident judge. The Report also properly credits the work of the magistrate judge as a primary ingredient...." Thus, the court adopted nearly all the recommendations of the advisory group.

**Summary of the Court's Plan**

Case Management

The court accepted the recommendation of the advisory group and created a five-track differentiated case management system, with cases assigned to tracks by the court after the initial pleading or the initial scheduling conference. The tracks are:

- Prisoner: May be assigned or referred to the magistrate judge, with no scheduling conference; the magistrate judge will enter orders and may enter a report and recommendation or proposed order for the court's signature.
- Social security appeals: Routinely referred to magistrate judge for report and recommendation with no scheduling conference.
- Bankruptcy appeals: Referred to Article III judge, but magistrate judge may enter administrative orders for efficient management.
- Standard: Managed by standard practice pursuant FRCP 16 and local rules.
- Special: FRCP 16 and local rules apply, and counsel will submit memo to court at least five days before the initial scheduling conference to explain complexity (parties, defenses, etc.).

The court will continue its policies, already encoded in local rules, of providing early and close judicial involvement in civil cases. For eligible cases, a judicial officer will conduct a timely scheduling conference under FRCP 16. The judicial officer will implement a plan for discovery and final disposition after consulting with counsel and will acquaint counsel with the mandated settlement conference policy for all standard and special track cases. The plan will set deadlines for amendments, discovery, motions, final pretrial conference, and trial.

Discovery

The court accepted the advisory group's recommendation regarding disclosure. The plan requires that each party will, without awaiting request and to the full extent known, disclose in writing to every opposing party the factual basis and legal theory for every claim or defense advanced, with citations where necessary. (Subsequent to the effective date of the federal rule amendments, the court has issued a general order, dated December 17, 1993, opting out of several provisions of Rule 26(a).)

In addition, every motion or other application relating to discovery must include certification that the parties have made a reasonable effort to resolve the dispute.

Alternative Dispute Resolution

In keeping with present practice, the plan provides that a settlement conference will be held within 60 days of the scheduling conference for standard and special track cases. Counsel, as well as each party or court-approved representative with authority to settle, must personally attend the settlement conference. Any judicial officer of the three federal districts in Oklahoma may preside over the settlement conference.

The assigned judicial officer may convene a summary jury trial at the motion of the parties or at the court's discretion. The summary jury trial will last one working day and use six jurors. The panel may issue an advisory opinion on liability, damages, or both. The presentations, opinion, and verdict will not be admissible unless otherwise admissible. After the summary jury trial, the presiding judicial officer will reconvene the settlement conference to determine the impact of the summary jury trial verdict on previous settlement negotiations.

Other

The advisory group made a number of recommendations to enhance court resources, each of which the court has acted on. The court submitted justification for an additional permanent judgeship through the 1994 Biennial Survey (October 1993). The court also submitted a request (July 1993) for an additional magistrate judge position for FY95 to support the ADR program and to assist with the pro se prisoner docket. By the same letter, the court requested an additional law clerk and a clerical assistant (a conversion of the temporary CJRA position to permanent) for FY95. The law clerk will implement the case management tracking program, and the clerical assistant will monitor the expanded ADR program.

The court also agreed with the advisory group that the court's case assignment order is out of date and promised to amend it as soon as the roving judgeship is filled.

Implementation

The plan is effective December 1, 1993.

Consideration of §§ 473(a) and (b)

The advisory group report included a section quoting the statute, and said, "[I]t is obvious that the Eastern District has implemented many of the management tools described in Section 473(a)." The group also considered Section 473(b), rejecting several of the techniques (party signature on requests for extension, joint case management plan, and ENE) and finding two already in use (attendance at pretrial and settlement conferences of a person with authority to bind). The court did not mention the statute, but in following the advisory group's analysis and recommendations, it touched on every requirement.

## Comments

This advisory group and court have fully responded to the conditions in the district and the requirements of the statute. Furthermore, in spite of the district's excellent condition and its history of using the principles set out in the CJRA, the court has undertaken a serious effort to further improve the condition of its docket. The Committee may want to inquire of the court only why it did not mention in its plan the ADR brochure recommended by the advisory group.

## Conclusion and Recommendation

I recommend that the committee approve the plan for the Eastern District of Oklahoma.

Principal Reviewer: John A. Thawley, Research Division, Federal Judicial Center