UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

CIVIL JUSTICE

EXPENSE AND DELAY REDUCTION PLAN

Adopted Pursuant to the Civil Justice Reform Act of 1990

December 31, 1991

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

EFFECTIVE DECEMBER 31, 1991

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

District Court Judges

Chief Judge Gene E. Brooks
Judge S. Hugh Dillin
Judge Sarah Evans Barker
Judge Larry J. McKinney
Judge John Daniel Tinder

Senior District Court Judges

Judge William E. Steckler
Judge James E. Noland

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

ORDER ADOPTING THE CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

IT IS HEREBY ORDERED by the Court that pursuant to the Civil Justice Reform Act of 1990, 28 U.S.C. Sec. 471 et seq. the District Court having reviewed and considered the Report of the Civil Justice Advisory Group of the Southern District of Indiana now adopts the Civil Justice Expense and Delay Reduction Plan.

The Clerk shall cause a copy of the Plan together with a copy of the Report of the Civil Justice Advisory Group to be distributed in accordance with 28 U.S.C. Sec. 472(d).

IT IS SO ORDERED.

DATED this 30th day of December, 1991.

GENE E. BROOKS, Chief Judge
U.S. District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

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INTRODUCTION

The United States District Court for the Southern District of Indiana has opted to become an "Early Implementation District" under Section 482(c) of the Civil Justice Reform Act of 1990. To qualify as an Early Implementation District, the Southern District must implement its Civil Justice Expense and Delay Reduction Plan by December 31, 1991.

Pursuant to the statute, the Court has received a detailed report prepared by an Advisory Group appointed by Chief Judge Gene Brooks. The Court has undertaken an independent review of the Advisory Group's recommendations.

Not all of the recommendations of the Advisory Group were addressed to the Court, and as a result not all are appropriate for inclusion in the Plan. A list of recommendations of the Advisory Group not intended for inclusion in the plan because they were not addressed to the Court alone is set forth in the Appendix.

The Court has adopted most of the recommendations of the Advisory Group with only minor changes. Many of the recommendations require the promulgation or revision of local rules, and the Court refers those sections of the Plan to the Local Rules Committee for prompt action consistent with this Plan. The Court adopts the Advisory Group's recommendations with respect to motions with the understanding that the recommendations are not intended to destroy the Court's flexibility to meet the demands of individual cases.

The Court has not adopted all of the proposed recommendations of the Advisory Group with respect to alternative dispute resolution. The Advisory Group recommended

the adoption of a local rule that detailed the procedures to be followed under a variety of alternative dispute resolution mechanisms. Some judges were concerned that such a rule might require inappropriate and time-consuming judicial supervision of the parties' use of these techniques, and might have the perverse effect of discouraging judges from encouraging resort to these procedures when they are appropriate. The Court was sympathetic, however, to the Advisory Group's hope to educate the bar and the litigants about these techniques

The Civil Justice Reform Act requires annual reassessment of the condition of the docket and the effect and usefulness of the Plan. 28 U.S.C. § 475. The Advisory Group is a continuing body with individual memberships limited to four years, with the exception of the United States Attorney, who is a permanent member, 28 U.S.C. § 478(c) and (d).

1. PRETRIAL MANAGEMENT AND PRACTICE

The Court refers to the Local Rules Committee the following recommendations of the Advisory Group:

a. New Local Rule 40.3: Trial Settings

All trials shall commence within six to eighteen months after the filing of the complaint unless the Court determines that, because of the complexity of the case, staging provided by the case management plan, or the demands of the Court's docket, the trial cannot reasonably be held within such time.

b. Revised Local Rule 16.1: Pretrial Procedures; Case Management Plan

Pretrial Procedures

(a) [Unchanged]

(b) [Unchanged]

(c) <u>Initial pretrial conference</u>

(1) In all cases not exempted pursuant to subsection (b) of this rule, the Court shall order the parties to appear for an initial pretrial conference no more than 120 days after the filing of the complaint. The order setting the conference shall issue promptly following the appearance of counsel for all defendants and in any event no later than sixty days after the filing of the complaint.

(2) The order setting the initial pretrial conference, in addition to such other matters as the Court may direct, shall require counsel for all parties to confer and prepare a case management plan and to

file such plan by a date specified in the order, which date shall be at least fifteen days before the pretrial conference setting. The order may provide that the pretrial conference setting shall be vacated upon the filing a case management plan that complies with this rule and upon the approval of such plan by the Court.

(3) Upon the filing of an acceptable case management plan in compliance with the order and this rule, the Court may issue an order adopting the plan, ordering it performed and vacating the initial pretrial conference setting. Any such order shall also set a firm trial date.

(4) If the parties do not file a case management plan, or file a plan that fails materially to comply with the order and this rule, or file a plan that reflects material disagreements among the parties, the Court may:

(A) Conduct the initial pretrial conference and, following such conference, enter an order reflecting the matters ordered and agreed to at the conference and setting a firm trial date; or

(B) Issue an order without further hearing adopting the acceptable portions of the plan, omitting unacceptable portions, supplying omitted matters, resolving disputed matters, vacating the pretrial conference setting and setting a firm

trial date. The Court may conduct a telephone conference with counsel prior to entering such an order.

(5) To the extent permitted by statute and rule, orders entered subparagraphs (c)(3) and (c)(4) may set an alternative trial date in the event the parties thereafter consent to referral of the case to a magistrate judge.

(d) Contents of case management plan

(1) The objective of the case management plan is to promote the ends of justice by providing for the timely and efficient resolution of the case by trial, settlement or pretrial adjudication. In preparing the plan, counsel shall confer in good faith concerning the matters set forth below and any other matters tending to accomplish the objective of this rule. The plan shall incorporate matters covered by the conference on which the parties have agreed as well as advise the Court of any substantial disagreements on such matters.

(2) The conference and case management plan shall address the following matters:

--Trial date. The plan should be premised on a trial setting between six and eighteen months after the filing of the complaint and should recommend a trial date by month and year. If counsel agree that the case cannot reasonably be ready for trial within eighteen

months, the plan shall state in detail the basis for that conclusion. The plan shall also state the estimated time required for trial.

--Contentions. The plan shall set forth the contentions of the parties, including a brief description of the parties' claims and defenses.

--Discovery schedule. The plan shall provide for the timely and efficient completion of discovery, taking into account the desirability of phased discovery where discovery in stages might materially advance the expeditious and efficient resolution of the case. The plan should also provide a schedule for the taking of the depositions of expert witnesses, together with a designation whether the deposition is for discovery purposes only or is to be offered in evidence at trial.

--Witnesses and exhibits. The plan shall incorporate a schedule for the preliminary and final disclosure of witnesses and exhibits.

--Accelerated discovery. The parties shall discuss and seek agreement on the prompt disclosure of relevant documents, things and written information without prior service of requests pursuant to Fed. R. Civ. P. 33 and 34.

--Limits on depositions. The parties shall discuss whether limits on the number or lengths of depositions should be imposed.

--Motions. The plan will identify any motions which the parties have filed or intend to file. The parties shall discuss whether any case-dispositive or other motions should be scheduled in relation to discovery or other trial preparation so as to promote the efficient resolution of the case and, if so, the plan shall provide a schedule for the filing and briefing of such motions.

--Stipulations. The parties shall discuss possible stipulations and, where stipulations would promote the efficient resolution of the case, the plan shall provide a schedule for the filing of stipulations.

--Bifurcation. The parties shall discuss whether a separation of claims, defenses or issues would be desirable; and if so, whether discovery should be limited to the claims, defenses or issues to be tried first.

--Alternative dispute resolution. The parties shall discuss the desirability of employing alternative dispute resolution methods in the case, including mediation, neutral evaluation, arbitration, mini-trials, and summary jury trials.

--Settlement. The parties shall discuss the possibility of settlement both presently and at future stages of the case. The plan may provide a schedule for the exchange of settlement demands and offers, and may schedule particular discovery or motions in order to facilitate settlement.

--Referral to a magistrate judge. The parties shall discuss whether they consent to the referral of the case to a magistrate judge.

--Amendments to the pleadings; joinder of additional parties. The parties shall discuss whether amendments to the pleadings, third party complaints or impleading petitions, or other joinder of additional parties are contemplated. The plan shall impose time limits on the joinder of additional parties and for amendments to the pleadings.

--Other matters. The parties shall discuss (1) whether there is any question regarding jurisdiction over the person or of the subject matter of the action, (2) whether all parties have been correctly designated and properly served, (3) whether there is any questions of appointment of a guardian ad litem, next friend, administrator, executor, receiver or trustee, (4) whether trial by jury has been timely demanded, and (5) whether related actions are pending or contemplated in any court.

--Interim pretrial conferences. The parties shall discuss whether interim pretrial conferences prior to the final pretrial conference should be scheduled.

(e) Additional pretrial conferences. Additional pretrial conference(s) shall be held as ordered by the Court. Prior to each such pretrial conference, counsel for all parties will confer, in person or by telephone, to

prepare for the conference. Such conference shall include a review of the case management plant and shall address whether the plan should be supplemented or amended. In cases in which pretrial case management is assigned to a magistrate judge, counsel shall also discuss whether direct involvement by the district judge prior to trial might materially advance the case. The discussions of counsel shall be summarized by one of counsel who shall prepare an agenda for the pretrial conference which shall reflect the agreements reached among or between counsel, including any proposed supplements or amendments to the case management plan. It shall be the responsibility of all counsel that an agenda be presented to the Court at the pretrial conference. Failure to present an agenda and failure to confer as required may be grounds for the imposition of sanctions.

(f) Contents of final pretrial order. In addition to such other provisions as the Court may direct, the final pretrial order may direct each party to file and serve the following:

(1) to (7) - [unchanged]

(g) Preparation of pretrial entry. [unchanged]

(h) Settlement. [unchanged except for noted decision]

Counsel should anticipate that the subject of settlement will be discussed at any pretrial conference. Accordingly, counsel should be prepared to state his or her client's present position on settlement. In particular, prior to any conference, ~~after the initial conference~~, counsel should have ascer-

tained his or her settlement authority and be prepared to enter into negotiations in good faith. Details of such discussions at the pretrial conference should not appear in the pretrial entry.

(i) Deadlines. [unchanged except as noted]

Deadlines established ~~at the pretrial conference~~ in any order or pretrial entry under this rule shall not be altered except by agreement of the parties and the Court, or for good cause show.

(j) [unchanged]

2. PRETRIAL MOTIONS

The Court adopts the following procedures and guidelines concerning motion practice and refers the following recommended local rules to the Local Rules Committee:

a. Summary Judgment Motions: Procedures

(1) Case management plans and scheduling orders should set summary judgment motions to be filed and briefed as soon as reasonably feasible in the circumstances of the particular case. For example, where the summary judgment motion will present a dispositive issue of law that is apparent from the outset of the case, the motion should be scheduled early, before the expenditure of substantial time and money on discovery. If a limited amount of discovery is required to present the motion properly, the plan and order may provide for the prompt completion of the "first phase" discovery and the subsequent filing of the motion. As an outer limit in complex cases, scheduling orders should set summary judgment motions to be filed and completely briefed no less than 90 days before any scheduled trial date. As an outer limit in other cases, scheduling orders should set summary judgment motions to be filed and completely briefed no less than 60 days before any scheduled trial date. Motions to extend earlier deadlines in scheduling orders should be granted only for good cause shown. Motions to extend the outer limit deadlines should be granted only for extraordinary cause.

(2) In ruling on motions, the Court should give high priority to summary judgment motions in cases scheduled for trial within 60 days.

(3) If a summary judgment motion has not been resolved in a case scheduled for trial within 30 days, the motion shall be decided by that scheduled trial date, and the trial should be rescheduled to a date at least 30 days from the date of the decision on that motion, and no more than 90 days after the previously scheduled trial date unless the parties stipulate to an earlier trial date.

b. Other Dispositive Motions: Procedures

The same principles and guidelines that govern summary judgment motions and decisions shall apply with respect to all other dispositive motions.

c. Priorities on Motions

In ruling on motions, the Court should also give high priority to motions addressed to whether the Court is the proper forum (e.g., venue, personal and subject matter jurisdiction, transfer to another district, remand of removed cases).

d. New Local Rule 7.1(d): Duty to Report Settlement Possibility

The parties shall immediately notify the Court of any reasonably anticipated settlement of a case where there is any pending motion.

e. No Delay in Anticipation of Settlement

Absent notification by the parties that settlement is reasonably anticipated, the Court should not delay ruling on a pending motion in the hope of settlement or to try to induce the parties to settle.

f. New Local Rule 7.1(c): Attorneys' Conferences to Discuss Certain Motions

Informal Conference to Discuss Certain Motions

The Court may deny any motion for the award of attorney's fees, motion for sanctions, or motion for attorney disqualification (except those motions brought by a person appearing pro se) unless counsel for the moving party files with the Court, at the time of filing the motion, a separate statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorney(s) on the matter(s) set forth in the motion. This statement shall recite, in addition, the date, time, and place of such conference and the names of all parties participating therein. If counsel for any party advises the Court in writing that opposing counsel has refused or delayed meeting and discussing the matters covered in this Rule, the Court may take such action as is appropriate to avoid unreasonable delay.

g. Decisions on Motions: Form

Ordinarily, written rulings on motions should not be lengthy. It is not necessary to describe fully the parties, the nature and background of a case, or the parties' opposing arguments. A ruling briefly stating the issues(s), the basis for the Court's ruling, and the main legal authority relied upon is sufficient.

3. DISCOVERY

The Court refers to the Local Rules Committee the following recommendation of the Advisory Group:

a. Rule on Certain Aspects of Discovery Practice

The Advisory Group recommends the adoption of a local rule to facilitate discovery in civil cases concerning certain aspects of the conduct of depositions, the timing of disclosure of expert witnesses, and procedures governing a claim of privilege. As noted in the Advisory Group report, these are the areas in which attorneys suggested that disputes sometime arise. The Advisory Group recommends that a local rule be considered along the lines of the Standing Orders of the United States District Court, Easter District of New York, on Effective Discovery in Civil Cases, included in the appendix to the Advisory Group report.

b. Rule Publicizing Availability of Magistrates

The Advisory Group recommends that the Court publicize, perhaps through a local rule, the willingness of the magistrate judges to hear and resolve discovery disputes telephonically.

4. ALTERNATIVE DISPUTE RESOLUTION

a. Settlement

The Court should continue actively to encourage settlement. Efforts should include discussion of settlement possibilities at every appropriate pretrial conference, solicitation of settlement offers from the parties, early neutral evaluation by magistrates in non-consent cases, "shuttle diplomacy," and other techniques.

b. Publicity

The Court directs the Clerk of the Court for the Southern District of Indiana to include in the Practitioner's Handbook descriptions of the following Alternative Dispute Resolution mechanisms: (1) Early Neutral Evaluation and Mediation; (2) Arbitration; (3) Mini-Hearings; (4) Summary Jury Trials. The Court also directs the Clerk for the Southern District of Indiana to prepare and promulgate a brochure for litigants as well as attorneys, describing these Alternative Dispute Resolution mechanisms.

APPENDIX

RECOMMENDATIONS TO AGENCIES OTHER THAN THE DISTRICT COURT

A. Court of Appeals for the Seventh Circuit

1. Decisions on Motions

The Court of Appeals for the Seventh Circuit should recognize that a district court's primary task is to move the docket and resolve issues promptly and fairly, not to write unnecessarily lengthy and "scholarly" opinions. The Court of Appeals should not encourage or require such opinions. In ruling on any issue reviewable de novo on appeal, it is sufficient that the district court briefly state the reason(s) for its decision. In other situations, it is sufficient that the district court also set forth any necessary factual determinations. Beyond such requirements, appellate decisions should not be influenced at all by the form, length or style of district court opinions.

B. Judicial Conference, Administrative Office of the United States Courts

1. Pro Se Law Clerk

The Advisory Group recommends to the Administrative Office of the United States Courts and to the Judicial Conference that the pro se law clerk be made a career position with advancing salary grade.

2. Flexible Job Descriptions

The Advisory Group recommends to the Administrative Office of the United States Courts and the Judicial Conference that each judge or magistrate

judge should have the ability to capitalize on the strengths of his or her employees by redefining job descriptions and pay scales as appropriate.

C. Congress

Prejudgment Interest

There is substantial, but not unanimous, support in the Advisory Group for a recommendation that Congress consider authorizing payment of prejudgment interest on civil judgments, to accrue from the date of the filing of the complaint, in those cases for which no such provision is made under state law. Many members of the Advisory Group believe that such a provision would eliminate economic incentives for delay in litigation.