Administrative Orders Re:

Revised Local Rules to

Implement

Differential Case Management

ADMINISTRATIVE ORDER NO. 91-023

By
Western Michigan
Serial No. F03

DIFFERENTIATED CASE MANAGEMENT PLAN

OF THE

UNITED STATES DISTRICT COURT

FOR THE

WESTERN DISTRICT OF MICHIGAN

PURSUANT TO

THE CIVIL JUSTICE REFORM ACT OF 1990

DECEMBER 18, 1991

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

The District Court, after considering (1) the recommendations of the Civil Justice Advisory Group appointed pursuant to Title 28, United States Code, section 478; (2) the principles and guidelines of litigation management and cost and delay reduction techniques listed in Title 28, United States Code, section 473(a); and (3) the litigation management and cost and delay reduction techniques listed in Title 28, United States Code, section 473(b), and after consulting with the Civil Justice Advisory Group in reference to Title 28, United States Code, section 473(a) and (b), adopts and implements this Civil Justice Expense and Delay Reduction Plan, pursuant to Title 28, United States Code, section 471, et seq.

1. *Findings.* Based on this court's review of the Report of the Civil Justice Advisory Group and this court's independent assessment of the condition of its docket, we find:

a. That the court is generally meeting its responsibility to litigants and the public to provide a "just, speedy, and inexpensive determination of every [civil] action."

b. That opportunities for improving and enhancing the ability of the court to provide a "just, speedy and, inexpensive determination of every [civil] action" exist and that monitoring and shaping the "ways in which litigants and their attorneys approach and conduct litigation" (Title 28, United States Code, section 472(c)(1)(C)), may serve to reduce excessive civil litigation costs and delay, to the

degree they exist in this district.

c. "Court procedures" (Title 28, United States Code, section 472(c)(1)(C)), especially those related to case management, have been used in a generally effective way to reduce cost and delay; and that the clarification, codification, and well-considered systematic application of these court procedures may serve to improve the rendition of just, timely, and efficient civil justice in the district.

It appears clearly to the court that there exists no valid method for quantifying the cost effectiveness of the court's procedures, or for determining precisely whether litigation in the district is excessively costly, or what aspects of the court's procedures may contribute to excessive costs. The court is aware that litigants and their attorneys have expressed the subjective view that the court's trailer docket system and method for resolution of motions in civil cases, particularly dispositive motions, contributes to increased and unnecessary cost in litigation.

The court believes that the methods for alternative dispute resolution set forth in its existing local court rules have been helpful, but their success has been hampered by the unavailability of limited sanctions, given the decision in Tiedel v. Northwestern Michigan College, 865 F.2d 88 (1988).

2. *Actions.* The court hereby ORDERS, ADOPTS, AND IMPLEMENTS: That in individual cases, a system of differentiated case management involving the

assignment of all civil litigation in the district to one of six case management tracks, as defined in the Advisory Group's plan. Assignment of civil litigation to tracks will be done by a judicial officer following an early status conference conducted pursuant to Federal Rule of Civil Procedure 16, either by attendance of the parties in person, or through telephone conferencing. Alternatively, cases may be assigned to tracks following informal telephone conversations among the parties and a judicial officer.

The Advisory Group's recommendation and plan for detailed monitoring of the cost of litigation, the timeliness of resolution, and the level of satisfaction of litigants with the court's processes is approved. The court will urge the cooperation of litigants and their attorneys in providing, on a confidential basis when necessary, detailed and pertinent data relating to attorneys' fees, and other costs associated with particular aspects of litigation in the district.

FURTHER ORDERED: That the court also adopts and implements the following:

1. *In response to the upsurge in criminal cases, the criminal docket of the United States District Court for the Western District of Michigan should be automated as soon as possible on a scale similar to that of the civil docket, using state of the art electronic technology.*

2. *A plan should be devised to determine the nature and circumstances of cases requiring personal appearances, video,*

or telephonic conferences and/or hearings, and systems put in place to conduct such procedures when appropriate. The immediate application of this capability is in prisoner civil rights cases, but it can be extended to other types of actions as well.

3. *Record keeping categories on the civil cover sheet (form JS 44) should be thoroughly reviewed and supplemented at the district level and refined at the national level to provide more precise information. Such a revision should be part of an improved management information system designed to expedite the court's role as an early implementation district.*

4. *Lawyers, judges, magistrate judges, and other members of the district's case management teams should afford themselves of opportunities for further training in the art of negotiation so that pretrial interventions can be more widely used for settlements. Trained specialists might also be added to the case management teams on occasion to serve this purpose.*

5. *Special masters should be considered in the district when it appears that such an appointment would reduce the cost and delay of complex judicial proceedings. Rule 53 of the*

Federal Rules of Civil Procedure should be scrupulously followed when making such appointments, and they should be the exception and not the rule of court management practice.

6. *The trailer docket should be shortened both in terms of elapsed time and the number of cases on it. Fixed dates of trial should be adhered to whenever possible.*

7. *Legislation should be enacted to strengthen alternative dispute resolution processes by allowing fee shifting as a sanction. By infusing new life into ADR processes, courts and litigants may be more willing to use them as cost efficient methods of conflict resolution.*

8. *As a protective device to help decrease unnecessary costs to litigants, a stay on judicial proceedings should be entered, if a motion is made by one or more parties, after a dispositive or non-dispositive motion has remained in the court without decision for more than 60 days, unless an exception is made for good cause.*

9. *Prisoner civil rights petitions should ordinarily be assigned to the fast track of the differentiated case management plan, without alternative dispute resolution, with limited or suspended discovery in appropriate cases, and with close supervision by a magistrate judge. After further review of the current method for disposing of these cases, and with detailed contributions from the magistrate judges, judges, and clerk's office, the Advisory Group should prepare as a national guideline, a written recommended procedure for the management of prisoner civil rights petitions.*

10. *Because of the size and distribution of cases in the Western District of Michigan, a local rule should be adopted to permit the reassignment of a case to a more geographically convenient judge, if all parties and the court agree.*

11. *Legislation should be drafted and appropriations made to compensate attorneys who are willing to represent pro se litigants in civil rights cases. The compensation should include reimbursement for all expenses incurred, including expert witness fees, and be forthcoming regardless of the outcome of the case.*

12. *The impact of federal minimum sentencing statutes and sentencing guidelines should be reviewed by appropriate agencies, to determine whether they hamper the adjudication and administration of justice.*

13. *A statute or local rule should be adopted which provides for the confidentiality of cost information pursuant to the Civil Justice Reform Act. This would enable researchers to gather more quantitative and qualitative data from which to address the purposes of the Act, which is to find ways to reduce cost and delay in civil litigation.*

14. *A plan of differentiated case management should be implemented by the court in accordance with the requirements of the Civil Justice Reform Act of 1990. The plan should be implemented initially through the use of orders in individual cases, as opposed to amendment of local court rules. As the court gains experience with its plan, and as empirical data are gathered to evaluate the effectiveness of various case management techniques, the Advisory Group may recommend revisions of the plan, including modifications of the local court rules.*

15. *The court should arrange for the production of a series of videotapes on subjects including, but not limited to, general court and trial procedures, discovery, alternative dispute resolution, differentiated case management and tracking, and the responsibilities and expectations of plaintiffs and defendants. The content of the tapes should be understandable to lay persons, and should be produced under the auspices of the judges of the Western District, taking into account the practices and procedures unique to the district. One or more of the judges should appear on the tapes as providers of information, thus offering a tangible sign of their support of the continuing education program.*

16. *A written and illustrated document or brochure should be produced to explain in detail the court's differentiated case management plan and its connection to the Civil Justice Reform Act. This publication should be aimed at both practitioners and lay persons, and should include a description of conferencing procedures, how track assignment decisions are made, and other relevant practices and procedures.*

17. The court should task the Advisory Group staff to coordinate the production of the tapes and written materials recommended above, and it should request the State Bar of Michigan and Bar Associations throughout the district to disseminate the information contained therein.

3. Disposition of the Plan.

a. Pending further action by the court, this plan will be in effect for the longest period of time permitted by the Civil Justice Reform Act of 1990. The court may revise the plan from time to time, as it sees fit, subject to statutory requirements, and will provide due notice of any such revision. In the event the court's experience with implementation of the plan leads to the conclusion that amendment of the court's local rules is appropriate, the court will request the Civil Justice Advisory Group to make recommendations for changes in the rules to the court or such committees as the court may appoint to consider the revision or adoption of local court rules.

The court directs the Civil Justice Advisory Group to report periodically to the court, no less frequently than twice per calendar year, so as to advise the court regarding the cost effectiveness of its civil case management practices, revisions that may be required in the plan or local rules, and other matters

pertinent to the court's plan of differentiated case management. The reports of the Civil Justice Advisory Group shall be made available to the public.

Educational material such as video tapes, pamphlets, or other materials contemplated by the plan shall be submitted to the court for approval before dissemination.

b. Pursuant to Title 28, United States Code, section 472(d) and section 474(a), the court hereby ORDERS that this plan, and the Report of the Civil Justice Advisory Group, be submitted to the Chief Judge of this district for distribution to (1) the Director of the Administrative Office of the United States Courts; (2) the Judicial Council of the United States Sixth Circuit Court; (3) the Chief Judge of all other United States district courts located within the Sixth Circuit; (4) the Chief Judge of the United States Court of Appeals for the Sixth Circuit; and (5) the Judicial Conference of the United States.

Adopted and Implemented by the Court,

December 18, 1991

Benjamin F. Gibson

Richard E. Enslen

Robert Holmes Bell

Dan L. Polster