UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

Civil Justice Expense and Delay Reduction Plan

Revised May 2002

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I. INTRODUCTION

In consultation with its Civil Justice Reform Act (CJRA) Advisory Committee, the Court developed this Plan, pursuant to the Civil Justice Reform Act of 1990, 28 U.S.C. §§ 471-82. The Plan is based on consideration of the following:

- recommendations in the Report of the Advisory Committee as required by 28 U.S.C. § 472(a);
- suggestions of the judges and magistrate judges in this District, and review of the Court's existing practices and rules;
- the Model Plan provided by the Administrative Office, plans from Early Implementation Districts and Pilot Districts, and plans from other districts throughout the country; and
- the purposes set forth in 28 U.S.C. § 471, the principles and guidelines set out in 28 U.S.C. § 473(a), and the techniques set out in 28 U.S.C. § 473(b).

The Court determined that the chief reasons for delay in the civil docket in the Northern District are threefold: (1) the constant and substantial increase in recent years in the number of criminal cases (an increase of 18% in 1992 over 1991) and multi-defendant criminal cases (an increase of 37% in the number of criminal defendants in 1992 over 1991); (2) the shortage of judges for several years, until recently; and (3) the increase in the amount of trial time required for criminal trials (during the period 1986-90 the percentage of total trial time devoted to criminal cases doubled, from 25% to 50%; in 1992 criminal cases accounted for 57% of the District's trials).

The judges of this Court are committed to providing a "hands-on" approach to civil cases. The judges are aware, however, that too many conferences and procedures can increase costs and delay and confuse attorneys and litigants. The judges will continue to try to simplify procedures and minimize the number of conferences. The judges realize that each case must be considered individually. Many cases need only minimal court supervision; others need extensive court supervision.

A credible, firm trial date is the sine qua non of reducing excessive costs and delay. The Court faces the challenge of harmonizing that preeminent principle of litigation management with the urgent demands of a steadily increasing criminal docket.

II. DISCOVERY

Excessive discovery is perceived as the principal reason for excessive costs in litigation. The Court recognizes that discovery serves the beneficial purposes of reducing unfair surprise in litigation, streamlining the presentation of pertinent evidence, and promoting pretrial resolution of cases by counsel who by discovery obtain a better knowledge of the positions of the parties. In some cases, however, the costs of conducting discovery outweigh the returns that may

reasonably be expected. Where feasible, litigants should mutually agree to forgo or significantly curtail formal discovery. A judge may impose limits on discovery at any time.

The Court also recognizes that firm deadlines for completion of discovery can promote reductions in costs and delay. Unless the presiding judge otherwise directs, a firm date for completion of discovery will be fixed at an early stage of the litigation. The continuance of the trial of a case will not extend the date for completion of discovery unless ordered by the presiding judge.

In every case determined by the presiding judge to be complex, an early conference will be set with the judge or a magistrate judge for development of a discovery scheduling order. At the conference, the parties must be prepared to identify and exchange core information relevant to the case, including names and addresses of persons with information relevant to claims and defenses as well as the location and custodians of relevant documents. The parties will be encouraged (and directed, if necessary) to produce and exchange documents upon informal requests. The judge or magistrate judge will also determine at the conference whether some discovery relating to the nature and extent of damages should be scheduled early in the litigation.

A discovery scheduling conference and order may be established in any

case, at a judge's discretion.

In discovery, and in all other aspects of litigation, the Court will insist upon adherence to the principles of Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n., 121 F.R.D. 284 (N.D. Tex. 1988)(en banc).

At the discretion of the presiding judge, discovery disputes may be referred to a magistrate judge for hearing and determination. A magistrate judge may be authorized to monitor all aspects of discovery in a case.

III. ALTERNATIVE DISPUTE RESOLUTION (ADR)

The Court endorses Alternative Dispute Resolution (ADR) programs as effective in bringing about settlement or narrowing of issues in civil actions. The Clerk's Office will provide to counsel for all litigants and to pro se parties a pamphlet describing the ADR methods, their use by the Court, and their potential advantages. The following policy regarding ADR is adopted:

A. ADR Referral

The Court requires that litigants in all civil cases, except those set out in local civil rule 16.1, consider the use of an alternative dispute resolution process at an appropriate stage in the litigation. A judge may refer a case to ADR on the motion of any party, on the agreement of the

parties, or on the judge's own motion. The judge will respect the parties' agreement unless the judge believes another ADR method or provider is better suited to the case and parties. The authority to refer a case to ADR does not preclude a judge from suggesting or requiring other settlement procedures.

B. Opposition to ADR Referral

A party opposing either the ADR referral or the appointed provider must file written objections within ten days of entry of the order of referral, explaining the reason(s) for any opposition.

C. ADR Methods

The Court recognizes the following ADR methods: mediation, mini-trial, summary jury trial, and early neutral evaluation. A judge may approve the ADR method the parties suggest or any other method the judge believes is suited to the litigation. A judge may not require any alternative dispute resolution process except mediation and early neutral evaluation.

D. Attendance

Subject to the provisions of 28 U.S.C. § 473(c), in addition to counsel, party representatives with the authority to negotiate a settlement, and all other persons necessary to negotiate a settlement, including insurance carriers, must attend the ADR sessions.

E. Binding Nature

The results of ADR are non-binding, unless the parties agree otherwise.

F. Confidentiality; Privileges and Immunities

All communications made during ADR procedures are confidential and protected from disclosure and do not constitute a waiver of any existing privileges and immunities.

G. Administration.

At the conclusion of each ADR proceeding the provider will complete and file with the District Clerk a form supplied by the Clerk that will include:

1. the style and civil action number of the case;
2. a list of those in attendance;
3. the names, addresses, and telephone numbers of counsel;
4. the type of case;
5. the method of ADR proceeding;
6. whether or not the case settled; and
7. the provider's fee.

The District Clerk annually shall tabulate, analyze and report on the disposition of ADR proceedings.

H. Neutrals.

The Court will adopt appropriate processes for making neutrals available for use by the parties for each category of process offered, and promulgate procedures and criteria for the selection of neutrals on its panels. A person designated as a neutral in a case must request to be excused from the designation in such circumstances as 28 U.S.C. § 455

would disqualify a justice, judge, or magistrate judge of the United States, or other applicable or professional responsibility standards so require.

I. ADR Provider Fees.

Fees charged by ADR providers, whether selected by agreement of the parties or by appointment of the court, shall be in amounts that are reasonable and customary in the division in which the case is filed or in which the ADR service is provided. No ADR provider shall charge a contingent fee.

IV. SETTLEMENT CONFERENCES

The Court strongly favors early settlement discussions.

The parties in every civil action must make a good faith effort to settle; settlement discussions must be entered into at the earliest possible time, well in advance of any pretrial conference. The presiding judge will be available for settlement conferences, and may require, and establish procedures for, such conferences.

In non-jury cases a judge will not discuss settlement figures unless requested by the parties.

V. MOTIONS

The Court will continue to insist on proper motion practice as an effective means of reducing costs and delay. Local Civil Rules 7.1 and 56.1-56.7 govern motion practice. Inter alia, Rule 7.1(b) requires certificates of conference on most motions and Rules 7.1(e) and 7.1(f) set deadlines for responses to motions and for replies to responses. Local Civil Rules 7.2(c) and 56.5(b) limit the length of briefs. Other Local Civil Rules provide for the form and content of certain motions (e.g., Local Civil Rules 56.1-56.7 regulate motions for summary judgment).

Motions for continuance must be signed by the party as well as by the attorney of record. The granting of a motion for continuance will not extend or revive any deadlines that have already passed in a case unless ordered by the presiding judge. See Local Civil Rule 40.1.

VI. PRETRIAL PROCEDURES

The Court recognizes the importance of scheduling orders in reducing delay and containing costs. A scheduling order will be issued in each case within 90 days after issue is joined. Unless changed by the presiding judge, the scheduling order will set a trial date, and deadlines for the following:

- completion of discovery;
- motions to join other parties;
- motions to amend the pleadings;

- motions for summary judgment and other dispositive motions;
- reports on the status of settlement negotiations, and counsels' respective attitudes concerning referring the case to mediation or to a magistrate judge for trial by consent per 28 U.S.C. § 636(c);
- a joint pretrial order, including the contents of such order;
- exchange of witness lists, exhibit lists and deposition designations, and objections thereto;
- designation of expert witnesses; and
- any additional matter that the presiding judge deems appropriate.

Scheduling orders are not required in exempt cases (see section IX, infra) or where the presiding judge deems that a scheduling order is unnecessary.

VII. TRIAL

The presiding judge may limit the length of trial, the number of witnesses each party may present for its case, the number of exhibits each party may have admitted into evidence, and the amount of time each party may have to examine witnesses.

The conduct of counsel at trial will continue to be governed by Local Civil Rule 83.4.

VIII. ATTORNEYS

The Court has always had detailed requirements governing the admission and discipline of attorneys. See Local Civil Rules 83.7 and 83.8. The Court will continue to stress adherence to the principles of Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n., 121 F.R.D. 284 (N.D. Tex. 1988)(en banc).

Any out-of-district attorney applying for *pro hac vice* status must affirm in writing that he/she has read and will comply with Dondi and the Local Civil Rules. The presiding judge may revoke *pro hac vice* status for failure to observe the Local Civil Rules or for failure to comply with the Dondi standards.

IX. MAGISTRATE JUDGES AND SPECIAL MASTERS

The Court has experienced, competent and hard-working magistrate judges who are available to try jury and non-jury civil cases pursuant to 28 U.S.C. § 636(c). The Court will increase its emphasis on encouraging parties to consent to trial before a magistrate judge.

The Court encourages the use of special masters consistent with the provisions of Fed.R.Civ.P. 53. The presiding judge may appoint a special master on her or his own motion or on the motion of a party.

X. SPECIAL CATEGORIES OF CASES

The Court will continue to exempt certain categories of cases from the requirements for scheduling orders and pretrial orders, unless the presiding judge otherwise orders. See Local Civil Rule 9.1 (regarding social security and black lung cases), and the case categories referred to in Local Civil Rule 16.1, as follows:

- actions filed by incarcerated persons pursuant to the Civil Rights Acts, 42 U.S.C. §§ 1981, et seq.;
- actions for forfeiture;
- cases filed by the United States Attorney for collection of promissory notes payable to the United States of America or any government agency;
- appeals from the Bankruptcy Court; and
- cases involving pro se plaintiffs.

XI. CONTINUATION OF OTHER EXISTING POLICIES AND PRACTICES THAT CONTRIBUTE TO REDUCING COSTS AND DELAY

1. Each judge currently designates at least one staff member to coordinate scheduling. The District Clerk will provide whatever additional training is needed for case management.

2. Each judge will continue to give priority to the monitoring and resolution of pending motions.

3. The Court will endeavor to stay informed of the latest technological advances regarding information, management and office efficiency, and will utilize these advances where and when appropriate.

4. The Court will continue to conduct a regular review of its Local Rules.

5. The Court will continue to try civil cases as promptly as it can judiciously do so, consistent with the demands of its criminal docket.

6. Each judge will endeavor to improve ease of communications between the Court and counsel in order to reduce costs and delay.

7. The Court will impose sanctions as needed to control litigation abuses.

8. The judges will endeavor to improve the exchange of information concerning practices and procedures designed to reduce costs and delay. Judges and their staffs in each division will meet together at least once a year, and if possible, more often, for the purpose of comparing their differing practices and exchanging ideas about reduction of costs and delay.

9. The judges will endeavor to release cases scheduled for trial when it appears certain that such cases will not be reached for trial. The judges will be sensitive to lawyers and litigants in cases involving particular complexity or expense in trial preparation that might have to be duplicated if the cases were continued too soon before the scheduled trial date.

XII. IMPLEMENTATION

The Court may consult an Advisory Committee to develop criteria by which to measure the Court's success in reducing costs and delay. The Court will expect the Advisory Committee to monitor such success and to advise the Court regarding its findings and recommendations.

This Plan is adopted as Miscellaneous Order No. 46, and is effective as a Local Civil Rule and will be construed as such. This Plan is intended to supplement, but not to supersede, any other Local Civil Rule; however, in the event of an inconsistency between a provision of this Plan and another Local

Civil Rule, the presiding judge will determine which will govern.

This Plan applies to all cases filed on or after July 1, 1993. In the discretion of the presiding judge the Plan may be applied to any case filed before the effective date.