UNITED STATES DISTRICT COURT

for the

DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

JAN 01 1993

CLERK

CIVIL JUSTICE EXPENSE AND DELAY

REDUCTION PLAN

Prepared pursuant to
Title 28, Section 472(a) of the United States Code
Civil Justice Reform Act of 1990

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

In compliance with 28 USC 471, et seq., the United States District Court for the District of New Mexico, submits the following Civil Justice Expense and Delay Reduction Plan as its implementation plan required by the Civil Justice Reform Act of 1990.

In formulating its Plan, the Court has considered carefully the Advisory Group Report and the six principles and guidelines for litigation management as outlined in 28 USC 473. The Advisory Group Report reflects that the Court already has many effective on-going case management procedures. Therefore, this Cost and Delay Reduction Plan covers primarily those areas which it believes are necessary for other fruitful expense and delay reductions and to comply with the requirements of the Act, especially as outlined in the individual sub-sections of 28 USC 473. For clarity, the sub-sections are set forth underlined in the body of this Plan and the actions being taken by the Court are in bold letters with accompanying comments in regular print.

A. Section 473 (a)(1)

"(1) Systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably

needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case; . . ."

1. Existing Local Rules

The Court has several local rules which address the need for differential treatment of civil cases according to their individual needs.

a. Local Rule 3.2 requires an attorney filing a complaint or other pleading involving a case which may be subject to pretrial proceedings before the Multi-District Litigation Panel, to submit in writing a description of the nature of the case and titles and numbers of related cases.

b. Local Rule 16.1 requires counsel who will try the case to attend a pretrial conference.

c. Local Rule 16.2 requires counsel to submit to the Court a proposed initial pretrial report, signed by attorneys of both sides, within 10 days from date of the pretrial conference or at such time as the Court shall order.

d. In Local Rule 16.4, full-time magistrate judges are authorized to hold initial and/or pretrial conferences in any case referred to them by the district judges and to conduct scheduling conferences in accordance with Rule 16 of the Federal Rules of Civil Procedure. Scheduling orders by the magistrate judges are entered in all civil cases except specified actions involving inmate actions as per 42 USC 1983, VA student loans, water rights, Freedom of Information Act, injunctive or other emergency relief,

temporary enforcement of NLRB orders, perpetuation of testimony or compelling testimony or production of documents, compelling arbitration, bankruptcy matters, forfeiture and seizures, condemnations, judicial review of administrative decisions of government agencies, citizenship matters and pro se matters where one of the parties is incarcerated.

2. As regards systematic and differential treatment of civil cases, the Court has adopted the following for expediting its civil cases:

a. Case Differential and Management Plan

The Court adopts a policy of differential case management to categorize each civil case as soon as possible and place it in one of four "tracks" according to its specific characteristics to assure proper and timely monitoring, handling, sheparding and direction to early firm trial dates, whenever possible, or to whatever disposition may be required according to its particular needs. The differentiated case tracking system will have defined "tracks" classified as follows for each civil case filed in the court:

(1) Expedited Cases

(a) A disposition time of within 9 months, after case is at issue, is the goal for such cases.

(b) Initial conferences with parties present or available will be set with magistrate or district judges within 60 days after such cases are at issue for scheduling and

management plans and setting of early trial dates.

(c) Discovery cut-off dates will be set no later than 100 days after the filing of the scheduling order.

(d) Periodic conferences and status reports thereafter will be required as determined by the assigned magistrate and/or district judge.

(2) Standard Cases

(a) Disposition goal will be within 12 months or less after such cases are at issue.

(b) Initial conferences with parties present are set with magistrate or district judges within 60 days after such cases are at issue for scheduling and management plan and setting of early trial dates.

(c) Discovery cut-off dates are set no later than 200 days after filing of the scheduling order.

(d) Periodic conferences held and status reports required thereafter as determined by the assigned magistrate and/or district judge.

(3) Complex Cases

(a) Disposition goal will be within 18 months after case is at issue.

(b) Within 30 days after a case is at issue, the assigned magistrate or district judge holds an

initial conference with parties present where the judicial officer:

[1] Explores the receptivity of settlement or proceeding with the litigation;

[2] Identifies and formulates the principal issues in contention, provides for staged resolution or bifurcation of issues consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

[3] Prepares a discovery schedule and plan consistent with the time limits set by the court for completion of discovery and with any procedures the court develops as to (1) discovery and (2) phase discovery into two or more stages, and,

[4] Sets earliest practicable motions timing and as early a trial date as practical.

(4) Administrative Cases

(a) These are cases which based on the court's prior experience are likely to result in default or consent judgment, resolved or dismissed on the pleadings or by motion.

(b) Such cases are referred directly by the

Clerk's Office to a magistrate judge for preparation of a report and recommendation unless the matter deals with a temporary restraining order or temporary injunctive relief in which occasion, the Clerk shall refer such matters immediately to the assigned district judge.

(c) Generally, there will be no discovery for this track without prior leave of Court.

b. Case Management Teams

In conjunction with the recommendation for a case differential and management plan, the Court adopts the concept that a court case manager be appointed and that management teams be established for each district and senior district judge for the constant surveillance, monitoring and follow-up of each civil case assigned to each judge's civil docket. Since current financial constraints prohibit the appointment of a court case manager, the Court adopts the policy of having the assigned district and magistrate judges, courtroom deputies and pertinent staff from the Clerk's Office function as case management teams to assure continued and uniform case management and monitoring for appropriate caseflow procedures, coordination and case control functions.

c. Service of Process

To encourage reduction in the time for service of process

of summonses and complaints but still allow the maximum time permitted by Rule 4(m) of the Federal Rules of Civil Procedure, the Court hereby adopts a policy of implementing local Rule 41.1, Dismissal of Actions, as regards service of process. Henceforth, if service of process is not accomplished on defendants in new case filings within ninety days, the action shall be dismissed without prejudice absent good cause shown within a period of 30 days.

d. Hearings and Rulings on Dispositive Motions

The Court recommends that each judge consider adopting motions hearing procedures for oral argument as deemed appropriate by the judges and that, whenever possible, dispositive motions be ruled on and order entered within 60 days following oral argument or after the reply or the deadline for filing such reply, unless the Court determines that additional time is necessary for consideration of the action.

e. Pro Bono Attorneys for Pro Se Litigants

The Court hereby recommends that each judge consider the appointment, whenever possible, of pro bono attorneys to represent pro se litigants. In order to provide a sufficient base for pro bono appointments, the Chief Judge will ask the Attorney General of the State of New Mexico to ascertain whether the State Risk Management Division will waive the prohibition against law firms representing New Mexico governmental agencies and officials from also representing plaintiffs who sue such entities. Furthermore,

the Court upon motion and order, will assist on a limited basis pro bono attorneys appointed for pro se litigants with funds from the Bench and Bar Funds for paralegal, services or other costs in connection with the case.

f. Pro Se Law Clerk

The Court recommends that the Administrative Office of the United States Courts authorize at least one permanent pro se law clerk position for the District of New Mexico.

g. Internal Pro Se Reference Manual

When a pro se law clerk is authorized and appointed for the District of New Mexico, the Court will require the Clerk of Court to assure that an internal reference manual and/or guidelines handbook is prepared by the pro se law clerk and other pro se staff to serve as guidelines for future staff members, attorneys and litigants for pro se litigation matters in the District.

h. Rule 11 Binding Plea Bargains

The Court recommends that all judges consider accepting Rule 11(e)(1)(A) or (C) of the Federal Rules of Criminal Procedure as binding plea bargains in pertinent criminal cases when deemed appropriate by the judges and within constitutional constraints.

i. Binding Stipulations Under Sentencing Guidelines

The Court recommends that all judges in the District consider

accepting binding stipulations for criminal defendants as they relate to various provisions in the Sentencing Guidelines, specifically, (a) acceptance of responsibility; (b) minimal or minor role; (c) relevant conduct and (d) specific guideline sentences with caps or specific lengths.

j. Revision of Omnibus Report for Criminal Defendants

The Court requests the Chief Magistrate Judge, the U. S. Attorney and the Federal Public Defender review the present Omnibus Hearing Report form used in criminal cases and revise and update the form as an aid to resolving as many pretrial issues as possible.

k. Rule 16 Deadlines

The Court recommends that all judges in the District continue imposing Federal Criminal Procedure Rule 16 deadlines in criminal cases.

l. Open File Policy by U. S. Attorney's Office

The Court recommends that the United States Attorney's Office consider formulating a meaningful open file policy which is practical, useful and within authorized limitations of that office.

m. State Court Prosecution of Certain Drug Cases

To permit district judges more time for their civil cases, the Court recommends that the United States Attorney

consider formulating a policy declining to prosecute in federal court certain drug cases which can be tried in state court.

n. Training for CJA Attorneys

To encourage training for inexperienced criminal trial lawyers who desire to be placed on Court's Main Panel for Criminal Justice Act appointments, the Court will, upon motion of its Main Panel attorneys, consider approving payment from the Bench and Bar Funds for Associate Panel attorneys at lesser than CJA hourly rates for assisting appointed Main Panel attorneys in specific cases.

o. Inns of Court Training for Inexperienced Attorneys

The Court requests that monitors of the Inns of Court programs establish procedures whereby experienced trial lawyers from such Inns of Court activities serve as mentors and instructors to inexperienced attorneys admitted to practice before the Court in order to expedite pretrial and trial procedures of federal civil cases.

B. Section 473 (a)(2)

"(2) Early and ongoing control of the pretrial process through involvement of a judicial officer in:

(A) Assessing and planning the progress of a case;

(B) Setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies in writing that:

"(i) The demands of the case and its complexity make such a trial date incompatible with serving the ends of justice or;

"(ii) The trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases";

(C) Controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion;

(D) Setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;..."

1. The Court is addressing the above guidelines through its local rules and current procedures for initial pretrial conferences and scheduling orders. However, the Court recommends that all judges consider incorporating more fully the intent of the guidelines of Section 473(a)(2) by adopting and adhering to the following procedures to expedite the handling and disposition of civil cases.

a. Mandatory or Automatic Discovery

Pending the effective date of the recently proposed amendments to Rule 26 of the Federal Rules of Civil Procedure, the

Court will adopt a local rule with language similar to the proposed amendments which will set out general provisions governing discovery such as required disclosures, discovery scope and limits, protective orders, timing and sequence of discovery, supplementation of disclosures and responses, etc.

b. Limitation of Expert Witness Costs

The Court recommends that all judges consider adopting a policy of determining, as soon as possible, the amount of expert witness discovery which will be required and that limitation of such be as determined by each magistrate or district judge during the initial or subsequent pretrial conferences.

c. Policy of Firm Trial Dates

The Court recommends that, whenever possible, each judge adopt a policy of setting and keeping early, firm trial dates. If the assigned trial judge is unable to meet a set trial date, efforts will be made to determine if any other district judge is available to keep the set trial date.

C. Section 473(a)(3)

"For all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer -

(A) Explores the parties receptivity to, and the propriety of settlement or proceeding with the litigation;

(B) Identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

(C) Prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to -

(i) Identify and Limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

(ii) Phase discovery into two or more stages; and

(D) Sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition."

1. As previously indicated, the Court already has in effect local rules which mandate pretrial conferences, scheduling of discovery deadlines, initial pretrial reports, limitation of interrogatories, pretrial orders, etc., to meet the goals of the above section. In this regard, the magistrate and district judges have instituted procedures to identify and limit the volume of discovery through early initial and other pretrial conferences, requiring initial pretrial and status reports to narrow and focus on the real issues of cases, etc. Additionally, to avoid the

filing of motions, whenever possible, the judicial officers give guidance to counsel as to judicial approaches to objections on relevancy, work product, privilege, etc.

2. In amplification of what the Court is already doing, the Court recommends that district and magistrate judges consider the following recommendations from its Advisory Group:

a. Phasing-in of Discovery

The Court hereby adopts a policy of phasing-in of discovery according to the characteristics of the case in conjunction with the "track" to which it is assigned. The phasing-in is determined by the judicial officer during the initial pretrial conference when the deadlines and schedules for discovery are set. The guidelines and rules for burden of proof regarding the confidentiality of documents and assertions of claims of privilege or work product are also determined by the district or magistrate judge at the appropriate pretrial conference.

D. Section 473(a)(4)

"(4) Encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;"

1. The Court has local rules which require counsel for the plaintiff to draft a proposed initial pretrial report in accordance with agreements at the pretrial conference. The report is required

to be submitted to the other counsel for their approval and submission to the Court within ten days from the date of the pretrial conference or at such time as the Court shall order. This report sets out a brief statement of the nature of the case and contentions of the parties, amendments contemplated, stipulations, contemplated discovery, time and reasons for discovery, pending and contemplated motions and the possibilities of settlement.

2. In order to have a uniform procedure and to attain as much interchange of information as possible, the Court recommends that each district and magistrate judge consider the following recommendation from its Advisory Group.

a. "Meet and Confer" Sessions

The Court recommends that magistrate and district judges adopt a policy which requires "meet and confer" sessions by lead counsel outside of the court setting for cases falling in the standard and complex "track" categories and that a case status and general scheduling plan be completed by counsel prior to the initial pretrial conference for use by the magistrate or district judge holding such conferences. The primary purpose of these "meet and confer" sessions will be to dispose of as many consensual matters as possible and to bring out areas of disagreement among counsel before the initial pretrial conference begins. If properly done, the "meet and confer" sessions should permit discovery without the need of formal discovery motions, eliminate many

initial discovery disputes and permit the judicial officer to approve a more useful initial pretrial order for scheduling, phasing and deadlines for discovery and setting the trial date as soon as possible.

E. Section 473(a)(5)

"(5) Conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification the moving party has made a reasonable and good faith effort to research agreement with opposing counsel on the matters set forth in the motion;"

The Court has local Rules 37.1 and 37.2 which require that if relief is sought under Federal Rules of Civil Procedure 26(c) or 37(a) concerning an interrogatory, request for production or inspection, request for admission or deposition, the motion seeking relief will not be entertained unless the moving party has conferred in good faith with the opposing party before filing the motion. The moving party must file a certificate to this effect with any motion made under the aforementioned Federal Rules of Civil Procedure.

F. Section 473(a)(6)

"(6) Authorization to refer appropriate cases to alternative dispute resolution that-

"(A) Have been designated for use in a district court;

or

"(B) The Court may make available, including mediation, mini-trial and summary jury trial."

1. The Court has used summary jury trials, mini-trials and special masters as mediators or facilitators for settlement with good results.

2. The Court upon recommendation of the Advisory Group asks that district and magistrate judges consider the following methods of alternative dispute resolution:

a. Alternate Dispute Resolution

As regards alternative dispute resolution, the Court recommends that magistrate and district judges, as soon as practical in their discretion at the initial pretrial conferences, offer parties the opportunity for consensual arbitration as well as other mechanisms which may lead to settlement, i. e., mediation, conciliation, mini-trials, summary jury trials, settlement conferences, etc. The Court through that the Clerk of Court will establish a panel of arbitrators, mediators and facilitators. Appropriate training will be scheduled periodically as required. Procedures for selection and training of such arbitrators, mediators, conciliators and facilitators will be developed in writing by the Clerk in conjunction with the district and magistrate judges. Until such panels are established, the Court through the Clerk will coordinate with the Second Judicial District Court to determine the availability of trained arbitrators, mediators and facilitators.

b. Pilot Settlement Week Program

The Court will establish a pilot settlement week program through the use of volunteer facilitators who have had experience and taken a training course in mediation in conjunction with the New Mexico State Bar Continuing Legal Education Section or other such qualified entity. The settlement week program should be flexible and not interfere with previously calendared cases set for trial or pretrial procedures by the magistrate and district judges.

c. Adoption of Inmate Grievance Procedures

The Court through the Chief Judge will meet with the Attorney General of the State of New Mexico to encourage the New Mexico Department of Corrections to adopt an approved prisoner grievance procedure as contemplated by Section 1997(e) of Title 42 of the United States Code in order to reduce the number of premature inmate petitions being filed in the District. The Chief Judge will forward a copy of the aforementioned section, the Information Handbook of Inmate Grievance Procedures Pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA) published by the U. S. Department of Justice, the administrative grievance procedures developed by the States of Connecticut and Wyoming as well as the Connecticut Prison Alternative Incarceration Center procedures for possible implementation by the New Mexico Department of Corrections as a means of reducing the inmate petition caseload.

G. Other Recommendations

1. Recommendation to the Tenth Circuit, U. S. Court of Appeals

a. Certificates of Good Faith on Frivolous Appeals

The Advisory Group recommends to the Court that it ask the Tenth Circuit, U. S. Court of Appeals, to consider more realistic discretion in reviewing district courts' certificates of non-good faith in <u>in forma pauperis</u> applications and in non-meritorious appeals. The Court concurs in this recommendation in that prudent consideration of these could save considerable time for both Courts as well as taxpayer funds.

The Advisory Group notes in its Report that district court judges routinely sign certificates of probable cause as per 28 USC 1915 on appeals by inmate petitioners of dismissals of habeas corpus petitions albeit the dismissals were for non-meritorious grounds. When queried as to the contradiction, judges advised the Advisory Group that if certificates of non-probable cause are submitted, the appeals court routinely issues its own certificates of good faith. Therefore, the Court recommends that the Chief Judge of the Tenth Circuit, U. S. Court of Appeals, consider bringing the above recommendation to the attention of those judicial officers who review these certifications from the district trial courts.

2. Recommendations to the Committee on Court Administration and Case Management

a. Recommendation for Permanent CJRA Staff for the District of New Mexico

The Advisory Group recommends that the Committee on Court Administration and Case Management recommend to the Judicial Conference of the United States that the District of New Mexico be allocated two permanent positions to provide the capability and support to accomplish the CJRA responsibilities effectively as outlined in this Plan. The Court concurs in this recommendation.

3. Recommendations to the Judicial Conference of the United States

a. Judgeship Vacancies

The Advisory Group recommends that the Judicial Conference of the United States notify the Executive and Legislative Branches that the filling of Article III judgeships is taking an inordinate amount of time. These delays adversely impact a court's ability to resolve cases timely and at less cost overall. The Court concurs in this recommendation.

b. Adequate Judicial Budget

The Advisory Group recommends that the Judicial Conference of the United States propose to the Congress that the federal courts receive adequate funding for effective operation. In addition it recommends that the Judicial Conference consider

seeking a set percentage of the national budget as the budget for the Judicial Branch. The Court concurs in this recommendation.

c. Use of Judicial Impact Statements with New Legislation

The Advisory Group recommends that the Judicial Conference of the United States continue to have the Administrative Office of the U. S. Courts prepare and disseminate judicial impact statements on contemplated legislation affecting the federal courts. Further, the Group recommends that the Judicial Conference consider approving a Resolution asking Congress to include language in each new legislative bill affecting the federal courts that an appropriate judicial impact statement has been taken into consideration by Congress and that proper funding exists or will be appropriated to permit the judiciary to accomplish its responsibilities with the new legislation. The Court concurs in this recommendation.

d. Repeal of the Minimum Sentence Provisions of the Sentencing Guidelines

The Advisory Group recommends that the Judicial Conference of the United States recommend that Congress repeal mandatory minimum criminal sentence provisions so that the United States Sentencing Guidelines Commission can reconsider the guidelines applicable to pertinent offenses. The Court concurs in this recommendation.

The Court, having reviewed and considered the Advisory Group Report and its Recommended Cost and Delay Reduction Plan completed in compliance with 28 U. S. C. 471 et seq., hereby adopts the foregoing as the Cost and Delay Reduction Plan for the District of New Mexico, pursuant to the requirements of the Civil Justice Reform Act of 1990. This Plan is effective on January 1, 1993.

DATED at Albuquerque this 1st day of January 1993.

FOR THE COURT:

Juan G. Burciaga
Chief Judge