CLERK'S OFFICE, U.S. DIST. CT.
AT DANVILLE, VA
FILED
JUN 13 1996
MORGAN E. SCOTT, JR., Clerk
By: Deputy Clerk

IN RE: Civil Justice Expense and Delay Reduction Plan

ORDER

Pursuant to the Civil Justice Expense and Delay Reduction Plan (the "Plan") for this district and 28 U.S.C. § 471, et seq., the Court appointed an advisory group to review the effectiveness of the plan since its entry on November 4, 1993.

The group met on March 29, 1996, and filed its report on April 18, 1996. The report found that in the main the plan was functioning satisfactorily, but found that there was dissatisfaction with portions of Rule 26 of the Federal Rules of Civil Procedure among a substantial number of the lawyers who practice in the Western District of Virginia. Specifically, there was dissatisfaction with the initial disclosure requirement under subparagraph (a)(1) and with the required meeting of parties under subparagraph (f).

The district judges of the Western District of Virginia have considered the recommendations of the advisory group and agree that the operation of Rule 26(a)(1) and (f) seem to be counterproductive to the efficient operation of the discovery process and are, in some instances, increasing rather than reducing expense of litigation. Consequently, the judges voted unanimously to amend the plan to opt out of the said subparagraphs. Accordingly, the present language of Paragraph IID of the Plan is deleted entirely and replaced with the following:

> Discovery shall be governed by the Federal Rules of Civil Procedure, effective December 1, 1993, except that subparagraphs (a)(1) and (f) of Rule 26 shall not be applicable in this district.
>
> 1. Discovery cut-off, as a general rule, should be forty-five (45) days before trial date (see Appendix 1).

ENTERED this 13th day of June, 1996.

A TRUE COPY, TESTE:
MORGAN E. SCOTT, JR., CLERK
BY:
DEPUTY CLERK

CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

NOVEMBER 1, 1993

Amended: June 13, 1996

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA

APPENDIX REVISED: November 1, 1994
February 15, 1995
June 13, 1996

SECTION ONE: DIFFERENTIATED CASE MANAGEMENT (DCM)

I. General Provisions

A. Purpose

The purpose of this plan is to improve upon the practices which have prevailed in this district, with the expectation of reducing costs of litigation and achieving speedier disposition of cases while still maintaining proper and studied consideration of each case to reach a just resolution. To attain this goal, the judges of the district have considered the practices (both formal and informal) which have been followed in this district, the report of the Civil Justice Reform Act Advisory Committee ("Committee") and the techniques specified in 28 U.S.C. § 473. We have also taken into consideration the proposed changes in the Federal Rules of Civil Procedure, which become effective December 1, 1993. To these ends, we adopt the plan herein contained.

B. Effective Date of Plan.

This plan shall take effect December 1, 1993, and will apply to all cases filed after this date. The plan shall be subject to amendment from time-to-time as the need arises and will be subject to an on-going review by the Committee.

C. In the event of conflict between the plan and local rules or standing orders of this district, the plan shall prevail.

II. Differential Case Management

A. Specialized civil cases to which the Differential Case Management's Techniques shall not apply.

1. Social security appeals.

2. Pro se prisoner cases.

3. Suits by United States to recover defaulted student loans and overpayment of veterans' benefits.

4. Appeals from bankruptcy court.

5. Other cases in which the district court acts in an appellate capacity.

B. Initial Pretrial Order

All civil cases, except those which fall in a specialized category listed above, shall be subject to an initial pretrial order. The order shall establish deadlines for discovery, motions practices, and such other pretrial matters as may be necessary on an ad hoc basis. Each case will be monitored by a person designated by the judge to whom the case is assigned and, in the district judge's discretion, may be referred to a magistrate judge for pretrial supervision.

The hallmark of the pretrial order shall be establishing a firm trial date, which should generally be set at a time period of between six and eight months from the date that service is effected upon the defendant(s). Some cases will be complex and will require more pretrial preparation. Those cases will be dealt with on an ad hoc basis, and the trial date may be extended in accordance with the requirements of the case. A sample pretrial order is attached to this plan as Appendix 1.

C. Settlement Conferences

Settlement Conferences may be called at the discretion of the presiding judge or, if referred to a magistrate judge, at the discretion of the magistrate judge. Any party may request a settlement conference and, upon such request, a settlement conference will be scheduled by the district judge or may be referred to a magistrate judge.

D. Discovery

Discovery shall be governed by the Federal Rules of Civil Procedure, effective December 1, 1993, except that subparagraphs (a)(1) and (f) of Rule 26 shall not be applicable in this district.

1. Discovery cut-off, as a general rule, should be forty-five (45) days before the trial date. (See Appendix 1)

E. Dispositive Motions

All dispositive motions must be fully briefed and brought on for hearing or submitted for decision no later than thirty (30) days before the trial date. It will be the responsibility of the moving party to bring the motion on for hearing. (See Appendix 1) The court will promptly rule upon the motion. If the court is unable to issue a timely ruling so as to avoid undue expense being incurred by the parties in trial preparation, consideration should be given to continuing the trial.

F. Initial Conferences

1. Initial conferences will be conducted by the scheduling official, at which time the official will ascertain the availability of trial dates, the anticipated length of trial, and such other information as is pertinent for the purpose of scheduling the case for trial. That conference will be followed by the initial

pretrial order (Appendix 1), which will set the case for trial and set time limits for motions and discovery.

2. Additional pretrial conferences shall be scheduled when called for. These conferences may be either in person or by telephone. If the case has not been assigned to a magistrate judge, the conference will be with the district judge, but if the case has been assigned to a magistrate judge, the conference shall be with him/her.

G. Partial Consent To Dispose of Pretrial Matters

The parties may give partial consent for the referral to a magistrate judge of pretrial matters for disposition. In order that the magistrate judge's efforts would not be duplicated by the district court, any ruling by the magistrate judge would be tantamount to a ruling by the district judge and would not be appealable to the district judge for further consideration. The parties could, however, preserve their objections for appeal to the Fourth Circuit.

H. Scheduling Trial

Because many trials are settled shortly before the trial date and scheduling another trial to fill the void of the settled case is impractical, prudent docket management requires that "double booking" take place in many instances. When a case is scheduled for trial in a secondary position, the parties will be so advised, and it will be their obligation to monitor the progress of the primary case. If the primary case is not seasonably disposed of, an attempt will be made to obtain another district judge (either within or without the Western District of Virginia) to handle one of the cases. As a general rule, if the primary case has not been settled, continued or otherwise disposed of five (5) days before the trial date and one of the cases cannot be reassigned, the secondary case will be canceled and rescheduled. (See Appendix 1.)

I. Assignment of Cases

1. Civil Docket

Assignment of civil cases shall conform with the past practice in this district. The seven divisions in the district are served by four active and one senior district judges. Cases are generally assigned based on the location of the resident chambers of the district judge, however, because of the disparity of the case load among the divisions, adjustments must be made.

2. Criminal Docket

The burgeoning criminal docket in the Western District of Virginia impacts substantially upon the court's ability to manage its civil docket. This has become increasingly true

in the northeastern portion of the district and although the preference is for a judge who is resident close to a division court to handle the work of that division, it may become necessary for judges who are primarily responsible for other divisions to accept cases in the Charlottesville and Harrisonburg divisions. It is hoped that the trend in criminal cases in the northeastern part of the district will level off and subside and not necessitate extensive use of judges from other divisions for a prolonged period.

SECTION TWO: SPECIALIZED CIVIL CASES

I. Pro Se Prisoner Cases

A. All pro se prisoner cases, both habeas corpus and civil rights complaints, shall be filed in the Roanoke division. These cases shall be managed by the magistrate judge stationed in Roanoke, who will oversee the work of two pro se law clerks. (See Standing Order of Reference of November 1, 1991, "In Re: Filing Prisoner Civil Rights Cases and Petitions for Writs of Habeas Corpus."

B. Any prisoner case, which cannot be disposed of by the magistrate judge without an evidentiary hearing, will be transferred to the division in which the prisoner complaint arose.

II. Social Security Cases

A. All social security appeals shall initially be heard by a magistrate judge. If the parties so consent, the magistrate judge may make a final disposition of the appeal. If the parties do not consent, the magistrate judge will prepare a report and recommendation to the appropriate district judge.

III. Bankruptcy Cases

A. Bankruptcy appeals will be handled in the same manner in which the court handles dispositive motions in main line civil cases, i.e., on briefs. Oral argument will be permitted when requested.

B. Bankruptcy cases in which the district court has withdrawn reference will be handled in the same manner as main line civil cases.

IV. Student Loans and Overpayment of Benefit

A. United States suits to recover defaulted student loans and overpayment of veterans and other benefits require little or no supervision. By and large, they are resolved on default judgments.

V. Appeals from Administrative Agencies

A. Unless the appeal from an administrative agency requires an evidentiary hearing, it will be handled in the same manner as bankruptcy appeal. If, however, an evidentiary hearing is required, the case will be treated in the same manner as a main line civil case.

SECTION THREE: ALTERNATIVE DISPUTE RESOLUTION

I. Mini Trials

A. Mini trials have been used with some degree of success in this district. This technique will be continued in the district in cases where the litigants are agreeable to it.

B. The success of a mini trial is dependent upon the extent to which litigants are willing to surrender their trial "rights."

II. Other ADR Techniques

A. The Committee has recommended further study of ADR techniques (See Report p. 65). No further methods will be adopted by the court until it has received a report and recommendation from the Committee.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

ROANOKE DIVISION

Plaintiff,	)	
vs.	)	Civil Action No.
	)	PRETRIAL ORDER
Defendant.	)	

IT IS ORDERED THAT:

(1) The above-styled case will be set for trial promptly. It is the obligation of the parties to contact the Court's docket clerk at 804-793-7150 within 14 days of the date of this Order for the purpose of setting a trial date.

(2) Parties shall submit a status report in the form of a letter, setting forth any pretrial matters which need to be taken up with the Court no later than 60 days prior to trial. A pretrial conference will be scheduled at the request of any party.

(3) Any jury instructions that counsel intend to request should be delivered to the Court at least one week prior to trial. It is not required that counsel exchange proposed instructions. (APPLICABLE ONLY IN JURY TRIALS).

MOTIONS

(4) All motions must be accompanied by a supporting brief. In the event that a motion has been filed prior to the entry of this Order and it was not supported by a brief, movant must file a supporting brief within 14 days of the date of this

Order. Briefs in opposition must be filed within 14 days of the date of service of the movant's brief (or within 14 days of this Order if a motion and brief have been served prior to this Order). **EXCEPT FOR GOOD CAUSE SHOWN, IF BRIEFS IN OPPOSITION TO THE MOTIONS ARE NOT FILED, IT WILL BE DEEMED THAT THE MOTION IS WELL TAKEN.** Movant's reply brief must be filed within 7 days of the date of service of the brief in opposition to the motion.

(5) It shall be the obligation of the moving party to bring the motion on for hearing by notice. If by mutual agreement of the parties a hearing is not required, it shall be the obligation of the moving party to notify the Court that the motion is submitted on briefs. **ANY MOTION WHICH IS NOT BROUGHT ON FOR HEARING OR SUBMITTED ON BRIEFS WITHIN 90 DAYS FROM THE DATE IT IS FILED WILL BE DISMISSED AND THE COURT WILL NOT ENTERTAIN A RENEWED MOTION OF THE SAME ISSUE(S) EXCEPT FOR GOOD CAUSE.** All Rule 12 and Rule 56 motions must be heard or submitted on briefs no later than 30 days prior to trial. To meet this deadline the moving party must allow adequate response time for the opposing party, as set forth above.

DISCOVERY

(6) Discovery shall be governed by the Federal Rules of Civil Procedure, except that pursuant to paragraph II D of the Civil Justice Expense and Delay Reduction Plan, as amended, for the United States District Court for the Western District of Virginia, this district has opted out of subparagraphs (a)(1) and (f) of Rule 26. Therefore, no initial disclosure as provided for in

subparagraph (a)(1) will be required nor will a meeting of the parties, as provided for under subparagraph (f), be required.

(7) All discovery should be completed in time for the Court to consider any motions which may arise from the discovery process. In all events, discovery (both written and oral) must be completed 45 days prior to trial. This requires that written discovery be served in time to allow the responding party time to respond before the cutoff date for discovery.

(8) All pretrial discovery motions and issues are hereby referred to: Magistrate-Judge Glen E. Conrad for cases filed in the Danville, Lynchburg and Roanoke divisions; Magistrate-Judge B. Waugh Crigler for cases filed in the Charlottesville and Harrisonburg divisions; Magistrate-Judge Cynthia D. Kinser for cases filed in the Abingdon and Big Stone Gap divisions.

WITNESSES

(9) Any expert witness must prepare a written report which shall conform to the requirements of Rule 26. The report must be furnished to the opposing party(s) in a timely fashion so that discovery, if desired, can be completed 45 days prior to trial.

(10) Twenty days prior to trial or at the final pretrial conference, which ever comes first, the parties shall exchange the names of witnesses they expect to call at trial. Along with each witness's name counsel shall include the witness's address and a summary of his anticipated testimony.

(11) If this case is settled before trial and the court does not receive the proposed final order within thirty (30) days after the court received oral or written notification of the settlement, the court will dismiss the case with prejudice without further notice.

(12) The Clerk is directed to mail a certified copy of this Pretrial Order to all counsel of record and to the Magistrate-Judge.

ENTERED: This_____day of_____, 1996.

_____
CHIEF UNITED STATES DISTRICT JUDGE