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First Annual Assessment of the Civil Justice Reform Act Advisory Group

Advisory Group For The District of North Dakota 1994-95

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First Annual Assessment of the Civil Justice Reform Act Advisory Group

December 1, 1993 through November 30, 1994

District of North Dakota

June 30, 1995

Advisory Group
For The District of North Dakota 1994-95

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I. INTRODUCTION

This is the Advisory Group's first annual assessment of this District since adoption of its Civil Justice Expense and Delay Reduction Plan (effective date December 1, 1993). As directed by Section 475 of the Civil Justice Reform Act of 1990, the Court, in consultation with the Advisory Group, must examine each year the overall state of the docket and the Plan's effectiveness to determine whether additional actions are necessary to improve the Court's litigation management practices. This assessment covers the Plan's first year from December 1, 1993 through November 30, 1994.

After review of pertinent information provided by the Court and the Clerk's Office—including a meeting with the district judges, magistrate judges, and their staffs—the Advisory Group concludes that the Plan's first year has been a successful one and that the District's case processing capabilities have improved under its provisions. While the Plan's full impact may not be evident for some time, there is little reason to make radical adjustments on its one year anniversary in light of the positive gains made so far. Accordingly, the Advisory Group unanimously reaffirms its commitment to the Plan and concludes that only minor refinements to the Plan are necessary at this time.

Any changes to the Plan adopted by the Court will follow in a separate Court order, a suggested draft of which will accompany this Report to the Court. What follows here is the Advisory Group's provision-by-provision reassessment and recommendations.

II. REASSESSMENT OF THE PLAN'S PROVISIONS

1. DIFFERENTIATED CASE MANAGEMENT

The civil case classification system instituted by the Plan (which differentiated between express (Class One) and standard (Class Two) cases) has assisted the Court in identifying these cases for scheduling purposes (particularly the Rule 16(b) Conference) and tracking their progress once identified. The Advisory Group, consistent with its original conclusion that a more complex tracking system was unnecessary, recommends no changes to this provision.

2. EARLY AND ONGOING CONTROL OF THE PRETRIAL PROCESS

Firm Trial Dates Set Early at the Rule 16(b) Scheduling Conference. At the heart of the Plan is the Court's commitment to setting firm trial dates and final pretrial conferences for each Class Two case at the Rule 16(b) Scheduling Conference, subject to extraordinary cause exceptions and criminal docket demands. The form order for that conference now reads in pertinent part:

> The joint [scheduling/discovery] plan shall be submitted to the magistrate judge (but not filed) for approval at least 4 working days prior to the conference. The deadline for submission of the plan is imperative. The lead time will enable the court to select settlement conference, final pretrial conference and trial dates before the conference. During the conference, the court will address the items covered in the plan and establish a schedule, including a trial date.

Thus far, it appears that this new procedure is not only feasible but helpful in maximizing efficient case scheduling and disposition. There have been few, if any, scheduling snags and counsel, on the whole, have voiced approval of the new method of scheduling trials. Accordingly, the Advisory Group reiterates its strong conviction that setting early and firm trial dates remains the Plan's centerpiece and urges the Court's faithful compliance to its requirements.

Eighteen-Month Benchmark for Trials. It is too early to tell how this provision is working until older cases are heard and more post-December 1, 1993 cases are scheduled for trial. In the interim, the Advisory Group recommends no changes to this provision. Of the post-December 1993 cases scheduled for trial, the Advisory Group was pleased to note the high degree of conformance to the 18-month benchmark.

The Intermediate Status Conference. Experience has already shown that not all Class Two cases require an Intermediate Status Conference between the initial Rule 16(b) Scheduling Conference and the Final Pretrial Conference. Holding one in the more simple cases may actually increase cost and delay. Accordingly, the Advisory Group recommends modification of this provision to eliminate the mandatory nature of the intermediate conference in less complicated cases and to encourage its use in more complex cases. Selection of cases which would benefit from

an intermediate status conference should be committed to the Court's discretion with input from counsel.

Joint Jury Instructions. The Local Rule revisions contained in this Plan provision have now been officially incorporated as the District's new Local Rule 47.1CV(F), adopted January 23, 1995. The Advisory Group recommends no changes to this provision.

Sixty-Day Benchmark for Motions and Bankruptcy Appeals. The Court's goal is to decide all motions within 60 days from ripeness. Given the beneficial effect of this goal, the Advisory Group recommends that bench trials be subject to this provision as well, with a complexity exception. Any complex bench trials will be noted on the motion tracking report.

3. PRETRIAL MONITORING OF COMPLEX CASES THROUGH DISCOVERY-CASE MANAGEMENT CONFERENCES

In accordance with this provision, the Advisory Group encourages—and the Court has expressed commitment to—more active case management by the district judges in complex cases. In addition, the Advisory Group urges continued use of the telephone conferences to cut costs and delay. Otherwise, the Advisory Group recommends no changes to this provision.

Court-Appointed Experts and Science and Technology in the Courtroom. The Advisory Group recommends no changes to this provision.

4. VOLUNTARY INFORMATION EXCHANGE AND COOPERATIVE DISCOVERY DEVICES

At the time that the Court's CJRA Plan was executed (October 8, 1993), the latest revisions to the Federal Rules of Civil Procedure were still in doubt. The Plan, as it now stands, requires less disclosure than Rule 26(a)(1) which the Court implemented after adoption of the new rules. Accordingly, the Advisory Group recommends that this Plan provision be amended to reflect the Rule 26(a)(1) requirements of this District.

5. GOOD FAITH CERTIFICATIONS FOR DISCOVERY MOTIONS

The Local Rule revisions contained in this Plan provision have now been officially incorporated as the District's new Local Rule 16.1(B)(4), adopted January 23, 1995. The Advisory Group recommends no changes to this provision.

6. ALTERNATIVE DISPUTE RESOLUTION

This Court's decision to encourage participation in ADR has been implemented by a new provision in the Scheduling/Discovery Plan which asks counsel to confirm that they have "discussed between themselves and explored with their clients early involvement in alternative dispute resolution." In addition, the Scheduling/Discovery Plan asks counsel to indicate which, if any, ADR options would be appropriate for the case and offers an ADR "menu" of options for counsel to consider. The Scheduling/Discovery Plan further requires counsel to explain their response if they indicate that no ADR option is appropriate.

The Advisory Group recommends no changes to this provision and procedure, except to reiterate (as stated in the Plan) that the Magistrate Judges' settlement conferences should remain mandatory. At this time, both the court and bar seem to prefer a voluntary ADR program, but the Advisory Group will reconsider whether to retain the voluntary nature of this provision after further experience with it.

7. EXTENSIVE UTILIZATION OF THE MAGISTRATE JUDGE

The Advisory Group is pleased with the Court's efforts in utilizing the Magistrate Judges for settlement efforts as well as consent cases. Accordingly, the Advisory Group recommends no changes to this provision.

8. NEED FOR SECOND FULL-TIME MAGISTRATE JUDGE

The Court received authorization for a half-time Magistrate Judge position in Bismarck in late 1993. Dwight Kautzmann was selected to fill the position and assumed office in April 1994. Nonetheless, the Advisory Group recommends no changes to this provision, and reaffirms its strong recommendation that this District secure a second full-time magistrate judge chambered in Bismarck.

9. DIVISION BOUNDARIES

In accordance with the Plan, the issue of division boundary realignment has been referred to the District's Federal Practice Committee. The Advisory Group recommends no changes to this provision.

10. RESOURCES FOR THE JUDICIARY

The Advisory Group recommends no changes to this provision.

11. TAXATION OF COSTS

The Local Rule revisions contained in this Plan provision have now been officially incorporated as the District's new Local Rule 54.1(A)-(B), adopted January 23, 1995. The Advisory Group recommends no changes to this provision.

III. CONCLUSION

We concluded our original CJRA Report to the Court with the "hope, rooted in the reality of what is now possible, that tangible and positive change can be achieved in the near future." *Report of the Civil Justice Reform Act Advisory Group For the District of North Dakota,* 69 N.D. L. REV. 741, 805 (1993). Our first year's experience with this District's CJRA Plan has demonstrated realization of that hope. There has been notable improvement in the Court's setting early and firm trial dates—the key, as we have asserted, to undoing so many cost and delay problems—and consequently, in hearing civil cases within the 18-month benchmark adopted by the Court. We applaud the Court's concrete strides towards ensuring the promise of the first rule of federal civil procedure "to secure the just, speedy, and inexpensive determination of every action" and look forward to a second year of even greater progress in eliminating the enemies of inordinate cost and delay as the Plan matures in its beneficial effects.

Respectfully Submitted,

THE CIVIL JUSTICE REFORM ACT
ADVISORY GROUP FOR THE
DISTRICT OF NORTH DAKOTA

First Amendment of the District's Civil Justice Expense and Delay Reduction Plan

District of North Dakota

Executed June 15, 1995

Effective June 30, 1995

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA

FIRST AMENDMENT OF THE DISTRICT'S CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

Effective Date: June 30, 1995

PRELIMINARY STATEMENT

This District's Civil Justice Expense and Delay Reduction Plan took effect on December 1, 1993. As directed by § 475 of the Civil Justice Reform Act of 1990, the Court, in consultation with the Advisory Group, has examined the Plan's effectiveness and the overall state of the docket for the first year of the Plan's operation in order to determine whether additional actions are necessary to improve the Court's litigation management practices.

After careful consideration of the Advisory Group's First Annual Assessment For the Period December 1, 1993 - November 30, 1994, the Court agrees with the Advisory Group that the Plan's first year has been a successful one, that the District's case processing capabilities have improved under its provisions, and that radical changes to the Plan at this early point in its life would be premature. Thus, as ordered below, the Court adopts the minor Plan refinements recommended by the Advisory Group in its Annual Assessment. Any Plan provisions not mentioned in this Order remain in full force and effect as originally adopted by this Court.

ACCORDINGLY, THE COURT ADOPTS THESE AMENDMENTS TO THE ORIGINAL CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN:

AMENDED PLAN PROVISIONS

2. EARLY AND ONGOING CONTROL OF THE PRETRIAL PROCESS

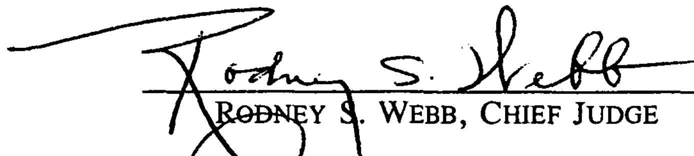
The Intermediate Status Conference. This original Plan provision required the Court to hold an Intermediate Status Conference between the initial Rule 16(b) Scheduling Conference and the Final Pretrial Conference in every Class Two case. Experience has shown that not all Class Two cases require this conference. Henceforth, the Court, in its discretion and with input from counsel, will decide on a case-by-case basis whether an Intermediate Status Conference will aid in the just and efficient disposition of the action.

Sixty-Day Benchmark for Motions and Bankruptcy Appeals. Given the benefits of the sixty-day benchmark for motion dispositions and bankruptcy appeals, the Court adopts the same benchmark for bench trials, with an exception for complex trials. Any complex bench trials will be noted on the Court's motion tracking report.

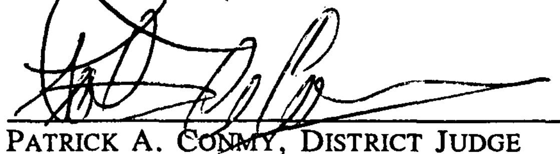
4. VOLUNTARY INFORMATION EXCHANGE AND COOPERATIVE DISCOVERY DEVICES

This original Plan provision has been superseded by the Court's adoption of Federal Rule of Civil Procedure 26(a)(1) by Order dated January 20, 1994 (applicable to all cases filed after December 1, 1993).

SO ORDERED.
Dated June 15, 1995



RODNEY S. WEBB, CHIEF JUDGE



PATRICK A. CONMY, DISTRICT JUDGE