

Getting To Know You

Improving Prisoner Case Management Efficiency Through
Increased Interaction with the Parties
-Honorable Charles R. Pyle (Ret.)

- Lawyers, judges, corrections officials and even the public will have an incorrect perception of the substance and importance of inmate litigation.
- “Frivolous” becomes automatic connector
- Prisoner Civil Rts Suits

FOCUS ON PROCEDURE INSTEAD OF DISPUTE RESOLUTION

Attica

Ineffective Grievance Systems

Federal and State Procedural Limitations

Law libraries removed

Federal Court becomes only outlet

More Talk - Less Paper

- More paper isn't necessarily better. As supervisor, I was responsible for periodic file reviews. What I found was disconcerting;
 - Most of the pleadings were discovery disputes
 - Most of the correspondence backer was correspondence with the inmate related to discovery and other disputes
 - There was no correspondence to our client
 - Factual development was limited or non-existent
 - As a result, motions for summary judgment were heavy on law and light on facts
 - Quarterly reports were vacuous and devoid of reliable information on which to judge exposure
- This looked like a pretty aggravating and unsatisfactory way to practice law. It was justified by the caseload volume.

LAW CLERK SURVEY FRUSTRATIONS

- Discovery/Motions to Compel
- Voluminous MSJ's
- Repeated Rule 12(b)(6) Motions
- Establishing Service of Process

Repetitive Tasks

- IFP Orders
- Motions for Counsel
- Motions for Extension of Time

Most Meaningful and Gratifying Aspect of Job

- Effective Case Management
- Interesting Constitutional Issues
- **Finding cases with meritorious claims and resolving cases on the merits**

Hypothesis

- Increased interaction between the Court and counsel and between counsel and their respective parties will reduce the flow of paper, the number of disputes and increase all parties overall perception of the fairness of the proceeding.

Civil Justice Reform Act of 1990

**Civil Litigation Management
Manual 2001**

**Civil Litigation Management
Manual 2010**

The Key Concept

“What is needed can be described in two words – cooperation and proportionality - and one phrase – sustained, active, hands-on judicial case management.”

-From the Duke Conference Committee Report
to Chief Justice Roberts

MEETING YOUR CLIENT

In person if possible

Prepare - particularly for the first 5 minutes

DO NOT ASK ABOUT THE OFFENSE

Do ask sentence expiration date

Background info as "ice breaker"

What info/documents does client have?

What witnesses does client suggest?

Use term "prisoner" instead of "inmate"

The Scheduling Conference

- The 26(f) meet and confer is key opportunity to meet with defense counsel
- Strategies for getting past/through procedural to focus on the dispute
- Judge – Law Clerk - Both

Goal of the Telephonic Conference

Build expectation and environment for cooperation between inherently distrustful parties.

Must be personal, not paper

Scheduling is secondary

Accept responsibility to prepare paperwork

Topics for R16 Conference

- Whether additional parties need to be served and whether the deputy attorney general can request authorization to accept service.
- Whether the DAG anticipates filing a motion to dismiss for failure to state a claim even though frivolousness review has already occurred.

Topics for R16 Conference Cont'd

- Whether there should be a deadline for motions to dismiss that is much earlier than the dispositive motion deadline.
- Whether either side anticipates using experts in the case?
- Whether either side intends to schedule depositions and **where, how and when?**

Topics for R16 Conference Cont'd

- How should the initial disclosure requirements of Rule 26(a)(1) be modified for this case, including when and how will the mutual disclosure occur? What disclosure will expedite resolution of the case? Records, reports, policies, videos and names relevant to the dispute.

Topics for R16 Conference Cont'd

- The dispositive motion process
- Potential settlement – when and how that might be considered.
- The discovery dispute process.
- Motions for extension of time.

Dispositive Motions

- 12(b)(6)
- R 56
- Stipulations
 - Parties
 - Claims

Settlement

- Do not be discouraged by repeated disinterest from opposing counsel
- Anticipate the “this will open the floodgates” arguments
- As quickly as possible get defense counsel to involve operations to resolve side issues

Final Pretrial Conference

- Witnesses – subpoenas needed? experts?
- Exhibits
- Motions in Limine
- Trial Procedure
- Jury Instructions

Fundamental Advice

- Communicate regularly with your client
- Avoid paper disputes
- Cooperate and get to the merits

Conclusion

- Prisoner civil rights litigation is important and challenging. Encouraging everyone to give these cases the respect they deserve is the best case management. Most importantly, let's change the focus from resolving procedural issues to solving problems.