

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FILED

85 JUN 23 PM 1:42

U.S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK - BUFFALO

PLAN FOR THE DISPOSITION OF PRO SE CASES

I. OBJECTIVE

Cases filed by pro se litigants comprise a sizable portion of the Court's civil caseload, the majority of which are prisoner petitions, including both civil rights matters and habeas corpus petitions. During fiscal year 1994, pro se case filings amounted to nearly one-third of all civil case filings.

In recognition of the size of the pro se caseload, it is the purpose of this plan to set forth efficient and uniform procedures for handling pro se cases in the Western District of New York. This plan promotes early judicial intervention and coordinates the responsibilities of the Clerk's Office and the pro se office to ensure orderly disposition of pro se cases. It is contemplated that the case management procedures set forth herein will uniformly be followed in all pro se cases.

Critical to this plan's success is the implementation of standard orders intending to guide the management of pro se cases. A set of standardized forms for use in pro se cases shall be adopted as a part of this plan. It shall be the responsibility of the pro se office to ensure that these forms are consistently updated when warranted by case law, statute, or local rule.

II. MANAGEMENT OF PRO SE CASES

A. Initial Case Screening

1. All incoming pro se cases shall be referred to the pro se office for initial screening. This screening includes reviewing complaints and petitions to determine whether the plaintiff/petitioner has submitted sufficient copies and whether the forms are properly and fully completed.
2. The pro se office shall determine whether the plaintiff/petitioner in a newly-filed case has previously filed other cases, either pending or closed, and, if so, to which district judge or magistrate judge those cases were assigned. The pro se office shall promptly provide this information to the Clerk of Court to facilitate assignment of the case to a district judge or magistrate judge following the case assignment procedure set forth below.

B. Case Assignment

1. The Clerk of Court shall randomly assign each incoming pro se case to a district judge or magistrate judge. All cases filed by a pro se plaintiff/petitioner shall be assigned to the same district judge or magistrate judge to whom a previously filed case has been assigned.
2. The District's full-time magistrate judges shall be assigned prisoner pro se civil rights and habeas corpus cases in equal proportion to assignments made to the Court's active district judges. The district's senior district judges shall be assigned prisoner pro se cases on any basis they choose. In the event that the assignment is to a magistrate judge, a backup district judge shall simultaneously be selected, but his identity shall not be disclosed except as provided herein. The parties shall be notified that their case has been assigned to a magistrate judge in which

event they shall be provided with a form indicating their consent to proceed to the disposition of their case before a magistrate judge pursuant to 28 U.S.C. § 636(c). The executed consent forms shall be returned to the Clerk of Court. If the parties fail to consent to the complete disposition of their case by the magistrate judge, then the district judge assigned to the case may, in his discretion, refer any matters concerning the case to a magistrate judge pursuant to 28 U.S.C. § 636(b). These procedures are more completely set forth in the standing order and related materials in Appendix A.

C. Preparation of Initial Orders

1. Each active district judge shall serve as the active duty judge on a rotating quarterly basis and shall be responsible for granting or denying initial orders prepared by the pro se office.
2. After a pro se case is assigned to a district judge or magistrate judge, the pro se staff attorney shall review the file and prepare initial orders for signature by the duty judge. Initial orders shall be presented to the duty judge within thirty days of the case being filed.
3. "Initial orders" contemplates, but is not limited to: orders staying proceedings pending the plaintiff's pursuit of remedies under the New York State Department of Correctional Services Grievance Program; orders granting or denying permission to proceed in forma pauperis; orders directing service of the complaint on behalf of the plaintiff/petitioner; orders transferring venue of cases improperly filed in the Western District of New York; orders dismissing habeas corpus petitions for failure to exhaust state court remedies or for abusing the writ of habeas corpus; and orders dismissing claims as frivolous under 28 U.S.C. §1915(d) or for failure to state a claim under Fed. R. Civ. P. 12(b)(6).

D. Requests for Appointment of Counsel

The pro se staff attorney shall review all initial motions for appointment of counsel in pro se cases and shall prepare a form order for signature. Subsequent motions for appointment of counsel shall be referred to the judge or magistrate judge assigned to the case. All requests for appointment of counsel shall be denied by form order until such time as the complaint or petition has at least survived a dispositive motion.

E. Scheduling Orders In Prisoner Civil Rights Cases

A scheduling order shall be prepared in each case and signed by the assigned district judge or magistrate judge. The pro se staff attorney shall review each prisoner civil rights case to ensure that a scheduling order has been issued. Furthermore, the pro se staff attorney shall be responsible for tracking the dates of each scheduling order to determine whether the case has been prosecuted in accordance with the scheduling order or abandoned. If the plaintiff does not prosecute the case in accordance with the terms of the scheduling order, the pro se staff attorney shall prepare a show cause order for dismissal of the complaint pursuant to Local Rule 41.2 as more fully described in Section II(J) of the plan.

F. Habeas Corpus Cases

The pro se office shall be responsible for preparing scheduling orders in habeas corpus actions. They shall be presented to the assigned district judge or magistrate judge for signature within seven days of the filing of the petition. The pro se office's responsibility for habeas corpus proceedings is limited to direct assignments only by a district judge and/or magistrate judge responsible for the proceeding.

G. Non-Inmate Pro Se Cases

The pro se office shall prepare required initial form orders in, and track the progress of, pro se cases brought by persons other than inmates and shall not otherwise be responsible for handling these cases except as requested by the assigned district judge or magistrate judge.

H. Case Summaries

Prior to delivering a pro se file to chambers, the pro se office shall prepare a one-page case summary sheet in a form such as that attached as Appendix B. The purpose of the summary is to briefly inform the assigned district judge or magistrate judge of the principal allegations, the current case status, and whether the plaintiff/petitioner may have filed other cases with the Court. The case summary sheet shall be prepared on a personal computer, and shall be as short and concise as possible.

I. Monitoring Pro Se Cases

1. The pro se office shall maintain a diary for each pending pro se case in order to track all case deadlines. When a deadline is approaching, the pro se office shall advise the assigned district judge's or magistrate judge's chambers.
2. When an order is signed directing service by the U.S. Marshal, the pro se office shall be responsible for transmitting the order to the U.S. Marshal and subsequently following up to ensure that service is effected within the proper time limits.
3. All activity on pro se files shall be memorialized through a diary system separate from the Clerk's Office docket records. Calendar entries shall be made when a case is opened, when the pro se office transmits a file to the assigned district judge or magistrate judge, and when an

order is signed and the file is returned to the pro se office. Such a system shall provide a mechanism for better tracking the progress of cases and location of case files.

J. Dismissal for Failure to Prosecute

The pro se staff attorney shall meet with or seek the approval of each of the district judges and magistrate judges at least quarterly to determine whether orders to show cause pursuant to Local Rule of Civil Procedure 41.2 shall be issued. In the event that such orders to show cause are issued, it shall be the responsibility of the pro se office to track and substantively review any responses received from plaintiffs in these cases. The pro se staff attorney shall make recommendations to the Court as to whether particular responses are sufficient to forestall dismissal for failure to prosecute. Dismissal orders in such cases, as well as in cases in which the plaintiff failed to respond to a Local Rule 41.2 order to show cause, shall be prepared by the pro se office and presented to the assigned district judge or magistrate judge for signature. If the plaintiff's response warrants continuation of the action, the pro se office shall prepare a scheduling order for further proceedings for signature by the assigned district judge or magistrate judge. Such orders and recommendations shall be prepared within fourteen days of the response deadline set forth in the order to show cause.

III. ADDITIONAL RESPONSIBILITIES OF THE PRO SE OFFICE

A. Research

The pro se staff attorney shall provide research assistance to district judges, magistrate judges, and their law clerks by preparing reports based on relevant substantive law governing

pro se cases. These reports shall be updated quarterly and transmitted to each chambers with sufficient copies for all personnel. Additionally, the pro se staff attorney shall be responsible for reviewing Supreme Court and Second Circuit Court of Appeals slip opinions on a bi-weekly basis. The pro se staff attorney shall promptly advise each chambers of any slip opinions relevant to pro se matters by briefly indicating in memorandum format the case name and citation and noting to what issue the opinion pertains.

B. Contact with Pro Se Litigants

The pro se office shall serve as a liaison between the Court and pro se litigants with respect to matters that require specialized attention. Telephone calls and inquiries from pro se litigants who seek general information, such as docket sheets, shall be fielded by Clerk's Office intake staff. Those inquiries requiring more specific information shall be referred to the pro se office for handling.

C. Sanctions

It is this Court's policy to enforce sanctions orders imposed against pro se plaintiffs/petitioners by this Court as well as by other federal district courts within the State of New York. The collection of sanctions information, to the extent it is available, shall be the responsibility of the pro se office. This information shall be collected at least monthly from each of the other three districts within New York State and combined with the list of litigants sanctioned in the Western District of New York. This list shall then be provided on a monthly basis to each chambers and to all Clerk's Office intake personnel in order to provide improved enforcement of sanctions in the district.

D. List of Assigned Counsel

The pro se office shall develop and maintain a list of attorneys within the district who have volunteered to accept pro bono assignments in civil cases. This list shall include: the attorney's name, office address and telephone number, nature of practice, number of years in practice, date of federal court admission, and area of interest for pro bono assignment. The list shall be transmitted to the Clerk's Offices and to each district judge's and magistrate judge's chambers quarterly.

The pro se office and the Clerk's Office shall take steps to promote awareness of the District Court Fund which provides reimbursement of out-of-pocket expenses incurred in the representation of indigent civil litigants.

IV. COMPOSITION AND SUPERVISION OF THE PRO SE OFFICE

The pro se office shall be staffed by three full-time employees: one pro se staff attorney, one pro se staff attorney/writ clerk, and one pro se writ clerk. Although funded by the Clerk's Office, the supervision of the pro se office shall be overseen by Judge William M. Skretny. Day-to-day supervision, particularly with respect to office operations and the development of form orders, shall be performed by Rachel Brody Bandysh, CJRA Attorney, under the direction of Judge Skretny.

V. EFFECTIVE DATE

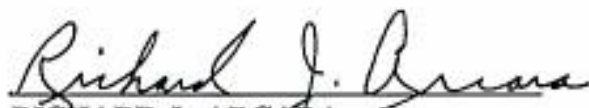
The provisions of this plan shall apply to all pro se cases filed or pending after July 1, 1995.



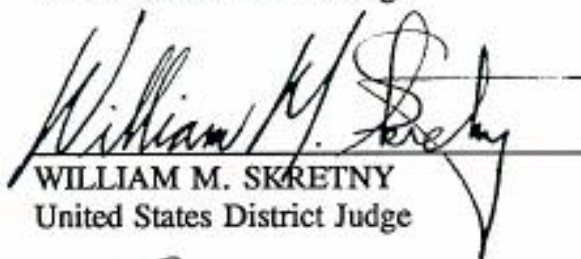
MICHAEL A. TELESKA
Chief Judge, United States District Court



DAVID G. LARIMER
United States District Judge



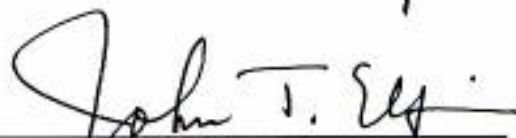
RICHARD J. ARCARA
United States District Judge



WILLIAM M. SKRETNY
United States District Judge



JOHN T. CURTIN
Senior United States District Judge



JOHN T. ELFVIN
Senior United States District Judge

ATTEST: A TRUE COPY
U.S. DISTRICT COURT, WDNY
RODNEY C. EARLY, CLERK

By Christine L. Manjel
Clerk

Original Filed 6/23/95

APPENDIX A

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

FILED

95 JUN 23 PM 1:41

**IN THE MATTER OF ASSIGNMENT OF
PRISONER CIVIL RIGHTS CASES AND
HABEAS CORPUS PETITIONS**

U.S. DISTRICT COURT
W.D.N.Y. - BUFFALO

ORDER

To assist in the handling and disposition of civil rights cases commenced by inmates pursuant to 42 U.S.C. § 1983 and habeas corpus petitions commenced pursuant to 28 U.S.C. §§ 2254 and 2255, it is necessary to modify the Court's system of case assignment to fully utilize the talents and abilities of the magistrate judges of this Court. Accordingly, all full-time magistrate judges in the Western District of New York shall be included in the case assignment procedures for actions brought by inmates, acting *pro se*, under 42 U.S.C. § 1983 and 28 U.S.C. §§ 2254 and 2255 and shall be randomly assigned such cases in equal proportion to assignments made to the active district judges of the Court.

A district judge will be paired with each case initially assigned to a magistrate judge. When such pairing is necessary, the district judge shall be randomly selected. The name of the district judge paired on a particular case will not be disclosed by the Clerk's Office.

In all cases filed by prisoners pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§ 2254 and 2255, the Clerk of Court shall notify the parties of their opportunity to consent to proceed to disposition before a magistrate judge. In those cases that are initially assigned to a magistrate judge in accordance with the case assignment system set forth in this order, the Clerk of Court shall notify the parties of the assignment of their case to a magistrate judge and provide the parties with a form on which the parties must indicate their decision as to whether they will consent to proceed to disposition before the assigned magistrate judge. The notice and consent

form to be sent to parties in cases initially assigned to a full-time magistrate judge shall be substantially in the form of the attachments to this order.

The Clerk of Court shall maintain the confidentiality of the parties' decisions on the issue of consent and shall not inform any district judge or magistrate judge of the parties' responses unless all parties consent.

If all parties consent to proceed to disposition before the magistrate judge, the Clerk of Court shall prepare for the chief judge's signature an order of reference pursuant to 28 U.S.C. § 636(c). The Clerk of Court shall then file the parties' consent forms.

An appeal of any judgment entered by a magistrate judge will be to the Court of Appeals for the Second Circuit.

In the event that all parties do not consent to proceed to disposition before the assigned magistrate judge, the district judge assigned to the case may, in his discretion, refer any matters concerning the case to the magistrate judge pursuant to 28 U.S.C. § 636(b). If any party objects to a decision or recommendation of the magistrate judge on a motion prior to trial in a case wherein consent has not been given, the objection will be ruled upon by the district judge paired on the case. Until such time as all parties have executed and returned the consent form to the Clerk of Court, the identity of the district judge paired on the case shall not be revealed to the parties.

This order shall be interpreted and enforced so as to fully protect the voluntariness of the parties' consent and no judicial officer or court employee shall take any action that implies that the parties are not free to withhold consent without adverse substantive consequences.

This modification to the system of case assignment for the Western District of New York shall take effect July 1, 1995.

ALL OF THE ABOVE IS SO ORDERED.

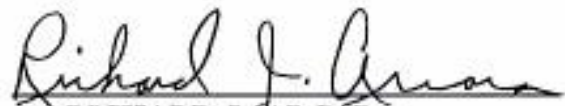
Dated: June 13, 1995
Rochester, New York



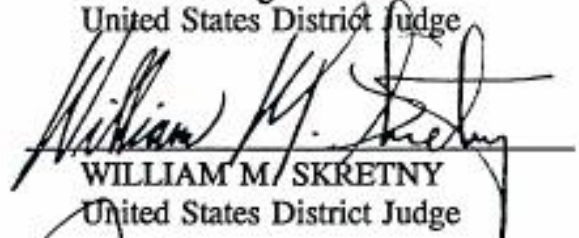
MICHAEL A. TELESKA
Chief Judge, United States District Court



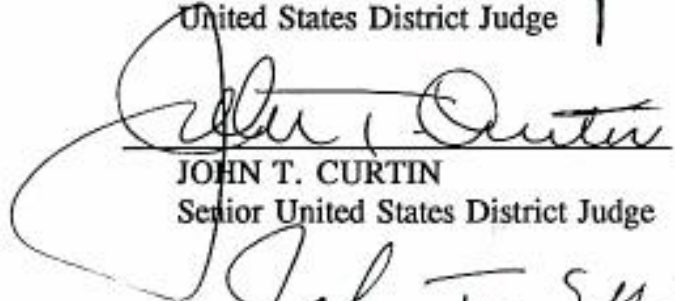
DAVID G. LARIMER
United States District Judge



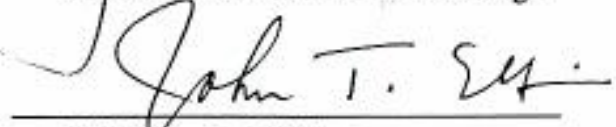
RICHARD J. ARCARA
United States District Judge



WILLIAM M. SKRETNY
United States District Judge



JOHN T. CURTIN
Senior United States District Judge



JOHN T. ELFVIN
Senior United States District Judge

ATTEST: A TRUE COPY
U.S. DISTRICT COURT, WDNY
RODNEY C. EARLY, CLERK

By Christine I. Kojjal
Clerk

Original Filed 6/23/95

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
304 U.S. COURTHOUSE
68 COURT STREET
BUFFALO, NEW YORK 14202-3498
(716) 551-4211 FAX (716) 551-4850

RODNEY C. EARLY
CLERK

NOTICE OF ASSIGNMENT TO MAGISTRATE JUDGE

Pursuant to the attached standing order, this case has been randomly assigned to United States Magistrate Judge [insert name] for all pre-trial purposes. You may consent to proceed to disposition before Magistrate Judge [insert name] pursuant to 28 U.S.C. § 636(c). This means that the magistrate judge will handle all aspects of your case, including the trial, probably much sooner than a district judge assigned to the case.

You may, however, without penalty, withhold your consent, and your case will be tried by a district court judge.

ALL PARTIES TO THIS ACTION MUST EXECUTE THE ATTACHED FORM INDICATING WHETHER THEY CONSENT TO PROCEED TO DISPOSITION BEFORE THE MAGISTRATE JUDGE.

Please return the attached decision form to the Clerk's Office within 20 days. If all parties consent to proceed before the magistrate judge, any appeal taken from the judgment in this case shall be made to the Court of Appeals for the Second Circuit. In the absence of the parties' consent, a district judge will preside at the trial of this case.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

PRO SE LITIGANT,

Plaintiff,

95-CV-0000

v.

CONSENT

OFFICIAL,

Defendant.

CONSENT TO PROCEED BEFORE A MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. § 636(c), the undersigned hereby voluntarily consents to the assignment of this case to the magistrate judge to conduct all proceedings in this case, including trial and the entry of final judgment.

I CONSENT

I DO NOT CONSENT

(Print Name)

(Signature)

(Date)

RETURN THIS FORM TO THE CLERK'S OFFICE WITHIN 20 DAYS

APPENDIX B

CASE SUMMARY SHEET

CASE NUMBER: _____ **JUDGE:** _____

CASE NAME: _____

APPOINTED COUNSEL: _____

DATE FILED: _____ **IFP GRANTED: Yes__ No__** **ORDER DATE:** _____

DATE SERVED: _____

DATE REFERRED: _____ **REASON REFERRED:** _____

SUMMARY OF ALLEGATIONS:

CLAIMS/DEFENDANTS DISMISSED SUA SPONTE: _____

PENDING MOTIONS:

Dispositive _____

Non-Dispositive _____

SCHEDULING ORDER:

Motion Cut-Off _____

Discovery Closing _____

Final Pretrial Order _____

Trial Date _____

Other _____