**IN THE UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF ARKANSAS**

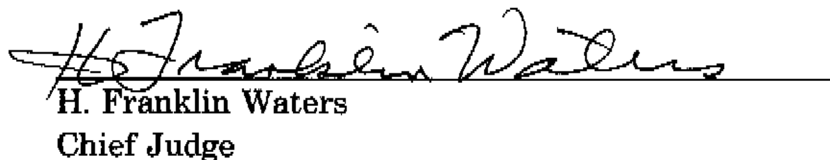
In Re: CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

**GENERAL ORDER NO. 24**

Now comes on for consideration the matter of adopting the Civil Justice Expense and Delay Reduction Plan pursuant to the Civil Justice Reform Act of 1990, 28 U.S.C. §471.

The Court, after careful consideration, hereby adopts said Plan in its totality, a copy of said Plan being made a part of this order.

IT IS SO ORDERED this 17th day of November, 1993.



H. Franklin Waters
Chief Judge

U. S. DISTRICT COURT
WESTERN DIST. ARKANSAS
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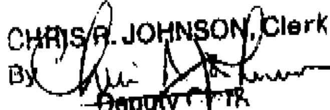
CHRIS R. JOHNSON, Clerk



By Deputy Clerk

# UNITED STATES DISTRICT COURT
# FOR THE WESTERN DISTRICT OF ARKANSAS

## CIVIL JUSTICE
## EXPENSE AND DELAY REDUCTION PLAN

**EFFECTIVE JANUARY 1, 1994**

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# CIVIL JUSTICE REFORM ACT PLAN

## I.

## INTRODUCTION

In 1990 the Congress enacted into law the Civil Justice Reform Act.[1] The Act requires, pursuant to Section 471, that each United States District Court implement a civil justice expense and delay reduction plan.

According to the Act, "the purposes of each plan are to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy and inexpensive resolutions of civil disputes". The Act also mandates that the district courts "shall consider and may include the following principles and guidelines of litigation management and cost and delay reduction" in its civil justice expense and delay reduction plan. Summarized below are the principles enumerated in Section 473(a) of the Act. The full text of the Act is included in Appendix A.

1. Systematic, differential treatment of civil cases that tailor case specific management to specified criteria;

[1] Title I of the Judicial Improvements Act of 1990, Pub.L.No. 101-650(1990) codified at 28 U.S.C. Section 471-482.

2. Early and ongoing control of the pretrial process by the involvement of a judicial officer;

3. Special attention to complex cases, with use of discovery management conferences and other settlement techniques;

4. Encouragement of cost-effective discovery through voluntary exchange of information;

5. Prohibiting consideration of discovery motions unless counsel have made good faith effort to resolve discovery dispute;

6. Utilization of alternative dispute resolution programs.

Additionally, the Act requires that each district court shall consider and may include in its plan the following litigation management and cost and delay reduction techniques. Summarized below are the litigation techniques enumerated in Section 473(b) of the Act. The full text of the Act is included in Appendix A.

1. Requirement that a discovery-case management plan be presented at initial pretrial conference;

2. Requirement that at pretrial conferences all parties be represented by an attorney with authority to bind the party in all matters;

3. Requirement that all requests for extensions and continuances be signed by the attorney and party making the request;

4. Requirement that neutral evaluation programs be established;

5. Requirement that at settlement conferences parties should be present with authority to bind in settlement discussions.



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The court, as required by the Act, specifically Sections 472(a) and 473(a) and (b), has consulted with the Advisory Group, has considered the recommendations of the group, and has considered all of the principles, guidelines and techniques set forth in the above Sections 473(a) and (b). Accordingly, the United States District Court for the Western District of Arkansas adopts the following Civil Justice Expense and Delay Reduction Plan and directs that it be implemented January 1, 1994. The Plan shall apply to all civil cases filed on or after that date and may, at the discretion of the court, apply to cases then pending.

Adoption of the court's Plan is a culmination of over two years' efforts by the advisory group. The Court is deeply grateful to the members of the advisory group who have contributed their time and efforts to this process. For this the court extends its sincere thanks and appreciation.

## II.

## CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

The United States District Court for the Western District of Arkansas unanimously adopts the following expense and delay reduction plan and shall implement the plan effective January 1, 1994.

A. Systematic, Differential Treatment of Civil Cases for Purposes of Case-Specific Management[2]

The Advisory Group recommended to the court that a Differentiated Case Management Program be established in the Western District. (See Appendix B.) This would be limited to "complex" cases. The Court, after careful consideration of the recommendation, respectfully disagrees that a DCM program be established. The Court believes that only a relatively few cases filed in this district would qualify as complex. Thus, it seems unlikely that there would be sufficient justification to warrant the procedural changes necessary to administer such a program. The Court will, however, on an experimental basis, be willing to adopt an element of the DCM program: the case management or scheduling conference. The Court agrees that in certain cases, those generally having "complex" characteristics, e.g. numerous and possible unique legal issues, extensive discovery and greater than usual number of expert witnesses, large number of parties and extended trial days, the scheduling conference would be a useful case management tool.

The ultimate discretion for determining whether a case would benefit from a scheduling conference rests with the Court. In such cases a scheduling conference shall be scheduled by the presiding judge within thirty (30) days after the appearance of the defendant or from the date of the last responsive pleading. The conference may be

[2]28 U.S.C. Section 473(a)(1)

conducted either telephonically or with counsel in person. Prior to the conference the attorneys shall confer and develop a proposed scheduling plan. The plan shall be submitted to the court seven (7) days prior to the scheduling conference. Within seven (7) days after the scheduling conference, a scheduling order shall be prepared and entered by the Court. The order shall establish the following key intervals:

1. Disclosure of witnesses, including experts;
2. Discovery cut-off date;
3. Amendment of pleadings and joinder of parties;
4. Trial date and estimated length of trial;
5. Settlement conference date, if directed by Court;
6. Pretrial conference date, if deemed necessary by Court.

The scheduling conference may also serve as an opportunity to discuss the appropriateness of consenting to a magistrate judge. Additionally, the conference may serve as a means to discuss other matters relevant to a just determination of the action.

**B. Early and Ongoing Control of the Pretrial Process Through Involvement of a Judicial Officer[3]**

The Advisory Group did not make a specific recommendation for this principle.

The Court, after careful consideration of the principles outlined in 28 U.S.C. §473(a)(2)(A)(B)(C)(D) of the Act, declines to make any specific changes to the case management policies and procedures of this court. The one exception, however, is the

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[3] 28 U.S.C. §473(a)(2)

scheduling conference procedure set out in Section A of the Plan herein. The Court believes that the present case management policies and procedures employed in this district are sound, are successful, and adhere to the principles outlined in §473(a)(2) of the Act. This is evidenced by this district's past and present circuit and national workload rankings.

C. Special Treatment of Complex Cases[4]

The Advisory Group recommended to the Court (Appendix B) that deference be granted to "complex" cases by way of a Differentiated Case Management Program. (Section A of Plan.) The Court, as outlined in Section A, declines to establish such a program, but does adopt a policy whereby scheduling conferences may be held in complex cases.

D. Encouragement of Cost-Effective Discovery Through Voluntary Exchange of Information[5]

The Advisory Group recommended to the Court (Appendix B) that the Court "refrain from making any substantive changes to discovery procedure until after the proposed amendments to the Federal Rules of Civil Procedure are approved, modified,

[4] 28 U.S.C. §473(a)(3)

[5] 28 U.S.C. §473(a)(4)

or rejected by the United States Congress". Further, the Advisory Group recommended that in the event the proposed rule changes are adopted, the Court have sufficient experience under the new discovery rules before examining the district discovery procedures.

The Court, after careful consideration of the Advisory Group's recommendations and the principles outlined in §473(a)(4) of the Act, agrees with the Advisory Group and declines to adopt any substantive changes to this district's discovery procedures until after the proposals are approved by the Congress and after sufficient experience under the approved rules.

### E. Reasonable and Good Faith Efforts of Parties to Resolve Discovery Disputes[6]

The Advisory Group recommended to the Court (See Appendix B) that the "court continue to be sensitive to discovery disputes (including disputes as to the reasonableness of hourly rates charged by expert witnesses for giving discovery depositions) and establish, if necessary, a means whereby disputes could be reasonably resolved during or after business hours". The Advisory Group recognized that nationwide discovery costs, in large part, are a major contributor to the overall cost of litigation. The Advisory Group recognized that this problem exists in this district, but not significantly.

[6] 28 U.S.C. §473(a)(5)

The Court, after careful consideration of the Advisory Group's recommendation and the principle set out in §473(a)(5), declines to establish any new procedures and policies which would address issues of discovery disputes. The Court believes that at this time Local Rule C-7(f)(g) **Motions** contains sufficient authority for the Court to enforce and resolve discovery disputes in this district. (See Appendix C.) Local Rule C-7 requires a moving party to file a statement that the parties have conferred in good faith and that they are unable to resolve their disagreement without court intervention. Further, the Court reaffirms its commitment to the bar and litigants of its sensitivity to discovery disputes, and, in particular, to the issue of the high cost of deposing expert witnesses.

### F. Alternative Dispute Resolution[7]

The Advisory Group recommended to the Court that ADR programs not be established in this district. (See Appendix B.) The Advisory Group did recommend, however, that the Court should identify ADR resources in the district or adjacent districts, and make available, if requested, sufficient time to explore ADR options.

The Court, after careful consideration of the recommendations of the Advisory Group, the ADR options enumerated in §473(a)(6)(B) of the Act, and a review of existing ADR programs in place in state and federal courts, concurs with the recommendation and

[7]28 U.S.C. §473(a)(6)

declines to establish court-annexed ADR programs in the Western District of Arkansas. The Court, will, as recommended by the Advisory Group, prepare a pamphlet listing the various ADR resources and options available in this district and in adjoining districts.

III.

## CJRA LITIGATION MANAGEMENT AND COST AND DELAY REDUCTION TECHNIQUES AND OTHER APPROPRIATE MATTERS[8]

Section 473(b) of the Act requires each district court, in consultation with its Advisory Group, to consider certain techniques of litigation management and cost and delay reduction. These techniques are as follows:

### A. Joint Discovery-Case Management Plan[9]

The Court, after careful consideration of this technique, declines to adopt any new procedures or rules to address this issue. The Court believes that our present case management procedures and policies are sound. Additional requirements to the parties would only increase costs and would be counterproductive.

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[8]28 U.S.C. §473(b)

[9]28 U.S.C. §473(b)(1)

B. Pretrial Conferences Attended by Attorneys With Authority to Bind[10]

The Court, after careful consideration of this technique, declines to adopt or amend our local rule which would explicitly require counsel attending pretrial conferences to have binding authority. The Court believes that Local Rule D-4 **Pretrial Conference**, which requires trial counsel to attend all pretrial conferences, is satisfactory in its present form.

C. Requirement That Extensions of Time be Signed by Attorney and Party[11]

The Court, after careful consideration of this technique, declines to adopt such a requirement. The proposal, on its face, has merit. Nevertheless, taking into account the geographics of the Western District of Arkansas, and the fact that parties are not always available for signature, it would seem that the potential costs in dollars and lost time far exceeds the benefit.

D. Early Neutral Evaluation[12]

The Court, after careful consideration of this technique, declines to establish such a program in this district. Early neutral evaluation as an ADR option was considered by

[10] 28 U.S.C. §473(b)(2)

[11] 28 U.S.C. §473(b)(3)

[12] 28 U.S.C. §473(b)(4)



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the Court along with other ADR techniques. The Court believes that Early Neutral Evaluation has some usefulness and would benefit certain courts. The Court believes, however, that the Western District's geographics and limited pool of expert attorney evaluators would call into question the practicality of such a program, and further the cost in resources and time.

### E. Representative of Party With Authority to Bind to be Present During Settlement Conferences[13]

This Court, by means of the settlement conference scheduling order (See Appendix D), requires that at each settlement conference an individual be present who has binding authority to settle that action. This shall continue to be a requirement in the Western District of Arkansas.

### F. Other Appropriate Matters for Consideration[14]

An area of concern identified by the Advisory Group concerned the failure of the Court to promptly act on dispositive motions, particularly motions for summary judgement. (See Appendix B.) The Advisory Group recommended "that the Court examine its current

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[13] 28 U.S.C. §473(b)(5)

[14] 28 U.S.C. §473(b)(6)

methods for processing these motions and employ its best efforts to promptly dispose of those motions".

The Court, after consideration of this recommendation and criticism, disagrees with the underlying premise. The Court does acknowledge, nevertheless, that an internal review of its dispositive motion procedures may prove useful. Accordingly, the Court agrees to internally review and examine its present methods and procedures for processing such motions, and further, increase court sensitivity to the prompt handling of dispositive motions.

## IV.

## PERIODIC DISTRICT COURT ASSESSMENT[15]

Section 475 of the Civil Justice Reform Act requires an annual assessment of the condition of the Civil and Criminal docket to determine appropriate actions that will reduce cost and delay in civil litigation and that will improve the litigation management practice of the Court.

To meet the requirements of Section 475 of the Act, the Court, through the district clerk's office, shall on a yearly basis, complete an assessment of the work of the Court. The assessment shall include an analysis of all statistical data - civil and criminal, a survey

[15] 28 U.S.C. §475

of attorneys, litigants and court staff, and an internal review of the case management policies and procedures of the Court.

The results of the yearly assessment shall be transmitted to the Advisory Group for comment and/or action. The Advisory Group may, on the basis of the results, offer suggestions for improvement and other appropriate actions that will improve the litigation management practices of the Court.

# APPENDIX A

# CIVIL JUSTICE REFORM ACT

Public Law 101-650
101st Congress

An Act

To provide for the appointment of additional Federal circuit and district judges, and for other purposes.

Dec. 1, 1990
[H.R. 5316]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Judicial Improvements Act of 1990".

Judicial Improvements Act of 1990.
Courts.
28 USC 1 note.
Civil Justice Reform Act of 1990.

# TITLE I—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

**SEC. 101. SHORT TITLE.**

28 USC 1 note.

This title may be cited as the "Civil Justice Reform Act of 1990".

**SEC. 102. FINDINGS.**

28 USC 471 note.

The Congress makes the following findings:

(1) The problems of cost and delay in civil litigation in any United States district court must be addressed in the context of the full range of demands made on the district court's resources by both civil and criminal matters.

(2) The courts, the litigants, the litigants' attorneys, and the Congress and the executive branch, share responsibility for cost and delay in civil litigation and its impact on access to the courts, adjudication of cases on the merits, and the ability of the civil justice system to provide proper and timely judicial relief for aggrieved parties.

(3) The solutions to problems of cost and delay must include significant contributions by the courts, the litigants, the litigants' attorneys, and by the Congress and the executive branch.

(4) In identifying, developing, and implementing solutions to problems of cost and delay in civil litigation, it is necessary to achieve a method of consultation so that individual judicial officers, litigants, and litigants' attorneys who have developed techniques for litigation management and cost and delay reduction can effectively and promptly communicate those techniques to all participants in the civil justice system.

(5) Evidence suggests that an effective litigation management and cost and delay reduction program should incorporate several interrelated principles, including—

(A) the differential treatment of cases that provides for individualized and specific management according to their needs, complexity, duration, and probable litigation careers;

(B) early involvement of a judicial officer in planning the progress of a case, controlling the discovery process, and scheduling hearings, trials, and other litigation events;

(C) regular communication between a judicial officer and attorneys during the pretrial process; and



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(D) utilization of alternative dispute resolution programs in appropriate cases.

(6) Because the increasing volume and complexity of civil and criminal cases imposes increasingly heavy workload burdens on judicial officers, clerks of court, and other court personnel, it is necessary to create an effective administrative structure to ensure ongoing consultation and communication regarding effective litigation management and cost and delay reduction principles and techniques.

SEC. 103. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS.—Title 28, United States Code, is amended by inserting after chapter 21 the following new chapter:

"CHAPTER 23—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

"Sec.

"471. Requirement for a district court civil justice expense and delay reduction plan.
"472. Development and implementation of a civil justice expense and delay reduction plan.
"473. Content of civil justice expense and delay reduction plans.
"474. Review of district court action.
"475. Periodic district court assessment.
"476. Enhancement of judicial information dissemination.
"477. Model civil justice expense and delay reduction plan.
"478. Advisory groups.
"479. Information on litigation management and cost and delay reduction.
"480. Training programs.
"481. Automated case information.
"482. Definitions.

**"§ 471. Requirement for a district court civil justice expense and delay reduction plan**

"There shall be implemented by each United States district court, in accordance with this title, a civil justice expense and delay reduction plan. The plan may be a plan developed by such district court or a model plan developed by the Judicial Conference of the United States. The purposes of each plan are to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes.

**"§ 472. Development and implementation of a civil justice expense and delay reduction plan**

"(a) The civil justice expense and delay reduction plan implemented by a district court shall be developed or selected, as the case may be, after consideration of the recommendations of an advisory group appointed in accordance with section 478 of this title.

Reports.

"(b) The advisory group of a United States district court shall submit to the court a report, which shall be made available to the public and which shall include—

"(1) an assessment of the matters referred to in subsection (c)(1);

"(2) the basis for its recommendation that the district court develop a plan or select a model plan;

"(3) recommended measures, rules and programs; and

"(4) an explanation of the manner in which the recommended plan complies with section 473 of this title.

"(c)(1) In developing its recommendations, the advisory group of a district court shall promptly complete a thorough assessment of the state of the court's civil and criminal dockets. In performing the assessment for a district court, the advisory group shall—

"(A) determine the condition of the civil and criminal dockets;

"(B) identify trends in case filings and in the demands being placed on the court's resources;

"(C) identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation; and

"(D) examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts.

"(2) In developing its recommendations, the advisory group of a district court shall take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys.

"(3) The advisory group of a district court shall ensure that its recommended actions include significant contributions to be made by the court, the litigants, and the litigants' attorneys toward reducing cost and delay and thereby facilitating access to the courts.

"(d) The chief judge of the district court shall transmit a copy of the plan implemented in accordance with subsection (a) and the report prepared in accordance with subsection (b) of this section to—

"(1) the Director of the Administrative Office of the United States Courts;

"(2) the judicial council of the circuit in which the district court is located; and

"(3) the chief judge of each of the other United States district courts located in such circuit.

**"§ 473. Content of civil justice expense and delay reduction plans**

"(a) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following principles and guidelines of litigation management and cost and delay reduction:

"(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;

"(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 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; and

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

"(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;

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

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

"(6) authorization to refer appropriate cases to alternative dispute resolution programs that—

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

"(B) the court may make available, including mediation, minitrial, and summary jury trial.

"(b) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following litigation management and cost and delay reduction techniques:

"(1) a requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so;

"(2) a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters;

"(3) a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request;

"(4) a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation;

"(5) a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference; and

"(6) such other features as the district court considers appropriate after considering the recommendations of the advisory group referred to in section 472(a) of this title.

"(c) Nothing in a civil justice expense and delay reduction plan relating to the settlement authority provisions of this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, or any delegation of the Attorney General.

**"§ 474. Review of district court action**

"(a)(1) The chief judges of each district court in a circuit and the chief judge of the court of appeals for such circuit shall, as a committee—

"(A) review each plan and report submitted pursuant to section 472(d) of this title; and

"(B) make such suggestions for additional actions or modified actions of that district court as the committee considers appropriate for reducing cost and delay in civil litigation in the district court.

"(2) The chief judge of a court of appeals and the chief judge of a district court may designate another judge of such court to perform the chief judge's responsibilities under paragraph (1) of this subsection.

"(b) The Judicial Conference of the United States—

"(1) shall review each plan and report submitted by a district court pursuant to section 472(d) of this title; and

"(2) may request the district court to take additional action if the Judicial Conference determines that such court has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the district court's advisory group.

**"§ 475. Periodic district court assessment**

"After developing or selecting a civil justice expense and delay reduction plan, each United States district court shall assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. In performing such assessment, the court shall consult with an advisory group appointed in accordance with section 478 of this title.

**"§ 476. Enhancement of judicial information dissemination**

Reports.

"(a) The Director of the Administrative Office of the United States Courts shall prepare a semiannual report, available to the public, that discloses for each judicial officer—

"(1) the number of motions that have been pending for more than six months and the name of each case in which such motion has been pending;

"(2) the number of bench trials that have been submitted for more than six months and the name of each case in which such trials are under submission; and

"(3) the number and names of cases that have not been terminated within three years after filing.

"(b) To ensure uniformity of reporting, the standards for categorization or characterization of judicial actions to be prescribed in accordance with section 481 of this title shall apply to the semiannual report prepared under subsection (a).

**"§ 477. Model civil justice expense and delay reduction plan**

"(a)(1) Based on the plans developed and implemented by the United States district courts designated as Early Implementation District Courts pursuant to section 103(c) of the Civil Justice Reform Act of 1990, the Judicial Conference of the United States may develop one or more model civil justice expense and delay reduction plans. Any such model plan shall be accompanied by a report explaining the manner in which the plan complies with section 473 of this title.

Reports.

"(2) The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations to the Judicial Conference regarding the development of any model civil justice expense and delay reduction plan.

"(b) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives copies of any model plan and accompanying report.

**"§ 478. Advisory groups**

"(a) Within ninety days after the date of the enactment of this chapter, the advisory group required in each United States district court in accordance with section 472 of this title shall be appointed by the chief judge of each district court, after consultation with the other judges of such court.

"(b) The advisory group of a district court shall be balanced and include attorneys and other persons who are representative of major categories of litigants in such court, as determined by the chief judge of such court.

"(c) Subject to subsection (d), in no event shall any member of the advisory group serve longer than four years.

"(d) Notwithstanding subsection (c), the United States Attorney for a judicial district, or his or her designee, shall be a permanent member of the advisory group for that district court.

"(e) The chief judge of a United States district court may designate a reporter for each advisory group, who may be compensated in accordance with guidelines established by the Judicial Conference of the United States.

"(f) The members of an advisory group of a United States district court and any person designated as a reporter for such group shall be considered as independent contractors of such court when in the performance of official duties of the advisory group and may not, solely by reason of service on or for the advisory group, be prohibited from practicing law before such court.

**"§ 479. Information on litigation management and cost and delay reduction**

"(a) Within four years after the date of the enactment of this chapter, the Judicial Conference of the United States shall prepare a comprehensive report on all plans received pursuant to section 472(d) of this title. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding such report to the Judicial Conference during the preparation of the report. The Judicial Conference shall transmit copies of the report to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives.

Reports.

"(b) The Judicial Conference of the United States shall, on a continuing basis—

"(1) study ways to improve litigation management and dispute resolution services in the district courts; and

"(2) make recommendations to the district courts on ways to improve such services.

"(c)(1) The Judicial Conference of the United States shall prepare, periodically revise, and transmit to the United States district courts a Manual for Litigation Management and Cost and Delay Reduction. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding the preparation of and any subsequent revisions to the Manual.

Government publications.

"(2) The Manual shall be developed after careful evaluation of the plans implemented under section 472 of this title, the demonstration program conducted under section 104 of the Civil Justice Reform Act of 1990, and the pilot program conducted under section 105 of the Civil Justice Reform Act of 1990.

"(3) The Manual shall contain a description and analysis of the litigation management, cost and delay reduction principles and techniques, and alternative dispute resolution programs considered most effective by the Judicial Conference, the Director of the Federal Judicial Center, and the Director of the Administrative Office of the United States Courts.

**"§ 480. Training programs**

"The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts shall develop and conduct comprehensive education and training programs to ensure that all judicial officers, clerks of court, courtroom deputies, and other appropriate court personnel are thoroughly familiar with the most recent available information and analyses about litigation management and other techniques for reducing cost and expediting the resolution of civil litigation. The curriculum of such training programs shall be periodically revised to reflect such information and analyses.

**"§ 481. Automated case information**

"(a) The Director of the Administrative Office of the United States Courts shall ensure that each United States district court has the automated capability readily to retrieve information about the status of each case in such court.

"(b)(1) In carrying out subsection (a), the Director shall prescribe—

"(A) the information to be recorded in district court automated systems; and

"(B) standards for uniform categorization or characterization of judicial actions for the purpose of recording information on judicial actions in the district court automated systems.

"(2) The uniform standards prescribed under paragraph (1)(B) of this subsection shall include a definition of what constitutes a dismissal of a case and standards for measuring the period for which a motion has been pending.

Records.

"(c) Each United States district court shall record information as prescribed pursuant to subsection (b) of this section.

**"§ 482. Definitions**

"As used in this chapter, the term 'judicial officer' means a United States district court judge or a United States magistrate.".

28 USC 471 note.

(b) IMPLEMENTATION.—(1) Except as provided in section 105 of this Act, each United States district court shall, within three years after the date of the enactment of this title, implement a civil justice expense and delay reduction plan under section 471 of title 28, United States Code, as added by subsection (a).

(2) The requirements set forth in sections 471 through 478 of title 28, United States Code, as added by subsection (a), shall remain in effect for seven years after the date of the enactment of this title.

28 USC 471 note.

(c) EARLY IMPLEMENTATION DISTRICT COURTS.—

(1) Any United States district court that, no earlier than June 30, 1991, and no later than December 31, 1991, develops and implements a civil justice expense and delay reduction plan under chapter 23 of title 28, United States Code, as added by subsection (a), shall be designated by the Judicial Conference of the United States as an Early Implementation District Court.

(2) The chief judge of a district so designated may apply to the Judicial Conference for additional resources, including technological and personnel support and information systems, necessary to implement its civil justice expense and delay reduction plan. The Judicial Conference may provide such resources out of funds appropriated pursuant to section 106(a).

Reports.

(3) Within 18 months after the date of the enactment of this title, the Judicial Conference shall prepare a report on the plans developed and implemented by the Early Implementation District Courts.

(4) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and House of Representatives—

(A) copies of the plans developed and implemented by the Early Implementation District Courts;

(B) the reports submitted by such district courts pursuant to section 472(d) of title 28, United States Code, as added by subsection (a); and

(C) the report prepared in accordance with paragraph (3) of this subsection.

(d) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part I of title 28, United States Code, is amended by adding at the end thereof the following:

"23. Civil justice expense and delay reduction plans .............................................. 471".

**SEC. 104. DEMONSTRATION PROGRAM.**

28 USC 471 note.

(a) IN GENERAL.—(1) During the 4-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a demonstration program in accordance with subsection (b).

(2) A district court participating in the demonstration program may also be an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENT.—(1) The United States District Court for the Western District of Michigan and the United States District Court for the Northern District of Ohio shall experiment with systems of differentiated case management that provide specifically for the assignment of cases to appropriate processing tracks that operate under distinct and explicit rules, procedures, and timeframes for the completion of discovery and for trial.

(2) The United States District Court for the Northern District of California, the United States District Court for the Northern District of West Virginia, and the United States District Court for the Western District of Missouri shall experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution, that such district courts and the Judicial Conference of the United States shall select.

(c) STUDY OF RESULTS.—The Judicial Conference of the United States, in consultation with the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall study the experience of the district courts under the demonstration program.

(d) REPORT.—Not later than December 31, 1995, the Judicial Conference of the United States shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report of the results of the demonstration program.

**SEC. 105. PILOT PROGRAM.**

28 USC 471 note.

(a) IN GENERAL.—(1) During the 4-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a pilot program in accordance with subsection (b).

(2) A district court participating in the pilot program shall be designated as an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENTS.—(1) Ten district courts (in this section referred to as "Pilot Districts") designated by the Judicial Conference of the United States shall implement expense and delay reduction plans under chapter 23 of title 28, United States Code (as added by section 103(a)), not later than December 31, 1991. In addition to complying with all other applicable provisions of chapter 23 of title 28, United States Code (as added by section 103(a)), the expense and delay reduction plans implemented by the Pilot Districts shall include the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(2) At least 5 of the Pilot Districts designated by the Judicial Conference shall be judicial districts encompassing metropolitan areas.

(3) The expense and delay reduction plans implemented by the Pilot Districts shall remain in effect for a period of 3 years. At the end of that 3-year period, the Pilot Districts shall no longer be required to include, in their expense and delay reduction plans, the

6 principles and guidelines of litigation management and cost and delay reduction described in paragraph (1).

(c) PROGRAM STUDY REPORT.—(1) Not later than December 31, 1995, the Judicial Conference shall submit to the Committees on the Judiciary of the Senate and House of Representatives a report on the results of the pilot program under this section that includes an assessment of the extent to which costs and delays were reduced as a result of the program. The report shall compare those results to the impact on costs and delays in ten comparable judicial districts for which the application of section 473(a) of title 28, United States Code, had been discretionary. That comparison shall be based on a study conducted by an independent organization with expertise in the area of Federal court management.

(2)(A) The Judicial Conference shall include in its report a recommendation as to whether some or all district courts should be required to include, in their expense and delay reduction plans, the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(B) If the Judicial Conference recommends in its report that some or all district courts be required to include such principles and guidelines in their expense and delay reduction plans, the Judicial Conference shall initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

(C) If in its report the Judicial Conference does not recommend an expansion of the pilot program under subparagraph (A), the Judicial Conference shall identify alternative, more effective cost and delay reduction programs that should be implemented in light of the findings of the Judicial Conference in its report, and the Judicial Conference may initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

**SEC. 106. AUTHORIZATION.**

(a) EARLY IMPLEMENTATION DISTRICT COURTS.—There is authorized to be appropriated not more than $15,000,000 for fiscal year 1991 to carry out the resource and planning needs necessary for the implementation of section 103(c).

(b) IMPLEMENTATION OF CHAPTER 23.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to implement chapter 23 of title 28, United States Code.

(c) DEMONSTRATION PROGRAM.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to carry out the provisions of section 104.

# APPENDIX B

# ADVISORY GROUP RECOMMENDATIONS

## V.
## RECOMMENDATIONS AND THEIR BASES

In undertaking its responsibilities under the Civil Justice Reform Act the Advisory Group not only focused its attention on the court's statistical history, any filing and caseload trends, and court practices and procedures, but also took into account the six principles and guidelines of litigation management and cost and delay reduction set forth in Section 473(a) of the Civil Justice Reform Act. The Advisory Group, after considerable discussion and analysis and data gathering, concluded that the Western District of Arkansas is a well-managed court, one of which the bar, the litigants and the general members of the public should be proud. The judges and court staff should all be commended for their leadership and commitment to the principles of caseflow management. Without these attributes it is doubtful whether the Western District would enjoy the successes achieved to date.

The Advisory Group in discharging its responsibilities under the Civil Justice Reform Act is required to "make a thorough assessment of the state of the court's civil and criminal dockets", and in doing so, "examine and identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and ways in which litigants and their attorneys approach and conduct litigation".[1] The Civil Justice Reform Act further requires that the Advisory Group submit a report containing recommended measures, rules and programs, and the basis for those recommendations. These recommendations are to be made in the context of the

particular needs and circumstances of the court, the litigants and counsel. Accordingly, with that context in mind, the Advisory Group makes the following four recommendations.

1. The Western District of Arkansas should establish a Differentiated Case Management Program. The program would be limited to cases which fall into the category of "complex". Complex would be defined as cases having the following characteristics:

   a. numerous and possibly unique legal issues,

[1]Civil Justice Reform Act, 28 U.S.C. 472(c)(1)(C)

b. extensive discovery,

c. greater than usual number of expert witnesses, large number of parties and extended trial days.

Case types may include: antitrust, patent infringement, class actions, malpractice actions, environmental issues, mass torts, securities, tax suits and product liability. The primary component of the program would be the case management conference. The conference would be scheduled within 120 days of the issues being joined, or from the date of the last responsive pleading. The purpose of the conference is two-fold: the conference would bring together, either telephonically or in person, counsel and the court to establish key intervals in the case - extent of discovery, setting of discovery cut-off dates, setting of deadlines for filing motions, and the setting of trial dates. Second, the conference would also serve as a forum for counsel to voluntarily disclose discovery information, including key documents and witness identification. (The proposed amendments to Rule 26 of the Federal Rules of Civil Procedure require mandatory pre-discovery disclosure.)

The basis for this recommendation is that the Advisory Group received a number of comments from Western District attorneys expressing concern with the scheduling practices of the judges of this court. Members of the bar voiced complaints that the judges were insensitive to scheduling, particularly in complex cases. Scheduling orders were too often unrealistic. Another complaint was that the court was inflexible in scheduling. Once the scheduling order was established it was impossible to change. An additional comment was there was generally no consultation between the court and counsel regarding establishing key dates and deadlines.

In the view of the Advisory Group there is no question where the responsibility for case management lies. Decisions of caseflow management, scheduling and the pace of litigation are, to be sure, a judicial function. Nevertheless, the Advisory Group

believes that in terms of scheduling complex cases there should be communication between the court and counsel. The case management conference would serve that purpose.

2. The Advisory Group recognizes that nationwide discovery costs are a major contributor to the high cost of litigation. The Advisory Group recognizes, too, that this is a problem in the Western District of Arkansas, but not a significant one. Nonetheless, the Advisory Group recommends that the court continue to be sensitive to discovery disputes (including disputes as to the reasonableness of hourly rates charged by expert witnesses for giving discovery depositions) and establish, if necessary, a means whereby disputes could be reasonably resolved during or after business hours. Further, the Advisory Group recommends that the court refrain from making any substantive changes to discovery procedure until after the proposed amendments to the Federal Rules of Civil Procedure are approved, modified, or rejected by the United States Congress. Further, the Advisory Group recommends that if the proposals are adopted, the court reexamine the district's discovery procedures only after it has had sufficient experience under the amended rules.

3. One of the principal concerns mentioned most frequently by the attorneys surveyed in the Western District of Arkansas was the complaint that motions filed with the court were not disposed of promptly. Principally, the complaints centered around dispositive motions and particularly motions for summary judgments. It is the consensus of the Advisory Group, based on its own experiences and the comments of attorneys, that the Western District should examine its methods for processing dispositive motions, and employ its best efforts to promptly dispose of those motions. This recommendation applies equally to civil and criminal.

4. The Advisory Group recommends that the Western District of Arkansas <u>not</u> establish mandatory alternative dispute resolution (ADR) programs. The court should, however, identify ADR

resources in this district or adjacent districts, and make available, if requested by the parties, adequate time to explore ADR options and other settlement possibilities.

A minority view is expressed in a letter from member Leroy Autrey dated March 18, 1993 which is attached as *Appendix* G.

5. In view of the handful of recommendations the Advisory Group recommends that the district court develop its own plan. The plan should specifically address the following issues:

   a. Adoption of a differentiated case management plan for complex cases, with particular attention to scheduling and the case management conference.

   b. Heightened sensitivity by judges to discovery disputes and to the costs associated with the deposing of expert witnesses.

   c. Heightened sensitivity by judges and staff to the prompt handling of dispositive motions. Measures may include internal review and examination of present methods and procedures for processing such motions.



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# APPENDIX C

# LOCAL RULES C-7 AND D-4

## RULE C-7
## MOTIONS

(a) All motions except those mentioned in paragraph (d) shall be accompanied by a brief consisting of a concise statement of relevant facts and applicable law. Both documents shall be filed with the Clerk, and copies shall be served on all other parties affected by the motion.

(b) Within eleven days from the date copies of a motion and supporting papers have been served upon him, any party opposing a motion shall serve and file with the Clerk a concise statement in opposition to the motion with supporting authorities. For cause shown, the court may by order shorten or lengthen the time for the filing of responses.

(c) If a motion requires consideration of facts not appearing of record, the parties may serve and file copies of all photographs, documents, or other evidence deemed necessary in support of or in opposition to the motion, in addition to affidavits required or permitted by the Federal Rules of Civil Procedure.

(d) No brief is required from any party, unless otherwise directed by the Court, with respect to the following motions:

(1) To extend time for the performance of an act required or allowed to be done, provided request is made before the expiration of the period originally prescribed, or as extended by previous order.

(2) To obtain leave to file supplemental or amended pleadings.

(3) To appoint an attorney or guardian ad litem.

(4) To permit substitution of parties or attorneys.

(e) Pretrial motions for temporary restraining orders, motions for preliminary injunctions, and motions to dismiss, shall not be taken up and considered unless set forth in a separate pleading accompanied by a separate brief.

(f) The failure to timely respond to any nondispositive motion, as required by the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, or by any local rule, shall be an adequate basis, without more, for granting the relief sought in said motion.

(g) All motions to compel discovery and all other discovery-enforcement motions and all motions for protective orders shall contain a statement by the moving

party that the parties have conferred in good faith on the specific issue or issues in dispute and that they are not able to resolve their disagreements without the intervention of the Court. If any such motion lacks such a statement, that motion may be dismissed summarily for failure to comply with this rule. Repeated failures to comply will be considered an adequate basis for the imposition of sanctions.

(a) through (d) Adopted and effective May 1, 1980

(b) Amended to change to eleven days effective July 1, 1988

(e) Adopted and effective July 14, 1986

(f) Adopted and effective July 1, 1988

(g) Effective April 15, 1989

Amended January 2, 1990

## RULE D-4

## PRETRIAL CONFERENCE

(a) Generally. Any party may request that a case be set for pretrial conference. The request shall specify the purposes to be accomplished and must be approved by the Court. The Court, on its own motion, may designate any case for pretrial conference.

(b) Information Sheet Filing. Seven days before the date set for pretrial conference, each party shall file with the Clerk a completed pretrial information sheet in the form which follows this Rule. Copies shall be sent to the Judge with a copy to all other parties.

(c) Conducting Conferences; Presence of Counsel and Parties. The pretrial conference will be conducted by the Judge who is scheduled to preside at the trial. However, the Judge may refer specific cases to be pre-tried by a full-time magistrate judge. The trial counsel shall attend the pretrial conference. Parties or their representatives shall also attend when so directed by the Court. All pretrial conferences shall be conducted in accordance with Fed. R. Civ. P. 16.

Adopted and effective May 1, 1980



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## OUTLINE FOR PRETRIAL CONFERENCE INFORMATION SHEET

The Pretrial Conference Information Sheet shall contain:

(1) The identity of the party submitting information, place and time of pretrial conference.

(2) The names, address, and telephone numbers of all counsel for the party.

(3) A brief summary of claims and relief sought.

(4) Prospects for settlement, if any. (Note: The Court expects attorneys to confer and explore the possibility of settlement prior to answering these inquiries).

(5) The basis for jurisdiction or objections to jurisdiction.

(6) A list of pending motions.

(7) A concise summary of facts.

(8) All proposed stipulations.

(9) The issues of fact expected to be contested.

(10) The issues of law expected to be contested.

(11) A list and brief description of exhibits that will be offered in evidence.

(12) A list and brief description of charts, graphs, models, schematic diagrams and similar objects which will be used in opening statement or closing argument whether or not they will be offered in evidence.

(13) The names, addresses, and telephone numbers of witnesses who will be called, excluding witnesses to be used solely for impeachment or rebuttal. (Indicate the nature of the testimony to be given by each witness, i.e. liability, expert, property damages, pain and suffering, etc.)

(14) Any request to amend pleadings.

(15) The current status of discovery, a precise statement of the remaining discovery and an estimate of the time required to complete discovery.

(16) Suggestions for expediting disposition of the action.

(17) An estimate of the length of trial.

(18) The signature of the attorney.

(19) Proof of service.

Adopted and effective May 1, 1980

# APPENDIX D

# COURT SCHEDULING ORDER

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

PLAINTIFF

v. Case No.

DEFENDANT

**ORDER SETTING SETTLEMENT CONFERENCE**

This case has been referred to the undersigned for a settlement conference. All parties and their lead counsel are hereby ORDERED TO APPEAR before the undersigned at the U.S. Post Office and Courthouse, 6th & Rogers, Fort Smith, Arkansas, in Room 229 at 3:00 P.M. on Friday, November 19, 1993. An insured party shall appear by a representative of the insurer who is authorized to discuss and make recommendations relating to settlement. An uninsured corporate party shall appear by a representative authorized to discuss and make recommendations relating to settlement.

Each party shall, before arriving at the settlement conference, ascertain in good faith the best settlement proposal that such party can make and be prepared, if asked by the undersigned, to communicate that settlement proposal to the undersigned in confidence. If no settlement discussions have taken place, the court encourages an exchange of demands and offers prior to the settlement conference.

Each party shall provide the undersigned, in confidence, a concise statement of the evidence the party expects to produce at trial at least 3 days before the conference.



AO 72A
(Rev. 8/82)

The purpose of the settlement conference is to precipitate settlement of this case, if that is appropriate. It will be conducted in such a manner as not to prejudice any party in the event settlement is not reached. To that end, all matters communicated to the undersigned in confidence will be kept confidential by her, and will not be disclosed to any other party, or to the trial judge. The undersigned, of course, will not serve as the trial judge in this case.

At the settlement conference the parties, by counsel, shall give a brief (5 minute) presentation outlining the factual and legal highlights of their case. Then separate, confidential caucuses will be held with each party and the party's representative(s).

The request for parties' personal appearance is intended to increase the efficiency and effectiveness of the settlement conference by reducing the time for communication of offers and expending the ability to explore options for settlement.

IT IS SO ORDERED this 21st day of October 1993.

HON. BEVERLY R. STITES
UNITED STATES MAGISTRATE JUDGE





AO 72A
(Rev. 8/82)