The Timing of Scheduling Orders and Discovery Cut-Off Dates

Report to the Judicial Conference Advisory Committee on Civil Rules

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Contents

Executive summary

This report summarizes findings on the timing of scheduling orders and discovery cut-off dates in more than 11,000 civil cases filed in 11 districts in 2009 and 2010. The first part of the report examined times from the filing of the case to issuance of the first scheduling order.

- The median time from filing to first scheduling order was 106 days, or 3.5 months ($N = 11,483$). The comparable mean was 126.1 days, or 4.1 months.
- The 11 districts studied had median times from filing to first scheduling order that ranged from 77 days, or 2.5 months, to 125 days, or 4.1 months, for a difference of 1.6 months.
- The nature-of-suit category with the shortest median time from filing to first scheduling order was torts, at 97 days, or 3.2 months. Complex and the catch-all other cases had longer medians (121 and 122 days, or 4 months).

The same analysis was performed for times from entry of the first scheduling order to first imposed discovery cut-off (i.e., the discovery cut-off date in the scheduling order).

- The median time from entry of the first scheduling order to first imposed discovery cut-off, without regard to any extension, was 187 days, or 6.2 months ($N = 11,348$). The comparable mean was 198.6 days, or 6.5 months.
- The 11 districts had median times from entry of the first scheduling order to first imposed discovery cut-off that ranged from 143 days, or 4.7 months, to 240 days, or 7.9 months, for a difference of 3.2 months.
- The nature-of-suit category with the shortest median time from entry of the first scheduling order to first imposed discovery cut-off was the catch-all other category, at 157 days, or 5.2 months. The contracts (6.6 months) and complex (7.1 months) categories had the longest observed medians.

These two analyses can be combined to capture the time from the filing of the case to first imposed discovery cut-off date.

- The median time from filing to first imposed discovery cut-off for all cases ($N = 11,281$) was 312 days, or 10.2 months. The comparable mean was 324 days, or 10.7 months.
- Districts ranged from a median time from filing to first imposed discovery cut-off of 252 days, or 8.3 months, to 378 days, or 12.4 months, for a difference of 4.1 months.
- In terms of nature-of-suit categories, the category with the shortest median time from filing to first imposed discovery cut-off was consumer, at 295 days, or 9.7 months. The longest median time from filing to first imposed discovery cut-off was observed in complex cases, 359 days, or 11.8 months (or about one year).

Background

The Judicial Conference Advisory Committee on Civil Rules asked the Federal Judicial Center to study the operation of Rules 16 and 26(f) in the district courts. This report summarizes findings of part of that study.[1] Specifically, this report examines the timing of Rule 16 scheduling orders in civil cases and, drawing from those scheduling orders, also examines the timing of the first discovery cut-off date imposed, without regard to any extension. The data analyzed in this report were drawn from court records in 11 districts.

Overall, the study identified 11,483 scheduling orders in cases in these districts filed in calendar years 2009 and 2010. This is not, to be clear, the number of scheduling orders entered in the study districts; instead, this is the number of such scheduling orders that included discovery cut-off dates in the text of a docket entry. So, for example, if the docket entry simply noted the scheduling order without listing the cut-off in the docket entry text, that scheduling order is not included in the analysis. More information on the search strategy can be found in the Appendix.

From filing to first scheduling order

The median time from filing to first scheduling order was 106 days, or 3.5 months ($N = 11,483$). In other words, in half of the cases included in the study, the scheduling order was issued in 106 or fewer days, and in half the scheduling order was issued more than 106 days after filing. The comparable mean (average) was 126.1 days, or 4.1 months. Rule 16(b)(2) requires that the first scheduling order be issued "within the earlier of 120 days after any defendant has been served with the complaint or 90 days after any defendant has appeared." The simple study design does not permit direct comparison to these times. However, it is likely that in the general run of cases, 106 days from filing to scheduling order would be within the rule's timeframe.

There was some variation among the districts included in the study. The 11 districts had median times from filing to first scheduling order that ranged from 77 days, or 2.5 months, to 125 days, or 4.1 months, for a difference of 1.6 months. For purposes of comparing the districts, I have prepared a violin plot of time from filing to first scheduling order in each of the 11 study districts, Figure 1. A violin plot is a useful tool for looking at the distribution of a variable. The plots themselves are drawn so that the estimated distribution of the variable (here, time from filing to first scheduling order) is reflected in the sides of the "violins"—such that, the thicker a region of the plot, the more cases with that value estimated for a given district.[2]

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1. My FJC colleagues George Cort and Jill Curry played key roles in this research.

2. *See* Deepayan Sarkar, Lattice: Multivariate Data Visualization with R (2008), 47, 49. Note that the estimation technique used (the kernel density distribution) is a smoothing technique, such that some of the plots extend into negative values. There were no observed negative values.

A similar analysis can be performed comparing nature-of-suit categories. In this report, I will apply the following categories: civil rights (largely 42 U.S.C. § 1983 and Title VII); complex (includes intellectual property, securities, and antitrust); consumer (e.g., Fair Debt Collection Practices Act, Truth in Lending Act); contracts (includes insurance); labor (primarily Fair Labor Standards Act and ERISA); torts (includes products liability); and the catch-all other category (includes prisoner and Social Security cases). In terms of cases analyzed in this report, the largest category is civil rights, followed by contracts, torts, labor, other, complex, and consumer.

The category with the shortest median time from filing to first scheduling order was torts, at 97 days, or 3.2 months. Somewhat surprisingly, the civil rights, consumer, contracts, and labor categories all basically had the same median, 105–106 days. This is also the overall median. The complex and other categories had longer medians (121 and 122 days, or 4 months). Figure 2 shows estimates for these distributions.

From entry of the first scheduling order to first imposed discovery cut-off date

The standard discovery cut-off is six months, but even here, there is variation among districts and nature-of-suit categories. The median time from entry of the first scheduling order to first imposed discovery cut-off, without regard to any extension, was 187 days, or 6.2 months ($N = 11,348$). The comparable mean (average) was 198.6 days, or 6.5 months. The 11 districts had median times from entry of the first scheduling order to first imposed discovery cut-off that ranged from 143 days, or 4.7 months, to 240 days, or 7.9 months, for a difference of 3.2 months. These are displayed in Figure 3. Violin plots can be useful in displaying bimodal distributions. Here, note that arguably six districts (Alpha, Bravo, Delta, Foxtrot, Golf, and Juliet) demonstrate some bimodality.

The nature-of-suit category with the shortest median time from entry of the first scheduling order to first imposed discovery cut-off was the catch-all other category, at 157 days, or 5.2 months. This makes sense given that many of the nature-of-suit codes included in this category will not generally be discovery-heavy. The civil rights, consumer, and labor categories have medians between 181 and 185 days, or just about 6 months. The torts category has a median of 192 days, or 6.3 months. Cases in the contracts (6.6 months) and complex (7.1 months) categories are given slightly more time to complete discovery. Figure 4 shows estimates for these distributions.

From filing to first imposed discovery cut-off date

Finally, I calculated a variable to measure the time from filing to first imposed discovery cut-off. The median time from filing to first imposed discovery cut-off

for all cases ($N = 11,281$) was 312 days, or 10.2 months. The comparable mean (average) was 324 days, or 10.7 months.

The 11 districts ranged from a median time from filing to first imposed discovery cut-off of 252 days, or 8.3 months, to 378 days, or 12.4 months, for a difference of 4.1 months. These distributions are displayed in Figure 5.

In terms of nature-of-suit categories, the "fastest" category in time from filing to first imposed discovery cut-off was consumer, at 295 days, or 9.7 months. Not surprisingly, the longest median time from filing to first imposed discovery cut-off was in complex cases, 359 days, or 11.8 months (or about one year). These distributions are displayed in Figure 6.
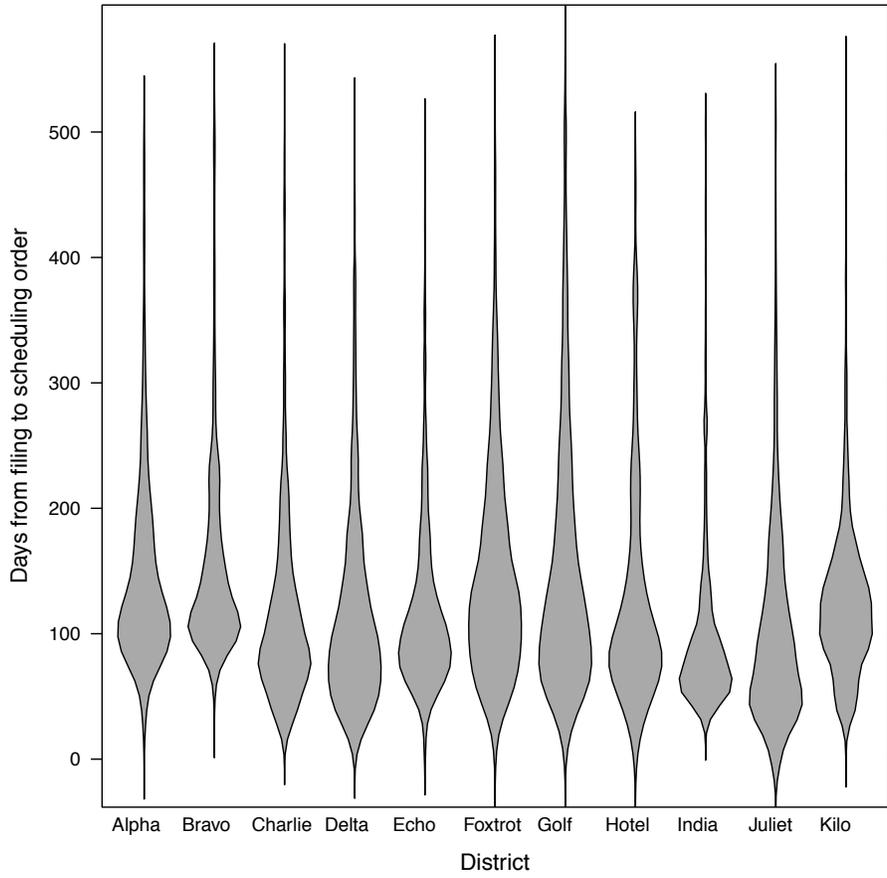
Appendix

In attempting to identify the percentage of cases with scheduling orders, I found that, in certain districts, standard language was employed in scheduling order docket entries, in at least some cases. For example, many docket entries state "discovery due by" a given date. It was possible to collect a database of all such entries, at least in these 11 study districts. Some cases would have multiple hits, in which instance the first set of dates was entered in the database. Moreover, docket entries labeled as, for example, extensions or amended scheduling orders were omitted from the analysis, as the goal was to identify the first scheduling order and the first discovery cut-off. However, I cannot say for certain that all of the observations are, in fact, first scheduling orders; it is possible that some of the orders included in the analysis were second or third orders. For that reason, the top ends of the distributions in the violin plots should be treated with some degree of skepticism.
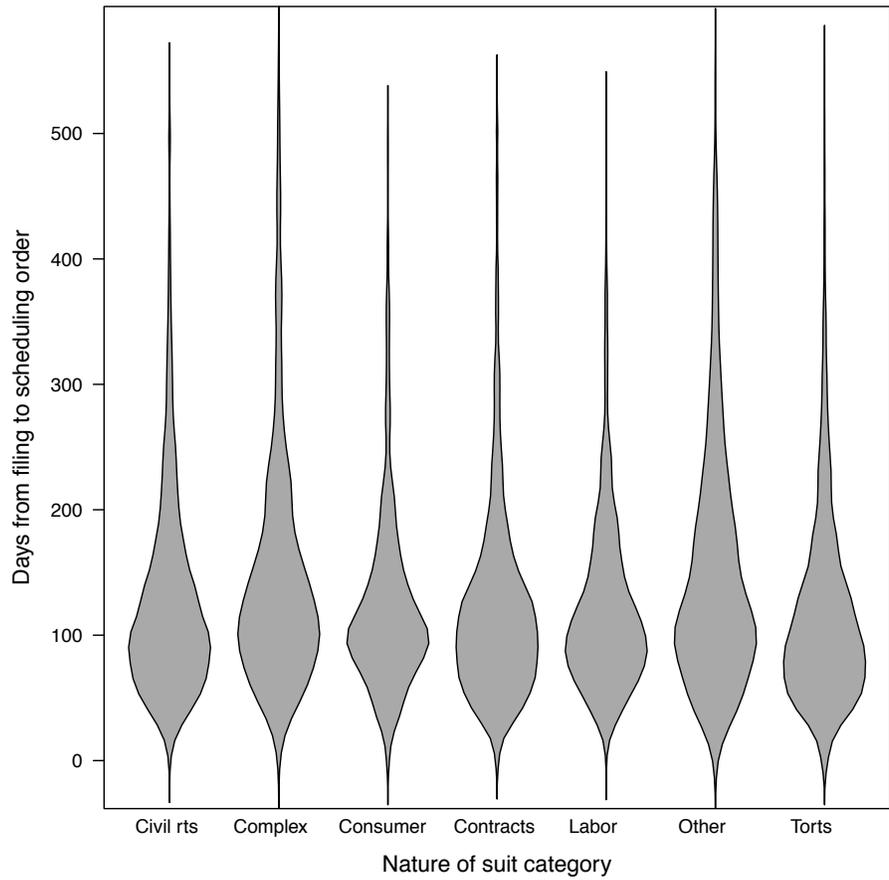
Once duplicate observations were removed, it was a relatively simple operation to extract the discovery cut-off dates from the docket text.

The 11 study districts include high-volume districts, medium-volume districts, and one rather low-volume district. The number of observations per district ranges from 2,082 (Kilo) to 132 (Hotel). I chose not to identify districts by name in this report because the goal was to give the committee a sense for the variation among districts, not to identify relatively faster or slower districts.
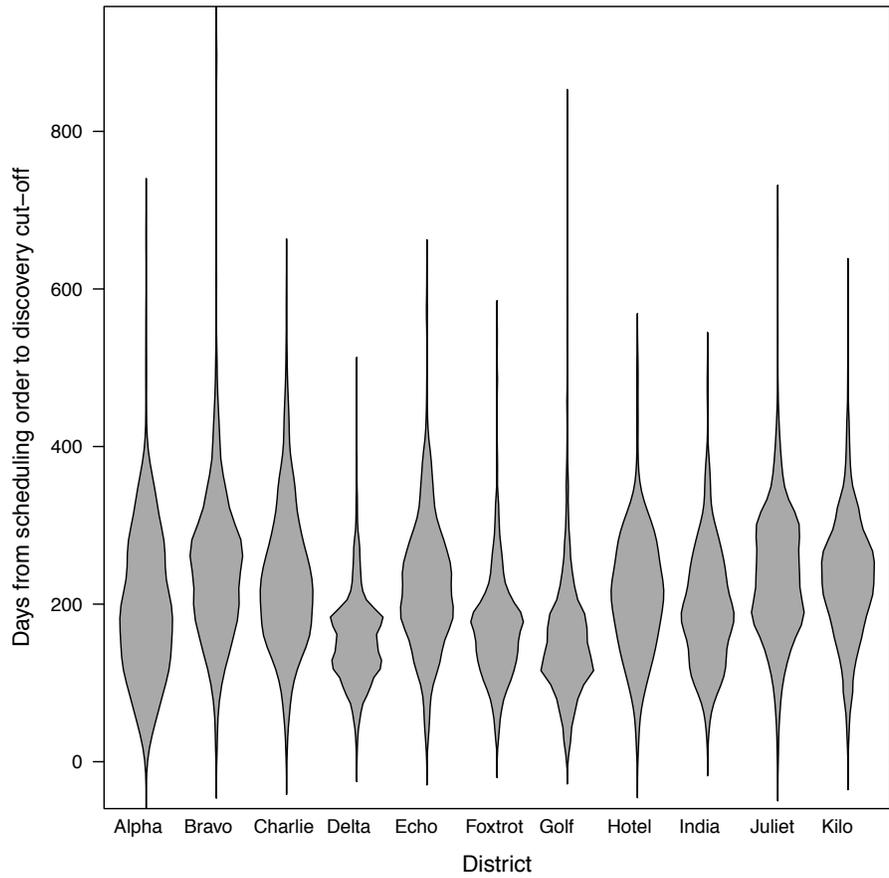
Figure 1. Days from filing to first scheduling order, by district

Figure 2. Days from filing to first scheduling order, by nature-of-suit category

Figure 3. Days from first scheduling order to first discovery cut-off, by district

Figure 4. Days from first scheduling order to first discovery cut-off, by nature-of-suit category
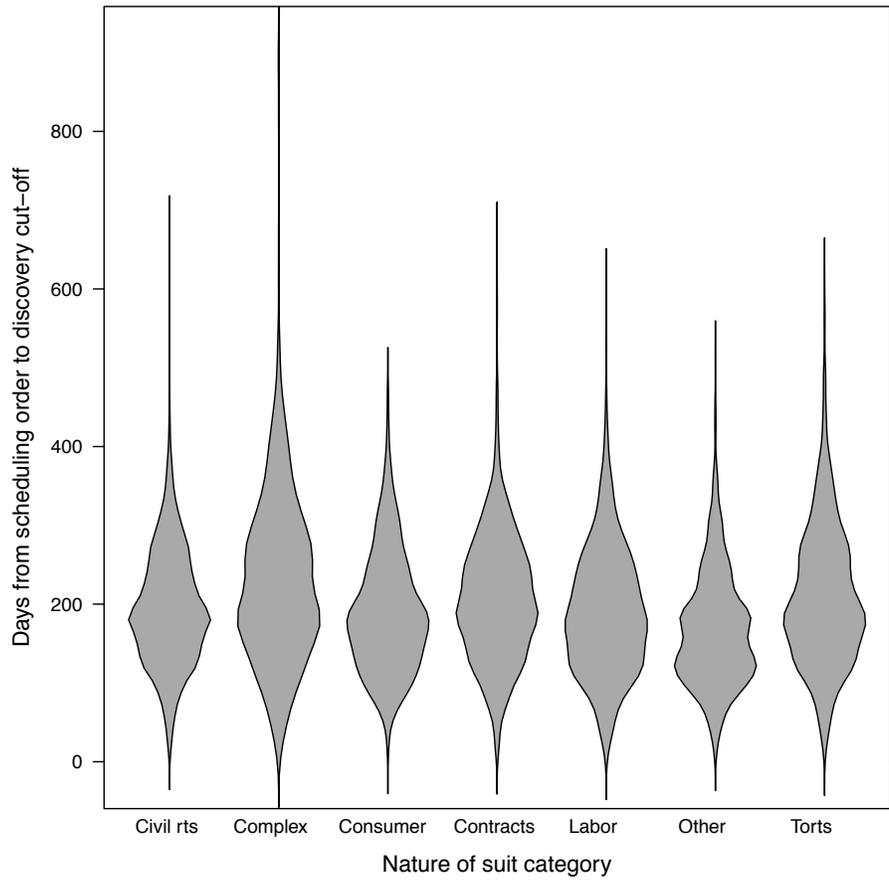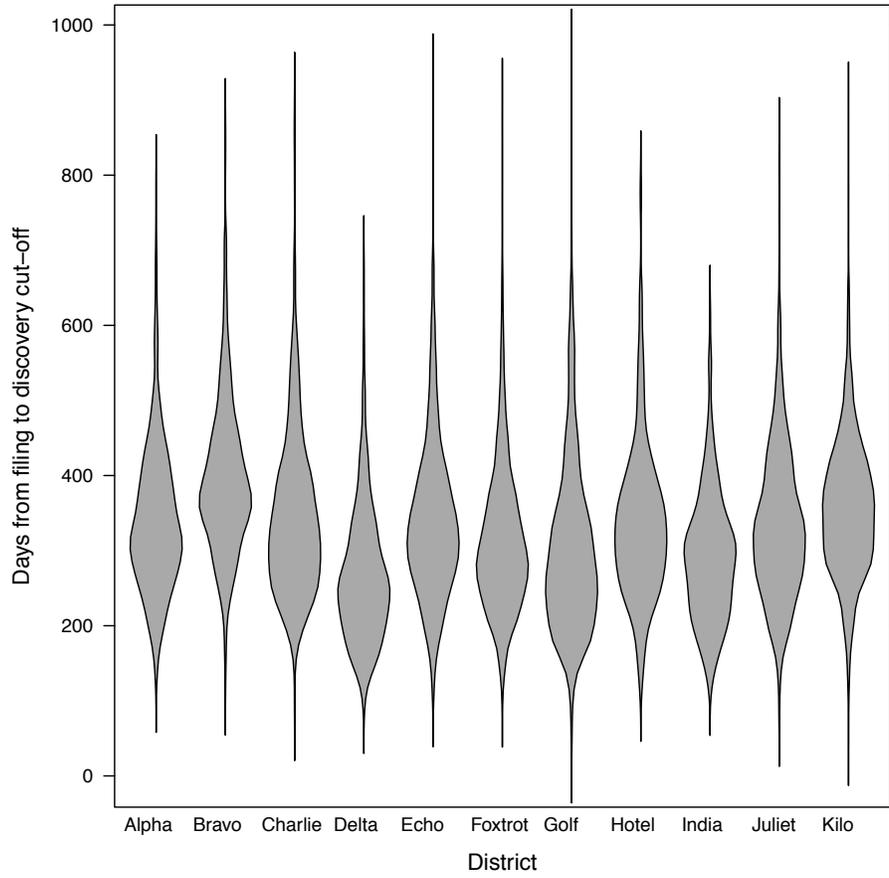
Figure 5. Days from filing to first discovery cut-off, by district

Figure 6. Days from filing to first discovery cut-off, by nature-of-suit category