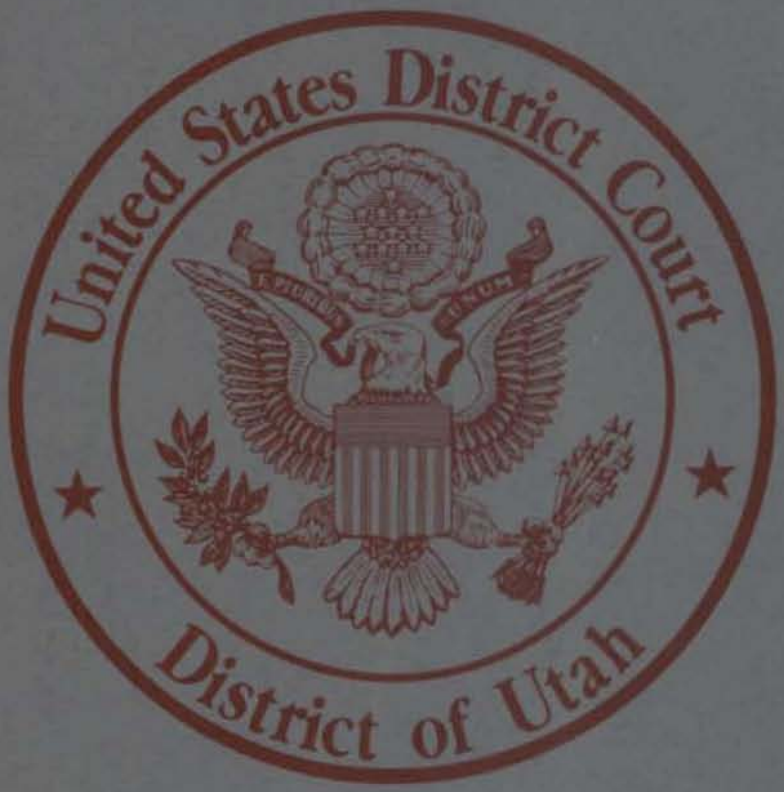
CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN



UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

DECEMBER 1991

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

IN THE MATTER OF:	
THE CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN	O R D E R

The findings of the Congress, as set forth in the Civil Justice Reform Act of 1990, pertain to congressionally found need for the adoption of improved techniques for litigation management and the communication of those techniques to others engaged in civil dispute resolution.

The Congress has required each U. S. district court to adopt and implement an "expense and delay reduction plan." The Congress has stated the purposes of such plan are to: 1) "facilitate deliberative adjudication of civil cases on the merits;" 2) "monitor discovery;" 3) "improve litigation management," and 4) "ensure just, speedy, and inexpensive resolutions of civil disputes."

In a district such as the District of Utah, one of ten "pilot districts," the Congress has made it mandatory as well that "the Plan" incorporate what the Congress has said are "principles and guidelines of litigation management and cost and delay reduction." The

statute provides that the plan implemented by a pilot District "...shall include the six principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of Title 28, United States Code."

The court has appointed an advisory committee. That committee has filed its report. We have been pleased with the efforts of the advisory committee. We note their extensive compilations of information as well as their evaluation of the civil and criminal dockets; their evaluation of case filings and trends; their profile of present and future demands on the court's resources; their examination of so-called "costs and delays" and the present circumstances of this court, the litigants, and the attorneys therein. We are grateful for the committee members' time, energy, and demonstrated expertise. We have taken into consideration their observations, findings, and recommendations in the formulation of the court plan.

In formulating "the plan" the court is of the opinion that it ought not to do again what has already been done in this district, nor to simply restate what is, as a matter of practice, being done under existing statutes, rules, and court practices.

The Congress has required six principles to be incorporated into the court plans of all pilot districts for the experimental term specified in the Act. The court, in compliance therewith, formally adopts such principles, noting that most, with minor exceptions, are part of the current practices and procedures of this court and have been for many years.

THE PLAN

Principle One is found at 473(a)(1) of the Civil Justice Reform Act of 1990, and states as follows:

> (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.

COMMENT: Differential case management has long been the practice of this court. After an issue is joined there is an initial status and scheduling conference held in every case, conducted either by a district judge--if that is the individual judge's preference--or by a judge-designated magistrate judge. At such conference, case complexity, preparation time estimates, target dates for motions to be filed and outside dates for hearing such motions, as well as firm pre-trial dates are all discussed, fixed, and reduced to order form. At that time some judges fix a provisional trial date. Others prefer to wait until pretrial to fix a firm trial date, knowing from past experience in this district that approximately 95 to 96 percent settle before a jury is empaneled or a witness is called.

At the initial conference, if it is known that a case will require a block of trial time running into weeks or months, a trial date is often set by the presiding judge.

This process is provided for in Rule 204, of our District Court Rules of Practice. The court is of the opinion that this system fine-tunes each case and is superior, for our purposes, to any effort to run a "two-track" or a "multi-track" system of slow track or fast track cases.

PLAN TERM: The current practice embraces Principle One. Current practice provides stability and flexibility. No change in current practice is needed to allow differential case management. Current practice is reaffirmed as part of the court plan.

Principle Two is found at 473(a)(2) of the Civil Justice Reform Act of 1990, and states as follows:

> (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 of 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 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;

COMMENT: We refer to Comment One and the observations therein made. The suggested practices have long been a part of the practices of this district. They are memorialized in Rule 204 of our District Court Rules of Practice. Matters are set for trial at an appropriate point in the life of a case, compatible with the schedule of the court and counsel, usually by agreement and with a firm, first-place specific date setting. On occasion a second-place setting will be fixed when there is reason to believe the first-place case will be disposed of otherwise.

PLAN TERM: The current practice embraces Principle Two. No change in current practice is needed to achieve the matters set forth in Principle Two. Current practice is reaffirmed as part of the court plan.

Principle Three is found at 473(a)(3) of the Civil Justice Reform Act of 1990, and provides as follows:

(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;

COMMENT: The initial status and scheduling conference provides the framework for case management. It is generally the practice of the judges of this court to target particular dates, in such a fashion that a case will automatically come to the attention of the court at a critical juncture and, once the case is placed "in the pipeline," it is the court's practice to never continue a particular case without date, but to change or continue to a date certain.

PLAN TERM: The current practice embraces Principle Three. No change in current practice is needed to achieve the matters set forth in Principle Three. Current practice is reaffirmed as part of the court plan.

Principle Four is found at 473(a)(4) of the Civil Justice Reform Act of 1990, and provides as follows:

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

COMMENT: The court as a matter of practice encourages the voluntary exchange of information. Many of the judges insist on the exchange of all exhibits prior to pretrial. The court typically requires a jointly prepared pretrial order, with provisions as to witnesses and exhibits, agreed to by counsel. These, in turn, are part of the existing rules of the court. However, to further encourage such exchange early on, the court will undertake the following change in current practice.

PLAN TERM: The current practice embraces the voluntary exchange of information among litigants and their attorneys. To accelerate that process, the court will supplement the notice form used to set down a case for the initial status/scheduling/pretrial conference as provided by its local rules, so as to advise counsel they should communicate with each other prior to the initial conference, they should agree on a suggested schedule for case

preparation, they should gather and examine existing documents that are relevant to the case which are in the possession or control of their clients and either produce them at the initial status and scheduling conference or be prepared to indicate to the court and counsel at what date such documents can be produced. The court at this time as well reaffirms court practice as part of the court plan.

As part of the court plan the court will refer the suggestions and recommendations which have been made by the advisory committee as to modification, and truncating and limiting discovery--indeed all the suggested changes as to the local rules--to the court's standing Advisory Committee on Revisions to the Local Rules of Practice, for intensive consideration and evaluation and for their recommendation as to which modifications should be adopted by the court and prior thereto made available to bench and bar for public comment, and will ask the committee to report back on their work within four (4) months after the referral.

Principle Five is found at 473(a)(5) of the Civil Justice Reform Act of 1990, and provides as follows:

> (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;

COMMENT: It has long been the practice of this court that such a certificate be required. See Local Rule 202(h).

PLAN TERM: The current practice embraces Principle Five and memorializes it in local Rule 202(h). The current practice is reaffirmed as part of the court plan.

Principle Number Six is found at 473(a)(6) of the Civil Justice Reform Act of 1990, and provides as follows:

> (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.

COMMENT: The court is of the opinion that the function of the court is to assist litigants to resolve problems they have been unable to resolve for themselves. The court is of the opinion that resort to the litigation process is almost always a last resort. The court is further of the opinion that alternative dispute resolution has always been available to litigants either before or after a case has commenced and that the most efficient method to arrive at resolution is the method found in traditional court processes, with traditional court safeguards. The court is of the opinion that a supermarket of services available at the courthouse has a tendency to weaken rather than strengthen the litigation process. The

court is further of the opinion that litigation efficiency can best be accomplished through rational means if Congress were willing to supply the judges and the staff to meet the expanding needs of the American people.

The court currently has an effective settlement conference process with characteristics of mediation as part of that process. Thus, a litigant and his attorney with a genuine interest in exploring settlement in either a formal or informal setting has that service available before a judge other than the trial judge, the same being totally off the record. (Rule 204(c))

PLAN TERM: The court will experiment with court-supervised mediation, arbitration, minitrials or summary jury trials for a limited period of time to determine whether services of that kind are in demand, and will refer appropriate cases to such programs and observe the kind and quality of results of such experimentation. The court will consider very carefully the suggestions of the Advisory Committee and will endeavor to provide services on an experimental basis within the next year, structured and staffed in a form yet to be determined by the court.

As to the provisions suggested by the Congress and found in 403(b), which exist separate and apart from the six principles found in 403(a), the court observes that all of them are touched upon in its current District Court Rules of Practice, effective June 1, 1991,

which rules have been widely accepted by the members of the Bar and which, for the most part, seek the objectives set forth by Congress.

SO ORDERED, this 30 day of December, 1991.

BRUCE S. JENKINS, CHIEF JUDGE

DAVID K. WINDER, DISTRICT JUDGE

J. THOMAS GREENE, DISTRICT JUDGE

DAVID SAM, DISTRICT JUDGE

DEE V. BENSON, DISTRICT JUDGE

A. SHERMAN CHRISTENSEN, SENIOR JUDGE

ALDON J. ANDERSON, SENIOR JUDGE