Results

Civil Justice Reform Act Survey

April 21, 1995

CIVIL JUSTICE REFORM ACT SURVEY RESULTS

1. **The Civil Justice Reform Act Plan for the District of Maine imposes various limitations on discovery depending on the type of track to which a case is assigned. Please indicate below how strongly you disagree or agree with each of the following statements:**

1a. Limiting discovery has reduced costs.

Disagree Strongly	Disagree Somewhat	Neutral	Agree Somewhat	Agree Strongly
2%	14%	29%	40%	15%

Number of respondents: 208

Comments:

Limiting discovery forces plaintiffs to spend more money on experts. I think this produces a better case but probably doesn't save money. Requiring parties to affirmatively prove their cases early promotes settlement.

In some cases, yes. But often especially amongst the Bangor bar, attorneys agree to ignore the limitations.

1b. More judicial involvement during the pretrial process has reduced costs.

Disagree Strongly	Disagree Somewhat	Neutral	Agree Somewhat	Agree Strongly
2%	11%	20%	39%	28%

Number of respondents: 207

Comments:

(Agree strongly)...especially regarding discovery disputes.

(Agree strongly)...especially telephone resolution of discovery disputes and scheduling conflicts.

1c. Clients have been unduly prejudiced by the discovery limitations imposed by Local Rule 15.

Disagree Strongly	Disagree Somewhat	Neutral	Agree Somewhat	Agree Strongly
20%	27%	40%	10%	3%

Number of respondents: 203

*Note: See comments on pages 10-12

1d. The provision of Local Rule 18 prohibiting the filing of written discovery motions without the prior approval of a judicial officer is generally beneficial.

Disagree Strongly	Disagree Somewhat	Neutral	Agree Somewhat	Agree Strongly
2%	5%	26%	33%	34%

Number of repondents: 203

*Note: See comments on pages 13-14

2. The scheduling order(s) imposed time limits on the discovery and motion practice. In you estimation, did these limits:

Lower the cost of litigation	40%
Have no effect on cost	41%
Increase the cost of litigation	19%

Number of respondents: 197

*Note: See comments on pages 15-23

3. In your estimation, did the time limits imposed on discovery:

Enhance the fairness of the ultimate disposition	15%
Have no effect on the fairness of the ultimate disposition	70%
Diminish the fairness of the ultimate disposition	15%

Number of respondents: 196

*Note: See comments on pages 24-29

4. **Do you believe cases are initially assigned to the appropriate track?**

Number of respondents that answered YES	Number of respondents that answered NO
181	12

If **NO**, did you seek a change?

Number of respondents that answered YES	Number of respondents that answered NO
9	3

Were you successful in seeking the change?

Number of respondents that answered YES	Number of respondents that answered NO
3	5

(One respondent did not answer this question.)

*Note: See comments on pages 30-31

5. **Did the disposition of the case(s) result from the use of any of the Alternative Dispute Resolution (ADR) mechanisms listed below?**

Mediation	7%
Arbitration	1%
Settlement conference with a Judge or Magistrate Judge	21%
No ADR mechanism was used / Case still pending	63%
Other	14%

Number of respondents: 200
Total % does not equal 100% due to multiple responses

*Note: See comments on pages 32-33

6. **Approximately how soon after the complaint(s) was filed was the Alternative Dispute Resolution mechanism employed?**

Immediately	5%
At pretrial conference	6%
After close of discovery	3%
During discovery period	2%
At appeal stage	3%
Prior to complaint	2%
Prior to trial	5%
Case transfered	2%
After case pended 2 months	2%
Default judgement	2%
1-6 months	38%
7-12 months	15%
13-18 months	5%
Not answered	10%

Number of respondents: 60

In your opinion, did the case(s) warrant employing the mechanism sooner?

Yes	No
30%	70%

Number of respondents: 57

*Note: See comments on pages 34-36

7. **Do you believe that the cost savings would have been greater if the ADR technique had been employed sooner?**

Significantly greater cost savings	8%
Moderately greater cost savings	29%
No greater cost savings	63%

Number of respondents: 62

Comments:

Hard to say. Primary issue was extent of damages. Medical depositions required. I believe significant cost savings can be effected by early judicial intervention in the form of a settlement conference.

(Moderately greater cost savings)..but we would have recovered substantially less as our case grew stronger the more witnesses we found.

8. **What was the costs (not including counsel fees) of using the ADR technique?**

$0	60%
$150	5%
$600	3%
$900	3%
$1,000	5%
$1,400	3%
$1,500	3%
$2,000	9%
$5,000	3%
$6,000	3%
$10,000	3%

Number of respondents: 35

9. To what degree did using the ADR technique save the client's attorney fees (as opposed to going to trial)?

Significant savings	44%
Moderate savings	28%
No savings	28%

Number of respondents: 57

Comments:

Settlement conference with Magistrate was successful, thus reducing litigation expenses.

I represented Plaintiff & had entered into a contingency agreement. It did save expenses.

10. In your opinion, do the Local Rules do enough to encourage the use of ADR techniques in the District of Maine?

Yes	No
77%	23%

Number of respondents: 157

*Note: See comments on pages 37-38

11. How knowledgeable was your client(s) about ADR techniques for this matter?

Very knowledgeable	23%
Somewhat knowledgeable	43%
Not at all knowledgeable	34%

Number of respondents: 146

12. Do you feel you gave your client(s) significant information about ADR techniques?

Yes	No
78%	22%

Number of respondents: 148

*Note: See comments on pages 39-40

13. **In your opinion, would it be helpful to give clients a court-provided pamphlet on ADR techniques and their availability?**

Yes	No
78%	22%

Number of respondents: 171

*Note: See comments on pages 41-43

In what county is your practice located?

Androscoggin	4%
Cumberland	51%
Hancock	1%
Kennebec	9%
Knox	1%
Oxford	1%
Penobscot	11%
Sagadahock	2%
Somerset	1%
Washington	1%
York	4%
Various	3%
Out of State	11%

Number of respondents: 194

Please indicate the size of your firm.

Solo practice	9%
A firm with less than five attorneys	24%
A firm with more than five attorneys	66%
A firm with only five attorneys	1%

Number of respondents: 190

How long have you been a practicing attorney?

1 to 10 years	30%
11 to 20 years	44%
21 to 30 years	20%
Over 30 years	6%

Number of respondents: 196

What percent of your practice is in the Federal District Court of Maine?

0% to 25%	79%
30% to 50%	10%
55% to 75%	6%
80% or over	5%

Number of respondents: 192

What is appropriate age category of person filling out survey?

25 to 39 years old	31%
40 to 54 years old	63%
55 or over	6%

Number of respondents: 196

Given the fact that Congress has directed each federal district to take steps to reduce cost and delay in federal civil litigation, what changes would you recommend in the practice in the District of Maine?

*Note: See comments on pages 44-56

If you have any other comments or suggestions about Alternative Dispute Resolution techniques, please make them in the space below.

*Note: See comments on pages 57-63

COMMENTS

The following pages are the comments received on the surveys along with the corresponding question from the previous pages.

1.	The Civil Justice Reform Act Plan for the District of Maine imposes various limitations on discovery depending on the type of track to which a case is assigned. Please indicate below how strongly you disagree or agree with each of the following statements:
1c.	Clients have been unduly prejudiced by the discovery limitations imposed by Local Rule 15.

If you agree somewhat or agree strongly, please explain:

Practice has become more "defensive". Parties use "all" of their discovery "because" of unrealistically short time periods.

The 5-deposition limit is unduly prejudicial in a number of cases where there are multiple potential witnesses of a corporate defendant.

Limits on interrogatories and sub-parts deny plaintiffs information and result in extended depositions.

The short periods imposed by the Court do not reflect the realities of managing a full caseload particularly for sole practitioners.

In cases involving large numbers of witnesses, including expert witnesses, limitations on depositions can result in limitations on what is presented later at trial.

Very little involvement in discovery in either of the two cases listed.

I have not yet been involved in a case where the limitations have been a problem.

Process didn't allow expert discovery to develop in a cost efficient way.

The limits on interrog & depos. leave parties in the dark on injury cases & employment cases.

In cases where it matters, unlike the case I am responding on, full and complete discovery about the case is not possible.

Particularly in employment and civil right cases, when defendant always controls information, and Plaintiff has few avenues of pre-filing investigation, limitations are prejudicial to individual plaintiffs.

The pace of discovery should meet the needs of the case. The present system gives plaintiffs the advantage of doing much of their preparation before filing suit. There is no reason for such a frantic pace.

Limitation on depositions unfair to plaintiff in civil rights cases, especially employment discrimination, where defendant already has most of relevant information and discriminatory intent is difficult to prove and requires extensive discovery.

Some limitations are arbitrarily unrealistic to properly defend cases, i.e., product liability cases.

Some cases with significant numbers of important witnesses involving complex issues require the opportunity to conduct more written discovery & depositions than the new rules allow.

Not enough time/room to flush out weaknesses in opposition's case.

Interrogatories are an inexpensive form of discovery. Arbitrarily limiting the number of interrogatories requires use of more expensive activities to obtain the same information.

On complex track cases, few limitations placed, thus increasing costs substantially.

The docket is so fast that discovery disputes are being argued up until the date of trial and plaintiffs are being denied information even if they keep up with the schedule.

Limitation on interrogatories is difficult where depositions are also needed. Interrog. a useful tool to find out discrete basic data.

Lawyers are usually capable of governing discovery.

Misc comments:

I disagree because discovery was not limited to any significant degree in my cases. I do not know if more Rule 15 limitations would be unduly prejudicial.

The limits are broad enough to permit ample discovery to properly prepare a case for trial.

Where discovery responses show that further discovery is needed, it may not be available without special permission in midstream. Some greater cushion is needed.

In general, I believe clients benefit from discovery limitations. There are of course cases where more extensive discovery is required. The Court needs to be flexible when these cases present themselves.

This works both ways. Sometimes it is to clients' advantage. Sometimes works greatly to disadvantage.

The court needs to be more accommodating for extension of discovery deadlines in complicated cases.

Sometimes lost of things are done too quickly without adequate preparation.

However, limiting depositions "per party" was unfair since there were 2 plaintiffs (husband w/consortium claim and wife) and only 1 defendant.

Not in my cases, but limits on some discovery may create problems....

Judge Brody, 2:94CV040 and 2:94CV175 went to default judgments. Discovery played no role in these cases. Therefore, the CJRA did not affect these matters.

1.	The Civil Justice Reform Act Plan for the District of Maine imposes various limitations on discovery depending on the type of track to which a case is assigned. Please indicate below how strongly you disagree or agree with each of the following statements:
1d.	The provision of Local Rule 18 prohibiting the filing of written discovery motions without the prior approval of a judicial officer is generally beneficial.

If you disagree somewhat or disagree strongly, please explain:

It saves both time and money for a judge/magistrate to simply listen to the dispute by telephone and tell the parties whether s/he really needs a mountain of paper argument. Judicial involvement in discovery disputes is one of the one most refreshing practices that I found in the District of Maine.

This is not helpful where Pro Se litigants are involved. It is actually counter productive.

The rule certainly eliminates frivolous motions but it is too reliant upon the presumed objectivity and good faith of the judges.

Good provision.

Forces other side to assess reasonableness of position.

It does eliminate knee-jerk motions for protective orders, etc. But the courts analysis is of necessity superficial & does not include review of documents - this makes possible arbitrary and inaccurate rulings. More importantly, the court seems to consider the benefits of speed and economy to outweigh full disclosure, to the detriment of individual plaintiffs.

The immediate prospect of a conference with a judicial officer is enough to prompt most lawyers to work out disputes without a conference.

This rule affects the clerks - not the lawyers.

This is absolutely the best aspect of the rules.

Can put further delays into process; compromises are forced too often when they should not be.

Attorneys in this State very rarely need to file discovery motions. Like much of the Act it addresses, are largely nonexistent problem here in Maine.

Speed is very beneficial. Sometimes the increased speed is obtainable with no reduction in outcome. In more complex situations, the key is the Magistrate's alertness to determining whether some time of written submission may be necessary.

Securing prior approval involves an additional motion and a hearing.

Not used in these cases. When used in other cases, issues that should never get to a judge in any form are hastily, and sometimes unfairly, put before the judge. If motions are proper they should be properly done. If a conventional motion is not a useful choice, there is a real question as whether a hasty telephone conference is more useful or as fair.

Counsel should have free access to court so the court can assume control and the threat to go to court believable.

Notice to opponent & opportunity for considered response are important.

My experiences in this case was positive, but I can envision procedural difficulties with this rule. How can you effectively seek the Courts help on discovery unless you are permitted to file a motion?

Misc comments:

In general, I would think this beneficial only if the Judge heard brief argument (even by telephone) and gave the courts "inclination" which would likely resolve the discovery dispute before need for motions.

It has been my experience that most motions in this area are unnecessary; the involvement of a judicial officer can obviate the need for such motions.

I think that filtering discovery motions will force attorneys to attempt to resolve their differences, which is in most cases.

When Magistrate is not immediately available, however, the system breaks down with serious adverse effects.

(Agree somewhat)...however, this case involved a pro se litigant, who didn't comply with this rule. In prior cases, this rule has been beneficial.

2.	The scheduling order(s) imposed time limits on the discovery and motion practice. In you estimation, did these limits: (Lower the cost of litigation, have no effect, or increase the cost of litigation)

Please explain:

Lower the cost of litigation:

Early discovery promotes early evaluation and settlement of cases that should settle, rather than courthouse step settlements when a lawyer finally gets around to doing the discovery and motion practice that points out the strengths and weaknesses of the case.

Things move more quickly thus less opportunity for excess motion posturing.

Probably somewhat lowered litigation costs.

Because time is money, the time limits clearly reduce the total time of the litigation which reduces the cost of litigation.

I think with more time they might have conducted more discovery.

No one had time to conduct thorough discovery so, by its very nature, the system lowers costs by eliminating discovery.

No order was made in the Olson case. Parties were defaulted. Generally, I receive discovery limits lower costs.

Pushed parties to a quicker settlement.

Created the record fast and to the point.

Knowing that a case will be subject to strict discovery deadlines, I think forces plaintiffs attorney to prepare cases better before filing. Knowing the strengths and weaknesses of a case from the start facilitates settlement.

The limits force you to evaluate your case critically early on; the simple fact that time runs out prevents last minute extra discovery.

Required more efficient use of discovery process.

I believe shorter time frames have generally resulted in some efficiencies in discovery.

With reasonable, realistic time limitations, necessary gets done. With open discovery, unnecessary discovery is conducted. Trial duties settle cases.

Accelerated settlement.

But doesn't mean that proper justice and fairness to client resulted. You can reduce costs but the "cost" of doing this can be very prejudicial to the client.

Promotes efficient use of discovery.

Time limits add to the Federal Court's overall thrust of making everyone: (1) focus early on what counts; (2) pay attention all the time; (3) do only what is necessary, truly necessary, to prepare the case.

I believe that the strict time limits require counsel to focus on the issues and formulate a discovery plan at the initiation of the case or earlier. A resulting effect is marginally lower expenses.

This case has already generated a heavy paper trail to reach the District Court - I can only speculate that time limits will help along a case which has taken 14 months to establish venue!

Effort is concentrated around a much shorter period of time which keeps the case moving and "fresh" in the attorney's and client's minds.

Although the two cases focused on specifically here, and my involvement therein, did not directly involve scheduling order time limits, I believe those limits generally lead to some reduction in litigation costs.

Requires counsel and clients to focus on discovery required w/out affording luxury of taking depositions that aren't really necessary.

Plaintiff conducted no discovery, defendants not defendant-intervenor conducted limited, targeted discovery.

Time limits require early and sustained focus on key legal points and their key facts (keeps the lawyers from wandering into the puckerbrush, thereby reducing costs, discovery disputes, etc.)

I think they help lower cost because discovery plans must be mapped out early and in detail thereby reducing "last minute" discovery and motions to enlarge time.

Scheduling Order time limits forces action to proceed and to be completed.

Everyone got right to business and the case got settled.

In this case they lowered the cost because my opposing counsel did not meet the deadlines. In another case I believe the limit can increase the costs by putting pressure on counsel to do too much too early.

Helped accelerate settlement.

Perhaps slightly lowered as time spent correlates with cost.

The extremely short time leash simply requires the parties to focus on what is important central to their cases, and effectively precludes wide abuse of the discovery process.

In general, on average, the longer a case drags on, the more it costs. Also, shorter time limits lead to earlier and more serious settlement discussions.

Lower the cost with respect to motion practice, not with respect to discovery. In one case because of the availability of crew and officers, a certain amount of depositions and discovery is still required.

The deadlines were for goal-oriented purposes and were flexible to encourage settlement.

My experience has been with Plaintiff's personal injury cases with insurance defense counsel on other side. I believe the limits can level the playing field.

I believe that the Court's rigid enforcement of time limits can sometimes force the parties to litigate a case which might otherwise be settled if the parties had more time to pursue that option. Sometimes the parties do not have sufficient time to probe whether their is a possibility to settle the case.

Litigation is done more efficiently if it is accomplished in a shorter period of time.

Have no effect on cost:

The time limits themselves did not change the necessity (or lack thereof) of conducting discovery or making motion but rather it caused the necessity to reprioritize items and time frames.

Discovery was not an issue in this case because the parties/defendants were defaulted. Generally, time limits do not effect fairness.

The time limits themselves do not increase the costs. The increased costs in Federal Court is caused by the paperwork requirements of actually going to trial, not limitations on discovery and motion practice.

Created panic for the lawyers, but some work is simply compressed into a shorter time, so no effect on dollars billed.

They force intense dedication to cases going to trial.

The discovery time limitation moved the case along more quickly, but otherwise, had no effect.

They focus the mind effectively, but are frankly inadequate in cases of any complexity and the court is unduly rigid in enforcing these limits.

The scheduling order had no effect on the cost of litigation in this particular case because the case required only limited discovery and the attorneys for the 4 parties approached that discovery reasonably.

Reasonable attorneys acted reasonably.

The case was promptly settled with virtually no resort to formal litigation.

All of my cases settled. The rule changes did not affect costs.

The same amount of work here to be done with a compressed period of time.

The listed case was settled prior to extensive discovery. The scheduling order was amended to extend the time for discovery to allow the settlement to be consummated.

The case (consolidated) in which I was involved was resolved on cross motions for summary judgment. I have not had enough other cases to offer an opinion on the effect of the scheduling orders.

Same amount of discovery is done; time frame is just underused.

For a Plaintiff, the time limits simply shift the time of when money is spent. Now I have my experts retained and paid before I file suit. The ultimate costs seem the same.

It merely compels you to do the same amount of work in a more compressed period.

There is basically the same amount of preparation required - it merely becomes more compressed.

We still must conduct the same amount of discovery but over a briefer time.

I prefer eliminating time limits provided discovery does not delay trial. Sometimes witnesses cannot be available for trial - at the last minute. They should be deposed.

Most things which would have been done are done anyway, even if on a tighter schedule.

The discovery would have been done sooner or later. This case presented minimal discovery issues due to the nature of the case.

The result is for attorneys to become more diligent.

Time is compressed - amount of work is about the same.

Because both these cases were resolved by negotiation between the parties, little if any discovery was required.

The discovery that was done would have been done at about the same pace and cost in any event. If stretched out a little, the cost would have been spread out but not enlarged.

One case was awaiting settlement when matter was filed to prevent statute of limitation problems.

Essentially, the matter settled w/o time limits.

We simply were more active within the shorter time frame.

It is not time limits that lower costs but rather the amount of discovery allowed.

In my case, I do not believe there was an effect. In a larger case, however, the cost would be lower.

They may force discipline with respect to timing. They probably did not result in added or less activity.

No effect in these cases. In most cases, however, extremely short deadlines have increased costs by requiring shotgun cover the entire case discovery and not allowing for resolution of dispositive motions prior to discovery.

We have had time limits prior to Civil Justice Reform Act. The Act was of no consequence.

Scope of discovery not affected by time limits.

In a pro se case like this, there tends to be less discovery. Usually parties do not take depositions and limit discovery to interrogatories and request for admissions, so cost is not impacted by time limits.

I think the Court should be somewhat flexible in granting extensions when needed.

Routine denials (or imposition of deadline shorter than the extensions requested) may compromise the quality of the legal work presented to the Court.

Responded to complaint with motion to dismiss, which would have occurred even without the scheduling order.

No discovery - no defense - default judgment entered in each case.

Court upon good cause extended a case where discovery would never have been an issue.

Increase the cost of litigation:

Because of the short discovery periods imposed by the court, counsel have no time to stop discovery to work on settlement. Counsel feel compelled to begin discovery immediately and do as much as possible as quickly as possible less the deadline run and the court not agree to an enlargement.

People practice more "defensively" and are less likely to extend professional courtesies because the rules are often applied punitively.

Time limits are unrealistic, especially w/regard to Rule 26(a)(L) info. Result is, even where parties agree on need for extended time, more resort to court for approval.

Where witnesses are out of state and/or case involves several experts, attorneys are compelled to complete all discovery in a very short time. Often this means rescheduling other cases, inconveniencing experts who charge accordingly and can result in the taking of depositions which might not have been taken if passage of time proved them no longer necessary.

There was alot of technical evidence and the time allotted did not leave time to work sequentially. We had to get every conceivable expert up front to avoid claims of failing to disclose later. It was very costly.

Experts had to be worked with prematurely.

Shortened time periods require attention to that case to the exclusion of other work. This requires me to charge/bill clients more to cover the cost to me of not being able to handle my normal caseload.

Due to the short time limits, additional motions and/or judicial conferences are required that previously could be handled by agreements between counsel.

Compressed costs into smaller timeframe which permits neither party to truly digest the case for settlement until all discovery is completed.

Imposes tremendous burdens on the rest of my practice by creating a tidal wave of frantic activity in one case as the deadline approached. Usually, these delays are created by Defense Counsel or their clients.

I feel time limits are generally too short.

Time limits sometimes cause one to use extraordinary measures to get things done, which is often more expensive.

For a complex case, the need to seek extensions of time limits adds cost.

Unnecessary unless there is a very short period between the end of discovery and start of trial. If there isn't what is the point of not allowing discovery during this time period?

Schedule did not allow sufficient time to explore all settlement avenues before because unnecessary to pursue discovery.

The short time frame requires more time and energy to be devoted to discovery while it is possible.

There was less time for planning. Discovery could not be conducted in a logical progression; instead we had to proceed w/all conceivable discovery immediately.

Can sometimes increase cost of litigation because time constraints may require taking of depositions that might be rendered superfluous by other discovery.

Expert designation was required by Plaintiff early on where Defendants were the side indicating probable use of one.

The Act may actually increase costs since discovery proceeds at such a breakneck pace. Settlement sometimes comes later than it ordinarily would thereby increasing the amount of discovery and attendant costs.

Too much pressure to move case procedurally and not enough time to negotiate.

Time limits which are not realistic considering volume of attorneys' case load require schedule shuffling and increase costs of system at macro level.

Trial track moves too quickly; requests for enlargement of time required.

The mandated time constraints can force early and significant expenditures that in individual cases might otherwise settle without such costs.

In a relatively small case obtaining early information from an expert early on can increase the cost in a matter that might settle.

Short time limits require multiple attorneys to learn a file in order to cover depositions (scheduling conflicts). Some discovery is done which might be avoided if counsel had more time to evaluate settlement value, report to client, and negotiate. We do not have the luxury of taking a step back and evaluating the effect of the first round of discovery.

My feeling is that the short deadlines force counsel to do all discovery almost immediately and it doesn't provide an opportunity to be selective, i.e., do a little discovery and then assess whether more is required.

I like the time limits. However, they increase the cost of litigation because they force discovery to take place which might not be necessary due to pending motions.

As a third party defendant, my client was forced to comply w/extremely short & unrealistic deadlines, which forced the parties to conduct discovery before meaningful settlement could be explored.

The time limits forced all investigation retention of experts & discovery to be performed immediately & simultaneously. The time limits make it impossible to proceed in a "staged" manner in which one would complete a phase of investigation and discovery, and then determine whether further investigation and discovery were needed.

Expert witness requirements add costs before the discovery process weeds out (or requires) a determination of expert witness necessity.

Compressing the time periods requires parties to perform many tasks that would otherwise be unnecessary, i.e., preparing for trial while dispositive motion pending.

The courts are reviewing motions on an expedited basis and do not give full attention. Judges may be pre-judging cases and then, subconsciously, managing the case to eliminate a contrary position or to eliminate evidence on the contrary point.

Increased line pressure - requires premium time billing.

We had to stop working on other matters to meet the deadlines.

Misc comments:

In some instances it does reduce cost - in others, it increases costs as counsel go to extremes due to paranoia.

It depends on the case Sometimes speed increases cost, sometimes decreases. Overall, shorter deadlines usually beneficial.

Time limits generally have positive effect, but Court needs to be more flexible to special circumstances, especially when parties agree modification to deadline is appropriate.

One case no effect - Case was straightforward and counsel practical. One case thought strict time limits led to increase in bickering, letters, etc. because counsel try to "protect" themselves, their position.

In 3 cases it had no effect.

In some instances they increase the cost. Because the time is so compressed, scheduling is difficult and can cause higher charges. In one example, an expert charged more than her usual rate because she had to turn the case over so quickly and squeeze in a deposition. To the extent the deadlines reduce unnecessary discovery, they also reduce the cost. To the extent they encourage settlement, they also reduce the cost.

3.	In your estimation, did the time limits imposed on discovery: (Enhance the fairness of the ultimate disposition, have no effect on the fairness, or diminish the fairness)

Please explain:

Enhance the fairness:

There is nothing more "unfair" to the client, to the court, or to my preparation than having to deal with opposing counsel who let discovery and motion practice languish until the last minute.

The time limits prevent delay. Delay promotes unfairness for at least one side.

Favor prompt resolution and assist plaintiffs who are without money or in stress.

I think the time limits left no time for discovery of marginal usefulness and consequently did not force the plaintiffs to waste resources on defending against marginal.

The more focused we are the more certainly we get to the true issues, resolving which leads to fairness.

Speculative again - delay by itself, forces settlements which are not reflective of a fair disposition at trial.

More tight focus means more attention to the true issues, which in turn means more fairness.

Our case was a "collection" case and the speed forced early and successful party negotiations.

Fair and proper result achieved in timely manner beneficial to all parties.

The enhancement resulted from the swiftness of the resolution & thru the limitation on non-pecuniary costs such as time lost from work, reducing anxiety.

Encouraged a more speedy resolution of the case.

Yes - discovery did take too long and was too expensive, but, if the process is faster, the court tends to give full attention, in many cases, it is impossible to keep up with the schedule and more latitude needs to be given by the court or sole practitioner will be forced out by large firms generating huge amounts of paper on an expedited schedule.

Time limits allowed a faster filing of a motion for summary judgment, which resolved the case.

As long as the time limits are reasonable, litigation results are more "fair" if accomplished sooner rather than later.

Have no effect on the fairness:

Ultimately, I think that the case would have settled for the same amount of money and the same discovery, regardless of the time span of the discovery period.

If the court is flexible on mutual requests for extensions in cases that have unexpected problems, then no effect - otherwise, they do diminish fairness.

I think the time limits sped the process to disposition, but didn't ultimately effect fairness.

The information needed was obtained. However, the limit on amending pleadings almost did adversely affect the fairness of the disposition. We were able to obtain leave to amend but (a) that was lucky & not routine, and (b) it cost money to draft the motion, memo, etc.

In this particular matter I do not believe there was an adverse effect. I can see how in some other matter however different result could have been reached.

In the specific cases I have had to date.

In both cases, my clients were only parties in interest and therefore the time limits did not effect my clients one way or the other. I am sure that I would have an opinion if my clients had been more actively involved.

Even with admissions gained case not resolved and must go to appeal.

The time limits had no effect on the fairness of the ultimate disposition of the case that generated this survey form. I do see the potential for unfairness in some cases due to the time limits.

There were no serious discovery problems in my cases, and the time limits were not a factor. The time limits have the capacity for diminishing fairness only if they are administered inflexibly.

Nervous breakdowns affect both sides equally.

In this case, the time limits allowed for discovery were sufficient to conduct all necessary discovery.

This case settled early.

I think the time limits were reasonable, and thus don't think they had any material effect of fairness.

The time limits simply require litigants to address cases. There is nothing unfair in requiring any party to prosecute cases in prompt fashion.

Everything which needed to be done, was done. But only with agreement of the party to allow a couple of depositions to be done after formal discovery ended.

The end is the same.

Same preparation, same result. Just quicker.

The cases in which I was involved were not "discovery intensive".

Important discovery still done and essential facts (for fair disposition) still uncovered.

People do what they have to do.

Discovery was a minor aspect of the case.

Both cases settled fairly.

Ultimate disposition was settlement.

Essential discovery still gets done.

This case was no resolved on factual disputes.

There was enough time to develop the necessary evidence. Generally, excessive time may adversely affect cost but not the fairness of the disposition. Insufficient time may adversely affect cost.

No effect on this particular case but I think the time limits are so short it does adversely affect some ultimate dispositions.

I could not tell. At least justice was not delayed.

The parties reached settlement without much regard to time limits.

In my cases, the time limits on discovery were not a factor on fairness of ultimate disposition except to the extent that the parties reached that result without a lot of wasted time and money.

Fairness is a very subjective term.

All the important discovery gets done within the time limits.

No discovery was discussed, no deadlines imposed.

N/A since motion raised qualified immunity effectively staying all discovery.

Only because Court reconsidered and extended discovery deadline.

Diminish the fairness:

The time limits imposed for the naming of experts were too short. Also, I think the overall discovery period should have been about 25% larger.

Rushing towards settlement had affect of client paying a premium. While settlement was appropriate, it was, on two occasions, at the higher rather than lower range of acceptable settlement.

The unrealistic time limits force parties to discuss settlement w/o necessarily knowing all relevant facts.

Tendency to diminish the fairness. I have no positive evidence of any direct effect on fairness, although I believe the extent to which the discovery period and motion deadlines are compressed impairs the ability to fully and fairly prepare the case, in particular for the defense.

Limited the parties' ability to discover and digest the evidence.

Small law firms of limited manpower, and individual plaintiffs, have difficulty in obtaining full discovery, especially if the court is inflexible.

These short time limits are very prejudicial to small firms, who cannot commit more than one attorney to many cases, when the opponent is represented by a large firm with several lawyers on the case. The same is true for the short time periods for filing memoranda in opposition to motions.

Although I believe the effects are marginal, many of the deadlines are so tight that orderly discovery is not possible. Fortunately, in these cases where additional discovery was essential to fairness, the parties have agreed to ignore the deadlines.

Time limits are beneficial and necessary. The current time limits for standard track matters are too severe, and do not allow for the proper development of all cases.

Of course you can limit all you want, but this impedes the litigants right to fully discovery and thus properly prepare and defend.

Defendants file frivolous objections to postpone meritorious discovery until the discovery deadline has prevented necessary follow up. No meaningful sanctions are ever imposed for such delay tactics.

I believe that the process is so rushed that it becomes difficult to adequately investigate and discover cases before trial.

The time limit results in more discovery because lawyers take unnecessary depositions just to be "safe."

Can work both ways but places great stress on small offices; counsel new to subject matter when other side has litigated similar cases often. These constraints also permit one side to disadvantage often by delaying tactics that stop short of requiring assistance from the court. The collegial side suffers.

Unreasonable and prejudicial exclusion of expert witness.

Time limits imposed are often too severe given the multitude of demands on trial lawyers today.

Preparation and thoroughness.

Defendants are at a disadvantage if plaintiffs have properly prepared their case before filing the complaint.

Too much discovery is done before its need and the rest issues in the case are fully developed.

The time limits make it difficult to adequately prepare case or file appropriate motions and still have a home life.

I found especially in dealing the out of state counsel that attorneys were motivated to engage in procedural gamesmanship in order to gain some leverage.

The time limits on regular track are very short, esp. since an active trial practice require juggling costs of cases.

Misc comments:

The early deadline in scheduling order for amending pleadings and addition parties is unfair to plaintiff because the deadline is routinely set before plaintiff has opportunity to take discovery.

As long as the court is flexible to changes the limits are helpful.

In 2 cases it had no effect. In 1 case, it was probably beneficial. In the 4th case, the short time constraints did not provide sufficient time for the discovery involved. More significantly, the very short time did not allow sufficient time for either my client or the opposing party to come to grips with the realities of the case, since it was an incident which my client did not receive notice of.

They ensure a resolution while the case is fresh, which must advance the truth seeking function. I've had cases, though, where I believe the other party is disadvantaged because his/her attorney simply can't devote the concentrated time to the file. This becomes a strategic advantage for a litigant who's well prepared and organized.

4.	Do you believe cases are initially assigned to the appropriate track?

If you had different experiences with more than one case, please explain:

I requested increase in number of depositions but staying on standard in one case.

Adjustments in scheduling allowed assignment to standard track to be acceptable.

I don't believe whatever track we were on would have solved the problems. Complex track schedules are equally problematic.

Because we dealt with the magistrate, the parties created a schedule together with the court that worked.

In ADA claim, court ultimately made sufficient changes in procedure that case assumed complex track appearance.

One case was assigned to the complex track in error. All parties agreed and wanted the change.

Recently, time frame has been even shorter on standard track. Too short for anyone who handles a number of cases at one time.

The consolidated cases(93-318/93-320) required a change from standard to complex track, which change was granted over the objections of defendants who later complained about the complexity of the case and its necessary discovery procedure in a series of motions for enlargement of time.

Plaintiff should be allowed more discovery than allowed is standard track, especially depositions, in civil rights and employment discrimination cases; affiliated defendants with common interests and common counsel should not get more discovery than plaintiff based on mistake assumption that discovery should be authorized on "per party" basis.

Product liability cases usually aren't as simple as the cost cutting measures would presumably hope for or anticipate.

There is one possible defect in the rule when a party is a corporation or association. In such situations, Rule 30(b)(6) can turn one deposition into the equivalent of several. This can probably be handled on an ad hoc basis in a case of abuse.

Generally, I have found track changes to be virtually impossible to obtain. I think there needs to be sufficient flexibility to ensure individual cases are appropriately tracked. (i.e., products liability cases vary tremendously in terms of discovery and time needs. Yet they are generally given standard track designation).

Getting an agreed upon increase in the number of depositions to be taken in a multi-party case was a burdensome exercise - in a case with 5 or 6 defendants and probable use of experts limiting depositions (to the Plaintiff) to 5 was not correct and all counsel agreed -the change (to 10) required more work, conferences, etc, than the old system.

I did seek a change in one case and was granted partial relief.

When appropriate I seek a change. I have been successful in getting some deadlines moved. I think that trying to complete discovery in 4-5 months is too short in most cases. The deadlines for amending pleadings and adding parties are now only a few weeks after filing which is too soon to be fair to the defendant. In many routine cases, without multiple parties, complex issues or many out of state witnesses, 6-7 months provides a tight, but reasonable schedule for discovery.

I did seek and receive a bifurcation from Magistrate Judge Cohen of discovery and resolution of an insurance coverage question. Discovery and resolution of this issue allowed the case to be resolved efficiently and cost-effectively. Flexibility on a case by case basis is appropriate, effective and appreciated.

The court did not change the track. It resolved the issue by increasing depositions, etc. within the track.

Other parties have changed case to complex track over objection and then ultimately no limits were placed on discovery.

The Juno case was very difficult from a discovery and motion point of view. Counsel from N.Y. did not cooperate in amy manner. For example, we requested extension of time for discovery because of foreign clients and witnesses. They objected. Motion denied. After complying with defendants discovery request, defendants requested an extension of time to complete our discovery request. No cooperation. Obviously, they do not have to continue practice in this State.

Good experiences! Magistrate and Court listened to concerns.

5.	Did the disposition of the case(s) result from the use of any of the Alternative Dispute Resolution (ADR) mechanisms listed below?

If other than Mediation, Arbitrtion, Settlement conference or no ADR used, please explain:

Although the case still went to trial, the settlement conference with the magistrate went a long way to narrowing the issues for trial.

One case settled after mediation. In another case mediation was utilized but was unsuccessful.

The forfeiture case was resolved due to the potential double jeopardy arguments with a criminal trial still pending.

Conference with Judge after jury selected for trial 3 weeks hence.

The ADR used in 2 cases was at parties suggestion, not the courts'.

We had traditional settlement negotiations between counsel in the case. A post settlement conciliation session was held.

Judge Cohen helped a good deal in facilitating settlement. His fair but firm approach, and his ability to get right to the points of division, facilitated settlement.

A waste of time - unless the judge is conducting the conference.

My file is minimal as Out of State counsel handled completely all substantive activities.

ADR was used in Auto Dealers but was not successful - at 1st Circuit Stage.

The speed with which discovery was conducted allowed for early dispositive motions on some counts of the action and thereby helped bring about a negotiated settlement.

We won on summary judgment but we tried mediation first.

Mediation used by Court order/pressure - much too early in process - resulted in preventive mediation at significant legal expense.

1 case was resolved by mediation through conflict solutions.

Mediation was attempted, but was unsuccessful.

One case a pre-arguement conference was held by the 1st Circuit - an earlier stage conference would have been more promising.

Mediation at 1st Circuit level.

But I have had marvelous success with settlement conferences in other civil cases.

Opponent had no interest in ADR.

One case settled after conference with judge; other after defendant was defaulted.

One case conf with court prompted settlement; 2nd case parties settled without court.

Settlement among parties.

Negotiations between counsel.

Denial of summary judgement.

Motion to dismiss.

We paid!

Misc comments:

Settlement conferences were unsuccessful.

Can be very effective if carefully conducted.

Settlement conf was scheduled and parties conferred day prior and resolved the case.

Matters were resolved on cross motions for summary judgment; ADR not involved.

All of these cases were conducted by settlement without ADR or court intervention. The attorneys were responsible enough in each case not to make unreasonable demands and, thus, the cases were easily settled. I am a big believer in ADR.

The pre-trial conf became a settlement conf. Parties just needed some encouragement. Case started in R.I., transferred to M.E. and was procedurally complicated.

We were attempting to set aside an arbitration aware additional use of ADR was not appropriate.

Default judgement.

Case scheduled for trial 2/21/95.

Case still pending - staying by change - Chapter 11 filing.

6. Approximately how soon after the complaint(s) was filed was the Alternative Dispute Resolution mechanism employed?

In your opinion, did the case(s) warrant employing the mechanism sooner?

If no, why not?

A third party needed to be added, and the parties need some time to begin discovery and to learn and assess the merits of their case.

Medical information and substantiation of damages claimed required to value case were not gathered (completely) until conclusion of discovery.

The discovery period is so short that an earlier use of ADR may have been less successful because the attorneys would not have known the case as well.

Expert review and options were necessary to allow the parties to settle.

I suspect the result with a jury would have been better.

The cases settled quickly.

Discovery enhanced settlement.

All expert discovery had to be completed before serious discussions could be held.

Defendants probably would not settle until trial imminent.

Went to mediation with the idea that serious discovery (i.e., depositions of experts) would only take place if mediation failed.

Sometimes the parties just are not ready.

The plaintiffs deposition was instrumental in bringing about settlement.

Defendant had to realize the strength of the case against him (as perceived in video depositions) to settle. Eventually settled for 3 times what was demanded before suit.

Need to see where you are going on a case most of the time.

Not all cases benefit from the ADR process. Clients are aware of it, and they insist on its use in appropriate cases to save expenses. For some cases it simply becomes another unnecessary layer of expense.

Discovery was extensive.

Both side required "education" via discovery!

The only case in which ADR has any practical purpose required counsel to understand strengths and weaknesses of case before any meaningful settlement could proceed.

Underlying facts regarding responsibility of defendants for product in question needed to be resolved before settlement could be achieved.

We needed some discovery to make the process meaningful.

Complicated discovery issues to resolve first.

1 month was enough time to allow pleadings to be filed, but a motion to dismiss had not been resolved.

Enough discovery had occurred so parties felt comfortable in settling.

Certain threshold issues had to be discovered or otherwise resolved.

The parties were too intransigent and extensive discovery softened them up, and made them each see weaknesses in their positions - at that point, they were more receptive to mediations.

The other side wouldn't even talk - wasn't ready to talk - until about the time of the mediation.

Need discovery to develop case.

Completion of Discovery and advent of trial often needed to prompt settlement discussions.

The complexity of the case required extensive investigation & discovery before one could even begin to assess the settlement value of the case.

Many types of cases are not appropriate for ADR.

Timing was just right.

Parties needed time to conduct some discovery before settlement could be sensibly discussed.

Other comments:

This case was settled on the day of trial after considerable discussion with the trial judge. At the final pretrial conference, perhaps due to a substitution of judges at the last minute, there was no serious effort to investigate the possibility of settlement. Perhaps trial prep. time could have been reduced.

The 1st settlement/status conference was actually held 4 mos after the complaint was files, and a couple more such conferences were held with the Magistrate. Counsel for both sides did not get down to serious settlement until late in the game and only when the settlement conferences were scheduled with a judge not assigned to the case. Settlement conferences with the non-assigned judge at an earlier stage could have booted counsel toward settlement sooner.

I think early settlement conferences would have a significant effect on case resolution, thereby reducing costs.

10.	In your opinion, do the Local Rules do enough to encourage the use of ADR techniques in the District of Maine?

If no, what suggestions can you make in this regard?

Standard track assignments may have little, if any, judicial involvement between scheduling order and final pretrial conference. Perhaps a mandatory phone conference re: settlement half way through discovery period.

Mandatory ADR, earlier judicial intervention towards settlement.

Bangor Magistrate should follow Portland's lead.

There should be an initial time for discovery for ADR alone then ADR. If ADR fails, then a new schedule for discovery and trial should be set.

No exp. with ADR in Fed Ct, except settlement Conf w/judge which is useful. Negative ADR exp under state experiment waste of time.

Because time limits for discovery are generally short, parties often do not have sufficient time to employ ADR techniques.

I have had relatively little success with ADR. I think the failure is due to the fact that ADR is too far removed from judicial review to be helpful. Greater involvement by the court in settlement negotiations probably would help and I, for one, would not be concerned about bias resulting.

I was not even aware of it.

The trial judges generally do not push ADR or settlement strongly enough. Judge Carter when he want to, can be very effective in bringing about a settlement but he does not bring that active involvement to every case and the remaining judges seem unwilling to be strong handed with regard to settlement.

Conference w/counsel to encourage.

Mandatory settlement conferences - not just on the eve of trial.

Adopt Middlesex County (MASS) Superior Court Pilot Program.

The best ADR can sometimes be an hour or 2 mediation with the court.

An early in-person conference w/judge or Magistrate would help encourage parties to try ADR.

A requirement of ADR being presumptively rejected or used after initial pretrial conference and before case actually placed on a trial calendar.

Eliminate ADR.

Force mediation on all but most complex cases.

I do not have a constructive suggestion - However, a mandatory, early and inexpensive contact with an ADR source might be helpful.

More early judicial intervention.

Mandatory ADR in certain types of cases.

I agree a Court-provided document containing information about ADR should be given to each client.

An attempt at "mediation" could be mandated.

Early settlement conferences with Judge/Magistrate.

Have lawyers confirm in writing that they have discussed ADR with client and possible cost advantage of ADR.

Early attorney-client education on ADR methods available.

Misc comments:

In light of the upcoming experimental program in the state court to require ADR in certain cases, I would not suggest any changes in the federal Local Rule at this time.

Speedy scheduling of trial is most effective settlement technique. Mandatory ADR only delays resolution of case. Voluntary ADR can be very useful but only if all parties agree.

Neutral - Mediation/ADR should only be used where both participants are willing to proceed voluntarily.

It is very helpful when judges and Magistrates are positive in encouraging resolution out of court.

Neutral - this assessment must be made on a case by case basis.

12.	Do you feel you gave your client(s) significant information about ADR techniques?

If no, why not?

One case was a straight forward foreclosure with a technical out of state issue was involved with absolutely no chance of ADR. The other two cases are in early stage.

I simply utilized it to expedite the case.

I do in general when handling a civil case.

My client did not want to consider alternatives to litigation and consequently if I had provided it with significant information about ADR, I would have been met with resistance.

Settled promptly without need for ADR

The cases settled early.

Case settled early on - before ADR was triggered.

I provided my clients with adequate information. All of the above matters were resolved at limited expense, because I do not waste clients money. Several were settled, for example, without any dispositive discovery.

I aggressively pursued settlement early and was rebuffed; imminence of trial was likely necessary before defendants would seriously discuss settlement. Fast disposition of cases by Court is very helpful in settling cases.

We were able to settle this action after one deposition. We had a post-settlement "conciliation" session orchestrated by counsel to heal the wounds. This was necessary because the parties needed to be able to continue to work together.

Business clients are very conversant w/ADR. Very little persuasion is needed to convince them of efficiency of ADR.

These cases were not very fact oriented but were primarily decided on the law.

Not really an option in cases with highly disputed liability and defenses to be resolved.

Not appropriate for these cases although I am a regular user of ADR.

Reluctance of opposing party to consider creative ADR techniques.

My client is a party-in-interest which cannot effectively suggest ADR until the principal litigants and counsel see the light. Also, my trial practice is limited to real-estate cases where ADR is not often implemented.

Nature of this case did not require it.

This case settled quite quickly so it is probably not a fair standard.

In my opinion, ADR is a route to take if negotiations between the parties stall. In my 2 cases negotiations did not stall.

The other sides are insistent about trial.

This case involved a constitutional challenge to an administrative action of my client. The action had previously been upheld by another court. Because of this, ADR would not have been helpful in resolving this case.

My client - the Board of Bar Examiners - was knowledgeable through individual members.

Cases were resolved on motion to dismiss or motion for summary judgement.

Insufficient information provided by the Court.

Other Comments:

This case was well along when my client was brought in as a defendant. Multi-party litigation. I did not explore ADR as an option. My suspicion was that case would settle since parties not that far apart.

Never considered: Would have been a waste of time.

On some case I thought was appropriate.

13.	In your opinion, would it be helpful to give clients a court-provided pamphlet on ADR techniques and their availability?

If no, why not?

Advice about availability of appropriate ADR should be left to the attorney -not all alternatives in the pamphlet will be appropriate for every case.

I think it is an unnecessary expense to have court-provided literature. The attorneys that practice in the Federal Bar will, and were, becoming more fluent in ADR and can provide more customized information to each client.

I think counsel can advise adequately on a case by case basis. It is difficult to tailor a one size fits all that would be very useful.

Because a lawyer must be able to understand and see the value and convince his/her client. If he/she can't do that as a minimum, how can they expect the process to be successful.

Clients tend to be very sophisticated.

This is responsibility of counsel.

I feel that I am more competent than the court to advise my client.

I think clients are generally aware already of ADR options.

It is incumbent on the attorney to advise the client of any available ADR technique that might assist in resolution of a particular case.

Counsel should routinely explain ADR alternatives as a matter of course, with reference to the specific circumstances of each dispute. A generic description would be of little value if counsel do their job.

There is sufficient information on this process without court involvement.

I think I apprise clients of the option and advantages of ADR as appropriate.

I don't think it would hurt, except that I feel the court should be careful about insinuating itself between attorneys and client.

In my case, my clients are fully aware of ADR.

Attorneys should adequately fulfill this function.

It is not necessary; it would be superfluous.

I believe this can be handled w/o a pamphlet.

Counsel needs to develop idea with client's unique perspective in mind.

Often not appropriate or not all techniques appropriate. Also can undermine counsel's atty/client relationship.

Counsel should provide this information.

I think that most quality atty's explain the process etc. to their clients in detail.

Counsel can provide an overview.

Counsel can explain these. ADR is often not appropriate.

They know more (or think they do) then whatever a brochure will tell them.

Because client education is largely the attorney's function. A pamphlet would only be helpful if accompanied by education and recommendations from attorney.

Insurance companies are usually very knowledgeable about ADR already, whereas plaintiffs in personal injury cases will generally do whatever their attorneys advise.

I do not see ADR as a viable alternative in most cases. It adds costs and does not accomplish anything that cannot be done with negotiation between the parties. I only use ADR when it is helpful for strategic reasons, such as when a client want to avoid trial by jury.

Client and counsel are sophisticated enough to understand.

Counsel can do this.

Misc comments:

Usually defendants and their insurers have been educated about and/or have participated in this process in other matters.

Most would rely on their attorneys and not read.

I am not certain. I discuss ADR in length with most clients early in the process. I am not sure that all attorneys share my views on this point. I am not sure a pamphlet would be helpful unless it is endorsed by the attorney.

It couldn't hurt, and may help.

Individual clients - not corporate clients.

Materials from the court are given great difference by individual litigants.

Neutral - I always explain the ADR option to my clients.

It would enhance their credibility with clients.

Any additional info a litigant can get about the process & options for resolving disputes is beneficial. I have found that clients respect you even more when you resolve something creatively instead of plodding along through litigation.

Sometimes, not always. I usually discuss the alternatives with clients as a less expensive and sometimes easier alternative.

Given the fact that Congress has directed each federal district to take steps to reduce cost and delay in federal civil litigation, what changes would you recommend in the practice in the District of Maine?

The practice achieves the ends sought - perhaps to a favor: When the trial follows the complaint by less than a year, clients have little time to become realistic about their cases. They are still angry at each other through discover, and the solacer effects their time has on litigating parties - awareness of the expense and energy that litigation consumes, awareness that the end result is likely to be less than fully satisfactory - do not have a chance to work.

My single greatest concern is that the short discovery period with firm deadlines encourages attorneys to "litigate first, talk later" for fear that any delay in discovery will prejudice their client. If the court intends to encourage ADR and settlement at the lowest possible cost, I suggest more flexibility in discovery extensions to permit litigants to suspend discovery while pursuing ADR or settlement, if they so choose.

As interpreted and applied, the Civil Rules tend to make civil litigation more adversarial. Counsel extend fewer professional courtesies because the court too often takes a "form over function" approach to the rules. I recommend that the court look more to "function" of the rules and apply them accordingly.

As discussed at the Bethel Conference, 1) More mandatory disclosure of documents and info upfront - as advocated by Jeff Thaler in the "Oxford Debate".
2) A 10-deposition limit per party in most cases, ie employment discrim., civil rights cases.

I think that some classes of cases should be identified as having virtually no discovery and sent to ADR and then trial.

I would suggest that all motions that go to the dismissal of an action such as jurisdictional grounds be heard early on in the process. I our case, the entire preparation for the trial was completed including the completion of all discovery, and the parties had prepared for trial when the case was dismissed a week or ten days before the trial date. Early disposition of the jurisdictional motion would have sent the case back to New York State at an earlier stage in discovery and would obviated a lot of duplication and effort in the New York State and the U.S. District Court in Maine.

I believe the Maine District is extraordinarily progressive in reducing cost and delay. My only suggestion is more substantial than procedural. I have experienced motions for summary judgement being denied where the granting of such motion, at least partially, would have saved tremendous time and cost.

The more and earlier there is judicial involvement the case will settle or be put in a serious trial list i.e. of cases that will really be tried.

If a client will need to be consulted about a proposed settlement then the client should be either present at the settlement conference or available by phone. The client should generally be empowered to settle most issues w/o seeking approval from superiors.

Before issuing scheduling order in standard and administrative cases, counsel should be required to submit a joint letter to court stating either what efforts have been or will be made to settle the case, whether judicial involvement (though a judge or an order requiring settlement/ADR within 30 days) is necessary.

Time limit on amending pleadings should be more liberal to permit facts obtained during discovery to be pleaded and avoid Rule 11 violations or "overpleading" otherwise, changes have been good. Most of Bar feels intimidated & uncomfortable, though. Is there some happy medium?

This case was my first major action in the Federal Court system and therefore I do not believe that I have the necessary background to make relevant recommendations in this area.

Increased magistrate involvement has been a mixed bag. While it tend to prevent delay, it also tend to result in increased cost, particularly where the parties themselves are in agreement as to extending deadlines, etc. Where the parties concur, magistrates/court should defer.

Adopt the "English Rule" in all actions nationwide until the "American Rule" is the law of the land. Litigation and dispute resolution generally will be too costly to society.

I see no correlation between unrealistic time limits on discovery and cost reduction. If cases settle for less value or parties resolve cases on less than complete discoverable information out of a concern that extensions will not be granted, one must consider whether a good idea is tainted. One wonders how much time is devoted to resolving motions for extensions. Nonetheless, justice is not served when trial lawyers abandon other cases to comply with federal demands.

My experience is limited to administrative track cases. I have found the administrative track to be fast and efficient.

Earlier trial conferences and mandatory ADR.

Portland and Bangor should treat cases similarly so that there is predictability and so clients receive the same treatment. There is a great difference between how magistrates handle cases in Portland and how magistrates handle cases in Bangor.

Through scheduling or otherwise establish a time for completing dispositive motions before requiring extensive trial preparation, motions, jury instructions, trial briefs, etc.

Having pretrial conferences with the court early in the proceedings helps. Continued or regular conferences with the court to discuss progress, discovery, settlement or other issues would help to move cases either to settlement, or ADR, or to the inescapable conclusion that trial is inevitable. Knowing where the case is headed earlier in the process will help both costs/budgets and timing of resolution.

Delay has been reduced. Any further speeding of cases to trial would be counterproductive, in my opinion. Cost is an interesting issue. Certainly the cost of litigation in Federal Court is high if you go to trial, because of the paperwork requirements. That cost probably seems higher because it is spread over only 6-9 months, whereas the likely similar cost of trying a case in State Court is spread over 2-3 years.

I don't think we have delay in this district. In many cases, the track is probably a little faster than really necessary. Active judicial involvement and intolerance of excessive written discovery already prevail, and do reduce cost. Prompt disposition of dispositive motions in advance of significant trial preparation is also very important. We should continue to stay away from "automatic disclosure" which I believe would add cost and really a workable system.

The court docket as it now prompts speed primarily does not adjust for cost and effective use of ADR. Sometimes limited discovery is needed for ADR to proceed. More emphasis needs to be given to the process of a cost effective resolution then to the court's desire to move a case along. Discovery is very expensive and without more flexibility in the trial deadlines, it must proceed despite ADR option. Additionally, the rather rigid scheduling promotes a whole new set of tactics to be used by those who would use such tactics to hinder a full and fair presentation of all the evidence.

My regular practice is not in the State of Maine. In my experience, it is the best run Court I have been exposed to.

Any more speed would (1) cause reverse practical strain (2) give too much advantage to the rich, who can afford the troops. We're dancing as fast as we can now. We could eliminate discovery entirely, but that is the only major change that would accomplish serious cost and delay reduction. It would also bring back trial by surprise.

I believe that appropriate measures are now being used.

Recommend ADR in all suits to involve the judge prior to full disclosure of parties. A pre-pre trial conference of issues.

The more accessibility to judges when questions arise, the lower the costs to the parties. I believe more hearings on motions (non-discovery) would expedite proceedings and keep cases on track.

Court must be more realistic in making individual case assessments for time and amount of discovery. Limitations now in rules should be regarded as models, to be followed or deviated from as each circumstance (including the fact that we all have other cases, too) warrants. An early conference with the court would help, unless both parties agree on discovery scheme at outset. Federal court practice should be challenging, but need not be either brutal or joyless. "Beat the clock" trials should never be used. There is no docket crisis in this District.

Eliminate expert depositions; require exchange of reports detailing opinions and bases.

Do not require the naming of expert witnesses so early in the case. Parties are required to have them without even knowing whether one will be required.

Devote more attention to reducing time of complex corporate litigation. Allow smaller cases, especially civil rights cases, to proceed more as counsel wish to litigate them.

At present, I think we are on the right course. Apparently, the District of Maine was ahead of most other Districts in terms of docket control and regulation of discovery. I feel that we struck a fair balance in opting out of the initial discovery and meeting requirements of Federal Rule 26. While I don't have a specific recommendation, I remain concerned that a litigant can be prejudiced due to the tight deadlines. Although attorneys are "on notice" of the requirements, there are occasions when diligent attorneys undertaking only necessary discovery and pretrial preparation cannot meet deadlines for legitimate reasons. To date, the system has shown enough flexibility to be fair.

A settlement conference with the court soon after the answer is filed, in which the court makes recommendations to the parties. Although I hate all the paper the court requires before a case can be tried, that requirement means only cases the parties can't settle, get tried. Keep the paper requirements.

I believe the changes in the Local Rules are good, provided they are administered with flexibility. Judicial styles vary significantly within the District of Maine. If these changes are administered inflexibly, the potential for arbitrary and costly procedural rulings and orders will drive many litigants to state court. My personal experiences have been very positive, but I know of other attorneys who have expressed strong frustration with some rulings.

Delay is generally not an issue. One factor contributing to cost is the significant pretrial filing requirement. This has improved somewhat. One key to efficient case management is flexibility. Any "one size fits all" system will have cases at either extreme - not enough control on one, too rigid on the other. I would seek ways to stay as flexible as possible in overseeing cases.

Stay the course. Limit discovery schedules. Involve the lawyers at the outset of the case. Involve the court by telephone to avoid needless discovery battles. Keep to the discovery schedule and give realistic and firm trial dates.

The number of depositions should be limited. Insurance companies have unlimited time and money and are willing to spend both - particularly against an impecunious opponent. On the other hand, there is not reason to limit interrogation. At least the permitted number should be increased. Interrogations may be the lease effective, but they are also the lease expensive.

Thank you for your Memorandum soliciting my input regarding the "Civil Justrice Reform Act." The case within which I was involved settled early on in the proceedings, so it was difficult to tell what effect the Civil Justice Reform Act Plan for the District of Maine had on this case. It appears to me, however, that the District of Maine is heading in the right direction in terms of reducing costs and expenses to all concerned. Believe the steps taken are good ones. Thank you for the opportunity to provide my comments in this matter.

I urge the court to continue to allow amendment of deadlines so that settlement can be explored without the burden and expense of litigating during the settlement process. In this case, the extension of the discovery deadline to allow the postponement of depositions was vital to the eventual settlement of this case.

1. Cost in terms of legal time in federal court is high. Reasons: a) pitfalls of federal work require greater attention to the case, b) short deadlines mean constant attention to case, c) courts jurisdiction usually mean significant damages issue(s), d) more written work required than state court, e) federal caselaw means much higher research costs, f) even though most cases settle, short deadlines require cost of trial preparation. Most of these costs can not be avoided. Bluntly, federal court is expensive and the shorter the deadlines the more expensive because the case consumes a greater % of my time. If a case takes 30-50% of my time for 2-3 months, the cost has to be $20,000 - $50,000. Note: the same is true for criminal work and that is why most cases must go CJA. Who has $25,000 to retain a lawyer?

I do not believe we have any significant delay problems in this district. One suggestion for cost reduction is to find a way for potentially dispositive motions, made at the close of discovery, to be decided by the court sufficiently in advance of trial, so that substantial trial preparation costs, including compliance with the final pretrial order (briefs, jury instructions, witness lists, exhibit lists, etc.) can be avoided if the motion is granted.

I have handled federal cases in many districts, so I can understand the Congressional concern, but there is not undue delay (and limited undue expense) in this District, at least to my observation. I do think that more face-to-face conferences (or telephone conferences) among the court and counsel would facilitate efficiency.

Required ADR with requirement that insurance reps attend. The ADR should take place after designations of experts but before any expert depositions are allowed. If trial judge following ADR does not think one of the parties was being reasonable, that party thereafter should have to pay all expert discovery costs for both sides.

The Federal Court in Bangor, with which I am most familiar, has shown a flexibility in dealing with discovery, scheduling and the availability of ADR which has been of help to the parties and counsel in reducing costs. Delay is absolutely not a problem in this District and indeed the speed with which matters are brought to trial in the District of Maine is often used by one side or the other as a tool to resolve litigated matters quite apart from the 'justice' of that resolution.

I would recommend that a court-provided ADR pamphlet be provided to all civil litigants and that the court schedule ADR conferences (i.e., mediation) before magistrates in all cases as early as possible. Settlements are achieved in my experience when the client can "really test" a lawyer's advice with a judicial officer. An early mediation session with a magistrate in all cases would do much to reduce expenses and delays.

None. Cases are resolved quickly and efficiently in federal court here.

I very much appreciated conferences by telephone, which saved my client thousands of dollars in my travel time (from Boston). I would encourage more of this, even with routine motions where the time spent preparing documents and waiting in court is largely wasted - many disputes can be well stated in minutes and relied upon by a good judge just as quickly over the telephone.

I do not believe that the District of Maine suffers from the types of delays Congress meant to address. The standard case track limitations on discovery are appropriate, but additional time should be allowed for discovery. In some cases, four months is not sufficient given experts' schedules, availability of witnesses, and trial counsel's schedule. Having dispositive motions ready and filed within 7 days of the close of discovery is not realistic.

I perceived there to be little delay in federal litigation in Maine. To save costs, perhaps a mandatory settlement conference or mediation process, before formal discovery, would generally reduce costs, assuming a meaningful resolution success rate. This probably would save little beyond to current employ of ADR if required sometime later in the process.

I would support a mandatory scheduling conference - either by telephone or in person - in most significant cases on the standard track and greater judicial inquiry regarding legal issues that could be briefed/decided so as to encourage earlier settlement discussions in cases. All too often, much needless discovery is completed before the court has the opportunity to resolve a legal issue that either is dispositive or has a substantial bearing on the parties' evaluation of their settlement positions. The court should seek out the opportunity to identify and resolve these issues early in the case and set briefing deadlines to ensure that discovery time/money are not wasted.

Very little. It appears to be quite streamlined as it is; I don't think it could be reduced further w/o effecting substantive justice.

Parties should be required to file with the Court the written settlement demand and response required by Scheduling Order and defendants should be required to submit a meaningful response. In my experience, defendants often fail to file any response or file response saying not offering any money now but may revisit issue later.

More initial pressure to justify AFF defenses; use more court directed ADR.

More flexibility in scheduling orders. Sometimes the dates set are arbitrary and require additional necessary motions and actively.

My impressions is that the cases move quite quickly.

I am very content with the current Local Rules and believe they provide a worth model for other Courts.

The system worked more efficiently than State court. To be fair the discovery needs in the cases was slight and therefore limitations on discovery are partially relevant. Magistrate's active involvement and pragmatic approach was welcome for counsel deadline with difficult clients.

Not to be as arbitrary on discovery limitations in many cases, especially product liability and more complex cases. Not every case is complex enough to complex track and rightfully so. But these cases differ greatly in their relative complexity, yet are treated the same.

1) Heavy sanctions for the loser in discovery disputes; 2) Award more costs (experts, etc) to the winner at trial; 3) Require defendant/plaintiffs to justify depositions in most situations and disallow where not essential; 4) Require the party - noticing the deposition (usually the defendant) to pay for the other sides transcript, if one is desired.

I think that the recent changes are enough for now. The system works in an efficient, cost effective manner presently. There is no need to fine tune it on an annual basis.

Permit discovery at anytime provided it does not delay the trial.

I can't think of any. We already have such limits on time and discovery that there is little extra costs or delays encountered.

I believe that experience was excellent and the judges attempt to follow the directions very good. However, some times I believe the direction was carried out to fast. But overall effect was very worth while. I would recommend more attention to scheduling and more attitude given to the lower justices, so that court room time is properly assigned to the justices who need it.

Up front judicial involvement in Maine adequately reduces delay and cost.

I think our Federal Court is a terrific place. I'd not change anything, except, perhaps, in smaller standard track cases, I might conference the case (pre-trial conference) without requiring a final Pre-trial Memorandum, which is often duplicated in the trial brief and accompanying pre-trial papers. This is a minor issue, and I recognize the pre-trial memo helps the Court focus on the important issues and settlement. In those cases, however, that are not complex, it might be unnecessary. Overall, I'd say: "Don't change anything!"

Based on conversations with friends elsewhere and comparison with state court practice, current Federal practice is excellent and strikes good balance in reducing cost and delay. Right now, the larger contributor to cost and delay arises from substantive rather than procedural law.

I do not believe that delay is a factor in this district. Likewise, I do not believe cost is any more of a consideration than the general cost of litigation.

Frankly, this district is exemplary in its case management. Any further streamlining or ADR efforts will simply be "window dressing." While I strongly believe in ADR my experience is that the Districts' early and aggressive intervention separates well those matters in which ADR is warranted and those in which it is not.

I would allow at least 6 mos discovery in every case. I would include a window after discovery for motions and settlement discussions before costs of trial preparations are incurred. If both sides agree that more time is needed, I feel the court should give serious consideration to granting an extension for discovery.

None - it is too fast already and the speed of the docket now costs the client money.

Encourage the use of motions to eliminate frivolous claims. Lengthen the discovery periods. The short time limits prejudice small firms, encourage unnecessary costs in the taking of depositions to be "safe" and actually make it more difficult to settle cases - there is simply no point in cutting off discovery and the waiting months for a case to be tried.

I like the new system, but I feel the discovery deadlines are unreasonably short and do not allow a learning curve. For novel cases, this can disadvantage the defense, since the plaintiff can do its learning prior to filing the actions. These short deadlines must really burden small firms that lack depths of personnel.

Unfortunately, my lack of experience in District Court practice limits my ability to answer helpfully. Single-justice case assignments, which probably is already implemented, assists in preventing, and imposing sanctions for, pretrial abuse. There will always be some extra cost and delay caused by skilled tactical lawyering not accompanied by a strategic objective of seeking a fair resolution.

I am satisfied with speed of process and ability to have cases resolved in short order.

There is no delay in Federal civil litigation in the District of Maine.

I feel we should continue as the procedures now exist for at least two additional years for a fair evaluation.

No material changes - I think that practice in the District of Maine is as efficient and cost effective as is possible at this time.

Complete discovery expect for privileged documents and clear fishing trips immediately in each action.

Review and monitor current rules - no further changes need be made at this time.

Continue to limit Discovery and promote ADR; continue to use summary judgment to dispose of meritless claims.

Slow down discovery and time for trial by three months to allow better planning and sequential discovery while continuing to limit number of depositions and requiring counsel to be diligent in discovery efforts. Reduce the amount of pretrial paperwork - I spend more of my time and client's money filing pretrial memos, trial memos, jury instructions and verdict forms, exhibit list, etc....before trial. There is a major paper crunch which could be reduced. The step of having motions reviewed by a Magistrate w/a guaranteed appeal also adds costs.

Delay is minimal.

I think things can be too rigid by the court sometimes. We are all busy practicing attorneys.

Nothing, really. Our Federal Court is a delightful place to practice. The rules are clear, fair, and applied equally to all. Right down to the 8:30-2:00 trial day, we go quickly and properly to results in Federal Court.

Be more reasonable and less arbitrary in enforcing deadlines.

I found the jury selection process to be very ineffective. Since this case was the 4th jury to be selected and we were required to appear at court at 9:00 am. Our selection process did not begin until late afternoon.

Telephone conferences could reduce costs of travel. Civil Litigation is very efficient in the District of Maine.

Your rule changes are a good step in the right direction but the judges have to become more involved in discovery matters to ensure that sufficient discovery can be had within the time limits imposed by the Scheduling Order. A "hands-off, let counsel settle it" approach is no longer good enough.

The time standards were too short and too inflexible, but the concept of moving cases quickly and setting benchmarks for discovery were wonderful. We had a requirement to serve summary judgment motions 7 days after the close of discovery, which in turn covered a brief period of about 90 days. We did not even have depo. transcripts when the summary judgment deadline loomed. We sought a 7-day extension which was denied. This represented a real potential for unnecessary expense and unfairness. We settled, but not because of the denial of the motion. I think good management requires not just short deadlines, but also flexibility to respond to the circumstances.

The court is exceptionally well run.

Don't require multitudinous copies of exhibits to be submitted to court by form pre-trial order.

Not enough experience with this single case to comment.

I do not believe steps need to be taken to decrease delay. I think if anything, cases move a little too quickly. The use of telephone conferences where possible would reduce litigation expenses given the distances traveled to reach either Portland or Bangor from much of the State.

I do not have enough experience with new system to offer suggestions.

I think that ADR is a valuable tool in that respect. In many instances even complex matters can be well handled by such procedures after the issues have been defined by a certain amount of discovery.

A direct tel call from a judge can sometimes produce results.

I have not had enough exposure to the Federal Litigation practice in the District of Maine to comment.

More early judicial intervention. Re: scheduling and substance of case.

This case went along w/o delay. Others I have seen are actively managed, which facilitates disposition. Keep up the good work!

It might be helpful if there was an initial conference before the district court judge. We only saw the Magistrate, and that gave my client perhaps a false view that once his case went to trial before "the judge", he would get a different/better outcome. I would suggest an initial conference before the judge, followed by a reference to the Magistrate for discovery purposes.

There is no significant delay in Maine's Federal Court system. The steps taken to date to reduce costs should be given more time to prove themselves.

If the Court has dispositive motions (or other clarification motions) that can resolve or substantially affect the proceedings, or the type of evidence or issues that can go forward, the Court's delay in ruling, while still mandating strict adherence to trial preparation time-lines, can very substantially raise the litigants preparation costs, sometime needlessly. If the Court cannot reach an issue, it might consider suspending certain trial preparation deadlines that are costly for the parties to meet.

Our Federal Court system works well.

Grant the judges more authority to promptly limit or dismiss frivolous complaints, arguments, motions, defenses, claims, etc.

None. It is well run and operates very smoothly.

I was very impressed w/my first Federal case that went to trial in Maine.

Maine is already way ahead.

Somewhat greater flexibility in altering the scheduling order when the parties agree have cause and request.

As we know delay is not a problem. I believe short discovery deadlines cause an increase in costs.

Provide for quicker resolution of dispositive motions before discovery; allow enough time for thoughtful discovery, not forcing people to do discovery to "get it done" in 90 days.

Require early settlement conferences. Allow extensions of time - where settlement is being explored so that parties aren't forced into conducting unnecessary and premature discovery.

We do not have delays in the Maine Federal Courts. Attempting to shorten the deadlines for discovery and further get cases to trial any sooner will result in unfairness to the parties. The steps of limiting discovery and requiring counsel to keep their clients involved in the process should reduce costs. Let's give those changes more time before making additional changes.

Very careful attention needed to be given to prevent complex cases from being assigned to the fast track. In general, it might be worthwhile to experiment with a face-to-face conference of counsel and the court w/in 60 days after the complaint is filed, to see realistic discovery limits & deadlines.

Consistent with the conclusions reached in November during the conference at Sunday River, I don't believe delay is a problem here in Maine and I believe that the methods in place are doing a strong job in keeping costs to clients down as much as possible. I am quite satisfied with my recent experiences in Federal Court.

Quicker resolution of substantive motions; staying of discovery pending motions which are dispositive of major issues; quicker resolution of decisions. In one case, the Court, sua sponte, recused himself six months after the filing of a complaint, leaving many issues in limbo. In general, the Court has done a tremendous job in reducing costs.

My experience indicates that this District does not have a delay problem. I believe the necessity of employing expert witnesses especially medical experts already employed to treat the client, adds an unnecessary expense at a very early stage of the litigation.

Make time limits contingent on earlier events e.q., motions due 30 days after discovery concludes; permit reply briefs; increase number of depositions on standard track, then keep more cases on the standard track; conform filing requirements to 1st circuit rule, i.e., filing complete to level playing field for non-Portland, Bangor lawyers; permit separate filing under Rule 17(6)(4); permit telephone conf. with lawyers, Rule 17; schedule separate settlement conferences; file separate motions, matter of fact statements Rule 19.

None. You are doing a good job.

Shortened discovery; trial at a date certain; mandatory mediation before trial (or a settlement conference before a Judge if only a legal, rather than a factual, issue is involved).

I don't believe that delay always means increased costs. A discovery to trial "bullet train" ride doesn't always provide litigants with a meaningful opportunity to evaluate their own case, the other party's case, digest the emotional content of most litigation, and carefully explore settlement possibilities. Parties should be afforded the opportunity to choose a slow track if that will be less costly and more productive in the estimation of the parties. I believe that careful judicial supervision is nevertheless necessary and welcome since the public purse does heavily subsidize the resolution of private disputes.

In the latest case the matter was removed to State Court, the only issue remaining in Federal Court was damages. The case was settled in short order.

I have been extremely favorably impressed with the Judge's & Magistrate's willingness to assist the parties in resolving cases fairly w/o trial. Their willingness to hear discovery issues informally and by phone saves a great deal of time and resources. Int he cases where I have used settlement conferences, the judges have been well prepared, and their input was instrumental in settling the case before trial. I have never used court-sponsored ADR. Perhaps a mailing to attorneys (in addition to the pamphlet to litigants) would be beneficial. It is my experience that any type of ADR that takes place before some discovery is done is fruitless because the parties aren't armed with all the facts and thus can't make reasoned decisions about resolving the case. To this extent, conducting ADR too early has, in at least one of my cases, been a waste of time.

More latitude needs to be given to counsel to control their schedules, dogmatic enforcement of deadlines achieves no useful purpose - a fast docket seem to be more important than a fair hearing - there seems to be inconsistency in requiring adherence from Judge to Judge and day to day.

ADR would be helpful after discovery was completed.

Feel Maine is extremely "fast track".

Avoid mandatory disclosure - parties to govern discovery as usual.

I am a Massachusetts practitioner, and was admitted pro hoc for this case. Accordingly, I do not have enough experience in Maine to comment.

If you have any other comments or suggestions about Alternative Dispute Resolution techniques, please make them in the space below.

I found the judicial conference to be an effective technique for settlement. Clients are particularly satisfied wit this technique because of court involvement. Judicial involvement lends credibility to the process.

I recommend a court ordered ADR conference after some discovery but prior to the discovery and motion deadlines.

It should intervene at an early stage - before the parties have invested heavily in the case.

My experience is mostly with cases involving banks as a party. The cases are difficult to resolve because the bank and banker would rather have the court make the decision; and, therefore, avoid any blame for capitulation. A judge's decision, whether favorable or unfavorable, is much easier to present to a Board of Directors or Regulators. If a bank officer approved an ADR technique, and the result is unfavorable, the officer will be "second guessed". If, somehow, ADR can be considered no worse than a Judge's final decision, I believe ADR would be used much more often. However, I am not sure how this potential "second guessing" can be reduced.

There are cases which do require some discovery and perhaps some dispositive motion filing before settlement discussions can be meaningful. The court's own schedule and docket does not generally allow a sufficient amount of time between decisions on dispositive motions and trial for meaningful and proper settlement/ADR options to be utilized. Final pretrial conferences occur too close to the close of discovery to allow time for settlement/ADR activities to receive the attention they deserve.

I was impressed with Magistrate Cowins ability to have the attorneys work at narrowing the issues to those few that were presented at the final hearing. The result of the meeting with the Magistrate effectively saved about 1 1/2 days of final hearing.

I do not think ADR needs to be mandated. I use it when I believe it will be helpful. However, there are cases where it is clearly a waste of time.

If ADR is possible, it is better to have a up front limited discovery for ADR then after. If ADR is unsuccessful, then set all of the trial deadlines.

ADR should be available at the request of either party. If requested by neither party, it should not be imposed. To impose ADR merely adds to the cost.

I felt that Judge Carter's handling of the settlement conferences was wonderful from the plaintiff's point of view. I doubt there would have been a settlement without his assistance. I am very grateful for his efforts.

My sense is that ADR should be mandatory to the following extent. Attorneys and parties should convene with the Judge assigned to a case as soon as possible after the initial pleadings are filed. Theories of recovery and defense and rough extent of damages should be frankly discussed, and the Judge should offer a rough assessment of liability and damages. This would provide an opportunity for greater judicial management of cases: dealing appropriately with vexatious, frivolous or otherwise meritless cases early on; introducing the parties to the financial, emotional and other negative realities of protracted litigation, with the ultimate outcome unlikely to be significantly better than what can be achieved through ADR; and providing guidance to the attorneys, especially those unfamiliar with litigation or local practice, so that time and effort and undue expense can perhaps be avoided.

I know ADR is all the rage but I've done arbitration and mediation for years. For defendants seriously disputing liability, arbitration is not appropriate. No arbitration has ever, in my experience, decided a case for a defendant. It's fine for many damages cases but not all. Most juries are far more penurious than arbitrators and will not excuse a plaintiff exaggeration and dishonesty. Arbitrators regularly excuse both. Mediation makes sense when the parties agree it does - - by definition. Without agreement, it's a waste of time and money.

I am a strong advocate of ADR, and I serve on the Supreme Judicial Court's ADR Implementation committee. As this Court may be aware, an experimental program providing for some type of mandatory ADR will soon be adopted for several counties on the State Court level. There is some variation in the rule as it will be applied to the counties involved. I would suggest that the federal court refrain from rule making in this area, pending the outcome of the state court experience. While I strongly support the use of ADR, I am not certain that making it mandatory will prove to be the most effective means of increasing its use.

1. Continue energetic use of summary judgement and/or dismissal of individual counts to expand involvement of Magistrates in pre-trial discovery status conferences. 2. Expand practice of limiting number of fact and expert depositions allowed either side. 3. Expand practice of Court setting time limits for each side's presentation of "case-in-chief". 4. Discourage Judges from interrupting counsel during open and closing arguments sua sponte (i.e., let lawyers try the cases).

I appreciate being asked for my views!! It's nice to be regarded as a member of the bar.

The Courts can often be as effective as ADR in settling cases if settlement conferences are encouraged, mandated & strongly but fairly conducted by the judiciary.

Preserve the right to civil jury trial and do not make ADR too expensive or time consuming, so that plaintiffs are deterred from a trial by jury by delay or cost.

I feel ADR techniques are and will be effective and will result in less overall expenses to client.

I don't see this as a real option unless liability is all but conceded, with damages as the only real issue. When annuity defenses are encountered, such as 2 1983 cases, there is no use in going through ADR as these defenses must be tested, even to the point of appeals. Perhaps an initial conference with the Magistrate to inquire as to the appropriations of ADR in a case could be tried.

My experiences with ADR have not been good. The court's involvement with settlement is beneficial. Anything less than that is a waste of time and finances. ADR is a law professors concept. For those of us who actually try cases in this real judicial world, ADR is one more unnecessary obstacle to resolving disputes. Cases get settled on the courthouse steps. They always did and they always will! The solution is: reducing discovery because most of it is unnecessary; early attention to motions to dismiss/summary judgment; sanctions against lawyers who file frivolous pleadings; and forcing cases to trial early.

The case listed was remanded to State Court on a technicality (lack of joinder of party necessary to establish diversity jurisdiction) - and this is how the case was "closed". However, the case is back - bigger than ever, and the ADR question will need to be revisited.

ADR has consistently been a useful exercise even when it fails to resolve the case, except in cases of fraud or no liability.

Perhaps the court could confer with counsel briefly when the case is assigned to a track and pretrial order is scheduled about the possibility of ADR. ADR, it should be recognized, can be used by a party to delay trial and to add costs. The court should be concerned whether all parties use the process in good faith.

I use it every chance possible.

I think the Court could be more proactive about ADR - including a time table for it - we ended up having a lengthy mediation at the same time we were preparing for the pre-trial conference, which put a tremendous burden on both the parties and counsel.

In a large number of State Court cases I have found mediation to have been a very successful tool in resolving cases. This is from the perspective of both Plaintiff's counsel, defense counsel and a mediator.

Counsel and clients should be made more aware of them.

Not all cases warrant ADR, but most would benefit from aggressive efforts by court on settlement.

ADR can be useful in some cases, but it is not a "cure all" or "panacea". ADR itself can be expensive, and if clients are not confident ADR will actually terminate their litigations, they are reluctant to engage in ADR.

If it happens early enough, it will save money. But the parties need enough time to become educated about the strengths and weaknesses of their cases. Overall, shortened time frames, coupled with ADR, will result in faster, more economical results (which, no matter the outcome, are more fair to clients than slower, more expensive results.)

I think that the Judiciary in our District do a fine job in promoting ADR even during the course of a trial. Responsible attorneys will heed Abraham Lincoln's advice of long ago to encourage clients to attempt to settle their disputes. ADR techniques merely provide attorneys (and Judges) with additional tools with which to fulfill our obligation to zealously represent clients in an ethical manner.

ADR - particularly mediation - might be useful as a part of the pre-trial settlement process. Some judges never engage in settlement efforts until the day of trial, others never discuss settlement. Some lawyers, particularly defenders, never express an interest - meaningful mediation at an early stage of the case before a large investment is made could be very useful. It is noteworthy that one Mag. Judge does not discuss settlement or attempt mediation at pre-trial conferences. On the other hand, another Judge was very useful in bringing about settlement discussions at pre-trial and trial.

It might be helpful to mandate formal settlement conferences directly after the close of discovery and prior to the filing of required pre-trial motions.

January 20, 1995

Justice Morton Brody
United States District Court
One City Center
Portland, ME 04101

Dear Justice Brody:

I have received your questionnaire concerning the Civil Justice Reform Act Plan for this district. I have answered the questions asked, but I think that one aspect of the Plan is not sufficiently explored in the questionnaire.

I do not disagree with efforts to bring cases to speedier resolutions. However, the imposition of short time limits and the strict enforcement of them put almost insurmountable burdens on small firms and plaintiff's counsel in general. I can best explain this by describing what I experienced in Whynot v. City of Portland, 2:94-cv-103. After filing the complaint I found myself confronted with a very short period in which to prepare discovery. While I am preparing mine defense starts its discovery. Deep pockets of the City permitted the scheduling of five depositions as well as interrogatories and requests for documents. I therefore was constantly fighting deadlines to comply with and prepare for discovery in both directions at once.

And then . . . Defense objected to some of my discovery requests. Before these have been resolved I get their motion for summary judgment. And now the fun really starts. I have to respond to summary judgment without full discovery. To protect myself I have to file motions, supported by memoranda, for permission to file a supplemental memorandum after discovery has been provided. Defense withdraws its objections and provides discovery after all, and I now have ten days in which to review several hundred documents and file a second memorandum opposing summary judgment based on the discovery.

Defense's work is all in computer memory. They push buttons and their cases almost generate themselves. (Two years ago in a civil case in U.S. District Court I received a memorandum supporting summary judgment in which the names of the parties of a previous case for which the memorandum had been used still appeared in many places.) Small firm plaintiff's counsel, on the other hand, are forced to drop **everything** they are doing to meet the demands of your court. I was fortunate that I had little else to do when your deadlines came up, else I never would have made it.

The bottom line is that though the Reform Act Plan does speed things up, it does so at the expense of fairness to a great degree. Sole practitioners are rejecting cases

because of the short deadlines, and those who accept the challenge find their practices jeopardized. This in turn means that plaintiffs are going to have an increasingly difficult time finding competent counsel, and counsel are going to have an increasingly difficult time performing competently.

It is my belief that the court needs to examine the degree to which its practices are affecting access to the courts. Saving time and money are fine, but not if the saving is achieved by discouraging meritorious suits.

Suggested Changes in Pretrial Practice in the District of Maine

In relatively large cases such as Murray v. Bath Iron Works , Docket No. 93CV188-P-DMC, I think that motion practice could be used earlier, and more effectively to focus the litigation, reduce the scope of discovery and thereby save time and promote settlement.

Environmental litigation and other complex cases which are based on relatively new federal statutes, frequently present the court and the parties with numerous legal issues which are not clear under case law. Resolving any of these issues in motion practice, saves the Court and the parties time.

In environmental cases in other districts, the pretrial order sometimes schedule a deadline for filing of motions for summary judgment or partial summary judgment during the discovery period. This enables the parties to focus their early discovery on those issues or claims which they believe may be resolved in motion practice. The balance of the discovery period can be used to develop claims and defenses that everyone knows will remain in the case. Even if the motion practice does not actually eliminate claims or defenses, it provides the parties with rulings from the Court on some disputed legal issues. Knowing how the court will rule on disputed legal issues limits the scope of subsequent discovery and promotes settlement. The more the parties know about the likely outcome if they go to trial, the more likely they are to settle.

In the Murray case, discovery ended one week before motions were due. This meant that the discovery had to address all claims and defenses, and develop evidence to support the parties different interpretations of the law. I also think that the quality of the motions would have been better if discovery had closed two weeks earlier, so that everyone had three weeks to do motions.

This District, compared to other districts where I have practiced, seems to have a reluctance to grant summary judgment. Although I generally like that reluctance, I believe that complex cases with a significant number of open or unclear legal issues, can be handled more efficiently for Cour and the parties, if partial summary judgment is considered earlier in the case and before the end of discovery.

Thank you for requesting and considering these suggestions.