

United States District Court  
District of New Hampshire

Chambers of  
JOSEPH A. DICLERICO, JR.  
Chief Judge

55 Pleasant Street, Room 523  
Concord, New Hampshire 03301  
603-226-7759

August 16, 1996

Dear Attorney

Pursuant to the provisions of the Civil Justice Reform Act, the United States District Court for the District of New Hampshire adopted a Civil Justice Expense and Delay Reduction Plan on December 1, 1993, after careful consideration of the report and recommendations of the District's CJRA Advisory Group.

In order to monitor the nature and extent of the impact which the plan has had on the district during the first year of its implementation, a new CJRA Advisory Group was named on December 8, 1995. That group is currently gathering statistical data on filings, settlements, closings, and other workload figures. However, the group's work will not be complete without your assistance in evaluating several areas of federal practice. As a frequent litigator in this court, your input is considered to be important.

Therefore, I am asking you to take a few minutes to complete the enclosed survey and return it by September 15, 1996, in the envelope provided. Since we want your responses to be as candid as possible, we are not asking you to identify yourself on the survey form. Your responses will be sent directly to the group's reporter for tabulation and will be included in the group's report.

Thank you for your cooperation in this undertaking which is very important to the court, to the attorneys who practice here, to the litigants, and to the public.

Sincerely,



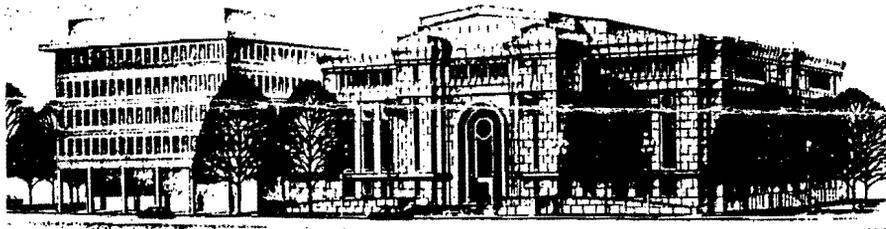
Joseph A. DiClerico, Jr.  
Chief Judge

enclosures

**Exhibit A**

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEW HAMPSHIRE**



**Questions for Attorneys  
from the  
Civil Justice Reform Act Advisory Group**

**AUGUST 1996**

**Chair**

James R. Starr, Clerk of Court

**Ex-Officio Members**

Hon. Joseph A. DiClerico, Jr.

Hon. Paul J. Barbadoro

Hon. Steven J. McAuliffe

Hon. Shane Devine

Hon. James R. Muirhead

**Members**

Peter G. Beeson, Esq.

Peter S. Cowan, Esq.

Dennis T. Ducharme, Esq.

Debra Weiss Ford, Esq.

Katherine M. Hanna, Esq.

Leslie J. Ludtke, Esq.

Lynn Mather, Ph.D.

Gretchen L. Witt, Esq.

**Reporter**

Mary Louise Caffrey, Esq.

**Exhibit B**

## INTRODUCTION

The Civil Justice Reform Act Advisory Group is charged with reviewing several areas of federal court practice, such as pretrial procedures, judicial intervention, settlement methods, local rule development, and case tracking. This survey is intended to solicit information about the system from practitioners like you, who actually use the Federal Court and have an interest in its efficient administration. The Court selected you to answer the survey because you have been identified as someone who has had experience with federal practice in general and with some of the new procedures in particular.

This survey has five sections, Background Information, Case Tracking, Discovery and Experts, Final Pretrial Materials and Conferences, and ADR and Miscellaneous. Each of the five sections has multiple choice questions. For each question, please CIRCLE the letter that corresponds to your answer. Most sections also include narrative questions. We encourage you to expand your responses by citing specific examples or by providing comments that you feel would assist the Group in completing its evaluation. The Group will carefully analyze the survey results and issue a report to the Court and Bar noting areas of concern and making specific recommendations. All survey responses will remain anonymous. Thank you for your participation.

### A. BACKGROUND INFORMATION

1. Approximately how many civil cases have you handled in the U.S. District Court for the District of NH in the past five years?

		Overall		Plaintiff		Defendant		
		-----		-----		-----		
A.	1	:	9	6%	4	6%	5	7%
B.	2-5	:	45	29%	19	31%	16	22%
C.	6-10	:	38	25%	17	29%	19	35%
D.	11-25	:	43	28%	14	23%	25	34%
E.	25+	:	18	12%	7	11%	9	12%
			-----		-----		-----	
			153		61		74	

2. Approximately how many civil cases have you handled in the U.S. District Court for the District of NH since March 1, 1994, when the case tracking system was implemented?

		Overall		Plaintiff		Defendant		
		-----		-----		-----		
A.	1	:	17	11%	11	17%	6	8%
B.	2-5	:	78	51%	36	57%	32	43%
C.	6-10	:	38	25%	8	13%	28	38%
D.	11-25	:	13	9%	5	8%	6	8%
E.	25+	:	6	4%	3	5%	2	3%
			-----		-----		-----	
			152		61		74	

3. Approximately how many civil cases have you handled in the U.S. District Court for the District of NH since January 1, 1996, when the Local Rules were substantially amended?

		Overall		Plaintiff		Defendant		
		-----		-----		-----		
A.	1	:	38	25%	20	33%	15	20%
B.	2-5	:	93	62%	32	53%	49	66%
C.	6-10	:	15	10%	4	7%	9	12%
D.	11-25	:	5	3%	4	7%	1	2%
E.	25+	:	0	0%	0	0%	0	0%
			-----		-----		-----	
			151		60		74	

4. Of the civil cases you have handled in the U.S. District Court for the District of New Hampshire within the past five years, in approximately what percentage of the cases did you:

A.	Represent Plaintiff	Total:	64.5	45%
B.	Represent Defendant	Total:	79.5	55%
			-----	
			144.0	

5. Of the civil cases you have handled in the U.S. District Court for the District of New Hampshire within the past five years, in approximately how many cases were you retained by an insurance carrier?

		Overall		Plaintiff		Defendant		
		-----		-----		-----		
A.	1	:	77	50%	50	83%	21	30%
B.	2-5	:	30	19%	7	12%	15	20%
C.	6-10	:	36	23%	3	5%	23	31%
D.	11-25	:	12	8%	0	0%	11	15%
E.	25+	:	0	0%	0	0%	3	4%
			-----		-----		-----	
			155		60		73	

6. Please rate your overall satisfaction with the new case tracking system compared with prior practice in this court.

	Overall		Plaintiff		Defendant	
	-----		-----		-----	
A. Very Satisfied	: 29	19%	13	21%	15	21%
B. Somewhat Satis.	: 35	23%	12	20%	20	27%
C. Satisfied	: 53	35%	19	31%	28	38%
D. Somewhat Dissat.:	8	6%	5	8%	1	1%
E. Very Dissatis.	: 0	0%	0	0%	0	0%
F. No Change	: 7	5%	5	8%	2	3%
G. No Opinion	: 18	12%	7	12%	7	10%
	-----		-----		-----	
	150		61		73	

7. In your experience with cases filed after March 1, 1994, have the case tracking deadlines been met?

	Overall		Plaintiff		Defendant	
	-----		-----		-----	
A. Always	: 14	9%	8	13%	5	7%
B. Usually	: 109	74%	39	65%	62	85%
C. Rarely	: 4	3%	4	7%	0	0%
D. Never	: 0	0%	0	0%	0	0%
E. No Opinion	: 20	14%	9	15%	6	8%
	-----		-----		-----	
	147		60		73	

8. If tracking deadlines were not met, please explain where in the course of litigation the case went off track and why.

9. Have track assignments been appropriate to the characteristics of your case?

	Overall		Plaintiff		Defendant	
	-----		-----		-----	
A. Always	: 36	24%	19	32%	14	19%
B. Usually	: 98	65%	34	57%	54	74%
C. Rarely	: 3	2%	2	3%	1	1%
D. Never	: 0	0%	0	0%	0	0%
E. No Opinion	: 13	9%	5	8%	4	6%
	-----		-----		-----	
	150		60		74	

10. Does the new case tracking system provide reasonable time frames for discovery and the trial of cases in the Federal Court? Please explain.

11. What changes, if any, would you like to see in the case tracking system?

12. Local and Federal Rules mandate the joint development of a discovery plan and require preliminary pretrial scheduling conferences. Have these Rules increased the effectiveness of preliminary pretrial conferences?

		Overall		Plaintiff		Defendant		
		-----		-----		-----		
A.	Yes	:	92	61%	43	72%	42	57%
B.	No	:	38	25%	11	18%	23	31%
C.	No Opinion	:	21	14%	6	10%	9	12%
			-----		-----		-----	
			151		60		74	

13. Please explain your answer to question #12. What improvements or problems have you experienced in the preliminary pretrial conferences?

14. Is it beneficial to have a preliminary pretrial conferences even if the parties agree on a discovery plan? Please explain your answer.

		Overall		Plaintiff		Defendant		
		-----		-----		-----		
A.	Yes	:	89	59%	32	54%	43	58%
B.	No	:	52	34%	23	39%	25	34%
C.	No Opinion	:	10	7%	4	7%	6	8%
			-----		-----		-----	
			151		59		74	

15. In your experience with the new Local Rules, has the court altered an agreed-to discovery plan?

		Overall		Plaintiff		Defendant		
		-----		-----		-----		
A.	Yes	:	49	36%	14	25%	29	40%
B.	No	:	87	64%	43	75%	42	60%
			-----		-----		-----	
			136		57		72	

16. If your answer to question #15 is "yes," please indicate what changes the court made to the discovery plan and the reasons articulated by the court for the changes.

17. Have you found that the requirement for the development of a discovery plan contained in Local Rule 26.1(f) has helped the efficient and equitable resolution of federal court litigation? Please explain your answer.

	Overall	Plaintiff	Defendant
	-----	-----	-----
A. Yes	: 63 41%	26 45%	31 41%
B. No	: 42 27%	12 21%	21 28%
C. No Opinion	: 49 32%	20 34%	23 31%
	-----	-----	-----
	154	58	75

18. The Federal Rules set limitations on the number of interrogatories each party may serve. In your experience, what effect has this had on litigation costs and delays?

	Overall	Plaintiff	Defendant
	-----	-----	-----
A. > Cost/Delay	: 13 10%	7 12%	4 5%
B. < Cost/Delay	: 26 17%	12 21%	14 19%
C. No Effect	: 84 56%	31 53%	43 59%
D. No Opinion	: 26 17%	8 14%	12 17%
	-----	-----	-----
	149	58	73

19. Is Local Rule 37.1, concerning Motions to Compel and Motions for Protective Orders, effective in avoiding and/or resolving discovery disputes?

	Overall	Plaintiff	Defendant
	-----	-----	-----
A. Always	: 9 6%	1 2%	0 0%
B. Usually	: 49 31%	19 32%	27 37%
C. Rarely	: 32 21%	15 25%	11 15%
D. Never	: 1 1%	0 0%	2 3%
E. No Opinion	: 63 41%	24 41%	33 45%
	-----	-----	-----
	154	59	73

20. How would you change the Rules to improve the effectiveness and reduce the expense of resolving discovery disputes?

21. Opposing counsel and I have been able to agree upon mutually acceptable levels of disclosure in the discovery plan.

		Overall		Plaintiff		Defendant		
		-----		-----		-----		
A.	Always	:	37	28%	15	27%	19	27%
B.	Usually	:	71	53%	29	54%	41	59%
C.	Rarely	:	21	16%	8	15%	9	13%
D.	Never	:	3	2%	1	2%	1	1%
E.	No Opinion	:	1	1%	1	2%	0	0%
			-----		-----		-----	
			133		54		70	

22. When opposing counsel and I did not use the provided opportunity to include specific levels of disclosure in the discovery plan, more stringent requirements were imposed by default under Federal Rule 26(a).

		Overall		Plaintiff		Defendant		
		-----		-----		-----		
A.	Always	:	5	6%	1	3%	3	7%
B.	Usually	:	17	19%	6	21%	10	22%
C.	Rarely	:	12	15%	4	14%	5	11%
D.	Never	:	18	20%	5	17%	9	20%
E.	No Opinion	:	35	40%	13	45%	18	40%
			-----		-----		-----	
			87		27		45	

23. When opposing counsel and I disagreed upon the acceptable levels of expert disclosure, the court imposed more stringent disclosure requirements.

		Overall		Plaintiff		Defendant		
		-----		-----		-----		
A.	Always	:	2	2%	1	3%	2	5%
B.	Usually	:	11	14%	4	13%	7	16%
C.	Rarely	:	21	25%	4	13%	12	28%
D.	Never	:	17	20%	10	34%	6	14%
E.	No Opinion	:	33	39%	11	37%	16	37%
			-----		-----		-----	
			84		30		38	

24. The court has attempted to maintain traditional New Hampshire practice regarding expert witness disclosure as much as possible within the confines established by Fed.R.Civ.P. 26(a)(2).

	Overall		Plaintiff		Defendant	
	-----		-----		-----	
A. Strongly Agree	: 16	11%	7	12%	9	13%
B. Moderately Agree	: 49	34%	21	37%	27	39%
C. No Opinion	: 55	38%	18	32%	26	37%
D. Moder. Disagree	: 19	13%	10	17%	8	11%
E. Strongly Disagree	: 5	4%	1	2%	0	0%
	-----		-----		-----	
	144		57		70	

25. Expert disclosure rules have obviated the need for expert depositions.

	Overall		Plaintiff		Defendant	
	-----		-----		-----	
A. Always	: 1	1%	0	0%	1	1%
B. Usually	: 4	3%	2	4%	1	1%
C. Rarely	: 23	16%	14	26%	6	9%
D. Never	: 59	42%	24	44%	34	49%
E. No Opinion	: 54	38%	14	26%	28	40%
	-----		-----		-----	
	141		54		70	

26. In those cases in which I have relied solely on written expert disclosures without expert depositions, I was surprised by the scope of expert testimony permitted by the court.

	Overall		Plaintiff		Defendant	
	-----		-----		-----	
A. Yes	: 11	8%	5	10%	4	6%
B. No	: 12	9%	7	13%	3	4%
C. No Opinion	: 117	83%	41	77%	62	90%
	-----		-----		-----	
	140		53		69	

27. If your answer to question #26 was "yes," what was the scope of the expert testimony permitted and how would you clarify the Local and Federal expert disclosure rules to eliminate the element of surprise?

28. How have the expert disclosure requirements affected litigation practice in Federal Court?

29. Please describe any changes you believe are necessary or appropriate concerning the automatic disclosure requirements of expert witnesses.

30. The new final pretrial statement filing requirements have increased the effectiveness of the final pretrial conference.

	Overall		Plaintiff		Defendant	
A. Strongly Agree :	15	10%	8	13%	6	9%
B. Moderately Agree:	59	38%	24	39%	31	44%
C. No Opinion :	68	45%	26	43%	28	39%
D. Moder. Disagree :	7	5%	0	0%	5	7%
E. Strongly Disagree:	3	2%	3	5%	1	1%
	-----		-----		-----	
	152		61		71	

31. The increased level of case preparedness necessary to meet the new final pretrial statement filing requirements has resulted in earlier settlements.

	Overall		Plaintiff		Defendant	
A. Strongly Agree :	8	9%	3	5%	5	7%
B. Moderately Agree:	39	28%	20	33%	15	21%
C. No Opinion :	63	45%	24	40%	27	39%
D. Moder. Disagree :	24	17%	9	15%	19	27%
E. Strongly Disagree:	2	1%	4	7%	4	6%
	-----		-----		-----	
	135		60		70	

32. The new final pretrial statement requirements have resulted in earlier trial ready cases to the benefit of the client.

	Overall		Plaintiff		Defendant	
A. Strongly Agree :	13	9%	5	9%	7	10%
B. Moderately Agree:	38	27%	23	38%	15	21%
C. No Opinion :	55	39%	21	34%	24	34%
D. Moder. Disagree :	30	21%	10	16%	20	28%
E. Strongly Disagree:	6	4%	2	3%	5	7%
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	142		61		71	

33. The requirement that jury instructions, trial briefs for bench trials, proposed findings and rulings, be filed along with the final pretrial statement well in advance of the trial results in the attorney having to refresh his or her knowledge of the case just prior to trial at an unnecessary higher cost to the client.

	Overall		Plaintiff		Defendant	
	-----		-----		-----	
A. Strongly Agree :	21	15%	10	16%	12	18%
B. Moderately Agree:	47	34%	17	28%	27	38%
C. No Opinion :	39	28%	17	28%	12	17%
D. Moder. Disagree :	25	18%	14	23%	14	20%
E. Strongly Disagree:	7	5%	3	5%	5	7%
	-----		-----		-----	
	139		61		70	

34. The requirement that motions in limine and objections be filed in advance of the final pretrial conference has resulted in increased resolution of evidentiary disputes in advance of trial.

	Overall		Plaintiff		Defendant	
	-----		-----		-----	
A. Strongly Agree :	16	12%	8	14%	7	10%
B. Moderately Agree:	53	39%	26	43%	27	38%
C. No Opinion :	56	41%	20	33%	29	41%
D. Moder. Disagree :	9	7%	3	5%	7	10%
E. Strongly Disagree:	2	1%	3	5%	1	1%
	-----		-----		-----	
	136		60		71	

35. Has the presence of your client at the final pretrial settlement conference had any effect on the resolution of the case? Please explain your answer.

	Overall		Plaintiff		Defendant	
	-----		-----		-----	
A. Always :	8	6%	3	5%	0	0%
B. Usually :	23	16%	11	19%	8	11%
C. Rarely :	33	22%	12	21%	22	32%
D. Never :	8	6%	4	7%	4	6%
E. No Opinion :	72	50%	27	48%	36	51%
	-----		-----		-----	
	144		57		70	

36. Mandatory ADR should be imposed by the court as part of the discovery plan.

	Overall		Plaintiff		Defendant	
	-----		-----		-----	
A. Strongly Agree :	40	27%	19	31%	16	21%
B. Moderately Agree:	49	33%	26	43%	27	36%
C. No Opinion :	7	5%	2	3%	3	4%
D. Moder. Disagree :	30	20%	9	15%	15	20%
E. Strongly Disagree:	20	15%	5	8%	14	19%
	-----		-----		-----	
	146		61		74	

37. The court should take a more active role in the settlement of cases.

	Overall		Plaintiff		Defendant	
	-----		-----		-----	
A. Strongly Agree :	52	37%	31	52%	20	27%
B. Moderately Agree:	62	44%	24	40%	33	45%
C. No Opinion :	11	8%	2	3%	8	11%
D. Moder. Disagree :	16	10%	1	2%	10	14%
E. Strongly Disagree:	1	1%	2	3%	2	3%
	-----		-----		-----	
	142		60		73	

38. What changes do you suggest to enhance the opportunity for settling cases prior to the final pretrial settlement conference?

39. The court schedules hearing on motions, such as dispositive motions and discovery disputes in a timely manner.

	Overall		Plaintiff		Defendant	
	-----		-----		-----	
A. Strongly Agree :	20	17%	12	20%	10	14%
B. Moderately Agree:	49	42%	21	36%	32	44%
C. No Opinion :	25	22%	9	15%	16	22%
D. Moder. Disagree :	18	16%	14	24%	9	13%
E. Strongly Disagree:	4	3%	3	5%	5	7%
	-----		-----		-----	
	116		59		72	

40. Which of the new Local Rules have caused you the most difficulty, and why?

41. Which of the new Local Rules have you found to have the most beneficial effect on your federal practice, and why?
  
42. How can the court improve the cost effectiveness and efficiency of the litigation process?

The Advisory Group appreciates the time and effort you took to complete this survey and thanks you for your comments. Please feel free to contact any member of the Group with additional suggestions or questions. Your input will help shape any future changes in the U.S. District Court.

A member of the Group will contact you in October to thank you personally for your participation in the survey. If you wish to, at that time, you can discuss any additional thoughts you have on federal practice. You may want to retain a copy of your completed survey for reference so that when you are contacted, it will help you refresh your recollection regarding specific comments you made.

Please return the survey in the enclosed envelope by September 15, 1996. It will be forwarded, unopened, to our report for tabulation. All survey responses will remain anonymous.

THANK YOU VERY MUCH FOR YOUR HELP!