

CIVIL JUSTICE REFORM ACT OF 1990



**DISTRICT OF RHODE ISLAND
CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN**

COST AND DELAY REDUCTION PLAN FOR THE DISTRICT OF RHODE ISLAND

UNDER THE CIVIL JUSTICE REFORM ACT OF 1990 (Effective December 1, 1993)

I.

INTRODUCTION

On October 18, 1993, this Court met to consider the recommendations of the Civil Justice Reform Act Advisory Group (hereafter "the Group") contained in the Civil Justice Reform Act Report (hereafter "the Report"), submitted to the Court on October 7, 1993. The Group analyzed civil litigation in the District, relying upon its members' experience, the deliberations of its committees and the results of several surveys, as well as consideration of other quantitative and qualitative information. Their collective efforts have provided insights that might not otherwise have been available to the Court. We are grateful for the time and effort they have devoted to the project.

The Court would also like to specifically acknowledge the efforts of William A. Curran, Chairperson and Dr. Diane M. Disney, Vice-Chairperson of the Advisory Group for their leadership and commitment of time and in sheparding the Project along to a successful conclusion. We also thank Magistrate Judge Timothy M. Boudewyns who, amidst very demanding duties as a judicial officer in this Court, devoted substantial time and energy in his capacity as Reporter to the Group in the development of this Civil Justice Reform Act Expense and Delay Reduction (hereafter "the Plan"). Finally, the Court wishes to extend its appreciation to Dr. Berry B. Mitchell, Project Manager. Dr. Mitchell's oversight of the Project and his direct and active work with the Group and the Court was of great assistance.

As the Group noted in its Report, there is no serious delay in this District. This conclusion was arrived at after conducting an extensive examination of the Court's civil and criminal docket and through utilization of a methodology that allowed the Court to be compared objectively to other district courts most similar. In its Report the Group concluded that, in general, the Court functions well in its management of workload and in its delivery of judicial services to litigants and members of the bar. The Court concurs, however, with the Group's belief that this is the appropriate time to implement a few changes in the way the Court functions and in the way services are delivered to litigants, including the introduction, on an "experimental" basis, of an alternative dispute resolution ("ADR") program.

It should be noted that this Court's success in managing its judicial workload emanates in large measure from practices and procedures that existed well before the Civil Justice Reform Act came into being. Some of the specific techniques set forth in Section 473(a) of the Act were already being used in this District, either informally or formally under the Local Rules, or other practices and procedures of this Court including the following:

1. Systematic, differential treatment of civil cases.

2. Early and ongoing judicial control of the pretrial process, including the use of settlement conferences, setting early and firm trial dates, exercising appropriate levels of control over discovery, and requiring strict adherence to deadlines established under the federal and local rules.
3. This Court's use of Rule 16(b) conferences has worked well in establishing an opportunity for the district judges, the parties and their counsel to explore the possibility of settlement; identify the principal issues in contention; set appropriate deadlines for and scope of discovery; establish deadlines for motions, and provide if necessary partial resolution of the case.

The purpose of this Plan is to enhance and supplement the pre-existing and established practices and procedures of this Court, with the goal being to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure to every litigant the just, speedy, and inexpensive resolution of civil disputes. To achieve this purpose the Court concurs with the Group that the Court should take full advantage of its present success and all of its available resources and develop through this Plan operational integrity sufficient to deliver consistently the highest possible level and quality of service to litigants.

This Plan seeks to ensure that the intent of the Act, after careful consideration of the Group's recommendations, is achieved through a committed effort on the part of the Court to implement a Plan that addresses those areas of practice the Court believes require reform, modification or new procedures that will improve the delivery of judicial services to litigants.

II.

PLAN PROVISIONS

The provisions of this Plan shall be included as an appendix to the Local Rules and shall have the same force and effect as other local rules promulgated by this Court.

1. The Court shall consider at the earliest practicable time the proposed revisions of the Local Rules submitted by the Civil Justice Reform Act Advisory Group's Local Rules Subcommittee. Further, based upon its review, the Court shall act to undertake such revision it deems appropriate.

2. The Court shall revise the categories for assigning cases. Currently, the following categories are used for assigning cases:

CIVIL

- ▶ Admiralty
- ▶ Antitrust
- ▶ Bankruptcy
- ▶ Civil Rights
- ▶ Contracts
- ▶ Habeas Corpus
- ▶ Taxes
- ▶ Labor
- ▶ Miscellaneous
- ▶ Patents/Copyrights/Trademarks
- ▶ Real Property
- ▶ Social Security
- ▶ Torts
- ▶ Miscellaneous Grand Jury Proceedings
- ▶ Prisoner Petitions
- ▶ Transfers from other districts

CRIMINAL

- ▶ All Indictments
- ▶ Bail Appeals
- ▶ Forfeitures

The Group found that, while each judge receives a pro rata share of cases, the weighted value of those cases is skewed by several factors:

- ▶ The number of categories
- ▶ The number of cards for each judge placed in the category
- ▶ The difficulty of the case, etc.

In order to assure the close approximation in each category of the expected cases to be assigned, TROs and Transfers from other districts shall be drawn from the category which most closely fits the nature of the TRO or Transfer case. All criminal matters will be consolidated into two categories. Furthermore, Indictments and Bail Appeals will be included as a third, Miscellaneous category.

The Court from now on will use the following categories for assigning its **civil cases**:

- ▶ Admiralty
- ▶ Antitrust
- ▶ Bankruptcy Appeals
- ▶ Civil Rights
- ▶ Contracts
- ▶ **Environmental¹**
- ▶ Forfeiture/Penalty/Tax Suits
- ▶ Labor
- ▶ Miscellaneous (including Grand Jury Proceedings and Bail Appeals)
- ▶ Patents/Copyrights/Trademarks (Intellectual Property Rights)
- ▶ Prisoner Petitions (including Habeas Corpus)
- ▶ Real Property
- ▶ Social Security
- ▶ **Torts²**

In making assignments the Court shall be mindful of historical data for the number of cases to be expected from any category to assure that the least number of judge cards necessary are used for the draw.

The Group in its Report noted, correctly, that the civil docket is heavily influenced by the criminal docket. While the Group did not evaluate the criminal docket in depth it is clear that there exists a need to either weight criminal cases or categorize them so that the possibility of one judge receiving a number of very time-consuming cases is minimized. In the Group's Report, Figure 19 found at page 46 demonstrates the result of a single judge receiving a number of very demanding criminal cases. The net result was a very high percentage of total criminal trial hours on the bench for certain judges, leaving them less time for civil matters. In order to reduce the likelihood of this happening in the future, the Court adopts a two-category of cases approach based on the expected length of trial.

¹ This is a new category.

² Torts will be subdivided into (a) products liability, (b) all malpractice, and (c) all other.

The U.S. Attorney already estimates trial length on all new indictments on form AO 257("Defendant information relative to a criminal action in the U.S. District Court"). While most cases are Category I type³, only one set of cards shall be placed in the Category II type⁴. All cards shall be drawn from category II before being replenished. In this way, each judge will be assured of receiving only one category II case out of each four cases assigned in that category. Thus, two categories of cases will be used for the criminal draw based on expected length of trial:

- ▶ Five days or less = Category I
 - ▶ More than 5 days = Category II
3. All discovery motions shall contain a certification by moving counsel stating that counsel for the parties have met and conferred in good faith to attempt to resolve disputes prior to filing such motions.
 4. All responses to non-dispositive motions shall be filed within (11) days from the date the motion was filed.
 5. The Court shall encourage referral of discovery motions that the district judge in his or her sole discretion deem appropriate to the assigned magistrate judge.
 6. The Court shall encourage the consensual referral of appropriate cases to the assigned magistrate judge.
 7. The Court adopts the Alternative Dispute Resolution Plan submitted by the Group's Alternative Dispute Resolution Subcommittee, **with the exception that, in the case of mandatory settlement conferences and summary jury or bench trial, in the sole discretion of the district judge, the presiding officer may be a district or magistrate judge**. All other approved forms of dispute resolution, including early neutral evaluation, mediation and arbitration, shall be presided over by a neutral from an approved list, maintained by the ADR Administrator.⁵

³ Type I cases are those which are more routine in nature and take up less judicial time for disposition (five days or less of trial).

⁴ Type II cases are those that are more complex and time-consuming. These cases may involve multi-party defendants or complex criminal case types such as RICO, complex fraud or conspiracy charges against one or more defendants, which are likely to take longer than five days of trial.

⁵ The full text of the ADR Plan is found in the Report at Appendix D, Chapter 3.

8. The Court shall ~~consider the use of video technology to conduct arraignments of criminal defendants~~ in order to reduce cost associated with transporting prisoners and detainees as well as eliminating the security risk inherent in the process, and in appropriate circumstances in civil matters as well.
9. The Court shall ~~conduct an educational program on the implementation and impact of the Plan soon after approval and adoption by the Court~~ to educate the Federal Bar and the public on changes resulting from implementation of the Plan.

ASPECTS OF THE PLAN WHICH DEPART FROM THE REPORT

In reviewing the recommendations submitted by the Group, the Court rejected only a few of the recommendations put forth. The following are those recommendations the Court carefully considered, but opted not to adopt.

1. Automatic referral of all discovery motions to the assigned magistrate judge.

Comment: The Court in many cases already "automatically" refers discovery motions to the assigned magistrate judge. Two of the Court's district judges follow this practice. The remaining district judges prefer to review these motions in the first instance, and where appropriate refer them to the assigned magistrate judge.

2. Implementation of a uniform pretrial order for use by all of the district judges.

Comment: ~~The Court unanimously rejected the Group's recommendation that a uniform pretrial order be adopted.~~ The Court strongly believes that the district judges should retain the flexibility to utilize their own pretrial orders which conform to the individual practices and procedures of each judge.

3. ~~Provide a pamphlet for pro se litigants~~ with instructions for complying with basic tenets of practice and procedure in the federal courts. In addition, the requirement that litigants should be required to certify that they have read the pamphlet and that they understand and agree to comply with the practices and procedures set forth therein.

Comment: The Court believes that there is a high degree of flexibility which the Court must maintain in the management of cases involving pro se litigants. The Court must maintain the balance of interests between the rights and duties of pro se litigants on the one hand and those of defendants on the other. Because each case is different and the practices and procedures of each district judge must adapt to the demands and needs of each case, a uniform pamphlet would unnecessarily constrain the flexibility of the Court to manage cases according to its dynamics.

V. COMPLIANCE WITH THE STATUTORY MANDATES OF THE ACT

Section 473 of the Civil Justice Reform Act requires the Court to consider each of the following 12 principles, guidelines or techniques. The Court has considered each of those principles, guidelines or techniques in adopting this Plan. The following is an very abbreviated summary of what the Court has done with respect to each.

1. Systematic differential treatment of civil cases.

Comment: The Group did not recommend the adoption of the use of a formalized differentiated case management (DCM) program in this district. Each judicial officer in this district already informally practices DCM. This process works well and therefore the Court concurs with the Group, that at this time, the Court does not require a formal DCM program.

2. Early and ongoing control of the pretrial process, including case planning, early and firm trial dates, control of discovery, and deadlines for motions.

Comment: By reason of the existing practices and procedures, the judicial officers in this District already assume early and on-going control of the pretrial process through the use of early and firm trial dates, settlement conferences and, in general, exercising appropriate levels of control over discovery and deadlines mandated by reason of federal or local rules.

3. Discovery/case management conference(s) for complex or other appropriate cases, at which the judicial officer and the parties explore the possibility of settlement; identify the principal issues in contention; provide, if appropriate, for staged resolution of the case; prepare a discovery plan and schedule; and set deadlines for motions.

Comment: ~~The Group did not believe, and the Court concurs, that formal discovery/case management conferences for routine or complex cases should be required. The Court believes that the mandatory settlement conference before a judicial officer required under the Court's ADR plan, together with the continuation of conferences under Rule 16(b), provide ample opportunity for judicial officers, the parties and their counsel to explore the possibility of settlement; identification of the principal issues in contention; set deadlines for motions, and if appropriate, provide partial resolution of the case.~~

4. ~~Encourage the voluntary exchange of information among litigants and other cooperative discovery devices.~~

Comment: The Group's Local Rules Subcommittee has submitted to the Court as part of the proposed revision of the District Court's Local Rules ~~a requirement that mandates automatic disclosure prior to discovery and addresses cooperative discovery~~ [Proposed Rule 209(H)]. The Group believes and the Court concurs that communication is a vital link in the early resolution of cases and in shaping the dynamics of cases that go to trial in ways that advance the goals of reducing litigation cost and delay. ~~The Group recommended that if Congress fails to adopt the amendment to the Federal Rules of Civil Procedure requiring early automatic disclosure, that the Court adopt proposed Local Rule 209(H). The Court is mindful that this requirement has been vigorously debated in Congress and among members of the bar. Whether such a requirement is the vehicle for enhancing the voluntary exchange of discovery or advancing the level of cooperation among litigants, remains unclear to the Court. Therefore, the Court will review carefully, proposed Rule 209(H) and may adopt this Local Rule, if the Court finds that such a requirement would substantially improve the litigation process, without prejudicing either privileged communications between attorney and client or the ends of justice.~~

5. ~~Prohibit the filing of discovery motions unless accompanied by certification by the moving party that a good-faith effort was made to reach agreement with opposing counsel.~~

Comment: The Court believes that parties should attempt to resolve discovery without intervention by the Court in the first instance. The Court adopts the above rule and shall incorporate the same into the revised local court rules.

6. Authorize the referral of appropriate cases to alternative dispute resolution programs approved by the Court.

Comment: This Court adopts the ADR Plan found in the District's CJRA Report at Appendix D, Chapter 3. The Plan was adopted by this Court in part due to the extraordinarily high percentage of cases that go to trial in this District, 18 percent civil and 23 percent criminal respectively. It is the Court's hope that ADR may reduce this high volume of cases tried, while at the same time reducing both the time involved in litigation and the cost to the litigants.

7. Require counsel for each party to present a joint discovery/case management plan at the initial pretrial conference.

Comment: The Court considered requiring each party to present a joint discovery/ case management plan at the time of the initial pretrial conference. The Court believes that the value of such plans is limited to those cases that are complex and identifiable early as protracted litigation. The Court retains the flexibility to require such plans if deemed desirable, but in general requiring parties in every case to submit to the court a joint discovery/case management plan would in the Court's view prove burdensome and of marginal value.

8. Require that each party be represented at each pretrial conference by an attorney with authority to bind that party on all matters previously identified by the court for discussion at the conference.

Comment: The district judges in their pretrial orders require each party represented by counsel to have counsel present with authority to bind.

9. Require all requests for extension of discovery deadlines or for postponement of trial be signed by the attorney or the party requesting the extension or postponement.

Comment: This requirement is under consideration by the district judges as part of their review and consideration of the revisions to the local rules proposed by the Group's Local Rules Subcommittee. 11

10. Provide for a neutral evaluation program for presentation of the legal and factual basis of a case to a neutral court representative at an early non-binding conference.

Comment: As noted, the Court has adopted an ADR Plan. One of the menu options provided for is early neutral evaluation. The Court believes that in certain cases, litigants may wish to avail themselves of this process. For a more detailed discussion of the ENE process adopted for use in this District see the ADR Plan found in the CJRA Report at Chapter 3, Appendix D.

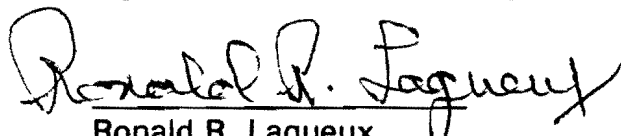
11. Require that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during settlement conferences.


Comment: The Court already requires this in conjunction with settlement discussions before the Court.

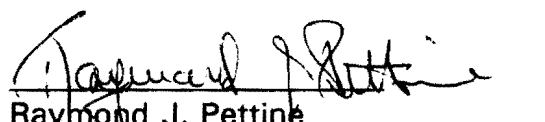
12. Other features the Court may feel appropriate after considering the Group's recommendations.


Comment: As a result of the Civil Justice Reform Act Report and Plan, the Court has identified and addressed all present areas of concern and believes that the Court's Plan has built into it changes that will enhance the already high level of judicial services provided to litigants and members of the bar who serve their interest. During the continued life of the "Act", the Court will continue to monitor the changes implemented under the Plan and will evaluate them, and where necessary modify or advance other changes if they are deemed appropriate.

NOW THEREFORE, the Court hereby approves this Plan as indicated by the signature of the district judges for this District.


Ronald R. Lagueur,
Chief United States District Judge


Ernest C. Torres,
United States District Judge


Raymond J. Pettine
Senior United States District Judge


Francis J. Boyle
Senior United States District Judge

Dated: 11/18/93