

CIVIL JUSTICE REFORM ACT ADVISORY GROUP
FOR
UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Chairman

Robert M. Landis
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, PA 19103
(215) 994-2765
FAX 994-2222

November, 1994

Members

Alice W. Ballard
Michael M. Baylson
Michael Churchill
James C. Corcoran
Andre L. Dennis
Eve B. Klothen
Seymour Kurland
S. Gerald Litvin
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Arthur G. Raynes
Richard M. Rosenbleeth
Daniel J. Ryan
John O. J. Shellenberger
J. Clayton Undercoffler, III

Dear Counselor:

This questionnaire is being sent to you to help us learn more about the way the self-executing disclosure rules are working in the United States District Court for the Eastern District of Pennsylvania.

This questionnaire is designed so that it can be completed in a very few minutes. You are asked to check a number of boxes, with room to add your own comments if you choose.

This survey has been undertaken to meet an obligation imposed upon us and upon the court by the Congress in the Civil Justice Reform Act of 1990. Your participation is important in making possible the discharge of that obligation.

All responses will be kept in complete confidence, except that the data will be cumulated and the results published.

We want very much to have the benefit of your help.

Sincerely yours,



Robert M. Landis
Chairman

Ex-Officio Members

Honorable Louis C. Bechtle
Honorable Edward N. Cahn
Honorable Robert F. Kelly
Honorable James R. Melinson
Michael E. Kunz, Clerk of Court

Reporter

A. Leo Levin
3400 Chestnut Street
Philadelphia, PA 19104
(215) 898-7496

Assistant to Chairman

Jennifer Clarke
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, PA 19103
(215) 994-2105

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF PENNSYLVANIA

501 HAMILTON STREET

ALLENTOWN, PENNSYLVANIA 18101

CHAMBERS OF
EDWARD N. CAHN
CHIEF JUDGE

PHILADELPHIA:
17614 U.S. COURTHOUSE
PHILADELPHIA, PA 19106

November, 1994

Dear Counselor:

On behalf of the judges of this Court, I would like to ask for your assistance in learning more about the way the self-executing discovery rules are working in the Eastern District of Pennsylvania, for the purpose of helping our Civil Justice Reform Act Advisory Group prepare its report.

In order to do this, I am requesting that you take a few minutes from your busy schedule to complete the questionnaire which is enclosed with this letter. Returning a completed questionnaire will help the court meet its obligation under the Civil Justice Reform Act of 1990. All responses will be kept in complete confidence. The data that is received will be cumulated and the results published.

In the event that you have any questions related to the completion of this questionnaire, please contact either Professor A. Leo Levin, Reporter of the Civil Justice Reform Act Advisory Group, at 215-898-7496, or Robert M. Landis, Chairman of the Advisory Group, at 215-994-2765.

Thank you for your cooperation.

Sincerely yours,



Edward N. Cahn
Chief Judge

Questionnaire on the Self-Executing Disclosure Rule

I. As a reminder, the rule for self-executing disclosure is as follows.

The term "self-executing disclosure" as used in this questionnaire refers to the obligation imposed by Section 4.01 of the Plan promulgated by the United States District Court for the Eastern District of Pennsylvania under the Civil Justice Reform Act of 1990.

That section imposes the obligation on each party to turn over to all other parties, without any formal request having been made, the following: (1) the name and last known address of each person likely to have information relevant to the claims and defenses in the lawsuit; (2) a description of all relevant documents, data compilations and tangible things; and (3) insurance policies that may satisfy any resultant judgment, including making the documents available for inspection and copying.

The provisions of this section do not apply to any cases assigned to the Special Management Track (special procedures govern those cases). For that reason, this questionnaire does not cover what is generally known as "complex litigation."

The terminology has been anything but uniform. What we have termed "self-executing disclosure" is sometimes referred to simply as "disclosure" or "voluntary exchange of information among litigants and their attorneys." It is to be distinguished from "discovery," the process of using interrogatories, depositions, requests for admission, and other formal mechanisms for gaining information from one's adversary.

In thinking about your last case that was concluded at the district court level and to which the promulgated rule governing self-executing disclosure applied:

1. Were you on the side of a defendant?

1. Yes 2. No

2. In which of the following categories was this case (check one)?

- | | |
|--|--|
| 1. <input type="checkbox"/> Contract-Insurance | 6. <input type="checkbox"/> Other civil rights |
| 2. <input type="checkbox"/> Other contract | 7. <input type="checkbox"/> Labor |
| 3. <input type="checkbox"/> Personal injury | 8. <input type="checkbox"/> Social Security |
| 4. <input type="checkbox"/> Tort-Personal property | 9. <input type="checkbox"/> Other |
| 5. <input type="checkbox"/> Prisoner petitions | |

3. When was the case terminated?

1. Before self-executing disclosure
 2. After self-executing disclosure but before full discovery
 3. After full discovery but prior to trial
 4. During the trial
 5. After the trial concluded

For Office Use Only
(9)
(10)
(11)

4. How was the case terminated?

- 1. ___ By settlement or other voluntary dismissal
- 2. ___ By verdict or judicial action

(12)

5. How would you characterize your level of compliance with the self-executing disclosure rule?

- 1. ___ Fully
- 2. ___ Partially
- 3. ___ Minimally
- 4. ___ Not at all

(13)

6. Whether or not you complied with the rule on self-executing disclosure, indicate to what extent you agree or disagree with the following statements: Substantial compliance by you did/would have

Strongly Disagree Mildly Disagree Neutral Mildly Agree Strongly Agree

• decrease(d) the time spent on the case. 1. ___ 2. ___ 3. ___ 4. ___ 5. ___

(14)

• decrease(d) the cost of litigation to your client. 1. ___ 2. ___ 3. ___ 4. ___ 5. ___

(15)

• improve(d) your ability to represent your client. 1. ___ 2. ___ 3. ___ 4. ___ 5. ___

(16)

7. How would you characterize your opponent's level of compliance with the self-executing disclosure rule?

- 1. ___ Fully
- 2. ___ Partially
- 3. ___ Minimally
- 4. ___ Not at all

(17)

8. Whether or not your opponent complied with the rule on self-executing disclosure, indicate to what extent you agree or disagree with the following statements: Substantial compliance by your opponent did/would have

Strongly Disagree Mildly Disagree Neutral Mildly Agree Strongly Agree

• decrease(d) the time spent on the case. 1. ___ 2. ___ 3. ___ 4. ___ 5. ___

(18)

• decrease(d) the cost of litigation to your client. 1. ___ 2. ___ 3. ___ 4. ___ 5. ___

(19)

• improve(d) your ability to represent your client. 1. ___ 2. ___ 3. ___ 4. ___ 5. ___

(20)

9. Whether or not full self-executing disclosure occurred in this case, if the rule had been followed by both sides, compared to no self-executing disclosure by either side, the outcome of this case would likely have been:

(21)

1. ___ Greatly different
2. ___ Somewhat different
3. ___ The same

II. Now think about the self-executing disclosure rule more generally:

1. In how many of your cases that were instituted since the beginning of 1992 did this rule apply?

(22)

- ___ 0-5 ___ 6-10 ___ 11-19 ___ More than 20

2. Of these cases, in what percentage was the self-executing disclosure rule followed to any extent by any party?

(23)

1. ___ Less than 10%
2. ___ 10% up to 30%
3. ___ 30% up to 70%
4. ___ 70% up to 90%
5. ___ More than 90%

3. At the time it became relevant in these cases, what was your knowledge about the self-executing disclosure rule?

(24)

1. ___ Was unaware of the rule
2. ___ Had general knowledge of the existence of the rule
3. ___ Had working knowledge of the rule
4. ___ Knowledge of the rule varied from case to case

4. Which of the following reasons for not following the self-executing disclosure rule would generally apply to you (please check yes or no).

- Would hurt my case 1. ___ Yes 2. ___ No
- Did not believe my opponent would comply 1. ___ Yes 2. ___ No
- Did not believe the judge would enforce it 1. ___ Yes 2. ___ No
- Did not know the rule 1. ___ Yes 2. ___ No

(25)

(26)

(27)

(28)

5. (a) In any case in which you participated, was there a motion for sanctions relating to self-executing disclosure?

(29)

1. ___ Yes 2. ___ No

(b) Was any such motion granted?

(30)

1. ___ Yes 2. ___ No

(c) In general, what is your perception of the judges' attitude to the self-executing disclosure rule?

- 1. ___ Favorable
- 2. ___ Neutral
- 3. ___ Hostile
- 4. ___ Court seemed unaware of rule
- 5. ___ Varies

(31)

6. In applying the self-executing disclosure rule, have you faced any issue of attorney-client privilege or of work product protection?

- 1. ___ Yes, but easy to resolve
- 2. ___ Yes, but difficult to resolve
- 3. ___ No

(32)

7. Assuming some kind of self-executing disclosure will remain, what are your feelings about the following?

Strongly Disagree
Mildly Disagree
Neutral
Mildly Agree
Strongly Agree

• Permit a party to institute discovery without awaiting any developments with respect to self-executing disclosure 1. ___ 2. ___ 3. ___ 4. ___ 5. ___

(33)

• Permit a party to institute discovery once the party has made its self-executing disclosures without necessarily waiting for the opposing party's self-executing disclosure. 1. ___ 2. ___ 3. ___ 4. ___ 5. ___

(34)

• Define more specifically to what the obligation of disclosure applies. 1. ___ 2. ___ 3. ___ 4. ___ 5. ___

(35)

• Expand to what the obligation of disclosure applies. 1. ___ 2. ___ 3. ___ 4. ___ 5. ___

(36)

8. What is your opinion of the current self-executing disclosure rule?

(37)

- 1. ___ Strongly in favor
- 2. ___ Mildly in favor
- 3. ___ Indifferent
- 4. ___ Mildly against
- 5. ___ Strongly against

9. Do you think a self-executing disclosure rule should remain in effect?

(38)

- 1. ___ Yes
- 2. ___ No

10. Has the obligation to disclose under the self-executing disclosure rule caused any problem with your clients?

(39)

- 1. ___ Yes
- 2. ___ No

11. Please indicate any general comments you might have about the self-executing disclosure rule:

(40)_____

(41)_____

(42)_____

(43)_____

III. At this point we would like to obtain a little background information about you. Please be assured that this information is for survey purposes only, and all such data will be amalgamated across respondents to ensure confidentiality.

1. In what percentage of your cases that were instituted since the beginning of 1992 were you

- _____ on the side of a plaintiff?
- _____ on the side of a defendant?

(44,45,46)

(47,48,49)

2. Of the cases you handled in which suit was filed in the Eastern District of Pennsylvania since the beginning of 1992, what were the percentages (to add up to 100%) in the following categories:

- _____ Contract-Insurance
- _____ Other contract
- _____ Personal injury
- _____ Tort-Personal property
- _____ Prisoner petitions
- _____ Other civil rights
- _____ Labor
- _____ Social Security
- _____ Other

(50,51,52)

(53,54,55)

(56,57,58)

(59,60,61)

(62,63,64)

(65,66,67)

(68,69,70)

(71,72,73)

(74,75,76)

_____ **Total (must equal 100%)**

3. In which category does your age fall?

(77)

- 1. ___ Under 30 years
- 2. ___ 30-39 years
- 3. ___ 40-49 years
- 4. ___ 50-59 years
- 5. ___ 60 years or over

4. What is your gender? 1. ___ Female 2. ___ Male

(78)

5. How many years have you been in practice?

(79)

- 1. ___ Less than 5 years
- 2. ___ 5-9 years
- 3. ___ 10-14 years
- 4. ___ 15-19 years
- 5. ___ 20-29 years
- 6. ___ 30 years or over

6. What is the number of lawyers in the firm in which you practice (at all offices)?

(80)

- ___ Fewer than 5
- ___ 5-9
- ___ 10-29
- ___ 30-49
- ___ 50-99
- ___ 100 or more