

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF PENNSYLVANIA

March 18, 1993

CHAMBERS OF
NORMA L. SHAPIRO
JUDGE

10814 UNITED STATES COURTHOUSE
INDEPENDENCE MALL WEST
PHILADELPHIA, PENNSYLVANIA 19106
(215) 597-9141

Robert M. Landis, Esquire
Dechert, Price & Rhoads
4000 Bell Atlantic Tower Building
1717 Arch Street
Philadelphia, Pa 19103

Dear Bob:

It was nice to talk to you about the Civil Justice Reform Act last week, and I very much appreciate your kindness in coming down to interview me. As you suggested, I am happy to put my comments in written form.

1. In general, the court's Civil Justice Expense and Delay Reduction Plan is working rather well. With the help of your Committee, the Civil Justice Reform Act has not caused our court any of the inconvenience or delay we feared. Of course, the issue really is whether it has done any good. On reflection, I think it has because it has supported the involvement of judges in the pretrial process and firm control of pretrial discovery and trial dates.

2. The only affirmative suggestion for improvement I would make is to clarify whether Section 4 self-executing disclosure applies to special track cases. Because I issue special orders in special track cases, it has been my view and that of other judges of the court, that Section 4 does not apply because the case has been "otherwise directed by the court." However, this view is not uniform; the Committee should consider whether the mandatory self-executing disclosure provisions of Section 4 apply to special management track cases.

3. Self-executing disclosure is working rather well and is not causing a great deal of pretrial motion practice. My standard pretrial order, a copy of which is enclosed, specifically calls attention to the requirements of Section 4 to push the parties towards compliance. There have only been two instances where I have been asked to impose monetary sanctions. I refused in both cases but insisted on prompt compliance. However, the self-executing disclosure requirements may be working well because they are substantially ignored. Occasionally, the parties report that they have mutually decided not to comply with self-executing disclosure but await the usual interrogatories and requests for production of documents and notice of depositions.

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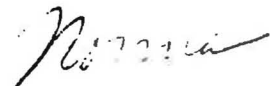
If the Plan is to be revised in the future, we might make clear that, as with other court rules, the parties cannot stipulate to disregard self-executing discovery without approval of the court.

Because timing of the required disclosures is tied in part to the filing of each defendant's Complaint, the Local Rule routinely allowing a thirty day extension to answer can delay self-executing disclosure. It is my practice in most cases to file an Order making clear that the extension of time to answer does not change the timing of self-executing disclosure. A copy of the Order used by me and some other judges of the court is also enclosed.

4. Finally, I continue to believe the time for service is too long and contributes more to delay in disposition than many other things. We should suggest an amendment to the Federal Rules of Civil Procedure to require service within two months, with an appropriate extension of time granted for good cause shown. Perhaps there should be more time allowed for service overseas. Ordinarily, unless the whereabouts of the defendant are unknown I cannot see why he, she, or it cannot be served in two rather than four months.

Thank you for the opportunity of making observations on the operation of our Civil Justice Expense and Delay Reduction Plan, effective December 31, 1991.

Sincerely,



cc: A. Leo Levin