

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

SAMPLING CRITERIA FOR SELECTION OF CASES
FOR THE CIVIL JUSTICE REFORM ACT ADVISORY GROUP'S
QUESTIONNAIRE

The sampling criteria and procedures which were utilized for the RAND evaluation of the pilot program of the Civil Justice Reform Act were also utilized for the selection of cases for the Eastern District of Pennsylvania's Civil Justice Reform Act Advisory Group Questionnaire. However, we did not send questionnaires to any of the cases which were selected by RAND. These procedures were approved in advance by RAND.

Cases were included from each of the different case management approaches used by this district excluding asbestos cases. Starting with all civil cases filed after December 31, 1991 a total of 840 cases were reviewed in order to select approximately 300 cases that met the sampling criteria. Of the 302 cases which were selected for the sample, 20% were minimal management approach cases which included: prisoner, social security, recovery, foreclosure, forfeiture and penalty, and bankruptcy cases. The remainder of the 302 cases were selected based on the Case Management Track Designation Form. Arbitration management track cases accounted for 20% of the cases, standard management track cases accounted for 40% of the cases and special management track cases accounted for 20% of the cases. A total of 693 questionnaires were sent to attorneys involved in the 302 cases. Any attorney who was involved in more than one case was sent only one questionnaire.

To: Prof. A. Leo Levin
From: Craig Miller-Barnett
Date: April 30, 1993
Re: Eastern District of Pennsylvania Survey

PRELIMINARY MEMORANDUM

General Information

Total Responses: 220
No Experience: 48
Undelivered Surveys: 42

SECTION A. AN OVERVIEW

Responses to Question #1

Is the Plan working reasonably well?

YES: 135
NO: 50
NO RESPONSE: 21
OTHER: 14

Comments:

"Speed does not equal justice. To require an arbitration hearing before discovery is completed is inappropriate. Such a practice places all parties in an awkward position of proceeding without being fully prepared."

"To expect that any meaningful information is going to come out of the required disclosure is wishful thinking."

"I think that more than streamlining litigation, they primarily serve to cause parties not to utilize the Federal courts. I don't think that is what procedures should be for."

"It has been my experience that the alternative dispute resolution program, while well-intended, has not been helpful. The conferences have been scheduled without prior consultation of counsel for the parties and as a result the parties are frequently in no position to talk because they just do not know enough about the case. the scheduling of conferences should be delayed until some discovery has been completed or coordinated with counsel for the parties."

"No - but the court is efficient and well-managed anyway."

"No - with few exceptions, E.D. Pa. moved its cases promptly and expeditiously without the Civil Justice Reform Act."

Responses to Question #2

If problems have developed, check each of the following that is responsible:

Opposing counsel do not cooperate: 57

Provisions are not familiar to the attorneys and hence are not used: 100

Failure to apply the Plan, or misapplication of the Plan, on the part of judicial officers: 29

Other: 28

No Response: 65

Comments:

"The requirements for self-disclosure are too vague - should require more specificity"

"Plan disallows any discovery before disclosure plans are followed. This shortens discovery further."

"Needs better follow-up and control by mediators."

"Opposing counsel do not comply with provisions and requirements in good faith."

"Too much emphasis on statistics, not enough on fairness, decency, justice, etc."

"Adds another meaningless layer of discovery."

"No uniform understanding of disclosure provisions and lack of experience in application of all provisions."

"No sanctions for failure to comply."

"Attorneys misapply the plan."

"Insufficient time to permit sufficient data."

"The timetables are too short."

Responses to Question #3

How does civil litigation in E.D. Pa. compare to civil litigation before the Plan went into effect?

SAME: 109

IMPROVED: 64

SLOWER AND/OR MORE COSTLY: 17

NO ANSWER: 30

B. SPECIFIC PROVISIONS

I. INVOLVEMENT OF JUDICIAL OFFICERS IN THE PRETRIAL PROCESS

Responses to Question 1.01

Are trial dates set early in the course of the litigation?

YES: 151

NO: 32

NO INFORMATION: 17

NO RESPONSE: 15

OTHER: 5

Comments:

The "other" types of responses included: "Yes & No"; "sometimes" (twice); and "if the parties ask the court."

Responses to Question 1.02(a)

Are trial dates set so that trial takes place within 12 months of filing in ordinary cases and within 18 months of filing in complex cases?

YES: 150

NO: 27

NO INFORMATION: 22

NO RESPONSE: 17

OTHER: 1

Comments:

The "other" types of responses included:

"Sometimes, depends on judge"

"Sooner"

"In one of the two cases I've had subject to the Plan,

"YES" - - for the other "NO"."

"This is TOO FAST!"

Responses to Question 1.02(b)

If changes in the trial date have been necessary, has the court followed the procedure detailed in the Plan?

YES: 55

NO: 32

NO INFORMATION: 110

NO RESPONSE: 20

OTHER: 1

Responses to Question 1.02(c)

Have dispositive motions been decided promptly?

YES: 80

NO: 57

NO INFORMATION: 55

NO RESPONSE: 23

OTHER: 5

Comments:

The "other" types of responses include:

"It varies."

"Depends on the judge."

"Usually"

"Yes and No"

II. CASES ON THE SPECIAL MANAGEMENT TRACK

Responses to Question 2.01

Has the court generally followed the provisions of the Plan (e.g., staged pretrial conferences, staged discovery, settlement procedures)?

YES: 68

NO: 23

NO INFORMATION: 107

NO RESPONSE: 20

OTHER: 2

Comments:

The "other" types of responses include:

"Yes - with some exceptions often seemingly related to the judicial assignment."

"Some yes, some no"

"Depends on the judge."

III. SELF-EXECUTING DISCLOSURE

Responses to Question 3.01

Have you had occasion to make disclosure to your opponent without awaiting formal requests?

YES: 175

NO 26

NO INFORMATION: 6

NO RESPONSE: 13

Responses to Question 3.02

Has your opponent do so?

YES: 109
NO: 87
NO INFORMATION: 6
NO RESPONSE: 14
OTHER: 4

Responses to Question 3.03

Have you had occasion to enter into cooperative discovery arrangements as envisioned by the Plan?

YES: 107
NO: 83
NO INFORMATION: 15
NO RESPONSE: 15
OTHER: 1

Responses to Question 3.04

Does the provision postponing formal discovery allow for disclosure cause delay?

YES: 86
NO: 92
NO INFORMATION: 34
NO RESPONSE: 7
OTHER: 1

Responses to Question 3.05

To the best of your knowledge does the rule governing self-executing disclosure appear to be working well?

YES: 83
NO: 91
NO INFORMATION: 26
NO RESPONSE: 15
OTHER: 5

IV. ALTERNATIVE DISPUTE RESOLUTION

Responses to Question 4.01

Does court-annexed arbitration need fine tuning at this time?

YES: 53
NO: 53
NO INFORMATION: 98
NO RESPONSE: 15
OTHER: 1

4:
V. JOINT DISCOVERY - CASE MANAGEMENT (SPECIAL MANAGEMENT TRACK CASES)

Responses to Question 5.01(a)

Is the provision concerning development of joint discovery-case management plans being implemented?

YES: 35

NO: 25

NO INFORMATION: 136

NO RESPONSE: 22

OTHER: 2 ("yes & no" 2X)

Responses to Question 5.01(b)

In special management track cases is discovery by both parties proceeding simultaneously?

YES: 36

NO: 16

NO INFORMATION: 146

NO RESPONSE: 22

VI. REPRESENTATION BY ATTORNEY WITH POWER TO BIND

Responses to Question 6.01(a)

Is the provision in the plan authorizing the court to require the presence at pretrial conferences of an attorney with power to bind being utilized?

YES: 79

NO: 33

NO INFORMATION: 87

NO RESPONSE: 19

OTHER: 2

Comments: The "other" responses include:

"Judges have done nothing"

"Varies"

Responses to Question 6.01(b)

If so, is it working satisfactorily?

YES: 62

NO: 16

NO INFORMATION: 103

NO RESPONSE: 39

VII REPRESENTATIVES WITH AUTHORITY TO SETTLE

Responses to Question 7.01(a)

Is the provision authorizing the court to require that representatives of the parties with authority to settle be present or be available by telephone being utilized?

YES: 94
NO: 22
NO INFORMATION: 82
NO RESPONSE: 21
OTHER: 1 ("it varies")

Responses to Question 7.01(b)

If so, are both alternatives (telephone availability and presence) being utilized?

YES: 83
NO: 15
NO INFORMATION: 86
NO RESPONSE: 35
OTHER: 1 ("yes & no")

Responses to Question 7.01(c)

Is this provision of the plan working satisfactorily?

YES: 78
NO: 21
NO INFORMATION: 90
NO RESPONSE: 31

C. MY RESPONSES ARE BASED ON...

Responses are based on:

Personal Experience:

one case: 33	special management track: 44
several cases: 145	standard management track: 177
many cases: 27	other: 4

Discussion with other lawyers concerning:

specific cases: 39	general conditions in the court: 54
--------------------	-------------------------------------

No Response: 11