

CIVIL JUSTICE REFORM ACT OF 1990

**UNITED STATES DISTRICT COURTS
NORTHERN AND SOUTHERN DISTRICTS OF MISSISSIPPI**

UNIFORM PLAN

October 1, 1993

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CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN
FOR THE UNITED STATES DISTRICT COURTS
FOR THE NORTHERN AND SOUTHERN DISTRICTS OF MISSISSIPPI

PREAMBLE

The judges of the Northern and Southern Districts of Mississippi have reviewed the proposed plans and the reports of the Advisory Groups appointed in each district pursuant to the Civil Justice Reform Act of 1990, 28 U.S.C. § 471 *et. seq.* Because both groups urged the judiciary to reconcile the two plans in order to preserve the Uniform Local Rules for the Northern and Southern Districts of Mississippi, and recognizing that uniform practice, in both districts is a desirable goal, the judicial officers have developed a common plan for both districts. The judges of the Northern and Southern Districts of Mississippi trust that the members of the bar will continue this cooperative effort with the courts and strive to meet the goals of the Civil Justice Reform Act of 1990.

ADOPTED: October 1, 1993.

SECTION ONE: GENERAL PROVISIONS

- I. Purpose. The Differentiated Case Management Plan adopted by the Court is intended to permit the Court to manage its civil docket in the most effective manner, to reduce costs and to avoid unnecessary delay, without compromising the independence or the authority of either the judicial system or the individual judge. The underlying principle of the plan is to make access to a fair and efficient court system available and affordable to all citizens.
- II. Definitions.
 - A. Differentiated Case Management ("DCM") is a plan providing for management of cases based on case characteristics. This system is marked by the following features: the court reviews and screens civil case filings and channels cases to processing "tracks" which provide an appropriate level of judicial, staff, and attorney attention; civil cases having similar characteristics are identified, grouped, and assigned to designated tracks; each track employs a case management plan tailored to the general requirements of similarly situated cases; and provision is made for the initial track assignment to be adjusted to meet the special needs of any particular case.
 - B. Judicial Officer is either a United States District Judge or a United States Magistrate Judge.

- C. Case Management Conference ("CMC") is the conference normally conducted by the judicial officer within ninety (90) calendar days after the filing of a complaint.
- D. Case Management Plan ("CMP") is the joint plan prepared by the lawyers and approved by the judicial officer at the case management conference. The plan shall include the determination of track assignments, whether the case is suitable for reference to an alternative dispute resolution ("ADR") program, the type and extent of discovery, the setting of a discovery cut-off date, and deadlines for filing motions.
- E. Court means the United States District Judge, the United States Magistrate Judge, or Clerk of Court personnel, to whom a particular action or decision has been delegated by the Judges of the United States District Court for the Northern and Southern Districts of Mississippi.
- F. "Discovery cut-off" is that date by which all responses to written discovery shall be due according to the Federal Rules of Civil Procedure and by which all depositions shall be concluded. Counsel must initiate discovery requests and notice or subpoena depositions sufficiently in advance of the discovery cut-off date so as to comply with this rule, and discovery requests that seek responses or schedule depositions which would otherwise be answerable after the discovery cut-off are not enforceable except by order of the Court for good cause shown. The

parties may not, by stipulation and without the consent of the Court, extend the discovery cut-off date.

- III. **Date of Application.** This plan shall apply to all civil cases filed on or after January 1, 1994 and may be applied to civil cases filed before that date if the assigned judge determines that inclusion in the DCM plan is warranted and notifies the parties to that effect.
- IV. **Conflicts with Other Rules.** In the event that the Rules of this plan conflict with the Uniform Local Rules adopted by the Northern and Southern Districts, the Rules in this plan shall prevail.

SECTION TWO: TRACKS, EVALUATION, AND ASSIGNMENT OF CASES

- I. **Number and Types of Tracks.**
 - A. **"Expedited"** - Cases on the Expedited Track shall have a case completion goal of nine (9) months or less after filing, and shall have a discovery cut-off no later than one hundred (100) days after filing of the CMP.
 - B. **"Standard"** - Cases on the Standard Track shall have a case completion goal of twelve (12) months or less after filing and shall have a discovery cut-off no later than two hundred (200) days after filing of the CMP.
 - C. **"Complex"** - Cases on the Complex Track shall have the discovery cut-off established in the CMP and shall have a case completion goal of no more than twenty-four (24) months after filing.

- D. "Administrative" - Cases on the Administrative Track shall normally be referred directly to a Magistrate Judge, with the exception of bankruptcy appeals and student loan cases. These cases will normally have no discovery and have a case completion goal of nine (9) months.
- E. "Mass Tort" - Cases on the Mass Tort Track shall be treated in accordance with the special management plan adopted by the Court.

III. Evaluation and Assignment of Cases.

- A. Evaluation Criteria - The Court shall consider and apply the following factors in assigning cases to a particular track:

1. Expedited:

- (a) Legal Issues: Few and clear
- (b) Required Discovery: Limited
- (c) Number of Real Parties in Interest: Few
- (d) Number of Fact Witnesses: Up to five (5)
- (e) Expert Witnesses: Few, if any
- (f) Likely Trial Days: Three (3) or less
- (g) Character and Nature of Damage Claims: Liquidated or routine.

2. Standard:

- (a) Legal Issues: More than a few, some unsettled
- (b) Required Discovery: Routine

- (c) Number of Real Parties in Interest: Up to five (5) legal entities but which represent no more than 3 diverse interests
- (d) Number of Fact Witnesses: Up to ten (10)
- (e) Expert Witnesses: Usually fewer than four (4)
- (f) Likely Trial Days: Five (5) or less
- (g) Character and Nature of Damage Claims: Routine

3. Complex:

- (a) Legal Issues: Numerous, complicated and possibly unique
- (b) Required Discovery: Extensive
- (c) Number of Real Parties in Interest: More than five (5)
- (d) Number of Fact Witnesses: More than ten (10)
- (e) Expert Witnesses: More than three (3)
- (f) Likely Trial Days: More than five (5)
- (g) Character and Nature of Damage Claims: Usually requiring expert testimony.

4. Administrative:

- (a) Cases that, based on the Court's prior experience, are likely to result in default or consent judgments or can be normally resolved on the pleadings or by motions. These include such cases as Social Security appeals, bankruptcy

appeals, habeas corpus petitions, student loans, or any other case involving an administrative record.

5. Mass Torts:

(a) Factors to be considered for this track shall be identified in accordance with the special management plan adopted by the Court.

B. Evaluation and Assignment - The court shall consider recommendations of counsel, evaluate each civil case in accordance with this Section, and assign each case to one of the case management tracks at the case management conference.

SECTION THREE: EARLY AND ONGOING JUDICIAL CONTROL OF THE PRETRIAL PROCESS

I. Early Assessment and Pretrial Case Management.

A. Early Meeting of Counsel. No later than five days prior to the case management conference, counsel are required to meet, by telephone or in person, and confer regarding the following matters:

1. Principal Issues.

- (a) Identify the principal factual and legal issues in dispute;
- (b) Discuss the principal evidentiary basis for claims and defenses;

- (c) Determine the DCM case track provided by Section One, days required for trial, and whether the case should be considered for ADR procedures.
2. **Additional Disclosure.** Discuss whether voluntary additional disclosure of documents or other information should be made, and if so, when.
 3. **Motions.** Identify any motions whose early resolution would have a significant impact on the scope of discovery or other aspects of the litigation.
 4. **Discovery.** Consistent with case track recommendations, determine what additional discovery is required beyond the voluntary disclosures and initial depositions of the parties, with designated time limitations.
 5. **Preparation of a proposed case management plan and scheduling order setting forth track and/or ADR recommendations, deadlines for amendments to pleadings and joinder of additional parties, completion of discovery, designation of experts, and filing of motions, including motions for summary judgment and motions in limine.**
 6. **Jurisdiction by a Magistrate Judge.** Discuss whether all parties consent to jurisdiction by a Magistrate Judge under 28 U.S.C. § 636(c).

7. Settlement.

B. The Case Management Conference. Within 90 days of the filing of the complaint, or on the first date thereafter available on the judicial officer's calendar, the judicial officer will conduct the case management conference as contemplated by Civil Rule 16, which normally shall be attended by lead trial counsel for each party. This conference may be conducted telephonically at the discretion of the judicial officer. The following matters will be discussed:

1. Principal Issues. Identify, at least tentatively, the principal factual and legal issues in dispute.
2. Alternative Dispute Resolution. Identify the alternative dispute resolution procedure which counsel intend to use, or report specifically why no such procedure would assist in the resolution of the case.
3. Jurisdiction by a Magistrate Judge. Indicate whether all parties consent to jurisdiction by a Magistrate Judge under 28 U.S.C. § 636(c).
4. Disclosure.
 - (a) Review the parties' compliance with their disclosure obligations.
 - (b) Consider whether to order additional disclosures.

5. Motions.
 - (a) Determine whether to order early filing of any motions that might significantly affect the scope of discovery or other aspects of the litigation.
 - (b) Provide for the staged resolution, or bifurcation of issues for trial consistent with Civil Rule 42(b).
6. Discovery.
 - (a) Determine the plan for at least the first stage of discovery.
 - (b) Impose limitations on each discovery tool and, if appropriate, on subject areas, types of witnesses, and/or time periods to which discovery should be confined.
7. Settlement. Determine the status of settlement negotiations. The judicial officer may require confidential settlement memoranda by the parties in advance of the case management conference.
8. Scheduling.
 - (a) Fix time limits to join other parties, amend the pleadings, complete any additional disclosures, conclude discovery, file motions, and for all other such matters that may be covered by Uniform Local Rule 6(d).
 - (b) Fix the dates or intervals for supplementation of disclosures.

- (c) Fix the date for the next conference with, or hearing by, the court, if any.
 - (d) Fix the date or the time period (by month and year) for final pretrial conference and commencement of the trial, if possible.
- C. Attendance at Case Management Conference. Participating attorneys will be required to have authority to bind the parties on matters, including settlement, which may be discussed at the case management conference. The judicial officer may require the attendance or availability of the parties, as well as counsel.
- D. The Case Management Order. No more than ten (10) calendar days after the case management conference, the judicial officer will enter the case management order. The order shall specify that its provisions, including any deadlines, having been established with the participation of all parties, can be modified only by order of the judicial officer, and only upon a showing of good cause supported by affidavits, other evidentiary materials, or references to pertinent portions of the record.
- E. Costs and Expenses. The court shall use its authority to impose costs and expenses for violation of any provisions of the case management and scheduling order, including violations of the duty to disclose and/or supplement discovery.

II. Case Status Report.

Not later than fifteen (15) days after the deadline for filing pretrial motions, the parties shall submit a joint report to the Magistrate Judge advising of the anticipated length of trial, a list of pending motions, and the progress of settlement negotiations. Any motion not listed will be considered moot and denied. If not previously scheduled, the trial date will promptly be established upon receipt of the report, or the trial judge will be advised of the status of the case. The court will also consider any modification of a previously scheduled trial date. Failure to timely submit the report will result in a conference date being established before the court which counsel must attend in person and show cause why sanctions should not be imposed.

III. Settlement Conference.

- A. The initial settlement conference will be conducted at the case management conference. Counsel for any party may request at any time thereafter that the Magistrate Judge assigned to the case schedule a settlement conference as soon as practical.
- B. In addition to lead counsel for each party, the Court may require that a representative of each party with authority to bind that party for settlement purposes be present in person or immediately available by telephone at the settlement conference.
- C. The notice of the settlement conference shall set forth the format of the conference and shall include any requirement for information or

documents which must be submitted to the Magistrate Judge prior to or at the conference as the Magistrate Judge may direct.

- D. No statement, oral or written, made by any party to the Court or counsel(s) opposite pursuant to this rule, shall be admissible or used in any fashion in the trial of the case or any related case.

IV. Pretrial Conference.

- A. **Scheduling.** The judicial officer assigned to try the case will attempt to conduct the pretrial conference. However, if unable to schedule timely the pretrial conference, the judicial officer assigned to the case may direct that the conference be held before another judicial officer. This conference shall be scheduled not more than 45 days prior to trial.
- B. **Attendance.** Each party shall be represented at the final pretrial conference by counsel who will conduct the trial. Counsel shall have full authority from their clients with respect to settlement and shall be prepared to advise the Judge as to the prospects of settlement. The Judge may require the attendance or availability of the parties, as well as counsel.
- C. It is recognized that a formal pretrial conference may not be needed in all cases. The trial judge either on his/her own motion or by joint request of the parties, may determine that a pretrial conference is unnecessary. In such event, a jointly agreed pretrial order shall be submitted to the trial judge.

- D. Pretrial Order. The parties are required to prepare a pre-trial order in accordance with Uniform Local Rule 10 and submit this order as directed by the Court.

SECTION FOUR: DISCOVERY CONTROL; MOTION PRACTICE

I. Controlling the Extent and Timing of Discovery.

A. Pre-Discovery Disclosure of Core Information/Other Cooperative Discovery Devices. [28 U.S.C. § 473 (a)(4)]

1. A party asserting a claim shall serve with the complaint, counterclaim, cross-claim, or third party claims, and in response to responsive pleadings, the following:

- (a) the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to the claims asserted,
- (b) a copy of, or a description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to the claims asserted,
- (c) A computation of any category of damages claimed by the party, making available for inspection and copying as under Rule 34, FRCP, the documents or other evidentiary material, on which such computation is based, including

materials bearing on the nature and extent of injuries suffered.

2. Within 45 days of service of a claim asserted by any party, with required disclosures by the party asserting the claim, or when any responsive pleading is due, whichever is later, the responding party shall serve similar disclosures on all parties relevant to all claims and defenses, which shall include inspection as under Rule 34, FRCP, of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.
3. Within 15 days of the service of the responding party's disclosures of persons/information and documents relevant to any affirmative matter asserted, the opposing party shall make similar disclosures as to the affirmative matters.
4. Initial Depositions. If notice is given within 15 days of service of process and required disclosures, a defendant/respondent may orally depose the filing party(s), not to exceed four (4) hours, before being required to file required disclosures. Filing parties shall have a like right to notice defendants/ respondents' deposition not to exceed four hours, either on the same date as filing party(s) deposition, or any time within 15 days from receipt of

defendants/respondents' answer and disclosures. In any event, all initial depositions of parties shall be completed within 75 days of the filing of the complaint.

5. **Removed Cases.** Within 15 days of an action being removed, the plaintiff shall file the initial disclosure required by this rule and all other deadlines will be determined accordingly. The filing of a motion to remand shall not toll these disclosure deadlines.
6. **Suspension of Discovery.** Except for the initial discovery, no further discovery shall be permitted until the entry of the case management plan unless authorized by the Court.
7. **Completion of Discovery.** After entry of the case management plan and scheduling order, discovery shall proceed as permitted by the FRCP and this plan.
8. **Exceptions.** The above procedures and rules shall not apply to:
 - (a) Any case assigned to the administrative track or pro se prisoner cases;
 - (b) In actions seeking temporary restraining orders until 10 days after entry or denial of the order;
 - (c) Complaints filed with counsel's affidavit that his/her representation was accepted too close to the running of the applicable statute of limitations to permit investigation for required disclosure; however, plaintiff shall comply within

30 days of the filing of the complaint or such additional time as the court may allow;

(d) The United States of America as a defendant to the extent that the United States shall serve required disclosures when its answer is due under Rule 12(a), Federal Rules of Civil Procedure rather than within 45 days of service of the complaint. No other exceptions shall be allowed except upon motion with notice and order of the court.

B. **Setting Discovery Deadlines.** A firm discovery deadline will be set by the judicial officer presiding over the case management conference consistent with the track assignment.

C. **Attorney/Party Signatures for Requests to Extend Discovery Deadlines [28 U.S.C. § 473(b)(3)].** The Court in its discretion may require the requesting attorney and party to sign requests to extend discovery deadlines.

D. **Limits on the Use of Discovery.** The Court should limit the number of depositions, interrogatories, requests for production and requests for admission to the needs of each particular case consistent with the track assignment.

1. "Expedited." Interrogatories and requests for production should be limited to fifteen succinct questions. Depositions should be

limited to the parties and no more than three fact witness depositions per party without prior approval of the Court.

2. "Standard." Interrogatories and requests for production should be limited to thirty (30) succinct questions. Depositions should be limited to the parties and no more than five fact witness depositions per party without prior approval of the Court.

3. "Complex." The case management order should provide for discovery consistent with the needs of the case.

4. "Administrative." No discovery should be the norm.

5. "Mass torts." The case management order should provide for discovery consistent with the needs of the case.

E. Methods of Resolving Discovery Disputes. This is covered by Uniform Local Rule 6(c)(1).

II. Motion Practice.

A. Motion Practice in the Context of the Discovery. All discovery motions must be filed so that they do not affect the discovery deadline. This subject is otherwise governed by Uniform Local Rules 6 and 8.

B. Form and Length of Motions. The procedure to be followed is governed by Uniform Local Rules 6 and 8.

C. Case Dispositive Motions. The procedure to be followed is governed by Uniform Local Rule 8.

- D. Rulings on Motions. The Court will strive to issue its opinion within sixty days of the receipt of the last brief. The Court will periodically review the motion practice and explore innovative approaches to expedite the process of resolving motions.
- E. Priority. The Court will give priority to discovery motions, discovery appeals, motions to remand, and other jurisdictional motions. Motions to remand shall be heard by the judicial officer assigned to try the case.

SECTION FIVE: ALTERNATIVE DISPUTE RESOLUTION PROGRAMS

- I. Alternative Dispute Resolution ("ADR") techniques should be encouraged in appropriate cases.
 - A. At the case management conference, the judicial officer will inquire about ADR. Counsel must be prepared to advise the court on each party's position on the different ADR resources available.
 - B. The Clerk of the Court will maintain and make available to counsel a list of all arbitration, mediation or other ADR agencies, and other resources. The court may in its discretion direct the Clerk to delete any person, agency or other entity from the list.
 - C. In the event that all parties agree to ADR or ADR is directed by the Court, the judicial officer may in the exercise of his or her sound discretion stay all or part of the case and hold the case management and scheduling order in abeyance during the pursuit of ADR.

- II. Early Neutral Evaluation and Settlement Conferences should normally be accomplished in the ordinary course of the case management conference and any subsequently scheduled status conference or pretrial conference.
- III. The Court may also utilize non-binding summary jury trials, non-binding bench trials, mini-trials, settlement weeks, and other innovative settlement devices.

SECTION SIX: OTHER FEATURES

- I. Prisoner/Pro Se Cases. No change from current system. The Court will continue to explore innovative approaches to process these cases.
- II. Role of the Courtroom Clerk. This should be left to each Judge.
- III. Procedures for Monitoring the Court's Caseload. No change from current system.
- IV. Use of Visiting Judges. No change from current system.
- V. Telephone Conferencing and Video Depositions.
 - A. The court may hold pretrial and other conferences, and any scheduled oral arguments on motions by telephone when requested and when that practice saves the attorneys, parties, or court time and money.
 - B. The video taping of the testimony of expert witnesses is encouraged.
- VI. Trial Provisions: Rotation of Criminal Duty. No change from current system.
- VII. Control of Legal Fees. No change from current system.