

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

**ADVISORY GROUP RESPONSE TO THE
PRELIMINARY PLAN PROPOSED BY THE COURT**

December 6, 1991

INTRODUCTION

On December 6, 1991, the Advisory Group appointed by the United States District Court for the Eastern District of Texas met to consider the preliminary plan of the Court to be adopted in compliance with the Civil Justice Reform Act of 1990 to become effective in the Eastern District of Texas on January 2, 1992. On that date the preliminary plan was extensively discussed and debated by all members of the Committee present and numerous motions were made and votes taken. The following is the statement of the Committee regarding the action taken and is the recommendation of the Committee for changes in the preliminary plan.

PART ONE

ARTICLE ONE: DIFFERENTIAL CASE MANAGEMENT - TRACING AND PRESUMPTIVE DISCOVERY LIMITS

TRACK THREE: The Committee recommends increasing the number of interrogatories and requests for admission permitted from 15 interrogatories and 15 requests for admission to 20 interrogatories and 20 requests for admission.

TRACK FOUR: The Committee recommends the same change as suggested regarding Track Three.

ARTICLE TWO: DUTY OF DISCLOSURE

(1) Initial Disclosure

(a) Each party shall, without awaiting a discovery request, provide to every other party:

(i) The Committee recommends adding:

"and a brief, fair summary of the substance of the relevant information known by the person."

(ii) The Committee makes the same recommendation as in paragraph (i).

(iii) The Committee makes the same recommendation as in paragraph (i).

(iv) The Committee makes the same recommendation as in paragraph (i).

(vii) (New) The Committee recommends adding language which makes clear there is no duty to disclose documents for which privilege is claimed, but only to identify the documents which exist and the basis for the claimed privilege.

(b) Timing of Disclosure

(i) The Committee recommends changing the timing of the Plaintiff's disclosure to the following:

"by a plaintiff within five days after receipt of any responsive pleading or removal of the action from state court, whichever occurs last";

(ii) The Committee recommends changing the timing of Defendant's disclosure as follows:

"by a defendant within 30 days after the defendant has served any responsive pleading or removal of the action from state court, whichever occurs last; and, in any event. . . ."

(3) Pretrial Disclosure

- (ii) The Committee recommends deleting the last portion of this paragraph as follows:

~~". . . means of a deposition. and, if taken by video, a transcript of the pertinent portions of such deposition testimony; and~~

(b) Timing and Objections

The Committee recommends everything set forth in the preliminary plan under this heading be deleted except the following sentence which should be retained:

"Unless otherwise directed by the judicial officer, those disclosures shall be made at least 30 days before trial."

ARTICLE THREE: MANAGEMENT CONFERENCE

(1) Timing

The Committee recommends changing the time limit from 120 days after issues have been joined, to 150 days after issues have been joined.

ARTICLE FOUR: MOTION PRACTICE

(1)

(e) (New) The Committee recommends adding: "Fed. R. Civ. Pro. 23."

(3) The Committee recommends changing the period after "practicable," to a comma and, thereafter, adding language as follows:

"and, in any event, within 30 days after filing of the response."

ARTICLE FIVE: ATTORNEYS' FEES

With regard to the attorneys' fees matter, the Committee voted to delete the entirety of **ARTICLE FIVE**.

Alternatively, in the event the Court chooses to address the issue of attorneys' fees in the plan which is to be adopted, the Committee requests the following language:

- (1) The assumption that underlies the substance of the Civil Justice Report Act is that implementation of a plan that substantially reduces legal activity during discovery will result in cost reduction for litigants who pay for legal services by the hour. Whether such presumed reductions become a reality remains to be seen. The court shall adopt methods to evaluate the effectiveness of the court's plan in this respect. However, no such reduction from these measures will inure to the benefit of litigants who retain counsel on a contingency fee basis. The court, therefore, adopts the following fee schedule for contingency fee cases (whether filed originally in this court or removed from state court):
 - (a) A fee of 33-1/3% of the total award or settlement
 - (b) Expenses:
- (2) Expenses incurred by attorneys that are directly related to the costs of litigation of individual cases shall be deducted from the award or settlement before any calculation or distribution is made for attorneys' fees. No deduction is permitted for general office overhead expenses. Moreover, attorneys are prohibited from charging interest on any money advanced for expenses.
- (3) The court may modify the fee in exceptional circumstances.

Committee Comment:

After significant discussion with regard to whether or not it is necessary or appropriate for **ARTICLE FIVE** to also apply to statutory attorneys' fees cases, it was decided that the attorneys on the Committee who customarily represent plaintiffs in civil rights matters where statutory attorneys' fees are recoverable would separately address this issue by letter to Judge Parker.

ARTICLE SIX: MISCELLANEOUS MATTERS

(5) Depositions

After discussion with Judge Parker, it was agreed that Paragraph (5) would be rewritten to permit taking depositions other than during business hours or on weekends or holidays by agreement of counsel and to, also, include as areas of inquiry to which counsel may advise clients they need not respond, the following: trade secrets, privacy issues and recognized privileges.

It was further discussed that the six hour time limit on depositions would be applicable to parties and that in the event of a neutral witness or a witness which all parties must examine, that the six hour time limit be divided equally among the parties.

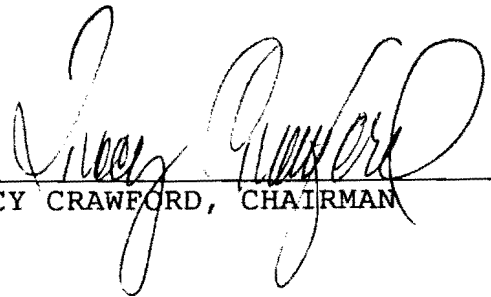
(7) Motion for Continuances or Extensions

The Committee recommends deleting certain language in Paragraph (7) as indicated:

~~"Requests for extensions of deadlines for completion of discovery or for postponement of the trial shall be signed by the attorney of record and the party making the request.~~

CONCLUSION

The Committee's response to the preliminary plan is the result of much discussion and debate. The Committee's position as stated herein was decided in accordance with Robert's Rules of Order. Some proposals were decided unanimously; others were decided by majority vote. The response is the final result of the efforts of the Committee members present and voting.



TRACY CRAWFORD, CHAIRMAN

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