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Differentiated Case Management Plan Report and Recommendations With Suggested Rules

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Discussion Draft

Civil Justice Reform Act Advisory Group
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The Honorable Jerry L. Hayes, Reporter

Advisory Group Task Force on
Differentiated Case Management
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FORWARD

The Civil Justice Reform Act of 1990 provided that the Chief Judge of each United States District Court would appoint an Advisory Group that would include attorneys and other participants in the civil litigation process. In compliance with the Act, the Honorable Thomas D. Lambros, Chief Judge for the Northern District of Ohio (Northern District), appointed a 35-member Advisory Group. Attorney Louis Paisley was named Chairperson of the Group. Attorney David C. Weiner was named Vice Chairperson of the Advisory Group and Chairperson of the Advisory Group's Task Force on Differentiated Case Management. The Honorable Jerry L. Hayes, Judge of the Portage County Court of Common Pleas, was named Reporter, and the Honorable Sam H. Bell, U.S. District Court Judge, was named Chairperson of the Advisory Group Coordinating Committee with the Court.

The Advisory Group held its organizational meeting on March 20, 1991. At that meeting Chief Judge Lambros told members they "had a unique opportunity to examine and inquire into the criteria and standards by which we resolve human disputes." Judge Bell reminded members of the Advisory Group of the need to preserve the fundamental principle that the mission of the courts is to serve the people of society and to do "justice."

The Act also designated the Northern District of Ohio as a "Demonstration District." The Northern District was specifically charged by Congress with the preparation of an experimental differentiated case management plan. In accordance with this congressional mandate the Advisory Group and its Task Force on Differentiated Case Management submit this Report and Recommendation with Suggested Rules to the Judges of the Northern District of Ohio.

Our task was made easier by the dedicated work of Chief Judge Lambros, Judge Bell, and the Court's Coordinating Committee. Their willingness to devote time and energy to this project is an example of their dedication to the law and their interest in improving the Federal civil justice system.

The Task Force acknowledges with appreciation the assistance and advice of Judge Jerry L. Hayes, Chairman Louis Paisley, Thomas P. Mulligan, Robert J. Fay, Dennis R. Rose, Joan Pettinelli, and the Clerk's Office, in particular, former Clerk of Court, James Gallas, Clerk of Court, Geri Smith, and Office Supervisor James McCann. The Task Force also wishes to thank Irene Milan, Sixth Circuit Satellite Librarian for the many resource materials she provided to the Task Force, Judith Pollarine and Cheryl Sexton for their assistance in the computer analysis of the Court's docket, and Susan Rose for the design and layout of this report.

The preparation of the plan was aided by input from Judge William W. Schwarzer, Director of the Federal Judicial Center and court management consultants Holly Bakke and Maureen Solomon, who provided valuable assistance in the preparation of the differentiated case management plan.

A special thanks must also go to Hilary S. Taylor who chaired the Task Force Subcommittee on asbestos litigation. A special processing plan for asbestos cases which is designed to handle all mass torts and actions, was submitted by the subcommittee and is found in the appendix, at tab 2.

The plan being recommended to the judges of the Federal District Court for Northern Ohio is innovative in many ways. It is the culmination of many special Task Force meetings combined with numerous hours of private labor by individual Task Force members.

This plan is the beginning — not the end. We look forward to the implementation, the review and the continued development of the system. It is our sincere hope that when the study years have ended, we will have developed a case management system for processing civil cases which will serve as a model for the other 93 districts in the Federal judicial system.

Louis Paisley
Advisory Group Chairperson

David C. Weiner
Advisory Group Vice Chairperson
Task Force on DCM Chairperson

I. THE CONGRESSIONAL MANDATE

The Advisory Group and the Advisory Group's Task Force on Differentiated Case Management¹ were appointed pursuant to the congressional mandate expressed in the Civil Justice Reform Act of 1990.²

The statutory functions of the Advisory Group fall into three general categories. First, it is to assess the Court's pending cases and litigation practices to identify unnecessary costs and delays in the processing of civil cases.³ Second, it is to prepare and submit a report recommending the adoption of a civil justice expense and delay reduction plan. The report is to recommend measures, rules and programs aimed at the reduction of cost and unnecessary delay and to state the basis for its recommendations. Finally, the Advisory Group is to consult with the court in annual postplan assessments of the civil and criminal dockets.⁴

Congress designated the Northern District as a Demonstration District⁵ for the implementation of a differentiated case management (DCM) plan. It is the understanding of the Advisory Group that the Northern District will also be designated as an Early Implementation District (EID). As an EID and a Demonstration District, the DCM plan, as well as the overall management plan required by the Act, must be implemented no later than the 31st of December, 1991.

In drafting the Act, Congress outlined certain principles, guidelines and techniques of litigation management and cost and delay reduction to be considered by all District Courts in formulating a plan. Districts designated as

¹ A roster of all CJRA Advisory Group members is provided in the appendix at tab 3.

² The Judicial Improvements Act of 1990, Public Law No. 101-650, was signed by the President on December 1, 1990. Title I of that legislation consists of the "Civil Justice Reform Act of 1990", 28 U.S.C. §471 et seq. (CJRA or the "Act").

³ 28 U.S.C. §472(c)(1).

⁴ 28 U.S.C. §475.

⁵ Section 103(b) of the Act designates the United States District Court for the Northern District of Ohio as a Demonstration District. The Northern District is required to experiment with systems of differentiated case management that provide specifically for the assignment of cases to appropriate processing tracks that operate with distinct and explicit rules, procedures and time frames for the completion of discovery and for trial.

"pilot" districts⁶ are required to include these Congressional principles in their plan. The required principles as outlined by the Congress are: differentiated case management; early and ongoing judicial intervention; early and firm trial dates; control of discovery; controlling motion practice; alternative means of dispute resolution, including settlement; and final pretrial conferences.⁷

In the preparation of its report and recommendations, the Advisory Group and the Task Force charged with the development of a DCM system considered and included measures which address each of the items mandated by the Congress of the United States.

⁶ Section 105(b) of the Act calls for ten District Courts to be designated by the Judicial Conference of the United States as "Pilot Districts." These Pilot Districts shall implement the expense and delay reduction plans under the Act no later than December 31, 1991. The plans implemented by "Pilot Districts" must include the principles and guidelines of litigation, management and cost and delay reduction identified in 28 U.S.C. §473(a).

⁷ 28 U.S.C. §473.

II. THE ADVISORY GROUP'S PERSPECTIVE OF MISSION

Case filings in the Federal District Courts began a period of rapid growth in the 1950's which has continued to the present time. The public is generally aware of the significant growth in the criminal docket. But the greatest growth in Federal case filings is not in the criminal arena, but is on the civil side.⁸

In 1950, for example, 23,000 civil cases involving the United States as a party were filed. By 1970, that number doubled and by 1980, it nearly doubled again. In 1986, 91,830 civil cases involving the U.S. were filed in the Federal District Courts. Despite these staggering statistics, U.S. involved civil suits do not represent a serious problem. These suits make few demands on judicial resources and trials are, in fact, rare.⁹

It is the growth of private civil litigation that poses a potential threat to the Federal judiciary. The statistical growth in this area is both a surprise and shock to many Americans. For example, in 1950, there were 32,000 new private civil case filings. By 1970, that figure climbed to 64,000 new cases, and in 1986, 161,000 private civil cases were filed in the Federal Courts.

If there is any deterioration in the operation of the Federal judicial system, it would most likely reflect itself in the handling of private civil case filing. Although criminal cases have increased, they have not experienced nearly the growth of the private civil filings and the requirements of the Speedy Trial Act assure the prompt adjudication of criminal cases. Accordingly, judicial attention is forced toward the criminal docket — sometimes at the expense of the civil docket.¹⁰

There is today a widespread public perception that the Federal Court civil justice system is not functioning at optimum efficiency. That perception found expression in the Brookings Institute Task Force Study *Justice For All*¹¹, and eventually in the passage of CJRA.

⁸ Dungworth, T. and Pace, N.M., *Statistical Overview of Civil Litigation in the Federal Courts*, The Institute for Civil Justice, Rand Corporation, Santa Monica, CA, (1990) (the "Dungworth Study") at pp. v-x.

⁹ Ibid.

¹⁰ Ibid.

¹¹ *Justice For All*, The Brookings Institute, Washington, D.C.,(1989).

Not surprisingly, statistical studies show regional variances in the speed of civil case processing as well as wide variances between individual district judges. Statistics for the Northern District show civil case filings have increased 43 percent since 1985. For the 12-month period ending June 30, 1990,¹² the Northern District ranked first among all 96 District Courts with 679 total cases filed per judgeship, compared to the national average of 437.

In weighted case filings, the court also ranked first, with 876 cases per judgeship, compared with the national average of 448. It is significant that the court ranks first in the country in civil cases filed per judgeship, yet ranks 79th in the country in the number of cases terminated per judgeship.¹³ As of June 30, 1990, the Northern District had 8,958 cases pending, 60 percent of which represent asbestos filings. Of that total, 15.5 percent were three years old or older as of June 30, 1991.

From 1970 through 1989, weighted case filings, per judgeship, for the Northern District exceeded the national average every year except one year, 1980, when they were even. The median time for the disposition of civil cases in the Northern District for the 12 months ending June 30, 1990 was 13 months. Statistical surveys showing civil case movement in all United States District Courts put the Northern District in the middle range and it was classified as average in a Rand Corporation Institute for Civil Justice Study.¹⁴

The Advisory Group's review of the statistics for Northern District civil case filings shows that the work ethic of district judges is satisfactory and, in many cases, superior. This finding taken with the Northern District's classification as an "average" district by the Dungworth Study raises the reasonable question of the necessity for change. For the Northern district that question has a two-fold answer.

¹² The Federal Court Management Statistics for the reporting period ending June 30, 1991 will not be available from the Administrative Office of the United States Courts until September, 1991.

¹³ It is important to note that the statistics are computed on a per judgeship basis and that the Northern District has had a vacant judgeship since the resignation of a district judge in October of 1989. That fact contributes both to the district's high standing in pending cases per judgeship and the low standing in terminations per judgeship.

¹⁴ The Dungworth Study classified the Northern District as an "average" district. The classification was based on the district's closeness to the nine-month median time to disposition for private civil cases in the Federal system.

First, it must be remembered that the Congress has designated the Northern District as a "Demonstration District." As, such, the Northern District is specifically mandated to experiment with a system of differentiated case management.

The second reason for change is found in the Advisory Group's definition of the word delay. For purposes of its mission, the Advisory Group has defined delay as any unnecessary time spent from the filing of the case until its conclusion. Any program which places all civil case filings into a single-track processing system, as the present system does, inevitably creates delays and, in some cases, the delay is considerable. Under its definition of delay, the Advisory Group feels that the case-specific management plans which form the basis of DCM will help reduce unnecessary time spent between the events in litigation and the overall time to disposition.

The Advisory Group is also charged with the preparation of a plan to reduce the costs of civil litigation. Attempts to examine civil litigation costs, however, are frustrated by a shortage of empirical data. The general notion that costs are rising rapidly is based on opinion and is not documented by hard data. Still, the opinion is widespread¹⁵ and, if true, calls into question our commitment to providing a judicial system available to all citizens of our society.

The primary costs of civil litigation come in the form of attorney-client billings and the bulk of those billings stem from the discovery process followed by the costs of motion practice, trial preparation and trial. The Advisory Group believes that the DCM management techniques (providing discovery control, encouraging the use of Alternate Dispute Resolution ("ADR") programs, streamlining motion practice and establishing firm trial dates) will help to reduce the cost of civil litigation.

¹⁵ The Foundation for Change recently commissioned Louis Harris & Associates to survey Americans regarding their feelings on the civil justice system. Litan, R.E., *Speeding Up civil Justice, Judicature*, Vol. 73, No. 3, Oct.-Nov., 1989. the survey results showed:

1. More than one-half of all the federal judges, corporation counsel and public interest litigators believe that the cost of litigation in civil cases is becoming a "major problem";
2. The majority feel that the high cost of litigation impedes access to the courts by ordinary citizens;
3. The most important cause for the high cost of litigation is an abuse of discovery;
4. The second cause of high cost is the failure of the judges to control the discovery process.

Philosophically, the Advisory Group believes that the American judicial system functions because it is able to maintain public confidence. The judicial bureaucracy is small in numbers; the overall budget is modest; and the judiciary has no army to enforce its orders. The high cost of civil litigation, coupled with delay, will eventually erode public confidence in the judicial system.

There is, therefore, general agreement, both in and outside the legal fraternity, that processing civil cases within the civil justice system must be improved. In 1998, Congress passed the Judicial Improvements and Access to Justice Act. The Act created the Federal Court Study Committee chaired by Judge Joseph F. Weis, Jr. The Committee report, issued April 2, 1990, persuasively documents that need and reviews why the seemingly obvious solution of appointment of more Federal trial judges is not a long-term solution.¹⁶

The more meaningful approach calls for the Federal Courts to find more effective and less costly methods to process the growing caseloads. The system must be willing to experiment; to be adventuresome and innovative. It must be willing to evaluate new programs honestly, keep and refine programs that work, and discard and replace programs which prove unsuccessful.

¹⁶ Report of the Federal Courts Study Committee, April 2, 1990.

III. ESTABLISHING A DIFFERENTIATED CASE MANAGEMENT PLAN

As a Demonstration District, the Northern District is specifically charged with the responsibility of establishing and implementing a Differentiated Case Management system. Its mission is to experiment with case management systems which can later be adopted by other districts in the national effort to improve the efficiency of our federal civil case system.

Several state Courts have experimented with DCM and the Task Force on differentiated case management reviewed DCM materials available from state courts. After consultation with experts involved with the implementation of state court DCM programs, the Task Force developed this proposal for the Northern District.

In developing the DCM program for the Northern District, the Advisory Group was guided by certain principles. Foremost among those principles was the philosophical commitment to a judicial system that will serve the American people by making access to an efficient court system available and affordable to all.

The Advisory Group was also guided by the following principles. The high cost of litigation and the unnecessary delays in bringing cases to trial pose a serious threat to our civil justice system. The establishment of a differentiated case management system, which puts civil case filings on different "tracks" depending on case characteristics, can be effective in efforts to reduce costs and avoid any unnecessary delay within the civil justice system. That DCM procedures can be implemented without compromising the independence or the authority of either the judicial system or the individual judge.

The underlying purpose of these recommendations is the creation of a management system which will permit the federal judicial system to process its growing and diverse caseload in a cost and time efficient manner. The Advisory Group recommends case appropriate management techniques which include judicial intervention prior to trial. The Advisory Group feels that the general application of a standard set of procedural rules and regulations to process all civil litigation, without regard for individual case needs, is inefficient, costly and ineffective. A single-track processing approach to civil litigation often causes more discovery than is necessary, impedes the movement of relatively minor cases, and can overlook the potential of ADR resolution.

IV. RECOMMENDATIONS

1. The Northern District should implement a DCM program whereby civil cases will be channeled into processing tracks that provide the appropriate level of judicial, staff and attorney attention needed to move the cases to disposition.
2. Pursuant to the DCM Program:
 - (a) Civil cases identified as having similar management requirements be grouped together and assigned to designated tracks. Each of the tracks will employ a case management plan tailored to the general requirements of the designated group. Each case will have judicial and support staff attention as needed and the management plan can be adjusted as required.
 - (b) Five tracks should be created for use in the Northern District:

EXPEDITED - Cases on the Expedited track will be completed within nine months after filing. This track will have a short discovery period of 100 days. Interrogatories will be limited to 25 single part questions and no depositions will be permitted without the approval of the Court.

An example of an Expedited track case is a contract case between two parties, where the documentary evidence is limited and the main issue involves an interpretation of the contract. Discovery would be limited with little or no need for depositions and the legal issues would be clear. This type of case would be highly suited for ADR.

STANDARD - Cases on the Standard track will be completed within 15 months after filing. The discovery period will be limited to 200 days. Interrogatories will be limited to 35 single part questions and depositions limited to three without leave of court. The Court can allow additional discovery for good cause shown.

An example of a Standard track case is an employment case where the factual issues are discrete and the documentary evidence is not extensive. Discovery would be routine and there would be few complicated legal issues. This type of case will have moderate to high ADR suitability. The Advisory Group acknowledges that the bulk of civil filings will be assigned to the standard track.

COMPLEX - All scheduled dates for cases on this track will be based on the complexity of the case, with a case completion goal of no more than 24 months after filing.

An example of a Complex track case is a products liability action involving several defendants and several allegedly defective products, where documentary evidence is likely to be voluminous, and numerous fact and expert witnesses are expected to testify. The discovery would be extensive and there would be numerous procedural and/or substantive legal issues, some of which might be complicated and/or novel. This case would have some ADR suitability.

ADMINISTRATIVE - Cases on the Administrative track will be referred to a Magistrate Judge for a report and recommendation, and are expected to be suitable for summary disposition. Cases will be completed within six months of filing. Little or no discovery will be necessary. Administrative track cases include Social Security matters, student loan complaints, foreclosures, etc. These cases would not require the involvement of the District Judge prior to entry of judgement.

MASS TORTS - A processing track for mass tort cases will establish procedures adapted to the unique characteristics of these cases. An example of such procedures is found in the recommended procedures for asbestos cases which will form the bases for the Mass Tort track. These procedures are set forth in the appendix at tab 2.

3. A Case Information Statement (CIS) should be filed with each new pleading for every civil case filed within the Northern District of Ohio.

The CIS will provide the information needed by the court to make an informed decision regarding the case track assignment. The CIS would also be used to screen cases for referral to Alternative Dispute Resolution (ADR) programs.

4. The Court should make track recommendations within five days after the time for the filing of the last responsive pleading. The Court will notify all counsel of the track recommendation and the date of the Case Management Conference.

5. A mandatory Case Management Conference should be held in every case within ten (10) days after track recommendation and a case management order will be issued following the conference. The Case Management Conference will, at a minimum, be used to:

- A. Determine track assignment;
- B. Direct early neutral evaluation or any other appropriate ADR program (with the exception of arbitration which must be agreed upon by the parties). Nontrial resolution potential should be explored at all appropriate times throughout the pendency of case;
- C. Discuss potential party additions;
- D. Determine nature and scope of discovery and set appropriate deadlines;
- E. Set motion deadlines;
- F. Set Status Hearing date;
- G. Complete case management plan.

6. Procedures should be adopted which will insure the exchange of necessary information between the parties and, at the same time, guard against the potential of wasteful and abusive discovery practices.

As part of "discovery control" the Advisory Group recommends that discovery be in two stages. First, there should be an exchange of information necessary to explore settlement potential and referral to appropriate ADR programs. Discovery in

its second phase should mandate the exchange of that additional information necessary to prepare for trial.

The discovery process must be monitored carefully by the Court and procedures for control are recommended under suggested Rule 8:8.2, titled "Discovery Motions and Disputes."

7. A mandatory case Status Hearing should be held approximately at the midpoint between the date of the Case Management Conference and the discovery cut-off date. It is recommended that at this hearing a FIRM TRIAL DATE be established.

If, for any reason, the assigned district judge is unable to hear the case on its assigned trial date, the case should be referred to the Chief Judge for reassignment to any available district judge for immediate trial. This is critical to assuring firm trial dates and is a key recommendation of the Advisory Group.

8. A rule should be adopted to ensure the early resolution of all motions, especially dispositive motions. The rule should, at the same time, streamline motion practice by adopting regulations which limit the mechanics of motion filing (length of memoranda, appendixes, time for answer, reply and hearings, etc.)

The rule recommended by the Advisory group which addresses the questions of motion practice and motion resolution is found under suggested Rule 8:8.1, "Motions General Information."

9. All provisions of Northern District Rule 7, Alternative Dispute Resolution (ADR), should be available for use in the implementation of the DCM plan. The Court will direct the parties to an appropriate ADR program when, in its judgment, such referral is warranted. No ADR hearing date will be modified without leave of Court.

It is the opinion of the CJRA Advisory Group that the success of the DCM plan rests, in part, with the ability of the Court and the parties to make full use of the various ADR programs available within the Northern District. The Advisory Group acknowledges the thoughtful presentation of ADR programs prepared by the Court's ADR committee and presented to the Northern District in the form of Rule No. 7.

10. There should be active involvement by the bar associations in the Northern District in the implementation and refinement of the DCM system.

The support of an informed legal community is essential to the success of DCM. The Advisory Group recommends that printed materials concerning the DCM System be distributed to the bar and a series of public meetings be held to review the DCM system. The intent is to involve the various constituent communities in the further development of the DCM program.

11. The Court should address the disposition of pending cases in conjunction with the implementation of DCM. By doing this, the Court can assure the public and the bar of its commitment to the fair and expeditious processing of all cases.

Current statistical information shows approximately 8,962 civil matters pending in the Northern District as of June 1, 1991. It is the recommendation of the Advisory Group that an inventory of these cases should be made and that a plan be developed to assure their timely disposition.

The plan should address the following:

- A. The number and type of cases pending prior to implementation of DCM.
 - B. The method and criteria to be used in screening inventory cases for appropriate disposition.
 - C. The plan should clearly explain that DCM procedures do not apply to pre-DCM cases. Further, the processing differences between pre-DCM cases and DCM cases should be emphasized in any training or orientation programs for the bar and the court support staff.
12. A formal support structure should be developed by the Court to implement and manage the DCM system.

DCM implementation will require a reorganization of the Northern District Court's support systems. The Advisory Group feels that

the role and responsibility of the Magistrate Judges must be reviewed and adjusted appropriately. Their roles are critical to DCM success. Other DCM recommendations will cause a hard look at the organization and assignment of personnel within the Clerk's office.

It is, however, the opinion of the Advisory Group that the reorganization and reassignment of existing personnel will not be sufficient. Additional staff will be necessary. New Magistrate Judges should be added to the Court. This is considered critical by the Advisory Group to the success of the DCM program.

Although funds have been made available for 3 new positions in the Clerk's office, additional support staff will be necessary. The Advisory Group is hopeful that, as a Demonstration District, the funds necessary to implement DCM will be available from Congress and the Court's fiscal offices.

13. The Court should conduct a systematic performance review of the DCM system. To facilitate its review, the Court should set measurable objectives for the evaluation of the DCM system. Statistics should be kept which, along with an analysis by the Court, will help determine those procedures within DCM which are successful as well as procedures which need adjustment. DCM should also be reviewed in efforts to answer such questions as to how events which take place during the life of the case can effect delay and what effect DCM has on these events. An effort should also be made to collect data on the costs of civil litigation to help determine areas where better management might reduce litigation expense.
14. The Advisory Group Reporter should prepare an annual report of the DCM program. It should review the DCM system in sufficient detail to allow recommendations for change and should be distributed to the Advisory Group and the court by the 31st day of January, following each of the project years.

V. CONCLUSION

The Advisory Group's mission is to recommend procedures permitting the Northern District to process its civil docket in ways which will reduce both delay and cost. Accordingly, recommendations for the implementation of a DCM system have been made to the Court.

The DCM plan is based on the premise that the early identification and classification of cases will permit the assignment of these cases to "tracks" consistent with their specific needs. By so doing, the case management team can eliminate unnecessary time delays between events in the litigation process.

The DCM plan also calls for the management of civil cases from their filing date to their conclusion by trained management specialists within the court. That management team is expected to eliminate the costs of unnecessary discovery, monitor motion practice, encourage Alternate Dispute Resolution, and promote the use of informal procedures to solve the problems of litigation as they arise. These techniques are specifically recommended in an effort to decrease the overall costs of civil litigation.

The fundamental guiding principle, however, has been the desire to do justice. These recommendations are made in the belief that the DCM process and the recommendations of the Advisory Group will help make the judicial system available and affordable to all citizens.

SECTION EIGHT: DIFFERENTIATED CASE MANAGEMENT

CHAPTER ONE • General Provisions

Rule 8:1.1 *Purpose and Authority*

The United States District Court for the Northern District of Ohio (Northern District) adopts this Section in compliance with the mandate of the United States Congress as expressed in the Civil Justice Reform Act of 1990 (CJRA or Act). This Section is intended to implement the procedures necessary for the establishment of a differentiated case management (DCM) system.

The Northern District has been designated as a DCM "Demonstration District." The DCM system adopted by the Court is intended to permit the Court to manage its civil dockets in the most effective and efficient 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 DCM system is to make access to a fair and efficient court system available and affordable to all citizens.

Rule 8:1.2 *Definitions*

- (a) "Differentiated case management" ("DCM") is a system 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 Court Judge or a United States Magistrate Judge.
- (c) "Case Management Conference" is the conference conducted by the Judicial Officer within fifteen days after the time for the filing of the last permissible responsive pleading where the track assignment, Alternate Dispute Resolution ("ADR") and discovery are discussed and where discovery and motion deadlines and the date of the status hearing are set.

- (d) "Status Hearing" is the mandatory hearing which is held approximately midway between the date of the Case Management Conference and the discovery cut-off date.
- (e) "Case Management Plan" ("CMP") is the plan adopted by the Judicial Officer at the conclusion of the Case Management Conference and shall include the determination of track assignment, whether the case is suitable for reference to an ADR program, and the type and extent of permitted discovery; plus the setting of the discovery cut-off date, deadline for filing motions, and the date of the Status Hearing.

Rule 8:1.3 *Dates of DCM Application*

This Section shall apply to all civil cases filed on or after _____ and may be applied to civil cases filed before that date if the assigned trial judge determines that inclusion in the DCM system is warranted and notifies the parties to that effect.

Rule 8:1.4 *Conflicts with other Rules*

In the event that the rules in this Section conflict with other local rules adopted by the Northern District, the rules in this Section shall prevail.

CHAPTER TWO • Tracks, Evaluation and Assignment of Cases

Rule 8:2.1 *Differentiation of Cases*

- (a) Evaluation and Assignment. The Court shall evaluate and screen each civil case in accordance with this Section, and then assign each case to one of the case management tracks described in Rule 8:2.1(b).
- (b) Case Management Tracks. There shall be five case management tracks, as follows:
 - 1. Expedited - Cases on the Expedited Track shall be completed within nine months after filing, and shall have a discovery deadline no later than 100 days after entry of the CMP, with interrogatories limited to 25 single part questions, no depositions without prior approval of the Court, and such other discovery, if any, as allowed by the CMP.

2. Standard - Cases on the Standard Track shall be completed within 15 months after filing and shall have a discovery deadline no later than 200 days after entry of the CMP, with interrogatories limited to 35 single part questions and no more than three depositions per side without prior approval of the Court, and such other discovery, if any, as allowed by the CMP.
3. Complex - Cases on the Complex Track shall have discovery and motion deadlines established by the assigned judge and shall have a case completion goal of 24 months.
4. Administrative - Cases on the Administrative Track shall be referred directly to a Magistrate Judge for a report and recommendation, shall have no discovery without leave of Court, and shall normally be determined on the pleadings or by motion.
5. Mass Torts - Cases on the Mass Tort Track shall be treated in accordance with the special management plan adopted by the Court.

Rule 8:2.2 *Evaluation and Assignment of Cases*

The Court shall consider and apply the following factors in assigning cases to a particular track:

Expedited:

1. Legal Issues: Few and clear
2. Required Discovery: Limited
3. Number of Real Parties in Interest: Few
4. Number of Fact Witnesses: Up to 5
5. Expert Witnesses: None
6. Likely Trial Days: Less than 4
7. Suitability for ADR: High

Standard:

1. Legal Issues: More than a few, some unsettled
2. Required Discovery: Routine
3. Number of Real Parties in Interest: Up to 5
4. Number of Fact Witnesses: Up to 10
5. Expert Witnesses; Two or three
6. Likely Trial Days: 7-10
7. Suitability for ADR: Moderate to high
8. Character and Nature of Damage Claims: Routine

Complex:

1. Legal Issues: Numerous, complicated and possibly unique
2. Required Discovery: Extensive
3. Number of Real Parties in Interest: More than 5
4. Number of Witnesses: More than 10
5. Expert Witnesses: More than 3
6. Likely Trial Days: More than 10
7. Suitability for ADR: Moderate

Administrative:

1. Cases that, based on the Court's prior experience, are likely to result in default or consent judgments or can be resolved on the pleadings or by motion.

Mass Tort:

1. Factors to be considered for this track are under separate listings.

CHAPTER THREE • Case Information Statement

Rule 8:3.1 Case Information Statement

The initial pleading filed by each party shall be accompanied by a Case Information Statement which shall be in the form prescribed by the Court, shall not be admissible in evidence and shall not be deemed to constitute a jurisdictional requirement.

CHAPTER FOUR • Case Management Conference

Rule 8:4.1 Notice of Case Management Conference

The Court shall make track recommendations within five days after the time for the filing of the last responsive pleading. The track recommendation shall be made in accordance with the procedures established in Rule 8:2.2. The Court shall notify all counsel of the date for the Case Management Conference, which shall be scheduled within 10 days after the date that the track recommendation is made.

Rule 8.4.2 *Case Management Conference*

The Judicial Officer shall conduct the Case Management Conference within 15 days after the time for filing of the last permissible responsive pleading. The parties and counsel of record shall be present at this Conference.

The agenda for the Conference shall be as follows:

- a. Determination of track assignment;
- b. Determination of whether the case is suitable for reference to an ADR program;
- c. Determination of the type and extent of permitted discovery;
- d. Setting of a discovery cut-off date;
- e. Setting of deadline for filing motions; and
- f. Setting the date of the Status Hearing, which shall be on a date approximately midway between the date of the Case Management Conference and the discovery cut-off date. At the conclusion of the Case Management Conference, the Court shall prepare, file and serve parties with the Case Management Plan.

CHAPTER FIVE • Status Hearing

Rule 8.5.1 *Status Hearing*

At the Status Hearing the Judicial Officer will (a) review settlement and ADR possibilities; any request for revision of track assignment and/or of discovery and motion deadlines; and any special problems which may exist in the case; and (b) assign a Firm Trial Date.

If, for any reason, the assigned District Judge is unable to hear the case on its assigned trial date, the case shall be referred to the Clerk of Court for reassignment to any available District Judge for immediate trial.

CHAPTER SIX • Alternative Dispute Resolution

Rule 8:6.1 *Alternative Dispute Resolution*

Parties are encouraged to use the provisions of Rule 7, Alternative Dispute Resolution (ADR), and the Court shall direct the parties to an appropriate ADR program when, in the judgment of the Court, such referral is warranted. ADR hearing dates shall not be modified without leave of Court.

CHAPTER SEVEN • Discovery

Rule 8:7.1 *Discovery - General*

The parties are encouraged to cooperate with each other in arranging and conducting discovery, including discovery involved in any ADR program.

CHAPTER EIGHT • Motions

Rule 8:8.1 *Motions - General Information*

- (a) **Motion Days** - Monday of each week shall be a civil motion day. The Court may also set a motion for hearing on other days, in its discretion.
- (b) **Motions to be in Writing** - All motions, unless made during a hearing or trial, shall be in writing and shall be made sufficiently in advance of trial to comply with the time periods set forth in this Chapter and to avoid any delay in trial.
- (c) **Memorandum by Moving Party** - The moving party shall serve and file with the motion a memorandum of points and authorities relied upon in support of the motion. The Clerk of Court shall reject any motion which is not accompanied by a memorandum of authorities.
- (d) **Responsive Memorandum** - The opposing party shall have ten (10) calendar days after service within which to serve and file a responsive memorandum.
- (e) **Reply Memorandum** - The moving party shall have five (5) calendar days after service of the responsive memorandum within which to file a reply memorandum, if any.

- (f) Length of Memoranda - Without prior approval of the Judge, memoranda relating to motions for summary judgment or other dispositive motions shall not exceed twenty (20) pages, memoranda relating to all other motions shall not exceed ten (10) pages, and appendices shall be limited to fifty (50) pages and shall be bound separately from memoranda. Waiver of page limitations may be granted only upon motion demonstrating good cause.
- (g) Hearings - Unless acted upon earlier by the Judge, hearings on motions shall be held within thirteen (13) days after the filing of the responsive memoranda. The court may, in its discretion, hear oral argument on any motion by telephone conference.
- (h) Attendance at Hearings - Any party may waive oral argument by giving notice of such waiver to the court and all counsel of record. Unless oral argument is waived, the moving party and all parties filing an opposition to the motion shall attend the hearing. The court may grant or deny the requested relief for failure to waive oral argument properly or to attend the hearing.
- (i) Untimely Motions - Any motion (other than a motion in limine) served beyond the applicable motion deadline may be denied solely on the basis of the untimely filing.
- (j) Sanctions for Filing Frivolous Motion or Oppositions - Filing a frivolous motion or an opposition to a motion on frivolous grounds may result in the imposition of appropriate sanctions including the assessment of costs and attorney's fees.

Rule 8:8.2 *Discovery Motions and Disputes*

Discovery motions and/or discovery disputes shall be referred to the Court only after moving counsel has made, and certified the making of, good faith efforts to resolve such disputes. The Judicial Officer shall attempt to resolve the discovery dispute by telephone conference, failing which, the parties shall outline their respective positions in writing for the Judicial Officer, which shall attempt to resolve the problem without additional legal memoranda. If the Judicial Officer is unable to resolve the dispute, the parties may file simultaneous memoranda by a date set by the Judicial Officer and a hearing shall be held within 72 hours after the filing.

Rule 8:8.3 *Dispositive Motions*

- (a) Whenever possible, Judges should make bench rulings on motions at the motion day hearings;
- (b) When a Judge determines that it is absolutely necessary to take motions under advisement, the Judge shall render his ruling within thirty (30) days of said hearing;
- (c) A list of motions that have been at issue and unruled on for thirty (30) days or more shall be published by the court and shall contain the case caption, the judge and the type of motion. Discovery shall be suspended during the pendency of such motions and track deadlines shall be adjusted accordingly. Any judge who does not rule on motions within thirty (30) days shall be asked to show cause for the delay in writing to the Chief Judge of the District Court.

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