

Civil Justice Reform Act
**COST AND DELAY
REDUCTION PLAN**

Middle District
of Tennessee

December 1, 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

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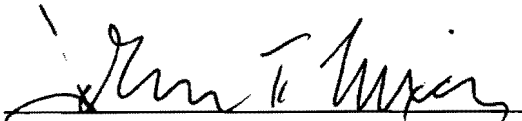
DEC 01 1993
BY Ann Gilles CLERK
DEPUTY CLERK

IN RE:)
) Administrative Order No. 132-1
)
COST AND DELAY)
REDUCTION PLAN)

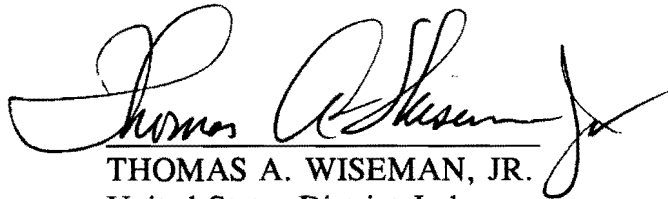
ORDER

Pursuant to 28 U.S.C. § 471, the Middle District of Tennessee hereby adopts the Cost and Delay Reduction Plan, attached hereto and incorporated by reference. The Plan shall be effective March 1, 1994. Until the effective date of the Plan, all current local rules, including but not limited to current Local Rule 11, shall remain in full force and effect.


It is so ORDERED.



JOHN T. NIXON
Chief Judge



THOMAS A. WISEMAN, JR.
United States District Judge



ROBERT L. ECHOLS
United States District Judge

THOMAS A. HIGGINS, District Judge, dissenting.

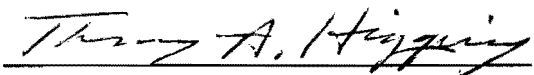
I respectfully decline to sign the order adopting the proposed cost and delay reduction plan and related changes in the local rules, except as to the revision to Local Rule 8(b)(7).

First, as a judicial officer of the United States appointed under Article III of the Constitution, I take exception to the description of the judicial function under the plan as that of a "case manager." This language has a ring to it as if reference is being made to the work of an employee in an agency of the Executive Branch. The Court is driving its geese to a poor market in adopting the "case manager" concept and terminology.

In my judgment the present system is working. I am opposed to throwing out one system of rules for a new and untried system. I am of the firm belief that customized case management and the designation of one week per month as a "civil trial week" constitute a ticket to disaster for the docket of this Court, and will prove to slow down the disposition of civil litigation and not speed it up at less cost.

I appreciate the effort and time expended by Mr. R. Dale Grimes and the members of the Civil Justice Reform Act Advisory Group for the Middle District of Tennessee.

For the reasons stated, I dissent and decline to join in the Court's order.


Thomas A. Higgins
United States District Judge

COST AND DELAY REDUCTION PLAN AND OPERATING PROCEDURES

Middle District of Tennessee

I. Customized Case Management

A. Goals and Purpose

Customized case management provides mandatory, Court-supervised, case management tailored to the individual needs of each case that is subject to the plan. The goal of customized case management is to reduce cost and delay of litigation in federal District Court, as mandated by the Civil Justice Reform Act, 28 U.S.C. §§ 471, et seq., and to accomplish the objectives set forth in Rule 16(a) of the Federal Rules of Civil Procedure, specifically, to expedite the disposition of the action; to establish early and continuing control so that the case will not be protracted because of lack of management; to discourage wasteful pretrial activities; to improve the quality of the trial through more thorough preparation; and to facilitate the settlement of the case.

Management of cases is primarily and ultimately the responsibility of the lawyers acting in the best interests of their clients. Customized case management brings to bear the attention and resources of the Court in initiating case management, supervising its implementation and actively monitoring the progress of each case to assist the parties in achieving the most efficient planning, scheduling, and progression of the case.

Customized case management will take the place of the scheduling order practice under current Local Rule 11 and will require the Court to be directly involved with counsel to assess the needs of each case and to develop a case management plan that tailors discovery to the needs of the case, schedules appropriate settlement conferences and sets efficient and realistic deadlines for the progress of the case.

If the case should be resolved by dispositive motion, customized case management will provide for the efficient and expeditious resolution of the dispositive legal issue(s). If the case should be resolved by settlement, the Court will make available or recommend settlement techniques to be utilized at the appropriate time in the case. If the case will be resolved by trial, it will be set for trial at the time when all pretrial issues have been resolved and it is determined that settlement is unlikely; the trial date will then be set quickly and firmly.

B. Application of the Plan

The Customized Case Management Plan is applicable to every civil action filed after the effective date of the Cost and Delay Reduction Plan, except those generally specifically exempted by local rule. Any case filed prior to the effective date of the Cost and Delay Reduction Plan may be subjected to the Plan by specific order of the presiding Judge. On a case-by-case basis, the Court may exempt any case from the operation of the customized case management plan, or it may extend the customized case management plan to include any otherwise exempt case.

Coverage under the customized case management plan is mandatory in every non-exempt case. Although parties may move the Court to opt out of the plan, they are not permitted to opt out of the case management plan without Court approval. A case will not, however, be exempted from the customized case management plan unless it is determined that exemption will reduce the cost and delay in the case.

By order entered in any case, the case manager or the Article III Judge may deviate from the Plan or alter any provisions of this Plan, when appropriate for the needs of the case and the administration of justice.

The currently utilized procedures in such specialized cases as Title VII cases, prisoner cases, Social Security cases, and Bankruptcy appeals will be retained.

C. Designation and Role of Case Manager

Unless otherwise exempted, each civil case will be assigned to a judicial officer with responsibility and authority for case management, i.e., a case manager. The active Article III Judge to whom cases are assigned will elect whether the Magistrate Judge randomly assigned to the case or the District Judge will serve as the case manager for all of the cases assigned to that District Judge or whether a Magistrate Judge will serve as the case manager on a case-by-case basis. The case manager will be responsible for assuring management of the case, including those matters listed in the local rule on customized case management.

For those cases assigned to the Magistrate Judge to serve as case manager, the District Judge will delegate responsibility for deciding scheduling matters, discovery disputes, and all procedural but non-dispositive motions within the scope of 28 U.S.C. § 636(a).

To the extent that Article III Senior Judges are available in the division in which the case is filed, they may be designated as managers if they consent to such assignments.

Senior District Judges will be responsible for their own case management on the cases covered under the customized case management plan that are assigned to them, although, in the discretion of the Senior District Judge, any case may be assigned to a Magistrate Judge to serve as case manager on a case-by-case basis.

D. Case Management Procedures

1. Initial Case Management Conference

All cases covered under customized case management shall have at least one early status/case management conference. The first case management order will be entered by the case manager, scheduling and outlining the purposes of the first case management conference. The contents of the case management order will be tailored by the case manager to the needs and complexity of the case. The first case management conference will be scheduled within 45 days of the filing of the complaint. In some instances, the first case management conference may be scheduled before all defendants have filed answers and, under appropriate circumstances, may even be scheduled before any defendant has been served. Any party may move the Court to hold the initial case management conference earlier or later than the Court schedules it.

Upon the filing of a complaint or notice of removal, the Clerk shall provide to the filing party a notice of the scheduled date for the initial case management conference, with instructions that the filing party must serve the notice along with the summons and complaint. Each judicial officer will provide the Clerk a calendar of dates on which that judicial officer will hold initial case management conferences. If the case is assigned to a District Judge who has chosen to designate the randomly assigned Magistrate Judge as case manager for all cases assigned to that District Judge or if that District Judge has chosen to be the case manager for all such cases, the intake clerk will provide the party filing the complaint with a notice date of the initial case management conference with instructions that the filing party must serve the notice on the defendants with the summons and complaint. If the District Judge has chosen to designate a case manager on a case-by-case basis, the initial case management conference will be scheduled before the District Judge, who may refer the case to a Magistrate Judge for case management after the initial case management conference.

Counsel shall be required to confer, at the initiative of the attorney for the plaintiff, before the initial case management conference and to prepare a proposed case management plan to be submitted at the initial case management conference for review and discussion with the case manager.

2. Case Management Order

A case management order will be entered after the initial case management conference, and will set forth all deadlines and the discovery plan for the progress of the case. The parties are not allowed to stipulate amendments to the case management orders without the approval of the case manager. Any party may at any time file a motion to amend the case management order.

The case management order will specify the time frames and/or deadlines for the filing of dispositive motions. The parties may file dispositive motions without leave of the case manager, as long as they are filed prior to the dispositive motion deadline contained in the case management order. The filing of any dispositive motion within the dispositive motion deadline but not specified in the case management order will have consequences for the progression of the case that will require case management. Thus, if the case management order does not specify that a particular dispositive motion will be filed but it is nonetheless filed before the deadline for filing dispositive motions, the case manager may, at his discretion, schedule a case management conference after the dispositive motion is filed.

3. Subsequent Case Management Conferences

Subsequent case management conferences will be scheduled in the case management order, depending upon and tailored to the needs and complexity of the case. In most cases, there will be more than one case management conference prior to the final case management conference. In protracted cases, case management conferences may be warranted on a regular, periodic basis.

4. Final Case Management Conference

A final case management conference will be held after completion of all stages of the case to determine that all possibility of settlement has been exhausted and to set the case for trial.

E. Discovery

1. Staging of Discovery

There will be no arbitrary discovery limits, but rather any limitations on the number of interrogatories, document requests, or depositions will be based on the particular needs of each case. Discovery will be staged according to the needs of each stage of the case (e.g., settlement, dispositive motions, and trial). If the case manager determines that the discovery necessary for the parties' evaluation of the case for

settlement is less than that necessary for full trial preparation, discovery will be so limited and a settlement conference conducted before additional discovery is allowed. Similarly, once it is apparent that a dispositive issue exists and that a motion thereon will be filed, the case manager will determine if discovery can be limited to that issue and, if so, no further discovery will be permitted before a ruling on the dispositive motion. The Court elects to opt out of the mandatory disclosure requirements of Rule 26(a)(1) of the Federal Rules of Civil Procedure, effective December 1, 1993, for both those cases covered under and exempted from the customized case management plan. However, for reasons sufficient to the case manager or Article III Judge, such disclosure requirements may be ordered on a case-by-case basis.

2. Stays of Discovery

Absent special circumstances, during the pendency of any dispositive motion filed in accordance with the case management order, discovery will be automatically stayed. A party seeking to engage in discovery during the pendency of a dispositive motion, including discovery necessary for the resolution of the motion, has the right to file a motion to lift the stay of discovery. Except for discovery necessary to the resolution of the dispositive motion, the Court will lift the automatic stay only under special circumstances.

If a dispositive motion is filed that is not provided for in the case management order, there will be no automatic stay of discovery. Any party may file a motion to request that the case manager stay discovery during part or all of the pendency of such a motion. Upon the filing of such a motion, the case manager may convene a conference with the parties or may rule on the motion without a conference. The case manager may stay discovery, upon the filing of a motion to stay, when the case manager finds that there is a substantial likelihood that a stay of discovery will avoid unnecessary cost.

3. Discovery Prior to Initial Case Management Conference

Although discovery requests can be made prior to the initial case management conference, responses to discovery requests are not required prior to the initial case management conference. At the initial case management conference, the case manager will determine what discovery should be provided, the extent to which it should be provided, and the timetable and deadlines for the phases of discovery.

A party seeking discovery responses prior to the initial case management conference must file a motion requesting such relief and serve it upon any other affected party. The case manager will not grant the motion absent compelling circumstances in order to maintain the integrity and efficacy of the case management process.

F. Dispositive Motion Practice

As a general rule, whether or not the case manager is the Magistrate Judge, dispositive motions will be resolved in the first instance by the Article III Judge without referral to a Magistrate Judge.

This portion of the Plan does not alter the current practice of referring prisoner cases, Title VII cases, and Social Security cases to Magistrate Judges. That practice will be retained.

On very rare occasions, an Article III Judge or the case manager may identify cases, particularly those that involve review of an extensive factual record to determine the existence or absence of a genuine issue of material fact, as appropriate for referral to the Magistrate Judge for Report and Recommendation. In those cases, the Article III Judge will consider referring dispositive motions to Magistrate Judges, provided that undue delay does not occur as a result of any such referral. The Court will strictly enforce current Local Rule 8(b)(7) as a means to eliminate even the need for Magistrate Judge referral in factually complex cases. The referral of dispositive motions will not be used solely to assist in eliminating a backlog of cases.

If the case manager is the Magistrate Judge, when a dispositive motion is filed, the Magistrate Judge will enter a notice of the filing of the dispositive motion, and will specify in such notice whether the dispositive motion was provided for in the case management order, whether discovery has been stayed, and whether there are any other factors that would require particularly expedited consideration of the dispositive motion.

The Clerk shall prepare a list of the dispositive motions pending before each Article III Judges on a monthly basis for circulation within the Court. Such list will reflect dispositive motions under advisement over 30 days, over 60 days, and over 90 days. Under this reporting system, a motion will be considered pending as soon as the last response or brief is filed. This reporting requirement is of particular importance to notify the Court of the pendency of the motions during which time discovery is stayed.

G. Trial Settings

At the initial case management conference, the parties and the case manager may begin to target an appropriate trial date or a month in which the trial should be scheduled in the event the case will go to trial. Subsequently, at such time as it appears highly likely that a trial will be necessary in the case, the case manager may schedule a firm trial date. Ordinarily, a trial date will not be scheduled until after at least the first phase of discovery, after dispositive issues have been resolved, and after it appears that settlement is unlikely. If the case manager determines that scheduling a trial date is a

necessary case management technique to move the case, a trial may be scheduled in any week not reserved exclusively for civil trials. As a general rule, however, a trial should not be scheduled during a civil trial week unless and until it is apparent that the case will proceed to trial.

H. Implementation of Customized Case Management Plan

1. The Court approves for publication the local rule on customized case management proposed by the Advisory Group. The current Local Rule 11 will be rescinded.

2. The Court approves for publication the revision to Local Rule 8(b)(7) proposed by the Advisory Group.

II. Alternative Dispute Resolution

A. General Description

The purpose of the Alternative Dispute Resolution Plan is to provide a mechanism by which the Court and the parties can consider alternative dispute resolution (ADR) techniques to aid in resolution of cases by settlement and thereby avoid the expense of trial and delay in adjudication. By use of early ADR techniques, settlements can be facilitated early in the proceedings, thereby reducing otherwise unnecessary time and expense of protracted pretrial proceedings, including discovery and other pretrial preparation.

The Alternative Dispute Resolution Plan is applicable to all civil cases filed in this District, including but not limited to those cases covered under the Customized Case Management Plan.

B. Reference to Alternative Dispute Resolution Programs

1. The case manager (or, in cases not covered under the customized case management plan, that the District Judge or Magistrate Judge assigned to the case) may refer cases for any method of alternative dispute resolution provided by the Court, with

or without the consent of the parties.¹

2. The case manager (or, in cases not covered under the customized case management plan, that the District Judge or Magistrate Judge assigned to the case) may refer cases to alternative dispute resolution programs not provided by the Court only with the consent of the parties.

C. Judicially-Conducted Settlement Conferences

1. Applicability of Settlement Conferences

Although the propriety of a settlement conference and/or other types of ADR will be discussed by the parties and the case manager in the case management conferences conducted in cases covered under the customized case management plan, settlement conferences will be available for any cases filed in this District.

(a) If the case is covered under the customized case management plan, any party may request referral for a settlement conference in the course of a case management conference or by motion to the case manager, or the case manager may direct that the case be referred for a settlement conference.

(b) If the case is not covered under the customized case management plan, any party may request referral for a settlement conference by motion directed to the Judge assigned to the case or the Judge may direct that the case be referred for a settlement conference.

2. Settlement Judge

Settlement conferences will be conducted by a District Judge or Magistrate Judge other than the case manager, if any, and other than the Judge to whom the case is assigned for trial, except when requested and agreed upon by the parties that the Judge to whom the case is assigned should handle the settlement conference or the Judge to whom the case is assigned deems it appropriate to preside over the settlement conference because of the exigencies of the case. The judicial officer to whom the case is assigned for a settlement conference shall be referred to as the "Settlement Judge."

¹ In making such referrals without the consent of the parties, the Court will satisfy itself that it is in compliance with the holding of the Court of Appeals for the Sixth Circuit in In re NLO, Inc., No. 93-3065 (September 17, 1993).

3. Party Attendance

(a) Except as specifically provided in sub-section (b) below, the case manager (or the Judge assigned to the case, if the case is not covered under the customized case management plan) or the Settlement Judge may order that representatives of the parties with settlement authority attend a settlement conference or be available by telephone.²

(b) If the United States is a party:

(1) If the potential settlement lies within the discretion of the United States Attorney for this District or an agency or department of the United States, the case manager (or Judge assigned to the case, if the case is not covered under the customized case management plan) or the Settlement Judge may order that the government have available by telephone the United States Attorney or his designated representative with full authority or the representative of the agency or department of the United States with full settlement authority.

(2) If the potential settlement requires approval of an agency or department of the United States, the attorney for the United States should be prepared to forward final offers to the appropriate agency or department official and to advise the Court of the expected decision time.

4. Party Statements

The procedure for filing party statements prior to the settlement conference will essentially track the existing procedures already utilized in this District.

(a) Each party shall deliver under seal to the courtroom deputy for the Settlement Judge an ex parte settlement conference statement, which specifies the settlement position of that party.

(b) The settlement statement shall contain a candid assessment of the strengths and weaknesses of both sides of the case, an appraisal of the issue of liability, an assessment of the economic cost of proceeding to trial, and a statement of the settlement authority extended by the client.

² The Court recognizes that, when parties are local and state governmental entities, it may be difficult or impossible for such parties to send representatives with full settlement authority.

5. Confidentiality

No part of any of the contents of the discussions or any statements made or information provided to the Court and/or to any other party or counsel during a settlement conference shall be used by any party for any purpose outside of the settlement conference. Likewise, all disclosures made to the Settlement Judge will be kept in strict confidence.

D. Implementation of Alternative Dispute Resolution Plan

1. Creation of Alternative Dispute Resolution Committee

The Court will create an Alternative Dispute Resolution Committee to consider potential uses of alternative dispute resolution on an ongoing basis. The Committee, composed of a District Judge, a Magistrate Judge, a representative of the Clerk's Office, and representatives from the bar, will help keep the Court abreast of potentially helpful alternative dispute resolution developments.

2. The Court approves for publication the local rule on Alternative Dispute Resolution.

III. Scheduling Civil Trial Weeks

A. General Description

The goal of customized case management is the easier and earlier identification of those cases that are, and those cases that are not, ultimately going to go to trial. For those cases identified by the parties and by the case manager as definitely going to trial, the customized case management plan assumes that at that point (and not at the outset of the case) a firm and final trial date will be assigned to the parties. To effectuate that feature of the customized case management plan, it is essential to implement a calendaring plan that will permit cases to be scheduled and tried on firm trial dates.

The intent of customized case management, however, is to provide flexibility to the Court in managing civil cases. Therefore, if the Court determines that scheduling a trial date before it is apparent that a trial will be needed is a necessary case management technique to move the case, a trial may be scheduled in any week not reserved exclusively for civil trials. As a general rule, a trial will not be scheduled during a civil trial week unless and until it is apparent that the case will proceed to trial.

B. Implementation of Calendaring Plan

1. Designation of Civil Trial Weeks

Each active District Judge will designate one week per month as a "civil trial week." During that week, civil trials will be scheduled with firm trial dates and, ideally, there will be no interruption of the scheduled civil trial(s) by criminal or other matters.

2. Number of Civil Trials to Be Scheduled During A "Civil Week"

If a proposed civil trial is anticipated to be quite short (e.g., less than 10 hours), more than one civil trial may be scheduled during the civil trial week. Such cases will not be "double-set" in the formal sense of the word. Rather, these cases will be set "back-to-back," e.g., one trial set firmly to begin on Monday, and the second trial set almost equally firmly to begin on Wednesday or Thursday.

3. Scheduling Civil Trials Without a Firm Trial Date

There may be some civil cases which will be given a "non-firm" trial date. Such a case might be one in which no out-of-town attorneys or witnesses or costly experts are expected to appear. In such a case, the parties might opt for a quicker, but non-firm, trial date by electing to be set behind a criminal case in one of the other three non-"civil trial week" weeks available on the court's calendar. In addition, as a case management technique, the Court may schedule a trial date in a week not reserved exclusively for civil trials before it has been determined that a trial will be needed.

4. Need for Adjustment in Scheduling the Rest of Each Month

Setting aside one week per month as a "civil trial week" will require some adjustment of the Court's remaining schedule. Particularly in the early stages of implementation and experiment, some innovation in scheduling may be desirable. For example, should the Court become aware that an impending criminal trial is likely to be lengthy, i.e., longer than one week, the Court will attempt to avoid setting such a case in the week preceding the "civil trial week." In the event of a very lengthy criminal case, e.g., one likely to last several weeks, other accommodations may have to be made. The criminal case may be set specially or the civil trial week may have to be moved well in advance to another month, resulting in two civil trial weeks in that particular month.

5. Monday Scheduling

To make optimum use of the five-day week for firm civil trial settings, jury trials scheduled during the "civil trial week" will begin on Monday.

6. Pooling Civil Trial Weeks

To optimize juror utilization, the Judges will normally set their civil trial weeks in pairs, with two Judges scheduling their civil weeks at the same time.

IV. Attorney Fees

The Court expresses its conviction that it has the inherent authority to regulate attorneys fees, whether on a contingency or hourly basis and whether Court-awarded or by private contract, but the Court does not perceive the need at this time to make a rule in this regard. The Court assumes that the bar will regulate itself in an effort to contain the cost of litigation.