CIVIL JUSTICE REFORM ACT

IMPLEMENTATION PLAN

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN THE MATTER OF THE ADOPTION OF THE CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN FOR THE DISTRICT OF MINNESOTA	)))	ORDER

Pursuant to the requirements of 28 U.S.C. § 478 the Chief Judge of the U.S. District Court for the District of Minnesota appointed an advisory group of judges, attorneys, and other persons who are representative of major categories of litigants to determine the condition of the civil and criminal dockets of the court and to carry out the other requirements of 28 U.S.C. § 462. The advisory group completed its work and submitted its report and recommendations to the court in May 1993.

Subsequently a civil justice expense and delay reduction plan for the District of Minnesota was prepared based on the recommendations of the advisory group. The draft plan was presented and discussed at meetings of the judges on July 15, 1993 and of the Federal Practice Committee on August 5, 1993. Based on the suggestions and comments received, the proposed district implementation plan was revised, and a final draft of the plan was circulated to the judges for their consideration.

The judges of the court, each having had an opportunity to review and consider the proposed implementation plan for the District of Minnesota, do now hereby adopt the referenced plan as the official Civil Justice Expense and Delay Reduction Plan for the District of Minnesota as required by 28 U.S.C. § 473.

SO ORDERED.

Dated this 23rd of August, 1993

Diana E. Murphy, Chief Judge

Paul A. Magnuson

James M. Rosenbaum

David S. Doty

Richard H. Kyle

CIVIL JUSTICE REFORM ACT IMPLEMENTATION PLAN FOR THE DISTRICT COURT OF MINNESOTA

I. GENERAL PROVISIONS

A. Purpose

The goal of this plan is to achieve a speedier, less expensive disposition of civil cases on the merits without forfeiting the careful and studied analysis required for the just resolution of litigants' disputes. We, the judges of this district, with the continued assistance of our Civil Justice Reform Act Advisory Group, expect to achieve this goal by:

1. adopting the principles of litigation management required by 28 U.S.C. § 473(a) for pilot districts and specific procedures consistent with those principles;

2. using other litigation management techniques, as outlined in this plan, which will address the particular problems of this district in managing its caseload; and

3. concluding the ongoing revision of our local rules in progress as of the date this plan was adopted.

In developing our plan, we have considered each recommendation of the Advisory Group Report (Report), and each of the cost and delay reduction and litigation management techniques specified in 28 U.S. C. § 473(b).

B. Application

This plan shall apply to all civil cases. Local rules changes required by this plan will take effect as of the date of adoption of such rules.

C. Annual Assessments and the Future Role of the Advisory Group

The CJRA Advisory Group will be convened not less than twice-a-year beginning in May of 1994 to assess the state of the civil docket and the utilization of the district's magistrate judges. The Group will assist the court in conducting an ongoing evaluation of the effectiveness of the recommended procedures being implemented by the Plan, and

by suggesting changes or modifications as they determine may be appropriate from time to time. Members of the Advisory Group may visit other districts to learn about successful plans elsewhere and their effective operation. The Advisory Group and court may schedule a common retreat if it appears it would advance the district plan's implementation and effectiveness.

D. Ongoing Internal Judicial Assessment

The court will continue its practice of providing each judicial officer with a monthly report of judicial activity in the district. In late 1993, the court will implement a new computer system that will enhance case management ability within each chambers. The district intends to provide better case information to each judge with easy retrievability in an easily useable format. Additional training and support staff will be needed to implement this plan.

In July of 1993, the court will conduct a case management seminar for the district judges designed to identify and replicate case management techniques that have been found to be particularly efficient and cost effective. Such judicial seminars will be scheduled in the future and may include other judicial officers and members of the bar.

E. Plan Publicity and Dissemination

The court will publicize the adoption of the plan by appropriate news releases to the legal and general media and to professional organizations within the district, and by formal legal notice in the statewide edition of the most prominent legal newspaper in the state. As recommended by the Advisory Group, the court will seek the assistance of the federal bar in developing "...a handbook to acquaint lay parties with the federal court system and to inform them about what they can expect in case processing and management." (Report at 51.) The court also adopts the Advisory Group recommendation "...that upon approval and publication of such a handbook by the District, either the attorney of record or the party, if unrepresented, be required to inform the court that the handbook has been provided to the party. Id. at 51. The court will also plan seminars or workshops for members of the bar and public to discuss the district's Civil Justice goals and procedures.

F. Need for Implementation Plan

The Advisory Group reported several areas of operational concern.

> For cases that went to trial, the median time from the answer, or other initial response, to the date of trial increased from thirteen months in SY83 to twenty-five months in SY92. (Id. at 19).

> A March 1993 review of the civil docket sheets for the last five civil trials of six of the district judges... demonstrates a significant delay between the first date on which a case is ready for trial and the actual date of trial. Excluding seven cases that were transferred from one judge to another, the average delay in the remaining twenty-three cases was over twelve months. (Id. at 19).
>
> In the District of Minnesota a review of the ratio of pending to terminated cases suggests an unfavorable trend: The court is disposing of cases more slowly then in previous years. (Id. at 20).
>
> The weighted file data for civil cases confirms the conclusion that the court's civil docket is becoming increasingly complex because the total number of weighted civil filings has increased despite the decrease in the raw number of civil filings. (Id. at 13).
>
> The data therefore confirms the district's civil caseload is becoming increasingly complex, and that the average civil case in SY92 imposed a much greater burden on the system than the average civil case in SY83. (Id. at 13).

Of a particular concern are the two existing Article III judge vacancies. The Advisory Group expressed its concern about the court's ability to address the issues of cost and delay mandated by the CJRA at a time when judicial resources were burdened by lengthy vacancies in the Article III ranks.

> The current shortage of Article III judges contributes significantly to each judge's caseload. (Id. at 30).
>
> The setting of an early, firm trial date is entirely contingent upon a judge's ability to hear a case when that date arrives. If the judge is unavailable because of other matters, delay results, and as discussed below, increased costs often follow. The Advisory Group urges that all current as well as future vacancies be promptly filled. (Id. at 31).

It is the court's intent to pursue by every means available the resources necessary to implement the spirit and letter of the plan. While the court takes some satisfaction in its ability to maintain a reasonably current docket in spite of an extended period of diminished judicial resources, it recognizes the pressure this has placed on judicial personnel. The goals and objectives of this plan must be funded in a realistic manner if the challenges of the future are to be addressed successfully.

II. DIFFERENTIATED CASE MANAGEMENT

After several months of inquiry, the Advisory Group concluded that the District has "a relatively stable civil docket" (Id. at 15) and enjoys "a relatively high level of satisfaction among attorneys and litigants." (Id. at 41). Their investigation "did not reveal a crisis of excessive cost or delays in the District,...". The Report described favorably the early involvement of judges in cases assigned to them (Id. at 25), and the broad discretion in pretrial procedures provided to judges and magistrate judges by the District's Local Rule 16.1.[1]

> By sending each case through the court system via a judicially supervised Rule 16 conference, case management may be specifically tailored to the needs of individual cases. Relatively simple cases requiring little discovery may be given shorter discovery deadlines and a relatively quick ready-for-trial status, while the system can also accommodate more complex cases that may involve many parties and require more extensive discovery. The Advisory Group believes that differential treatment based on the facts and circumstances of each case is warranted, and that the time taken by the judge or magistrate judge at this early state is generally well spent. Id. at 28.

The Report also noted several case management alternatives available to judicial officers in the District's local rules and practices that are applied differentially to individual cases. These include telephone conferencing, including emergency telephone calls to resolve discovery disputes (Id. at 37); utilizing the services of special masters (Id. at 48); awarding sanctions when appropriate (Id. at 37); conducting trials by consent[2] (Id. at 27); restricting the number of interrogatories[3] (Id. at 36); meet and confer requirements[4] (Id. at 36); page limits for briefs[5] (Id. at 36); and strict adherence to deadlines (Id. at 26). The Advisory Group thus concluded that, although the District does

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[1]Each judge and magistrate [judge] may prescribe such pretrial procedures, consistent with the Federal Rules of Civil Procedure and with these rules, as the judge or magistrate [judge] may determine appropriate (L.R. 16.1).

[2] L.R. 72.1

[3] L.R. 33.1

[4] L.R. 37.1

[5] L.R. 7.1(c)

not have a formal tracking system for civil cases, its judicial officers do in fact apply different case management techniques to individual cases.

> The Advisory Group does not recommend the adoption of a formalized tracking system in which all cases would be automatically slotted into certain categories with uniform rules to govern pretrial administration. Rather, we recommend that our magistrate judges be provided with all of the necessary tools to manage effectively the problems of litigation cost and delay through hands-on management of individual cases, subject to the guidelines suggested below. Id. at 43.
>
> The Group concludes that it would be a mistake for this District to impose mandatory, universal limitations on the amount of pretrial discovery in civil cases. Most of the discovery practices currently used in this District facilitate the just and fair resolution of our cases. System managers should nonetheless be vigilant about the responsibility that we all share in controlling litigation expenses. We recognize that protracted litigation involves potential inefficiencies and extracts enormous societal costs. We believe, however, that except for the simplest types of cases, individualized case management by a judicial officer provides the best method of achieving an appropriate balance between adequate pretrial discovery and the control of litigation costs. Id. at 44.

Although the Advisory Group recommended against the adoption of a formalized tracking system for all cases, it suggested strongly that the district should place simple civil cases on a expedited management track.

> The Group concludes that the handling of relatively simple civil cases through the use of a Rule 16 case management conference not only adds unnecessarily to the cost of these cases but also constitutes an inefficient use of judicial resources. The Group therefore recommends that the Court (with the assistance of the United States Attorney's Office, where appropriate) identify the types of cases that historically require little, if any, discovery and are capable of conclusion within six to nine months (by cross-motions for summary judgment or a one or two day trial). Cases so identified should be subject to expedited case management through the use of a standard pretrial order that the Clerk's office will send out automatically following the filing of an answer. The standard pretrial order should set out all deadlines for

discovery and motions, the date of a prescheduled settlement conference, and the date of trial readiness. Id. at 46.

The court accepts the Group's suggestion, and will request funds to implement the recommended procedure for the expediting of simple civil cases.

The court remains committed to the individualized treatment of each case by a judicial officer with broad authority to apply a wide range of appropriate case management techniques and believes that even greater consideration should be given in each case to assure appropriate handling for that type of case. To promote greater awareness of the variables which might usefully be considered, more case tracking information needs to be made available to the judicial officers. This information should include statistics on disposition time by type of case, number of parties, amendments of pleadings, continuances in discovery, and trial readiness deadlines, etc.

III. EARLY AND ONGOING JUDICIAL CONTROL OF THE PRETRIAL PROCESS

A. Planning the Progress of the Case

The local rules of this District relating to case management are premised on the authority of individual judicial officers to promote efficient case management without undue cost or delay by fashioning appropriate restrictions on pretrial discovery on a case-by-case basis. The local rules currently under revision shall authorize judicial officers to 1) limit the number and scope of depositions; 2) minimize travel expenses and the expenditure of attorney time through the use of telephonic and video conferencing devices for recording deposition testimony; 3) order the use of a document depository for the common storage and retrieval of documents through imaging and data processing techniques; 4) require the use of multiple-track discovery to expedite complex matters where appropriate; 5) encourage parties to minimize discovery costs by stipulating to facts; 6) impose and enforce discovery deadlines that promote adequate but prompt case preparation; 7) impose such other requirements or restrictions as may be deemed appropriate in the interest of justice, economy, and fairness; and 8) refer a case to appropriate alternative dispute resolution methods.

1. Early Assessment/Pretrial Case Management.

a. Scheduling conference in civil cases.

In every civil action, except in categories of actions exempted by district court rule as inappropriate, the judicial officer shall convene a scheduling conference as soon as practicable, but in no event more than

ninety (90) days after the appearance of a defendant or the time that is specified in Federal Rules of Civil Procedure 16, if it is shorter. In cases removed to this court from a state court or transferred from any other federal court, the judge shall convene a scheduling conference within sixty (60) days after removal or transfer.

b. Reference to Magistrate Judge.

As recommended by the Advisory Group, the court shall develop a standard procedure and time schedule for referring civil cases to the magistrate judges for pretrial management.

c. Obligation of Counsel to Confer.

Unless otherwise ordered, counsel for the parties shall confer no later than ten (10) days prior to the date of the scheduling conference for the purpose of:

(1) Preparing an agenda of matters to be discussed at the scheduling conference;

(2) Preparing a joint proposed pretrial schedule for the case that includes a plan for discovery setting forth specific parameters for anticipated discovery, including the number of depositions, the volume of documents expected to be produced, the volume of written discovery, and the extend of expert discovery;

(3) Preparing a joint plan to control excessive litigation costs and delays. Such a plan shall include such matters as focusing the initial discovery on preliminary issues that might be case dispositive, instituting document control and retrieval mechanisms to contain costs, stipulating to facts to eliminate unnecessary discovery, adopting procedures for orderly discovery, and scheduling alternating periods for party discovery and any other matters counsel may agree upon to control excessive litigation costs and delays;

(4) Considering whether or not they will consent to trial by magistrate judge; and

(5) Preparing a schedule to submit to the judicial officer for the scheduling conference setting forth time periods for fact discovery, the joinder of parties, and expert discovery; cut-off

dates for both dispositive and nondispositive motions, and a trial readiness date.

d. Required Initial Scheduling Conference Statement, Including Pretrial Plans and Disclosures.

(1) After counsel have met and conferred on the matters set forth above, they will submit a joint statement setting forth each of the matters agreed upon at least three (3) days prior to the scheduling conference. To the extent that counsel have not agreed upon any of the items set forth in the immediately preceding paragraph, then each party shall submit its own proposal for each item for review by the judicial officer conducting the first scheduling and management conference. In addition, if required to disclose core information pursuant to the Federal Rules of Civil Procedure, a party shall include a description of its compliance with that requirement.

(2) Parties shall continue to provide required information including the time periods proposed for fact discovery, the joinder of parties, and expert discovery; cutoff dates for both dispositive and nondispositive motions; and a trial-readiness date.

e. Exceptions.

The court by local rule may exempt certain categories of actions from pretrial scheduling conferences and pretrial meeting requirements. Cases so identified shall be subject to expedited case management through the use of a standard pretrial order sent automatically to the parties following the filing of an answer. The standard pretrial order should set out all deadlines for discovery and motions, the date of a pre-scheduled settlement conference, and the date of trial readiness.

f. Additional Case Management Conferences.

Nothing in the local rules shall be construed to prevent the convening of additional case management conferences by a judicial officer as may be thought appropriate in the circumstances of the particular case. In any event, a conference with a judicial officer should not terminate without the parties being instructed as to when and for what purpose they are to return to the court. Any conference under this rule designated as final shall be conducted pursuant to Federal Rule of Civil Procedure 16(d).

g. Scheduling and Case Management Orders.

Following the conference, the judicial officer shall enter a scheduling order that will govern the pretrial phase of the case. Unless the judicial officer determines otherwise, the scheduling order shall include specific deadlines or general time frameworks for:

(1) amendments to the pleadings;

(2) the joinder of any additional parties;

(3) the identification of trial experts and the completion of expert discovery;

(4) completion of non-expert discovery;

(5) the filing of motions;

(6) a date for a settlement conference to be attended by trial counsel and, in the discretion of the judge, their clients;

(7) one or more case management conferences and/or the final pretrial conference;

(8) a date by which the case will be ready for trial; trial shall begin on this date unless the court calendar requires another setting; and

(9) any other procedural matter that the judicial officer determines is appropriate for the fair and efficient management of the litigation.

h. Control of Excessive Litigation Costs and Delays

Unless the judicial officer determines otherwise, the scheduling and case management order shall include the following matters designed to control excessive litigation costs and delays:

(1) The specific parameters of anticipated discovery including the number of depositions, the volume of documents expected to be produced, the volume of written discovery and the extent of expert discovery;

(2) Other procedures the judicial officer determines will contribute to orderly pretrial discovery and case preparation including document control and retrieval mechanisms to contain costs, the scheduling of alternating periods for party discovery and mechanisms for fact stipulations to eliminate unnecessary discovery.

B. Setting Early and Firm Trial Dates

1. Early, Firm Trial Dates.

The court accepts as a guideline that trial should take place with 18 months of filing, unless a judicial officer certifies that the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice, or that the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases.

For most cases, the trial date should be set in the scheduling order entered under Federal Rule of Civil Procedure 16.

For all cases, the trial date should be set initially for a specific month. The exact date for trial shall be set at a later time by the court. Once the trial date has been set, no continuances should be granted without compelling reasons.

2. Maintenance of Trial Setting.

a. An established trial date shall not be vacated unless there exists a compelling reason necessitating a continuance.

b. It shall be the policy of the court to utilize all available judicial resources to allow the court to adhere to an established trial date.

3. Settlement Conferences.

At the conference held pursuant to Rule 16 of the Federal Rules of Civil Procedure, the judicial officer shall determine whether a case is an appropriate one in which to invoke one of the following settlement procedures:

a. A conference with the judge or a magistrate judge to be held within a reasonable time;

b. Scheduling the case for a summary jury trial or a mini-trial;

c. The appointment of a special master, after input from the parties;

d. The referral of the case after consultation with the parties, for neutral evaluation, mediation, arbitration, or some other form of alternative dispute resolution.

Judicial officers may make referrals under this section to those persons or entities who, in the opinion of the referring judicial officer, have the ability and skills necessary to bring parties together in settlement. The reasonable fees and expenses of persons designated to act under this section shall be borne by the parties as directed by the court.

At settlement conferences, the parties may be required to attend in person. Any documentation or proposal submitted under this rule shall not become part of the official court record.

Efforts will be made to provide the court with all available information and assistance in regard to programs and personnel who may assist the court in alternative disposition programs.

4. Representation by Attorney with Authority to Bind At the Initial and Interim Pretrial Conferences.

a. Authority to bind on specific topics.

Participating attorneys will be required to have authority to bind the parties on the following matters, that may be discussed at the initial and all other pretrial conferences:

(1) Whether any issue exists concerning jurisdiction over the subject matter or the person, or concerning venue;

(2) Whether all parties have been properly designated and served;

(3) Whether all counsel have filed appearances;

(4) Whether any issue exists concerning joinder of parties or claims;

(5) Whether any party contemplates adding additional parties;

(6) The factual bases and legal theories for the claims and the defenses involved in the case;

(7) The type and extent of damages being sought;

(8) Whether any question exists concerning appointment of a guardian ad litem, next friend, administrator, executor, receiver, or trustee;

(9) The extent of the discovery undertaken to date;

(10) The extent and timing of anticipated future discovery, including, in appropriate cases, a proposed schedule for the taking of depositions, serving of interrogatories and motions to produce, etc.;

(11) Identification of anticipated witnesses or persons then known to have pertinent information;

(12) Whether any discovery disputes are anticipated;

(13) The time reasonably expected to be required for completion of all discovery;

(14) The existence and prospect of any pretrial motions, including dispositive motions;

(15) Whether a trial by jury has been demanded in a timely fashion;

(16) Whether it would be useful to separate claims, defenses, or issues for trial or discovery;

(17) Whether related actions in any court are pending or contemplated;

(18) The estimated time required for trial;

(19) Whether special verdicts will be needed at trial and, if so, the issues verdict forms will have to address;

(20) A report on settlement prospects, including the prospect of disposition without trial through any process, the status of settlement negotiations, and the advisability of a formal mediation or settlement conference either before or at the completion of discovery;

(21) The advisability of court-ordered mediation or early neutral evaluation proceedings, where available;

(22) The advisability of use of a court-appointed expert or master to aid in administration or settlement efforts; and

(23) Whether the parties are willing to consent to trial by a magistrate judge.

b. Additional matters by specific order.

By specific order, a judicial officer also may require participation in a settlement conference immediately after the pretrial conference and may require preparation to discuss any other matter that appears to be likely to further the just, speedy, and inexpensive resolution of the case including notification to the parties of the estimated fees and expenses likely to be incurred if the matter proceeds to trial.

c. Attendance of party.

The judicial officer may require the attendance or availability of the parties, as well as counsel.

C. Final Pretrial Conference

1. Scheduling.

Except as otherwise provided by statute, local court rule, or the judge, a final pretrial conference may be held before the judicial officer assigned to try the case not less than seven (7) days prior to the presumptive trial date.

2. Individuals Attending.

Each party must be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters.

3. Written Submissions/Pretrial Memorandum.

In the absence of a final pretrial conference, the local rules shall control the requirements for the submission of trial materials.

Unless otherwise ordered by the judicial officer or provided by the local rules, the parties are required to file, no later than five (5) business days prior to the final pretrial conference, a pretrial memorandum that shall set forth:

a. A short summary statement of the facts of the case and theories of liability or defense. The statement should not be longer than two pages.

b. A statement of the issues.

c. The names and addresses of all witnesses expected to testify. A witness not listed will not be permitted to testify absent a showing of good cause.

d. If expert witnesses are to be used, a narrative statement of the experts' background.

e. A list of exhibits to be offered at trial.

f. A designation of all depositions or portions of depositions to be read into the record at trial as substantive evidence. Reading more than five (5) pages from a deposition will not be permitted unless the court finds good cause for permitting such readings.

g. Counsel's best estimate on the time needed to try the case.

h. If scheduled for a jury trial:

(1) All proposed questions that counsel request the court to ask on voir dire.

(2) Proposed instructions on substantive issues.

(3) A proposed verdict form.

i. If scheduled for a court trial, proposed findings of fact and conclusions of law. See Rule 52 of the Federal Rules of Civil Procedure.

4. Final Pretrial Order.

The following issues shall be discussed at the final pretrial conference and shall be included in the final pretrial order:

a. Stipulated and uncontroverted facts;

b. List of issues to be tried;

c. Disclosure of all witnesses;

d. Listing and exchange of copies and all exhibits;

e. Pretrial rulings, where possible, on objections to evidence;

f. Disposition of all outstanding motions;

g. Elimination of unnecessary or redundant proof, including limitations on expert witnesses;

h. Itemized statements of all damages by all parties;

i. Bifurcation of the trial;

j. Limits on the length of trial;

k. Jury selection issues;

l. Any issue that in the judge's opinion may facilitate and expedite the trial; for example, the feasibility of presenting testimony by a summary written statement;

m. The date when proposed jury instructions shall be submitted to the court and opposing counsel, which, unless otherwise ordered, shall be the first day of the trial.

5. Trial Planning.

The final pretrial conferences will be used to resolve as many issues as possible prior to the commencement of trial. Prior to the final hearing before trial, or as required by the local rules, the parties are required to submit to the court their proposed jury instructions, voir dire and form of special verdict.

a. Motions in Limine.

Motions in limine must be filed no later than the date specified for submission of trial materials. The court will rule on motions in limine concerning exhibits, testimony, and the use of depositions prior to, or at

trial; and may require resolution of such disputes at the final pretrial conference or final hearing.

b. Trial Practice.

Trial will be conducted in such a manner that conferences outside the presence of the jury are minimized. Counsel shall submit evidentiary motions in writing with supporting memoranda when they require explication or argument. Because of the emphasis on resolving issues prior to trial, fewer interruptions will be necessary. The court will carefully apply Rule 611(a)(2), Federal Rules of Evidence, to limit the introduction of cumulative evidence that would extend the trial needlessly. The court will apply Rule 702 carefully to limit expert testimony to those circumstances will assist the trier of fact, and in which the expert is properly qualified.

IV. DISCOVERY CONTROL; MOTIONS PRACTICE

A. Controlling the Extent and Timing of Discovery

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

The District's Local Rules Committee is currently reviewing the court's case management policies and procedures and proposed amendments to the Federal Rules of Civil Procedure for the purpose of expediting discovery and trial preparation and avoiding inconsistencies between the local rules, federal rules, and this plan. An important goal of the Committee's review will be to provide greater authority to limit pretrial discovery as deemed appropriate to impose and enforce discovery deadlines; and to promote cost-effective practices such as telephonic and video conferencing, the use of document depositories, and scheduling multiple-track discovery to expedite complex matters.

2. Attorney/Party Signatures for Requests to Extend Discovery Deadlines [28 U.S.C. § 473(b)(3)].

All requests for extensions of deadlines for completion of discovery shall be signed by the attorney and the party making the request.

3. Limits on the Use of Discovery [28 U.S.C. § 473(a)(2)(C)].

Although the Advisory Group was generally complimentary about the district's use of magistrate judges, their Report observed that magistrate judges do not typically restrict the amount of discovery, other than to impose deadlines by which discovery must be completed. It was also a finding of the Group that the scope and extent of discovery is rarely addressed at Rule 16 conferences, except as it may relate to the setting of deadlines. Accordingly, it is the court's intent that this plan authorize a proactive role for the judicial officers of the district in pretrial case management.

4. Interrogatories, Depositions, etc. [28 U.S.C. § 473(a)(2)(C)].

The number of interrogatories and depositions shall be established by agreement of the parties or by court order. In the absence of agreement or court order, the number of interrogatories shall be presumptively limited to twenty-five (25), and the number of depositions shall be presumptively limited to ten (10) per side. Such a provision allows the court maximum flexibility in designing limits to fit the individual case. It also, however, sets presumptive limits if the parties cannot reach agreement or if the court does not reach a decision.

5. Methods of Resolving Discovery Disputes/Certification of Efforts to Resolve Disputes [28 U.S.C. § 473(a)(5)].

Every motion or other application relating to discovery made under the Federal Rules of Civil Procedure or local court rules must include certification by counsel that the parties have made a reasonable, good faith effort to resolve the discovery dispute to which the motion or application pertains. Good faith efforts to resolve discovery disputes must include a verbal discussion between counsel.

B. Motions Practice

1. Motions Practice in the Context of the Discovery—Case Management Process.

The judicial officer to whom a case is assigned shall develop a case management plan that establishes a time-frame for disposition of pretrial motions that is conducive to the orderly and efficient disposition of the case, and establishes a deadline by which all pretrial motions must be presented to the court for determination.

2. Obtaining Hearing Date; Notice to Parties.

A motion hearing date and time shall be obtained from the calendar clerk of the judicial officer assigned to the case. A party obtaining a date and time for a hearing on a motion or for any other calendar setting, shall promptly give notice advising all other parties who have appeared in the action so that cross motions may, insofar as possible, be heard on a single hearing date.

3. Form and Length of Motions.

a. Nondispositive Motions.

Unless otherwise ordered by the district judge or magistrate, all nondispositive motions, including but not limited to discovery, third-party practice, intervention or amendment of pleadings, shall be heard by the magistrate to whom the matter is assigned. Hearings may be scheduled by contacting the calendar clerk of the appropriate magistrate judge.

(1) Moving Party; Supporting Documents; Time Limits

No motion shall be heard by a magistrate judge unless the moving party delivers one copy of the following documents to opposing counsel and an original and two copies to the Clerk of Court at least 14 days prior to the hearing:

(a) Notice of Motion
(b) Motion
(c) Proposed Order
(d) Affidavits and Exhibits
(e) Memorandum of Law

Affidavits and exhibits shall not be attached to the memorandum of law, and shall contain a title page designating the title and file number of the action.

(2) Responding Party; Supporting Documents; Time Limits

Any party responding to the motion shall deliver one copy of the following documents to opposing counsel and an original and two copies to the Clerk of Court at least 7 days prior to the hearing:

(a) Memorandum of Law
(b) Affidavits and Exhibits

Affidavits and exhibits shall not be attached to the memorandum of law, and shall contain a title page designating the title and file number of the action.

b. Dispositive Motions.

Unless otherwise ordered by the district judge, dispositive motions in any civil case shall be directed to the judge to whom the case is assigned. Hearings may be scheduled by contacting the calendar clerk of the appropriate judge.

(1) Moving Party; Supporting Documents; Time Limits

No motion shall be heard by a district judge unless the moving party delivers one copy of the following documents to opposing counsel and an original and two copies to the Clerk of Court at least 28 days prior to the hearing:

(a) Notice of Motion
(b) Motion
(c) Proposed Order
(d) Affidavits and Exhibits
(e) Memorandum of Law

Affidavits and exhibits shall not be attached to the memorandum of law, and shall contain a title page designating the title and file number of the action.

(2) Responding Party; Supporting Documents; Time Limits

Any party responding to the motion shall deliver one copy of the following documents to opposing counsel and an original and two copies to the Clerk of Court at least 9 days prior to the hearing:

(a) Memorandum of Law
(b) Affidavits and Exhibits

Affidavits and exhibits shall not be attached to the memorandum of law, and shall contain a title page designating the title and file number of the action.

(3) Reply Memorandum

The moving party may submit a reply memorandum of law by delivering one copy to opposing counsel and an original and two copies to the Clerk of Court at least 5 days prior to the hearing.

c. General Rules

(1) Memorandum Page Limits

No party shall file a memorandum of law exceeding 35 pages except by permission of the court. If a reply memorandum of law is filed, the cumulative total of the original memorandum and the reply memorandum shall not exceed 35 pages, except by permission of the court. Affidavits and exhibits shall not be attached to the memorandum of law.

(2) Rulings on Unopposed Motions

A judicial officer may rule on unopposed motions without hearing at any time after the time for filing an opposition has expired. The judicial officer may also rule on any opposed motion without hearing at any time after the time for filing a reply memorandum has elapsed.

(3) Waiver of Oral Argument

Any party may waive oral argument by giving notice of such waiver to the court and all counsel of record at least three (3) days in advance of the hearing. Unless oral argument is waived, the moving party and all parties filing an opposition to the motion shall attend the hearing. The judicial officer may hear oral argument on any motion by telephone conference. The judicial officer may grant or deny the requested relief for failure by any party to attend the hearing.

(4) Failure to Comply

In the event a party fails to timely deliver and serve a memorandum of law, the court may strike the hearing from its motion calendar, continue the hearing, refuse to permit oral argument by the party not filing the required statement, consider the matter submitted without oral argument, allow reasonable attorney's fees, or proceed in such other manner as the court deems appropriate.

(5) Untimely Filings

Any motion served and filed beyond the motion deadline established by the court may be denied solely on the basis of the

untimely filing, (other than motions made during hearings or at trial).

(6) Sanctions

Filing a frivolous motion or opposing a motion on frivolous grounds may result in the imposition of appropriate sanctions including the assessment of costs and attorneys' fees against counsel and/or the party involved.

4. Case-Dispositive Motions.

Motions that dispose of any claim or defense shall usually be heard and determined by the district judge assigned to the case. When such judge concludes that final adjudication of such motion will be expedited if it is referred to a magistrate judge for report and recommendation, such motion may be referred to the magistrate judge whose report and recommendation shall be filed promptly.

5. Rulings on Motions.

Routine motions filed by the parties shall be determined by the judicial officer as soon as practicable, and in any event within thirty (30) days after filing of the response for non-dispositive motions. The court shall employ its best efforts to dispose of dispositive motions such as summary judgment as soon as possible after hearing or final submission.

V. ALTERNATIVE DISPUTE RESOLUTION PROGRAMS (ADR) AND ADDITIONAL DISPUTE RESOLUTION TECHNIQUES

In 1986, the Federal Practice Committee (FPC) in the District of Minnesota conducted an extensive, formal review of ADR and reviewed ADR plans and results from several jurisdictions, both federal and state. The FPC also invited judges from the Eastern District of Pennsylvania and the Northern District of Ohio to speak to the Committee and to the court about their experience with ADR. After careful deliberation, the Committee recommended that the court not adopt a formal ADR program, and the court accepted that recommendation.

In 1992-93, the Advisory Group once again carefully considered the matter of ADR and reviewed the ADR programs described in the Model Plan for Reduction of Expense and Delay in Civil Cases and in the implementation plans of various districts.

> As noted above, the District is fortunate to have a team of highly experienced, skilled magistrate judges. We believe that encouraging the magistrate judges to fashion appropriate restrictions on pretrial discovery on a case-by-case basis best serves the goal of promoting efficient case management without undue cost or delay. Report at 47.
>
> ...we believe that the Court should resist the temptation to institute mandatory ADR. Id. at 41.
>
> This is not to say that we oppose all ADR for the District. Certain cases, including some of the most complex and time consuming, are especially suited to the use of discovery and settlement special masters, early neutral evaluation, mediation, and even full consensual referral. Such assignments should be made at the expense of the parties and with their consent. Cases should not be referred pursuant to a preset formula, but rather by the informed choice of the referring judge. When combined with a system of strong, settlement-oriented magistrate judges, we believe that this approach will provide greater calendar relief than institutionalized ADR, and without the need for the bureaucratic resources associated with formal ADR programs. Id. at 41.

The Advisory Group concluded that a formal ADR program was not suitable to the District of Minnesota.

> Based on its analysis, the Group recommends that the District not impose mandatory ADR procedures or requirements, either through amendment to the local rules, or by the establishment of mandatory procedures by individual judges. As discussed below, however, we strongly support the use of selective ADR mechanisms on a case by case basis as determined by the individual judge or magistrate judge. Id. at 40.
>
> Although we have no doubt that the case for mandatory ADR is strong in some other districts, we do not believe that it is necessary or sensible in this District at the present time. This recommendation reaffirms the position taken by our predecessor group, the Federal Practice Committee. Id. at 42.

The Court accepts the Advisory Group's recommendation that a formal ADR program is not suitable to the District of Minnesota. The court's interests remain strong in various ADR applications as may be found appropriate through the best efforts of judicial officers and the parties in specific cases and will seek to experiment with various proposals which appear to have merit.

VI. OTHER FEATURES

A. Pro Se Panel

In 1982, the District established a Pro Se Panel of volunteer attorneys to assist pro se litigants in constitutional and civil rights cases. The demands of this plan for thorough pretrial preparation and the breadth and complexity of the proposed amendments to the Federal Rules of Civil Procedure to be effective December 1, 1993, will likely increase substantially demands for such assistance. To meet these anticipated needs, the court will seek resources to recruit volunteer attorneys and to conduct necessary training programs on the new civil rules and local rules.

B. Pro Se Cases and Handbook

The court, in conjunction with the federal bar, will develop a comprehensive information handbook that will be distributed at no cost to parties and especially all pro se litigants. This handbook may include the following subject matter: the importance of legal counsel; alternatives to going to court; a description of the federal court system, forms, rules, and procedures for filing complaints; pleadings, motions, discovery, evidence, necessity of exhausting administrative grievance procedures, and other non-adjudicatory remedies; trial procedures; and the functions of the judicial officer and jury.

C. Relationship of Federal Courts to State Courts

For more than 20 years, the judges of the U. S. District Court for the District of Minnesota and the Justices of the Minnesota State Supreme Court have met on a regular basis to discuss matters of mutual interest, including ways to expedite certification of questions of state law important to disposition of civil cases, scheduling conflicts between court systems, etc. This State/Federal Judicial Council is scheduled to meet next in October 1993, and meetings will continue to be held approximately on a biennial basis.

D. Role of the Calendar Clerk or Case Management Assistant

The calendar clerk or case management assistant (referred to as the courtroom deputy in most districts) plays an essential role in the case management process. It is the

court's intent to provide additional resources to the ongoing training of case management assistants in order to standardize procedures, identify and replicate efficient work methods and procedures, and better serve the practicing bar and the public. Particular emphasis will be placed on the training of case management assistants in the operation of the computerized, chambered-based case management system called CHASER that is scheduled for installation in the fall of 1993 and in other aspects of effective management.

E. Procedures for Monitoring the Court's Caseload

The court took particular notice of the Advisory Group's recommendations regarding the need for improved statistical records and reports to assist judicial officers in case management. Although regular reports of judicial activity have been provided to all judicial officers in the past, the Advisory Group made it clear that the court should expand its statistical activities beyond the objective measurements of case volume and gross disposition rates. Rather, the court must adopt procedures and methods to measure subjective factors such as case complexity and litigation costs. Even in the standard objective statistical categories, the Advisory Group suggested that time frames between sequential milestones must be measured and reported to the court as cases progress through the system if the court is to effectively manage and analyze its caseload on an ongoing basis. To implement the Advisory Group's recommendations, the court will apply additional resources to the improvement of case management information as it may redirect internally, or as it may be successful in obtaining in future budget requests.

As recommended by the Advisory Group, the court will direct the clerk of court to develop and maintain statistical data to better measure the complexity of cases, such as the number of dispositive motions, the involvement of multiple parties or claims, the number of trial days or hours of trial required by individual cases and by various categories of cases, and other factors that contribute to the overall complexity of the caseload. The clerk will maintain and report to the court on a regular basis statistics on when cases achieve readiness for trial status, the date cases are placed on the trial calendar, and the dates trials begin and end. The clerk will also maintain and report information on the date a party requests a hearing for a dispositive motion, the date on which such hearing is held, and the date on which the ruling is issued. The new reports must be in a simple and useable format for each judge to assure timely disposition of motions and cases.

The court will consult with the Advisory Group to develop quantifiable, objective criteria; and non-quantifiable, subjective criteria by which to measure the court's success in reducing delay and cost. The court will request that the Advisory Group monitor such efforts and to advise the court as to its findings and recommendations. In compliance with 28 U.S.C. § 475, and in consultation with its Advisory Group, the court will "assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve litigation management practices of the court."

F. Use of Visiting Judges

The court will utilized visiting judges to assist when appropriate. In the past, visiting judges have generally handled civil matters. The court believes visiting judges could be even more helpful if they also handled criminal matters and thus enable the judicial officers in this District to devote time to the civil docket where the ongoing management of a single judicial officer is very important in a case's progress.

G. Telephone Conference and Video Depositions

A plan shall be devised to identify the nature and circumstances of cases requiring personal appearances, as distinguished from those cases in which video or telephonic conferences and/or hearings are appropriate.

The video taping of the testimony of expert witnesses is encouraged.