



***CIVIL JUSTICE REFORM ACT
EXPENSE AND DELAY REDUCTION PLAN***

***UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI***

EASTERN DISTRICT OF MISSOURI EXPENSE AND DELAY REDUCTION PLAN

Introduction

Having received and reviewed the Report of the Civil Justice Reform Act Advisory Group, the Court thanks and commends that Group and its reporter for their excellent report. The delineation and assessment of conditions in the district have enabled both the Advisory Group and the Court to take a critical look at the Court's operation and the causes of added cost or delay in the district. The Plan adopted by the Court is designed to address those principal causes of cost and delay identified in the Report with which the Court concurs and which are under the Court's control.

The Court acknowledges the number of judicial vacancies and the continuing high volume of civil filings in recent years; however, the Court controls neither the judicial appointment process nor the number of cases filed. Similarly, the number of criminal cases filed, the time constraints of the Speedy Trial Act, and the added demands of the Sentencing Guidelines are outside the Court's authority. Several recommendations made by the Advisory Group are likewise outside the Court's budget or policy authority. The Court, therefore, has focused on factors that can be modified or influenced by changes in Court policy or procedure. Specifically, the Plan will address:

- 1) the implementation of a standardized pretrial case management system coupled with expanded use of magistrate judges;
- 2) the reform of pre-trial litigation practices to reduce cost or delay in federal cases; and
- 3) the processing of prisoner cases.

The Expense and Delay Reduction Plan

The United States District Court for the Eastern District of Missouri, after considering (1) the findings and recommendations of the Advisory Group appointed pursuant to 28 U.S.C. Sec. 478 (Civil Justice Reform Act of 1990), (2) the principles of litigation management and guidelines for cost and delay reduction specified in 28 U.S.C. Sec. 473(a), and (3) the litigation management and cost and delay reduction techniques contained in 28 U.S.C. Sec. 473(b) adopts this Civil Justice Expense and Delay Reduction Plan.

I ASSIGNMENT OF CASES

All civil cases shall be randomly assigned to both district and magistrate judges. Expanded use of magistrate judges in civil cases will result in several benefits. First, the distribution of civil cases among all judicial officers will reduce the caseloads of the district judges and will enable them to engage more actively in pre-trial case management. Second, use of magistrate judges primarily as judicial officers with full responsibility for management and disposition of an expanded caseload will eliminate delays inherent in a referral system. Third, expanded use of magistrate judges will create a more uniform and efficient caseflow by reducing case referrals. A single judge will handle all facets of a case, thereby adding greater predictability to civil case processing.

Under the revised civil case assignment system based on current filings, the Court is hopeful that each district judge will carry a civil caseload of less than 400 cases and each magistrate judge will carry a caseload of 200 or fewer cases. The district judges will remain solely responsible for felony criminal trials. Magistrate judges will remain responsible for misdemeanors with the consent of the defendant, petty offenses, and the majority of criminal pretrial matters referred by a district judge. Magistrate judges will no longer be responsible for civil pretrial matters on referral from a district judge in most civil cases.

Implementation

The clerk will randomly and equally assign cases among the district and magistrate judges and will monitor the distribution of cases according to five tracks. After receipt of the complaint and Track Information Statements from the parties, an experienced deputy clerk will assign each case to the appropriate case processing track. (See Section II - Differentiated Case Management.) Each judge may change the track of any case assigned to that judge.

If a case is randomly assigned to a district judge, the Clerk's Office will notify the attorneys or litigants. The Clerk's Office will also notify the parties that they may consent to trial before a magistrate judge and will provide consent forms. Cases initially assigned to a district judge will require the approval of the assigned district judge before reassignment to a magistrate judge. If the parties consent and the assigned district judge approves, the case will be randomly reassigned to a magistrate judge.

If at the time of filing a case is randomly assigned to a magistrate judge, the Clerk's Office will notify the attorneys or litigants. All parties will be required to return a signed form either consenting to trial before the magistrate judge or opting for reassignment to a district judge. The deadline for submission of these forms will be 20 days after the entry of appearance of the last served party. If a party does not consent and opts for a district judge, then the forms will be removed from the file and the clerk will randomly reassign the case to a district judge.

If a dispositive issue arises in a case assigned to a magistrate judge before all required consents are obtained, the Clerk's Office will temporarily assign the matter to a district judge on a rotating basis for resolution. When such resolution does not dispose of the entire case, the case will be returned to the case pool of the magistrate judge.

If upon filing the complaint, a party includes with the filing a motion which requires the immediate attention of a district judge, e.g., a TRO, the clerk will randomly assign the case to a district judge.

II DIFFERENTIATED CASE MANAGEMENT

The District Court shall implement a differentiated case management (DCM) system for managing each civil case according to its individual requirements. Each civil case filed in this district on or after January 1, 1994 will be assigned to one of five processing tracks that differentiate among civil cases based on objective factors such as the time required for scheduled pretrial events, the preparation required for discovery and disclosure, and the degree of court intervention required for a timely and just resolution of each case.

The following tracks are hereby established:

* **TRACK 1: EXPEDITED** - Case disposition is expected to occur within 12 months of the date of filing, with minimal judicial intervention prior to trial. These cases will usually involve few parties, limited disputed facts, simple discovery/disclosure requirements, and damages with relatively low monetary claims.

* **TRACK 2: STANDARD** - Case disposition is expected to occur within 18 months of the date of filing, with more judicial management than routinely available in expedited cases. There may be multiple parties, substantive factual and legal disputes requiring moderate discovery/disclosure, and significant monetary value in the damage claims. Scheduling conferences will ordinarily be conducted by telephone. Cases on this track which require further attention will be identified and monitored closely by the Court. Most standard cases will move routinely, according to a uniform scheduling order through pretrial stages toward final disposition.

* **TRACK 3: COMPLEX** - Case disposition is expected to occur within 24 months of the date of filing, requiring early and intensive judicial intervention through an individualized case management plan. This relatively small class of cases will be characterized by numerous parties with diverse interests, complicated factual and legal issues, and the potential for extensive discovery/disclosure approved and monitored by the Court. The parties under close supervision by the Court will be expected to design, within guidelines, a detailed plan for management of pretrial stages, including periodic management conferences with the Court. The trial date will be set only upon the Court's assessment of the parties' readiness.

*** TRACK 4: ADMINISTRATIVE -** Case disposition will occur in accordance with the Court's ability to issue reasonably prompt written orders and opinions. Discovery is nonexistent or very limited. Uniform scheduling orders will set deadlines for filing dispositive motions and responses because most cases require only the resolution of legal issues. Administrative appeals, social security cases, non death penalty habeas corpus petitions, and bankruptcy appeals are included in this track.

*** TRACK 5: PRO SE PRISONER CIVIL RIGHTS -** Special case management guidelines will govern matters assigned to this track, in recognition that the processing needs of these cases are unlike other litigation. Because the unique characteristics of these cases go beyond purely scheduling concerns, prisoner pro se cases are treated separately in section V.

DCM IMPLEMENTATION: All parties in civil actions shall complete and file a Track Information Statement (TIS) with their complaint or first responsive pleading. When all TIS documents have been filed, a DCM coordinator in the Clerk's Office will review the case, preliminarily assign a track, and notify the parties in writing of the assignment. In connection with the track assignment, the DCM coordinator may also recommend referral of appropriate cases to an alternative dispute resolution option.

For Track 2 (Standard) and Track 3 (Complex) cases, the assigned judge will usually conduct an initial scheduling conference in person or by telephone pursuant to Rule 16 of the Federal Rules of Civil Procedure. This conference will normally occur no later than 60 days after receipt of the last defendant's responsive pleading. The Court may in its discretion alter the track assignment of the case at this time. The Court will enter a case management scheduling order appropriate for the assigned track at the conclusion of the conference or within ten (10) days. The Court may order referral to an alternative dispute resolution option. In Track 1 and Track 4 cases, the clerk will issue a scheduling order to the parties with notice of track assignment that will be binding on the parties unless modified by the judge assigned to the case.

Failure to comply with any of the terms and deadlines established by a scheduling order may result in the Court issuing a show cause order as to why the case

should not be dismissed. Automated case management reports will monitor DCM deadlines, enabling the Clerk's Office to notify the Court of cases failing to comply with the scheduling order.

III ALTERNATIVE DISPUTE RESOLUTION: EARLY NEUTRAL EVALUATION AND MEDIATION.

Procedures governing early neutral evaluation (ENE), and mediation will be developed in conjunction with the establishment of a pool of panel attorneys (both pro bono and compensated depending on the case) who will serve as evaluators and mediators.

A. Early Neutral Evaluation. Early neutral evaluation is an alternative dispute resolution process designed to bring the parties and their counsel together early in the pretrial period to present case summaries before and receive a nonbinding assessment from an experienced neutral attorney-evaluator. The objective is to promote early and meaningful communication about disputes, enabling parties to plan their cases effectively and assess realistically the relative strengths and weaknesses of their positions. While this confidential environment provides an opportunity to negotiate a resolution, immediate settlement is not a primary purpose of this process.

Referral of cases to ENE will occur when ordered by the Court either when the parties agree to participate, or the assigned judge orders referral to ENE after the first case management scheduling conference.

B. Mediation. Mediation is an informal non-binding dispute resolution process in which an impartial neutral facilitates negotiations among the parties to help them reach settlement. The goal of mediation is the fair, consensual resolution of a dispute in less time and at lower cost than formal court adjudication.

Either upon motion of one or more parties or after a case management conference the Court may by order refer a case to mediation. When an order of referral to mediation is entered, attendance of the parties (or representatives having authority to negotiate a settlement) and counsel is mandatory unless specifically excused by the judge.

IV PRETRIAL CASE MANAGEMENT

Disclosure, Discovery, Scheduling Orders, Case Management Conferences

After consideration of the unanimous position of the Advisory Group, the Court has decided not to implement the mandatory initial disclosure requirements of Fed. R. Civ. P. 26(a)(1) (effective December 1, 1993) in all civil cases. The Court retains the inherent authority to require disclosure by all parties in any civil case by order of a judge. The Advisory Group recommended that the amount of discovery and disclosure should be determined on a case by case basis through the use of an effective scheduling order and appropriate pre-trial conferences. Effective case management requires additional involvement from the Court and early, informed involvement and cooperation from attorneys and litigants.

Case management will depend on the track to which the case has been assigned. Parties shall file a Track Information Statement with the complaint or the initial pleading. Parties may indicate their preference for track assignment on the Track Information Statement. The track assignment will determine discovery and disclosure requirements.

Cases assigned to the expedited track will follow a prescribed written pre-trial schedule. Routine pre-trial conferences will not be scheduled. The judge may refer cases on the Expedited Track to early neutral evaluation or mediation. The judge will determine any deviation from the prescribed schedule. The clerk will issue the expedited scheduling order within 15 days after the entry of appearance of the defendant(s). The Court may defer setting the trial until a date subsequent to entry of the scheduling order. Trial settings are intended to be realistic and firm.

In all standard and complex track cases not governed by Fed. R. Civ. P. 26 (a)(1), the parties shall meet (either in person or by telephone) to prepare a joint proposed scheduling order within 30 days after all served defendants have entered an appearance. The parties shall submit a proposed scheduling order and any unresolved scheduling questions or differences (which must be clearly delineated) to the Court within 40 days after the entry of appearance by the last defendant(s). The plaintiff will be responsible for timely submitting the proposed joint scheduling order to the Court.

The judge will review the case and the proposed scheduling order. Within 14 days after submission of the proposed scheduling order the judge will set a time for a scheduling conference by telephone in most standard cases and in person in most complex cases. The judge will determine the appropriate type of conference.

At the scheduling conference or within ten (10) days after the conference, the judge will enter the Court's scheduling order. The order will: set dates for disclosure of information deemed appropriate by the court; set limits on the number of written interrogatories and depositions; establish a deadline for the filing of dispositive motions; establish additional pre-trial conferences to determine unresolved matters, if needed, or to resolve outstanding motions; and set a realistic and firm trial date. The judge may set forth a procedure to schedule telephone conferences to resolve discovery disputes or request additional conferences or the judge may order a mandatory disclosure/discovery schedule if the parties are unable to comply in a timely manner with a tailored, case-specific schedule.

Reference to Early Neutral Evaluation or Mediation

The judge may refer a case to early neutral evaluation or to mediation after the pre-trial conference. The judge will determine if the scheduling order should be stayed to encourage participation in any settlement effort. Throughout the pretrial process all cases will be given specific reporting or milestone dates for case monitoring purposes even when a case has been referred to early neutral evaluation or mediation.

Motions

To avoid delays caused by unresolved motions, the moving party shall notify the clerk of any motion which is not decided within 60 days after submission. Submission occurs on the date when the last response is filed or the date such response is due. The notice form shall state, "As required by the CJRA Plan, I hereby notify the Court that the referenced motion has been pending since submission for more than 60 days without a ruling."

**V PRO SE PRISONER CIVIL RIGHTS
DIFFERENTIATED CASE MANAGEMENT**

The District Court, recognizing that prisoner civil rights cases comprise a substantial portion of this Court's civil docket and require special processing because of their unique nature, implements the following system of differentiated case management (DCM) for these cases, consistent with the recommendation of the Advisory Group (Report p. 32). A separate DCM system insures that the specific needs of prisoner cases are addressed given limited availability of prisoners for conferences, extra judicial proceedings, and their pro se status.

Pro se prisoner civil rights cases shall be assigned to one of three processing tracks:

*** TRACK 5A: EXPEDITED PRISONER ACTION -**
Disposition is expected to occur within 12 months of the date of filing. These cases involve uncomplicated but contested factual disputes. The pleadings indicate that only limited discovery will be required.

*** TRACK 5B: STANDARD PRISONER ACTIONS -**
Disposition is expected to occur within 18 months of the date of filing. In these cases a limited period of discovery and an early deadline for filing dispositive motions will be set in a scheduling order.

*** TRACK 5C: NON-STANDARD PRISONER ACTIONS -**
Disposition is expected to occur within 24 months of the date of filing. This track includes cases that raise class-wide claims or systemic challenges, or cases which present complicated legal and/or factual issues. In these cases the Court may require the parties to propose a scheduling order including a schedule for completing discovery and filing dispositive motions.

PRISONER DCM IMPLEMENTATION: All parties in prisoner civil rights cases are exempt from the requirement that parties complete and file a Track Information Statement with the complaint, first responsive pleading or motion. The Court will make its track assignments based solely upon review of the complaint.

VI ADOPTION AND IMPLEMENTATION

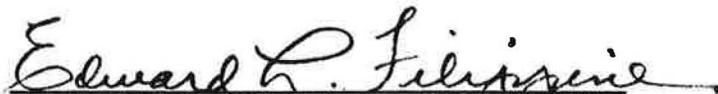
The Court hereby unanimously adopts this CJRA Expense and Delay Reduction Plan. The initial implementation of the Plan shall begin immediately with the dissemination, explanation, and preparation for full implementation of all provisions as to civil cases filed on or after January 1, 1994.

In the event that local rules conflict with provisions of this Plan, the provisions of the Plan shall govern.

Consultation with the Advisory Group by the Court will continue and the Plan may be amended by the Court at any time. Comments or suggestions regarding the Plan should be sent to:

Clerk of Court
United States District Court
1114 Market Street, Room 260
St. Louis, Missouri 63101-2043

SO ORDERED this 30th day of November, 1993.


Edward L. Filippine, Chief Judge
United States District Court
Eastern District of Missouri