

ALTERNATIVE DISPUTE RESOLUTION PROGRAM
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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REMARKS: Here is the Proposed General Order for the Case Management Pilot and accompanying notice, both of which will published for public comment.

NOTICE AND CALL FOR COMMENT
PROPOSED CASE MANAGEMENT PILOT PROGRAM
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Responding to the mandate of the Civil Justice Reform Act of 1990 to "experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution," the United States District Court for the Northern District of California, working closely for several months with an Advisory Group of about 35 local lawyers, has developed a Case Management Pilot Program whose rules the Court expects to begin applying to most civil cases filed on or after July 1, 1992.

The purposes of this Notice and Call for Comment are to alert the bar that implementation of the pilot program will begin July 1, 1992 and to solicit comments on and suggestions for improving the content of the pilot rules. Those rules are set forth in detail in Proposed General Order No. 34, copies of which are available, at no charge, from the office of the Clerk of Court, 450 Golden Gate Avenue, San Francisco, CA, 94102 (415-556-3031).

All of the active judges of the Court, and two of the judges on Senior Status (Judges Peckham and Williams), will participate in the pilot. The pilot rules will apply to virtually all of the mainstream civil actions filed after July 1, 1992, except those types of cases listed in Appendix B to Proposed General Order No. 34.

The core features of the pilot will include:

- (1) a requirement that service of process be effected within 50 days of the filing of the complaint,
- (2) suspension of formal discovery activity until after the first case management conference, unless all parties stipulate otherwise,
- (3) compulsory disclosure by all parties of certain core information within 100 days of the filing of the complaint,
- (4) a requirement that lead trial counsel, shortly after completing initial disclosures, conduct an extensive meet and confer to identify key issues, assess the state of the evidence, consider settlement and ADR options, and develop a proposed case management plan, including proposed limits on discovery,

- (5) a requirement that counsel jointly file a case management proposal before the court's first Rule 16 conference, and
- (6) a requirement that the court conduct a comprehensive case management conference within 130 days of the filing of the complaint, to be followed promptly by an initial case management order fixing the fundamental directions of the case development process.

Comments on the proposed pilot program are welcome. They should be sent to Richard W. Wieking, Clerk of Court, United States District Court, Box 36060, 450 Golden Gate Avenue, San Francisco, CA 94102. Comments must be received by Friday, June 5, 1992.

PROPOSED

GENERAL ORDER NO. 34

CASE MANAGEMENT PILOT PROGRAM

I. PURPOSE

The Northern District of California is one of three federal courts specifically mandated by Congress, under the Civil Justice Reform Act of 1990, to "experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution." 28 U.S.C. §471 Note. The Case Management Pilot Program (the "Pilot") is designed to enable parties to civil litigation who are proceeding in good faith to resolve their disputes sooner and less expensively.

The Pilot rules address three major causes of expense and delay: (1) excessive reliance on motion work and formal discovery to determine the essence of claims and defenses and to identify supporting evidence, (2) inattention to civil cases in their early stages, and (3) insufficient involvement of clients in decision-making about the handling of their cases.

Accordingly, the Pilot strives to replace some formal motion and discovery proceedings with early exchange of core information and meaningful dialogue about the merits and posture of the cases, including Case Management Proposals which reflect the clients' cost-benefit analyses and which suggest specific limits on formal discovery.

II. SCOPE

All civil actions filed on or after July 1, 1992 that are assigned to the judges listed in Appendix A, except those types of cases listed in Appendix B, shall be included in the Pilot and governed by this General Order. Pilot cases also shall remain subject to this court's Local Rules, but the provisions of this General Order shall supersede any conflicting provisions of the court's Local Rules, General Orders and Standing Orders. The major deadlines are set forth in Appendix C.

III. SERVICE

A. Timing

No later than 50 days after filing the complaint, plaintiff shall serve, on each defendant, the summons, complaint, a copy of this General Order, the Case Management Scheduling Order, and the booklet entitled "Dispute Resolution Procedures in the Northern District of California."

B. Filing Proof(s) of Service

Proof(s) of service of process shall be filed with the court no later than 55 days after the complaint is filed.

C. Order to Show Cause

If by the 65th day after the complaint was filed, plaintiff has not filed proof of service showing that at least one defendant has been served, the court automatically will issue an Order To Show Cause Why The Complaint Should Not Be Dismissed.

D. Additional Parties

Any party who, after the filing of the original complaint, causes a new party to be joined in the action shall promptly serve on that new party a copy of all items described in paragraph A of this Section. Such additional parties must make the disclosures set forth in Paragraph B of Section V no later than 100 days after the filing of the complaint, or no later than 50 days after they were served with the complaint, whichever occurs later.

IV. TEMPORARY SUSPENSION OF ALL FORMAL DISCOVERY ACTIVITY

Except by stipulation of all parties, or on written order of the court, no formal discovery shall be initiated until after the initial Case Management Conference.

V. DUTIES OF DISCLOSURE AND SUPPLEMENTATION

A. Timing of Initial Disclosures

No later than 100 days after the complaint was filed, each party, regardless of whether defendant(s) has filed an answer, shall make the disclosures set forth in paragraph B of this section, to every other party who has been served.

B. Content of Initial Disclosures

After making in good faith such inquiry and investigation as is reasonable under the circumstances, each party shall disclose:

1. the full name, title, address, and telephone number of each person known to have discoverable information about factual matters relevant to the case;
2. all unprivileged documents in the party's custody or control that are then reasonably available that tend to support the positions that the disclosing party has taken or is reasonably likely to take in the case;
3. copies of any apparently pertinent insurance agreements;
4. all documents and other evidentiary material in the party's custody or control that are then reasonably available that relate to damages claimed by another party, except punitive damages; and
5. a computation by claimant(s) of any category of damages sought, and all documents and other evidentiary material then reasonably available on which that computation is based.

C. Protective Order

If one or more parties desires protection of documents or other information disclosed under paragraph B of this section, the parties shall enter into a reasonable protective order to govern the disclosed documents or information until further order of court.

D. Duty to Supplement

Each party shall have a continuing duty to supplement its disclosures on a timely basis. In a Case Management Order, the court may, on its own initiative or upon request, set time intervals for supplementation.

E. Certification Requirement

Every disclosure and supplementation shall be signed by at least one attorney of record, whose signature constitutes a certification that, to the best of his or her knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the disclosure or supplementation is complete and correct as of the time it is made.

VI. MEET AND CONFER RE CASE MANAGEMENT

No later than 110 days after the complaint was filed, lead counsel for each party shall meet and confer to:

A. Principal Issues and Evidence

1. Identify the principal factual and legal issues that the parties dispute.
2. Discuss the principal evidentiary bases for claims and defenses.

B. Alternative Dispute Resolution

Discuss utilization of alternative dispute resolution procedures.

C. Disclosure

1. Discuss the feasibility and usefulness at this time of disclosing or of describing by category and location all reasonably known, relevant and discoverable documents (other than those already disclosed), including documents then known to be in the custody or control of non-parties.
2. Discuss whether additional disclosure of documents or other information should be made and, if so, when.

D. Discovery and Motions

1. Identify any motions whose early resolution would likely have a significant effect on the scope of discovery or other aspects of the litigation.
2. Plan at least the first phase of discovery, specifically identifying areas of agreement and disagreement about how discovery should proceed.
3. Recommend limitations on each discovery tool and, if appropriate, on subject areas, types of witnesses, and/or time periods to which discovery should be confined.
4. Recommend protective orders, if appropriate.

E. Scheduling

1. Recommend dates by which discovery should be completed, dispositive motions filed, the final pretrial conference held, and the trial commenced.
2. Recommend the intervals for supplementation of disclosures.

These items also are set forth on the Form for Case Management Proposal attached as Appendix D.

VII. THE CASE MANAGEMENT PROPOSAL

No later than 120 days after the complaint was filed, counsel shall serve and file a concise, joint Case Management Proposal, in the Form attached as Appendix D, which shall:

A. Principal Issues

Identify the principal factual and legal issues that the parties dispute.

B. Alternative Dispute Resolution

Identify the alternative dispute resolution procedure which counsel intend to use, or report specifically why no such procedure would assist in the resolution of the case.

C. Disclosure

1. List by name and title the witnesses who have been disclosed.
2. Describe by category the documents that have been disclosed or produced.
3. Describe by category and location all then reasonably known, relevant and discoverable documents (other than those already disclosed or produced), including documents then known to be in the custody or control of non-parties, or indicate why providing such descriptions would not be feasible or useful at this juncture.
4. Set forth the computations of damages.

D. Discovery and Motions

1. Identify any motions whose early resolution would likely have a significant effect on the scope of discovery or other aspects of the litigation.
2. With respect to at least the first phase of discovery, describe the areas of agreement and disagreement, and identify the reasons for any disagreement. (The areas of disagreement will be resolved, if possible, at the Case Management Conference.).

3. Recommend limitations on each discovery tool and, if appropriate, on subject areas, types of witnesses, and/or time periods to which discovery should be confined.

E. Scheduling

1. Recommend dates by which discovery should be completed, dispositive motions filed, the final pretrial conference held, and the trial commenced.
2. Recommend the intervals for supplementation of disclosures.

VIII. THE INITIAL CASE MANAGEMENT CONFERENCE

Within 130 days of the filing of the complaint, or on the first date thereafter available on the judge's calendar, the judge shall conduct the initial Case Management Conference, which shall be attended by lead trial counsel for each party. The judge may enter an order requiring the parties to participate, in person or by telephone, in the conference.

At the conference the court shall:

A. Principal Issues

Identify, at least tentatively, the principal factual and legal issues in dispute.

B. Alternative Dispute Resolution

Consider referring the case to an alternative dispute resolution procedure.

C. Disclosure

1. Review the parties' compliance with their disclosure obligations.
2. Consider whether to order additional disclosures.

D. Discovery and Motions

1. Determine whether to order early filing of any motions that might significantly affect the scope of discovery or other aspects of the litigation.
2. Determine the plan for the first stage of discovery.
3. Impose limitations on each discovery tool and, if appropriate, on subject areas, types of witnesses, and/or time periods to which discovery should be confined.

E. Scheduling

1. Fix time limits to join other parties and to amend the pleadings, to complete any additional disclosures, to conclude discovery, and to file motions.
2. Fix the intervals for supplementation of disclosures.
3. Fix the date for the next conference with or hearing by the court.
4. Fix the date or the time period (by month and year) for commencement of the trial.

IX. THE INITIAL CASE MANAGEMENT ORDER

No more than ten calendar days after the initial Case Management Conference, the judge shall enter the initial Case Management Order, which shall address all of the matters covered in the initial Case Management Conference.

X. SANCTIONS

The court has authority to impose sanctions for violation of any provisions of this General Order, including violations of the duties to disclose and/or supplement.

XI. RECONSIDERATION BY DISTRICT JUDGES OF RULINGS ON DISCOVERY MATTERS BY MAGISTRATE JUDGES

A party who seeks reconsideration by the assigned district judge of a ruling on a discovery matter by a magistrate judge shall do so by filing a motion in conformity with Local Rule 410-2. Unless otherwise ordered by the assigned judge, no response need be filed and no hearing shall be held. The judge may deny the motion by written order at any time, but shall not grant the motion without giving the opposition an opportunity to brief the matter. If no order denying the motion or setting a briefing schedule is made within 15 calendar days of the filing of the motion, the motion shall be deemed denied.

XII. TENTATIVE RULINGS; NOTICE RE ISSUES ON WHICH JUDGE WANTS ORAL ARGUMENT TO FOCUS

- A. Any judge may elect to issue a tentative ruling with respect to any motion scheduled for hearing. A judge who makes a tentative ruling shall assure that it is communicated to counsel in advance of the time fixed for oral argument on the matter.
- B. When a judge identifies, before a hearing on a motion, issues or other matters on which he or she wants oral argument to focus, or about which he or she wants additional information or authority, the judge will endeavor to provide advance notice to counsel in writing, by telephone, or by such other means as the judge deems appropriate.

XIII. RELATIONSHIP BETWEEN THE CASE MANAGEMENT PILOT RULES AND THE COURT'S ARBITRATION AND EARLY NEUTRAL EVALUATION PROGRAMS

A. Cases Assigned to Arbitration

Except as may be otherwise ordered in individual matters, counsel in cases that are subject to this General Order and that are assigned to arbitration under Local Rule 500 shall comply with the provisions of both that Local Rule and of this General Order. In addition, the assigned judge shall hold a status and trial setting conference within 30 days of a timely filed demand for trial de novo after an arbitration hearing.

B. Cases Assigned to Early Neutral Evaluation (ENE)

Except as may be otherwise ordered in individual matters, counsel in cases that are subject to this General Order and that are assigned to the ENE program shall proceed simultaneously in compliance with both this General Order and General Order No. 26 (governing ENE). No later than 115 days after the filing of the complaint, the ADR program directors shall communicate with the assigned judge concerning the timing of the ENE session. The assigned judge will then determine whether to proceed with the initial Case Management Conference on the schedule contemplated in this General Order or to postpone that conference for a short period to permit the litigants and the court to capitalize on the contributions that can be made through the ENE process.

XIV. PROHIBITION AGAINST MODIFYING PILOT REQUIREMENTS SIMPLY BY STIPULATION; REQUIREMENT OF COURT ORDER

Except as expressly provided in Section IV above, provisions of this General Order may be modified or vacated only by written order of a judge of this court following a timely showing that the interests of justice clearly would be harmed if the provisions in question were not modified or vacated. Counsel may contact the chambers of the assigned judge to determine whether he or she will hear requests to modify provisions of this General Order by telephone conference.

XV. REQUIREMENT OF CLIENT APPROVAL FOR CERTAIN CONTINUANCES

Any request to continue the trial shall be signed by both lead trial counsel and the client.

XVI. FILING MOTIONS DOES NOT RELIEVE PARTIES OF PILOT PROGRAM OBLIGATIONS

The filing of a motion of any kind does not relieve any party of the obligations imposed by this General Order.

APPENDIX A

PARTICIPATING JUDGES

The following judges are participating in the Case Management Pilot:

Chief Judge Thelton E. Henderson
Judge Robert F. Peckham
Judge Spencer M. Williams
Judge Marilyn Hall Patel
Judge Eugene F. Lynch
Judge John P. Vukasin, Jr.
Judge Charles A. Legge
Judge D. Lowell Jensen
Judge Fern M. Smith
Judge Vaughn R. Walker
Judge James W. Ware
Judge Sandra Brown Armstrong
Judge Barbara A. Caulfield
Judge Ronald M. Whyte

APPENDIX B

CATEGORIES OF CASES EXCLUDED FROM THE PILOT

The following types of cases, based on information set forth on the Civil Cover Sheet, will be excluded from the Pilot: cases filed by pro se plaintiffs, cases remanded from appellate court, reinstated and reopened cases, and cases in the following nature of suit categories: Prisoner Petitions (510 - 550), Forfeiture/Penalty (610 - 690), Bankruptcy (422 - 423), Social Security (861-865), Contracts (only nos. 150 - 154), Civil Rights (only no. 441), and other Statutes (only nos. 440, 460, 810, 875, 890, 891, 892, 894, 895 and 900).

APPENDIX C

CASE MANAGEMENT PILOT

TIMELINE

<u>DAY¹</u>	<u>ACTIVITY</u>
0	complaint filed, case assigned to pilot judge
50	last day to serve all defendants
55	last day to file proof(s) of service
65	court issues Order to Show Cause Why The Complaint Should Not Be Dismissed if plaintiff has not filed proof that at least one defendant has been served
100	last day to complete required disclosures
110	last day to complete meet and confer re case management
120	last day to file and serve Case Management Proposal
130²	judge conducts initial Case Management Conference
140³	judge issues initial Case Management Order

¹ These deadlines represent the number of days after the filing of the complaint. All activities must occur no later than the listed date, unless the court orders otherwise.

²The date for the initial Case Management Conference will be set as close as feasible to the 130th day after the filing of the complaint.

³The judge will issue the initial Case Management Order within 10 calendar days after the Case Management Conference.

APPENDIX D

FORM OF CASE MANAGEMENT PROPOSAL

[to be added]