REPORT OF THE TASK FORCE ON THE CIVIL JUSTICE REFORM ACT

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LITIGATION

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REPORT OF THE TASK FORCE ON THE CIVIL JUSTICE REFORM ACT, SECTION OF LITIGATION, AMERICAN BAR ASSOCIATION

In 1990, Congress enacted the Civil Justice Reform Act, 28 U.S.C. § 471 et seq., for the purpose of encouraging district-by-district solutions to what were perceived as the growing problems of cost and delay in federal court civil litigation. The Act required each district to create an Advisory Committee charged with analyzing local problems and proposing specific solutions, and required courts thereafter to adopt district-specific Expense and Delay Reduction Plans. These plans were to be adopted in two phases. An initial phase, comprised of so-called "pilot" districts and "early implementation" districts, was to be completed by December 31, 1991; all remaining districts were required to adopt plans by December 31, 1993.

Based upon detailed reports issued by their respective Advisory Committees, 34 districts[1/] implemented Expense and Delay

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1/ The thirty-four districts which were analyzed are: District of Alaska; Eastern District of Arkansas; Eastern District of California; Northern District of California; Southern District of California; District of Delaware; Southern District of Florida; Northern District of Georgia; District of Idaho; Southern District of Illinois; Northern District of Indiana; Southern District of Indiana; District of Kansas; District of Massachusetts; Western District of Michigan; District of Montana; District of New Jersey; Eastern District of New York; Southern District of New York; Northern District of Ohio; Western District of Oklahoma; District of Oregon; Eastern District of Pennsylvania; Western District of Tennessee; Eastern District of Texas; Southern District of Texas; District of Utah; District Court of the Virgin Islands; Eastern District of Virginia; Southern District of West Virginia; Northern District of West Virginia; Eastern District of Wisconsin; Western District of Wisconsin; and the District of Wyoming.

Reduction Plans by the Phase I deadline. The Advisory Committee reports generally acknowledge that some problems of cost and delay emanate from legislative action or inaction beyond the direct control of courts (e.g., the increasing federalization of criminal statutes, the increasing trial burden caused by mandatory sentencing guidelines, and the failure of Congress and the President to fill judicial vacancies and provide needed resources for our civil justice system). The resultant plans have dealt, therefore, only with aspects of the cost and delay problem that can be controlled by judges, litigants, and lawyers.

The plans enacted to date, comprising roughly one-third of the federal districts, reflect the flourishing variety which Congress sought to promote in solving the problems of cost and delay. These plans, and the experience that courts will have using the plans in coming months, will define the base line from which the remaining districts will implement their own plans by the end of 1993.

The Section of Litigation Task Force on the Civil Justice Reform Act has prepared this report to facilitate consideration by remaining districts of the various solutions proposed in plans issued to date. We have -- somewhat arbitrarily -- divided those solutions into three areas. Part I of this report considers various case management techniques to be tested in the various districts. These management techniques are by definition

discretionary, relying upon the judgment of judges and lawyers on a case-by-case (or type-of-case by type-of-case) basis.

Part II considers certain discovery limitations which, rather than implemented through discretionary exercise of management judgment, have been implemented by a more formal (and rigid) rules process. While there is some overlap between Parts I and II, Part II focuses on issues of mandatory disclosure and numeric limits on the discovery devices available under Rules 30, 33, 34 and 36.

Finally, Part III considers the range of alternative dispute resolution mechanisms considered and adopted in the various plans. These techniques attempt to divert cases from a trial process in order to achieve expedited solutions short of trial and thereby relieve congestion in the court dockets.

In general, we have not attempted to evaluate pros and cons of the competing and in some cases conflicting solutions adopted in the 34 district courts thus far. The purpose of the Civil Justice Reform Act is to encourage this diversity in the first instance, with the expectation that actual experience with diverse solutions will ultimately yield a more consistent set of perhaps nationally applicable solutions. Consistent with that objective, our report seeks to categorize and analyze the various plans without necessarily reaching normative judgments. We leave such

evaluation to a later day, when experience with these plans has been more comprehensive.

I. IMPROVED CASE MANAGEMENT

Case Management -- from the outset of litigation through trial -- involves the making of choices, and the various district courts have in some cases made rather different choices regarding how best to manage litigation. We examine these choices under the headings of mandatory case management plans, differential case management, phased discovery, disposition of motions, early and firm trial dates, expert witness discovery and trial testimony, and movement away from live testimony. More detailed "side-by-side" analyses are included in Appendix A ("App. A").

A. Mandatory Case Management Plans/Conferences

Most of the plans provide for discovery/case management conferences, and many specifically expand the scope of the conferences already contemplated by Rule 16. Integral to this process in many districts is the adoption of a specific written discovery/case management plan. Approximately one-half of the plans require some sort of "meet and confer" session prior to the initial pretrial conference, followed by submission to the court of a joint discovery plan, status report or other written assessment of the case. (See App. A-1). By contrast, other courts were content to rely on a less formal process. One court,

for example, has declined to require such a written submission prior to the status conference on the grounds that such a requirement in every case is unnecessary (N.D. Ind.). Another court (W.D. Mich.) expressly requires that a joint status report and discovery plan be prepared and submitted after the initial case management conference.

Whether or not a written submission is required, most of the plans emphasize the importance of early pretrial orders establishing procedures and deadlines crafted specifically for the particular case. The subject matter of these procedures is considered under the individual subject headings set forth below. In each case, we have summarized the choices made by the individual districts among the principal case management techniques referenced in the CJRA.

B. Differential Case Management ("DCM")

Section 473(a)(1) of the CJRA calls for plans to adopt "systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case."

In simplified terms, differential case management ("DCM") recognizes that all cases are not alike, and that the amount and type of court intervention will vary from case to case. DCM requires some method to predict the likely complexity of each case early in its "litigation life." Thereafter, each case is assigned to a certain category based upon the degree of court intervention that will be necessary, the amount of discovery that is anticipated, the time necessary to prepare the cases for trial, or some combination of all these factors.

DCM is most frequently implemented by assigning cases to a pre-established category or "track". A DCM "tracking" typically uses a set of standard criteria applied to either certain specific types of cases, to general categories of cases, or to both specific types of cases and general categories. The criteria applied within a DCM "track" may include some pre-set maximum time from filing to trial, and/or absolute or presumptive limits on the types and/or numerical limits on discovery, sometimes with specific time limits for completion of discovery.

Within the district plans reviewed (see App. A-2), most categorize or track cases based upon their individual characteristics. Although not all the districts assign names to them, most commonly these categories can be broken down into expedited cases, standard cases, and complex cases, thus categorizing cases from least to most complex. More specific details are contained in the side-by-side comparison (App. A-2).

The judicial officer assigned to the case in question normally assumes the responsibility of determining its complexity for case tracking purposes. That officer is supposed to consider a number of factors, including: the type of lawsuit involved; the number and capacities of the parties; the factual and legal issues (including their technical complexity) raised by the pleadings; the volume and nature of the documents, the amount of third party and foreign discovery necessary; the number of deposition witnesses and their locations, the need for expert testimony; and the nature of pretrial issues. Some districts, such as the District of Massachusetts, describe this process of determining complexity in great detail, while others are less specific. Once case complexity has been determined, the cases are assigned to categories and a time frame for proper resolution can be more realistically established.

Generally, the expedited track cases are relatively non-complex. These are cases which require little discovery and only three (3) days or less at trial. They are usually to be set for trial within six (6) to eight (8) months of the filing of the initial complaint. Some specific examples of these cases as set forth in the plans include social security appeals, enforcement of judgments, prisoner petitions, forfeiture and penalties, and bankruptcy matters.

Standard cases encompass the majority of civil cases. These are usually to be set for trial within one year of the filing of the initial complaint and are expected to last no more than three (3) to ten (10) days at trial. Specific types of cases identified as "standard" are contracts, civil rights, discrimination, asbestos, admiralty, labor, copyright and trademark, selective service, simple tort, and other statutes (e.g., Federal Tort Claims Act cases).

Complex cases are usually to be set for trial no more than eighteen (18) months after the initial filing of the complaint. These cases comprise less than ten (10) percent of civil cases. The types of cases listed in this category are antitrust, patent infringement, class actions, major disasters, environmental issues, securities, tax suits, and malpractice cases.

Although a few of the districts (for example, the Eastern District of California, the Northern District of Indiana, the Eastern District of New York, and the Eastern District of Arkansas) reject the principle of differential case management, the majority seem to believe it can only improve the judicial system. Most of the district plans, like those of the Southern District of Florida, the Northern District of Georgia and the Southern District of Illinois, establish three (3) categories of cases; a few establish just two (2) tracks. Other districts establish as many as five or six tracks of cases. Nevertheless,

the similarities of the case management plans far outweigh their differences.

DCM tracking obviously has a close relationship to the establishment of early firm trial dates, as well as to limitations on discovery. In some ways, tracking can be viewed as "off the rack" suits that fit similar but not identical people with varying degrees of accuracy -- a good fit in some areas, not quite right in others. Tracking is designed to facilitate case-specific case management by endeavoring to apply like principles to like cases.

C. Phased Discovery

The Civil Justice Reform Act suggests "phased discovery" as a means for managing complex cases in a more cost-effective and efficient manner. Specifically, the Act instructs the advisory groups to consider certain "principles and guidelines of litigation management and cost and delay reduction," including the following:

> (3) for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer -- . . .

(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to --

(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

(ii) phase discovery into two or more stages; . . .

28 U.S.C. § 473(a) (emphasis added).

"Phased discovery" is a concept that has been utilized by some courts on an ad hoc basis, especially in complex cases, for some time now. This concept reflects the view that discovery, in some cases, should occur in a prescribed sequence to promote a more expeditious proceeding. The Manual For Complex Litigation (Second) (1985) sets out various procedures that may be considered "phased discovery." It states:

Sequencing of Discovery. Another common control is to mandate, typically through the establishment of time schedules (which may overlap or be discrete), that discovery be conducted in a prescribed sequence. Among the sequences that have been useful are the following:

"Wave" discovery. Discovery generally proceeds in a more orderly fashion if counsel first determine the types and locations of documents and other physical evidence . . . and the identity and location of witnesses to be examined. This "first wave" of discovery may be conducted on an informal basis, or pursuant to a standing order or local rule calling for disclosure of evidence supporting a party's position without need for a discovery request, or by interrogatories, depositions, and document production as needed. After this has been completed, additional "waves" of discovery on the merits may be conducted. . . .

Subject matter priorities. The parties may be directed to conduct discovery on certain issues, or for particular time periods or geographical areas, before discovery on other issues, time periods, or areas. . . .

Sequencing by parties. Although discovery by all parties ordinarily proceeds concurrently, sometimes one or more parties should be allowed to proceed first. For example, if summary judgment on some issue may be appropriate early in the litigation, but the opposing party needs some time and discovery before responding to the motion, that party may be given priority in conducting discovery. The court may establish periods in which particular parties will be given exclusive or preferential rights to take depositions, and in

multiple litigation may direct that discovery be conducted in some cases before the others.

Forms of discovery. Sometimes the court prescribes a sequence for particular types of discovery -- for example, first, requests for documents; then depositions; finally, interrogatories and requests for admissions.

Id. at § 21.421.

The district courts that have adopted CJRA plans have addressed the issue of phased discovery in different ways. (See App. A-3). Most plans at least provide for some form of scheduling order which sequences discovery or provides for mandatory disclosure sequenced in time. But a full one-half of the plans address the issue in a more specific manner.

In the eighteen plans that directly address phased discovery, there are basically three approaches. One approach, adopted by nine of the plans, provides for pretrial, scheduling, or case management conferences to address phased discovery. Second, four of the plans direct the parties to submit a case management plan addressing the subject of phased discovery; this plan may later be considered at a conference. Finally, five of the plans direct the court to consider the desirability of phased discovery in a general way as part of its case management strategy.

The plans also describe different purposes for which phased discovery might be utilized. Some are somewhat philosophical, describing broad reasons why phased discovery may be appropriate. Other plans are very practical, delineating when and how discovery should be phased. In sum, the plans each point to one or more of the following reasons for utilizing this method of case management:

1. To aid in the expeditious resolution of the case;

2. To conduct discovery concerning dispositive issues that could narrow the scope of the case;

3. To separate discovery in class actions to provide for class discovery, then merits discovery;

4. To separate discovery to provide for discovery on certain claims/issues early on and other claims/issues later on;

5. To avoid duplication, delay, and/or needless costs;

6. To separate discovery as to liability and damages;

7. To separate fact and expert discovery;

8. To provide first for discovery aimed at facilitating settlement, and if no settlement is reached, to provide next for discovery necessary for trial preparation.

9. To attain the goals set out in the Manual for Complex Litigation.

Of the eighteen plans that provide for phased discovery, ten indicate that this technique should be considered in connection with complex cases or "special management" cases. The other eight plans contemplate phased discovery being considered with respect to all cases.

The Massachusetts plan is unique. It greatly encourages the use of phased discovery in every case. It provides that after initial document disclosure the judicial officer has discretion to phase further discovery. Despite the plan's reference to judicial discretion in utilizing the technique, however, Rule 2.05 of the plan actually mandates the phasing of written discovery as follows: (1) interrogatories restricted to listed topics; (2) expansion of information sought in interrogatories if more practical than other discovery methods; (3) then, allow contention interrogatories and expert interrogatories. The main purpose the plan cites for phasing discovery in this way is to allow first for discovery essential to settlement decisions, and next trial discovery if settlement should fail.

The remaining plans, although not directly addressing phased discovery, generally give judicial officers enough discretion to utilize this technique in appropriate cases. Nevertheless, the fact that phased discovery is not explicitly mentioned in a substantial number of districts, and is treated only as an optional device in most of the remaining districts, suggests a continuing uncertainty about the utility of the device. It appears that phased discovery is most likely to be embraced in certain types of complex cases, but may not receive broader approval.

D. Deadlines for Filing and Disposition of Motions

Several of the plans recognized that delays in rulings on motions increase litigation costs. Specifically, the plan for the Western District of Michigan observes that:

> [w]ithout a timely opinion from the court [on dispositive motions], lawyers are compelled to continue expensive discovery procedures to protect the interests of their clients. Non-dispositive motions that languish tend to slow down the entire litigation process. Some of these motions have the potential for dynamic impact on the outcome of a case, including the facilitation of earlier settlements . . .

(p. 111). The authors of the above plan conclude that costs to litigants would be decreased by an automatic stay after a dispositive or a non-dispositive motion has remained in court without decision for more than 60 days.

The Plan for the District of Wyoming imposes even more stringent requirements on judges. Under that plan:

> The judges shall rule on dispositive motions at the conclusion of oral hearings and have an order prepared immediately thereafter by the prevailing party, when possible. A dispositive motion shall be taken under advisement only when complex issues exist. The Chief Judge shall monitor the progress of dispositive motions to ensure they are promptly resolved. When appropriate, the Court shall consider staying all pretrial discovery proceedings during the pendency of motions filed pursuant to Fed. R. Civ. P. Rule 12(b).

(pp. 9-10).

More generally, a majority of districts establish, or set out procedures for establishing, specific deadlines for all or some categories of motions. (See App. A-4). Most frequently specified are dispositive motions, although the scheduling of such motions varies among the districts and often is subject to judicial discretion.

A number of courts attempt to impose specific deadlines on judges for issuing rulings on motions. Some require a ruling within a certain number of days after hearing (e.g., N.D. Calif., D. Idaho), or within a specified time after the motion is filed or briefing is completed (e.g., S.D. Ill., D. Kansas, N.D. Ohio, E.D. Texas, E.D. Va.). Finally, a few courts attempt to discipline judges in the decision making process, by for example requiring a judge to issue a decision or submit a status report to the chief judge, or by staying the action until certain motions are resolved (e.g., D. Mich., D. Mon., S.D. N.Y., N.D. Ohio, D. Wyo.).

Several districts specify procedures for ensuring that motions are timely heard. A few districts (N.D. Ohio, W.D. Tenn., E.D. Va.) establish "motion days" or otherwise permit the parties to notice motions for hearing on a date chosen by counsel. Other courts establish other mechanisms for bringing motions to hearing (e.g., upon request by counsel (e.g., S.D. Fla., Idaho)). By contrast, some courts have moved in the other direction, specifying that there will be no oral argument on motions except by order of the court (e.g., S.D. Ill., N.J.).

E. Early and Firm Trial Dates

Perhaps the reform advocated most vigorously by litigants and the private bar has been the setting of early and firm trial dates. It is therefore somewhat surprising that this subject gets

relatively scant treatment in the majority of plans adopted to date. (See App. A-1). Many of the plans speak in terms of the "presumptive" or "customary" setting of trial dates within a certain period of time after commencement of the action. A number of the plans emphasize that setting the trial day will continue to be the court's prerogative.

Nevertheless, there is some evidence in most of the plans that the setting of firm trial dates will be given increasing priority and importance. At least 14 plans specify a date of 18 months or less as the absolute, presumptive or expected deadline for getting all (or nearly all) cases to trial. A few districts (e.g., E.D. Va., N.D. Ga.) guarantee that time limit. Other courts that do not specify particular time frames encourage the judge to establish early and firm trial dates, and set out the process by which those trial dates will be set.

The setting of early, firm trial dates is often considered in the context of differential case management objectives. For example, the authors of the differentiated case management plan for the Northern District of Ohio reason that placing cases on different tracks depending upon their degree of complexity would result in early resolution dates:

> [t]he Northern District should implement a DCM program whereby civil cases will be channeled

> into processing tracks that provide the appropriate level of judicial, staff and attorney attention needed to move the cases to disposition. . . .

(p. 31). For example, a contract case where the documentary evidence is limited will be placed on the expedited track and will be completed within nine months of filing. (p. 23) On the other hand, a products liability action with several defendants, voluminous documentary evidence and numerous fact and expert witnesses will be placed on the complex track and will be completed within 24 months after filing. (p. 24).

Some plans establish procedures designed to ensure that the trial date, once set, will not be postponed. For example, the plan of the District of Montana provides for such a procedure, which includes possible reassignment of the case to another judicial officer for trial. In the Northern District of Ohio, if the presiding judge cannot hear a case when scheduled for trial, the case will be reassigned and tried before any available judge.

G. Discovery and Trial Restrictions On Expert Witnesses

Only seven districts adopted any provision directly regulating expert trial testimony (N.D. California, Delaware, S.D. Illinois, Massachusetts, E.D. New York, S.D. Texas, Virgin Islands). (See App. A-3). Most of these provisions merely set

forth the presently existing right of the court, in its discretion, to (1) limit or restrict the use of expert testimony, (2) limit the length of time for presentation of such evidence or the number of witnesses, (3) rule on the admissibility of expert testimony at trial, or (4) provide for some procedure to object to an expert witness's qualifications (Delaware, Massachusetts, S.D. Texas). Three districts affirmatively prohibit an expert's testimony from being inconsistent with or going beyond the fair scope of the facts known and opinions disclosed in pretrial discovery (S.D. Ill., Mass., Virgin Islands).

The Northern District of California has special limitations and procedures for expert witnesses which apply to all bench trials and may be considered for jury trials, requiring that direct examination of experts be submitted and exchanged in narrative form ten days before pretrial conference II, with rulings on objections to such statements made at pretrial conference II; providing for approved narrative statements to constitute the direct examination of experts; and providing that proposed Rule 702 be adopted with respect to experts.

The Eastern District of New York provides that, in bench trials, expert testimony may be ordered to be submitted in writing with only cross-examination done before the fact finder and may be taken by deposition where appropriate. The District of the Virgin Islands "encourages" videotaping of expert witness testimony. The district provides further that where a firm trial date has been

set at least 45 days in advance of trial and the expert testimony has not been videotaped, if the witness is unavailable for trial, the parties will be precluded from using the expert's testimony at trial absent good cause.

Many of the plans propose the regulation of pretrial discovery concerning expert witnesses. Each of the plans discussed above plus seven additional districts[2/] regulate expert witness discovery which will, of course, have some impact on the utilization of such testimony at trial. (See e.g., S.D. Ill.). In addition, in some districts expert testimony is made the subject of mandatory disclosure requirements, as discussed in Part II, infra.

H. Movement Away from Live Testimony

Apart from the issue of experts (subpart G, supra), only two advisory committee reports refer to substituting testimony by affidavit, statement, report or deposition for live witnesses.

First, the Report of the CJRA Advisory Group for the Western District of Tennessee of September 26, 1991 makes the following recommendation:

2/ The additional seven districts are Northern District of Georgia, Idaho, Southern District of Indiana, Western District of Oklahoma, Eastern District of Texas, Northern District of West Virginia, and Eastern District of Wisconsin.

> In lengthy trials, in-court presentation of evidence should be reduced by greater use of stipulations, and by narrowing presentation of proof to the issues which are actually in dispute, and eliminating witnesses whose testimony is purely cumulative or directed to non-material issues. pp. 58, 120.

Second, the Advisory Group for the Western District of Texas has made a number of recommendations under the topic of "Trial Procedures", pp. 81-90, but made the following comment:

> We conclude, however, that many of the procedural reforms that purport to shorten the litigation process and to reduce costs make little sense and can be implemented only at the risk of substantially undermining the right of litigants to a fair trial. Proposals that would restrict drastically the opportunity of citizens to obtain and present evidence to support or defend claims are fundamentally inconsistent with the very notion of due process of law. Moreover, several of these Proposals are gimmicky shortcuts offering no realistic prospect of significant savings in costs or time. Finally, we have concluded that the trial phase of the

> litigation process has not itself been a significant cause of unnecessary cost and delay in the Western District. Trials in the Western District are already among the most efficient in the nation, with the vast majority consuming fewer than three days.

After recommending against imposing limits in advance of trial on the number of witnesses a party may call, or increasing the authority of judges to limit the time for case presentations, the Western District of Texas Advisory Group discusses proposed Rule 43 of the Federal Rules of Civil Procedure, which authorizes presentation of direct testimony in narrative or affidavit form in non-jury cases, and makes the following recommendation:

> To the extent use of the procedures specifically authorized by proposed Rule 43 is limited to allowing voluntary use of affidavits with respect to witnesses whose credibility is not at issue, it is an acceptable means of expediting trial. This objective is already usually achieved through use of stipulations in the pretrial order. We recommend against, however, any requirement that a party put on a witness by affidavit, statement, report or deposition during direct examination ....

In addition, this group suggests broader use of depositions at trial as a means of reducing costs and expediting trial proceedings. It concludes with a recommendation that Rule 32 of the Federal Rules of Civil Procedure, which already authorizes use of depositions in a variety of ways (such as to present testimony of an unavailable witness or to impeach or limit an adverse witness's testimony), be amended to eliminate unavailability of the witness as a condition for use of such depositions. The Group says:

> "Presenting testimony by deposition is generally more efficient than by live testimony. If the proponent chooses to present an otherwise available witness by deposition, there is no harm to allowing this more efficient means of eliciting testimony given that opposing parties can call the witnesses live for cross-examination...."

The Group notes further, however, that there should be no requirement that evidence be presented by deposition because to do this would deprive the parties of the opportunity to present evidence in what is usually the most effective, revealing manner - "through live testimony."

II. REVISION OF DISCOVERY PROCEDURE

A. Automatic Disclosure

Many of the Expense and Delay Reduction plans developed by the various districts require automatic disclosure by the parties of certain information.[3/] (See App. B-1, B-2). This disclosure is given many names, among them automatic disclosure, automatic pre-discovery disclosure and mandatory discovery. As one attorney has aptly noted, the difference between automatic disclosure and mandatory discovery is not dissimilar to the fine line between a necessary party and an indispensable party -- the distinction is a gray area at best.

Similar to the semantics of "automatic" vs. "mandatory", the nuances of language used by the different plans in their disclosure requirements are subtle. Yet, these subtleties can greatly impact the type of disclosure required. What, for example, is the difference between documents that are "likely" and those that are "reasonably likely" to bear significantly on the claims and defenses? How does a "general description" differ from a

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3/ The 15 plans that provide for some kind of automatic disclosure are: Northern District of California, District of Delaware, District of Idaho, Southern District of Illinois, Northern District of Indiana, District of Massachusetts, District of Montana, Eastern District of New York, Southern District of New York, Western District of Oklahoma, Eastern District of Pennsylvania, Eastern District of Texas, District of the Virgin Islands, Northern District of West Virginia, and District of Wyoming. The remainder of the plans do not, as of this time, provide for automatic disclosure.

"description"? Is providing a "description" of an insurance agreement tantamount to providing its "contents"? And, importantly, upon whom does the duty of interpretation fall? These and other ambiguities leave the area of automatic disclosure ripe for controversy.

In the accompanying side-by-side comparisons, we have chosen to examine six areas of automatic disclosure as defined in the 15 plans that require some form of automatic disclosure: (i) documents and other tangible things; (ii) expert witnesses; (iii) other witnesses; (iv) insurance agreements; (v) claims and damage theories; and (vi) timing. Each area is dealt with separately, and the text of each applicable plan for that form of required disclosure is noted. (See App. B-1, B-2). This is not an exhaustive list, but it should highlight the ambiguities and variations that the plans present in the disclosure area.

It is worth explaining that many of the plans adopt some form of the "reasonably likely to bear upon" language contained in the draft disclosure rules then being considered by the Advisory Committee on Civil Rules of the Judicial Conference. Those draft rules have now been superseded by a new phrasing recently approved by the Advisory Committee, requiring disclosure of certain information "relevant to disputed facts alleged with particularity in the pleadings. . . ." Thus, districts that have yet to adopt plans may wish to consider the more recent formulation by the Advisory Committee.

B. Time And Numerical Limits In Discovery

The district court plans address in varying ways proposals for (a) numerical limits on interrogatories and depositions, (b) duration limits on depositions and (c) limits on the time in which discovery must be completed. (See App. B-3, B-4). Most plans contain no such limitations although, as noted below, the local rules in many district courts already have certain limits. The CJRA plans that do impose some discovery limits break down as follows:

1. Six plans have some form of limits on the number of interrogatories.

2. Three plans have some form of discovery cut-off date.

3. One plan limits the number of requests for admission.

4. One plan limits the number of requests for production.

5. Two plans have some form of limits on the duration of depositions.

6. Three plans have some form of limits on the number of depositions.

In addition to these proposals, the local rules of many federal district courts already contain a variety of discovery limitations. These limitations, which are described in our side-by-side comparison (see App. B-5), can be summarized as follows:

1. Fifty-seven districts limit the number of interrogatories.

2. Fifteen districts have a discovery cut-off date.

3. Fifteen districts limit the number of requests for admissions.

4. One district limits the number of requests for production.

5. One district limits the duration of depositions.

6. One district limits the number of depositions.

The CJRA advisory groups have articulated a variety of reasons both for and against discovery limits. Those that recommended such limits did so for the following reasons:

1. Abusive and excessive discovery exists because counsel act to further their client's interests. [E.g., District of Idaho.]

2. Counsel are concerned about malpractice claims. [E.g., District of Idaho.]

3. Discovery is conducted by inefficient and/or inexperienced attorneys. [E.g., Eastern District of Wisconsin.]

2. Limits require counsel to plan early. [E.g., Western District of Wisconsin (Dissent).]

3. Limits focus counsel's attention on disposition of the case and not on trial.

4. Depositions are costly. [E.g., District of the Virgin Islands.]

The reasons given against limits on discovery include:

1. Limits may actually drive up the costs of litigation because counsel who might otherwise have used limited discovery might feel they have to take advantage of the full allowable scope of discovery. [E.g., Eastern District of New York, Eastern District of Pennsylvania, Southern District of Texas.]

2. Limits might drive up the costs of litigation because there would be a corresponding increase in motions about applying the limits in particular cases. [E.g., District of Massachusetts.]

3. Limits are too restrictive. [E.g., District of Massachusetts, Eastern District of Pennsylvania.]

4. Counsel should have the discretion to decide discovery limits on a case-by-case basis. [E.g., Western District of Wisconsin; Eastern District of New York.]

5. Judicial officers should have the discretion to decide discovery limits on a case-by-case basis. [E.g., District of Massachusetts; District of Montana; Eastern District of New York.]

6. Specific rules can be avoided by creative lawyers. [E.g., Southern District of New York.]

7. There is little discovery abuse; new rules are therefore not required. [E.g., Western District of Oklahoma.]

8. Existing rules are sufficient to control discovery. [E.g., District of Oregon.]

9. Most cases do not involve significant discovery; many others require only the most perfunctory discovery. Broadly applicable rules are therefore not necessary for most cases. [E.g., Southern District of Texas.]

10. Justice in some cases may require what appears to be excessive and abusive discovery. [E.g., Southern District of Texas.]

11. There is little empirical evidence about the relationship between limits on discovery, costs and just outcomes. Without this evidence, it is very difficult to formulate specific rules. [E.g., Southern District of Texas, District of Utah.]

12. Attorney professionalism is what is required to reduce excessive and abusive discovery; the lack of attorney professionalism will defeat any specific rules. [E.g., Southern District of Texas.]

13. Limits on interrogatories may adversely affect less wealthy litigants who rely on interrogatories instead of costlier depositions. [E.g., District of Idaho.]

Given the broad difference of opinion on this issue, it is fair to say that over the next few years the district courts will be experimenting with a wide range of rules, some imposing

discovery limits and others not. It remains to be seen whether, after this experimentation, there will emerge a national consensus either for or against increased numeric limitations on discovery.

III. ALTERNATIVE DISPUTE RESOLUTION

Most of the Expense and Delay Reduction plans seek to increase the use of alternative dispute resolution ("ADR") processes. (See App. C). The ADR processes considered by the thirty-four districts analyzed generally fall into the following seven categories: settlement conference; early neutral evaluation; mini-trial; reference to a special master; summary jury trial; mediation; and arbitration. This analysis compares the components of each category as applied by the various districts, as well as provisions which are not amenable to categorization and thus are discussed in a section entitled "Miscellaneous".

A. Settlement Conference

Federal Rule of Civil Procedure 16(c) provides that the participants in a pretrial conference "may consider and take action with respect to . . . (7) the possibility of settlement . . . ." At least fifteen of the district court plans contain provisions to reinforce Rule 16's recommendation by requiring or encouraging some type of formal, supervised settlement conference (as opposed to private settlement

discussions between the parties). (See App. C-1). It is noteworthy that, of all the ADR processes, it is in the case of the settlement conference that the plans most frequently give the court authority to compel the parties to participate.

Most of the provisions relating to settlement conferences provide instruction regarding at least three elements:

(1) how the conference is to be invoked;

(2) who is to oversee the conference; and

(3) who must attend the conference.

The provisions with respect to each element vary widely, however.

With respect to how the conference is to be invoked, most of the plans provide that the courts have the power, either compulsory or discretionary, to compel the parties to participate in a settlement conference.[4/] A settlement conference may be:

- mandatory by local rule (the Western District of Oklahoma);

4/ With respect to every category of ADR process, it should be noted that the plan of the Northern District of Ohio recommended authorizing the Judicial Officer to mandate the use of ADR programs, without specifying particular forms of ADR.

- directed by the court (generally at the pretrial conference) (the Eastern District of Wisconsin, the District of Massachusetts, the Southern District of Indiana, the Southern District of California, the Northern District of West Virginia and the Eastern District of New York);

- available either upon request of the parties or at the direction of the court (the Northern District of Indiana and the District of Montana); or

- available upon request of the parties (the District of Wyoming and the District of Idaho).

With respect to who is to oversee the conference, plan provisions include:

- a judge or magistrate judge (the Eastern District of Wisconsin, the Eastern District of California, the Eastern District of New York, the District of Montana, the District of Idaho and the Northern District of California);

- a magistrate judge (the Western District of Oklahoma and the District of Wyoming);

- the court (the Northern District of Indiana);

- "another judicial officer" (the District of Massachusetts); or

- a mediator, attorney-mediator, magistrate judge, or any consenting trial judge (the District of Kansas).

With respect to who must attend the conference, the provisions include:

- the parties (in person or by telephone) (the Eastern District of Wisconsin);

- the parties, or their authorized representatives (the District of Montana);

- trial counsel and a person authorized to settle the case (the Western District of Oklahoma, the Southern District of West Virginia and the District of Idaho [party or authorized representative may be available by telephone]); or

- a person authorized to settle the case (the District of Wyoming, the District of Massachusetts, the District of Kansas and the Southern District of California).[5/]

5/ The Northern District of Illinois Plan directs the judge to consider requesting the attendance of a person authorized to settle the case (either in person or by telephone).

The District of Utah Plan does not add any new procedures because it believes it has in place an effective settlement conference process. That process has characteristics of mediation and is presided over by a judge (other than the trial judge).

Finally, the plans of two districts -- the Northern District of West Virginia and the District of Idaho -- provide for "settlement weeks." While the District of Idaho Plan declines to require formal settlement conferences in all cases, it provides for the Court to select cases to participate in settlement week. Neutral attorneys will serve as settlement masters, either on a volunteer basis or for a nominal fee to be paid by the parties. Settlement weeks in the Northern District of West Virginia are to be conducted pursuant to the rules currently in force in that district.

B. **Mini-Trial**

A mini-trial is a proceeding in which selected representatives for each party, or an impartial third party, are presented with an abbreviated version of the parties' positions. After the presentations, the merits of the dispute are discussed and a non- binding advisory opinion is issued. Like the summary jury trial, a mini-trial is a means of providing the disputants

with an early evaluation of their respective cases, and thereby developing a basis for realistic settlement negotiations.[6/]

The plans of only three districts -- the District of Massachusetts, the Northern District of Indiana and the Southern District of California -- recommend expanding the use of mini-trials.[7/] Moreover, the recommendations of the first two districts mentioned above are qualified. (See App. C-3).

The District of Massachusetts Plan recommends use of mini-trials only when the parties consent. The Northern District of Indiana recommends "cautious" use of mini-trials, limited to cases which would be unusually expensive to try. The plan of the Northern District of Indiana does not state explicitly that the Court may compel the parties to participate in a mini-trial, but it would apparently give the Court that authority, since the plan states that the use of mini-trials, even with the consent of the parties, generally should be limited.

In contrast to the tentative approach used in the Northern District of Indiana and the District of Massachusetts, the plan of

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6/ Expense and Delay Reduction Plan, District of Massachusetts, p. 76.

7/ The plans of five other districts -- the District of Utah, the Southern District of New York, the Western District of Tennessee, the Southern District of Texas and the Western District of Wisconsin -- provide for the use of ADR programs, specifically including mini-trials, but without further elaboration. Local Rule 44 of the Western District of Michigan currently provides that a case may be "selected" for a mini-hearing.

the Southern District of California authorizes the Court to compel the parties to submit to a non-binding mini-trial in any case where the Court finds that the potential judgment does not exceed $250,000 and that the use of a mini-trial is likely to resolve the case. No other plan contains a similar provision.

C. Mediation

Mediation is a process by which an impartial third party is appointed by the court "in an effort to assist in reconciling a civil dispute. The impartial mediator, working with the parties and their representatives, may offer interpretation and advice and allow the parties to reach a mutually acceptable agreement as to particular issues, or the entire controversy."[8/]

Generally, the plans encourage the use of mediation: the plans of at least fifteen of the thirty-four districts provide for some use of mediation.[9/] (See App. C-3). After the settlement conference, mediation is the ADR process which the plans most frequently make mandatory.

8/ Expense and Delay Reduction Plan, District of Massachusetts, p. 76.

9/ Nine federal districts currently employ mediation: the Southern District of California, the District of Connecticut, the District of Columbia, the Middle District of Florida, the District of Kansas, the Western District of Oklahoma, the Eastern District of Pennsylvania and the Eastern and Western Districts of Washington.

In spite of the wide acceptance of mediation in theory, a number of districts seem uncertain on how to implement mediation programs; a number of the proposed implementation plans are vague. For instance, the plan of the Southern District of Florida recommends creating a Mediation Committee to formulate a plan to implement a mediation program. The plan of the District of Utah recommends that the Court experiment with court-supervised mediation for a limited period, in a form yet to be determined. Similarly, the Northern District of California plan pledges to establish a court-annexed pilot mediation program. An implementation plan, including guidelines for case selection, standards for use and sources and selection of mediators, is to be completed sometime in 1992. The Eastern District of New York plans to establish a voluntary court-annexed mediation program. The plan of the Western District of Tennessee merely authorizes the Court to refer cases to ADR, including mediation. The District of Montana has explicitly declined to endorse the establishment of court-annexed mediation, but its plan recommends that the Court maintain a list of court-approved mediation masters.

The plans of four districts -- the Western District of Wisconsin, the Southern District of California, the Southern District of West Virginia and the Southern District of New York -- give the courts authority to compel the parties to submit to mediation.[10/] The District of Delaware Plan recommends that the

[10/] Of course, it is possible that those districts whose plans

Court adopt a rule requiring the Court to consider at the Rule 16 meeting whether the matter could be resolved by voluntary mediation.

In the Northern District of Ohio any civil case may be referred to mediation when the status of discovery is such that the parties are generally aware of the strength and weaknesses of the case; or at any earlier time by agreement of the parties and with court approval. A party may object to referral to mediation for good cause by filing a written request for reconsideration within 10 days of the date of the court's order referring the case to mediation. Moreover, if all parties advise the court that they would prefer court-annexed arbitration to mediation, the court may order the case to arbitration. In addition, if all the parties advise the court that they would prefer to use a private ADR process (including private arbitration or mini-trial) the court may permit them to do so at the expense of the parties as long as they submit to the court an agreement executed by the parties providing for the conduct of the ADR process and file with the court within 10 days of completion of the ADR process a written report signed by the neutral, or by the parties, if no neutral is used. The court has also established administrative procedures for selection of mediators, written submissions, attendance, the conduct of the conference and confidentiality.

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recommends that detailed mediation plans be developed would also so authorize the court.

In the Western Districts of Oklahoma and Michigan, local rules already provide for court-annexed mediation. (The plan of the latter, a designated case management district ["DCM"], notes that mediation would frequently be appropriate for standard track cases.) Similarly, the Eastern District of Pennsylvania equates court-annexed mediation with an early settlement conference. An existing local rule governing court-annexed mediation will govern such proceedings.

The plans of the District of the Virgin Islands, the District of Massachusetts, the Southern District of California and the Southern District of New York provide the most detailed mediation plans. The Virgin Islands plan provides that the presiding judge may order any civil matter or selected issues to be referred to mediation upon consent of the parties. Like the Virgin Islands plan, the Massachusetts plan provides that the judicial officer may refer matters to mediation upon consent of the parties.

In contrast, the plan of the Southern District of West Virginia provides that mediation is mandatory if the judge deems the case appropriate for mediation; the plan of the Southern District of New York, a DCM district, also provides that mediation shall be mandatory for all expedited cases and two-thirds of all civil cases (with specified exceptions) wherein only money damages are sought; and the plan of the Southern District of California provides that half of all simple contract and tort cases, where the potential judgment does not exceed $100,000, and half of all

trademark and copyright cases, be referred to non-binding "arbitration/mediation."

The Virgin Islands plan further includes detailed recommendations governing the operation of the program and the rights and duties of the parties and the mediator. Interestingly, the Virgin Islands plan forbids the parties' counsel from participating in the mediation conference. In contrast, the Massachusetts plan provides that counsel may meet with the mediator; the Southern District of West Virginia plan provides that trial counsel must meet with the mediator.

The plans of the Virgin Islands, Massachusetts, Southern District of West Virginia and the Eastern District of New York also provide that mediators should be compensated; the Eastern District of New York Plan states that this compensation should be at the mediators' ordinary rates. The Eastern District of Pennsylvania recommends instituting modest compensation for mediators if the program proves successful. The plan of the Southern District of New York does not provide for compensation to mediators, but does give them credit for pro bono service. The Southern District of California requests that its arbitrator/mediators serve without compensation.

Finally, like the Virgin Islands plan, the plans of Massachusetts and the Southern District of West Virginia provide that mediation proceedings shall be confidential, with no communication

District of Tennessee, the Western District of Michigan, the Southern District of California, the Northern District of West Virginia, the Southern District of West Virginia, and the District of Idaho. (See App. C-4). A twelfth district, the District of Montana, would like to undertake the development of an early neutral evaluation program but lacks sufficient resources. A thirteenth district, the Southern District of Texas, has considered the possibility of an early neutral evaluation program but has chosen, pursuant to the recommendation of its Advisory Group, to experiment with a different alternative dispute resolution technique. The same is true for the District of Wyoming.

The Northern District of Ohio plan provides that any civil case may be referred to early neutral evaluation. The case may be selected for ENE by the court at the case management conference or any time on the court's motion, the motion of the parties or by stipulation of all parties. Rules set out the administrative procedures for selection of the evaluator and scheduling of the evaluation session.

There also are specific rules dealing with the neutrality of the evaluator, and the written submissions which are to be submitted before the evaluation session. The written submissions, which are not to exceed 10 pages, include identification of the parties' representative, identification of any legal or factual issues whose early resolution might reduce the scope of the

in connection with the mediation (not otherwise discoverable) admissible as evidence should the case ultimately proceed to trial. The plans of the Virgin Islands, Massachusetts, and the Southern District of New York provide processes for termination of the mediation.

D. Early Neutral Evaluation Program

The early neutral evaluation program involves the presentation of the legal and factual basis of a case to a neutral court representative selected by the court in a non-binding conference conducted early in the litigation. The evaluator should identify the primary issues in dispute, clarify areas of agreement, articulate a frank assessment of the relative strengths and weaknesses of the respective parties' positions, assess the value of the case, help formulate a cost effective case plan, and explore the possibility of settlement. The assessments and recommendations of the evaluator of the early neutral evaluation program are purely advisory. They are not to be communicated to the court and have no binding effect on discovery, motion practice, or other aspects of trial preparation.

There are at least eleven district plans which indicate intentions to experiment with early neutral evaluation programs: the Northern District of Indiana, the Southern District of New York, the Western District of Wisconsin, the Eastern District of New York, the Northern District of California, the Western

dispute or contribute to settlement and a description of contemplated discovery. The statement may also include any other information the party believes useful in preparing the evaluator and other parties for a productive session. The written submission is not to be filed or shown to the Court. The plan also provides that the parties are to respond "fully and candidly in a private caucus to questions by the evaluator "on such topics as the estimated cost, including legal fees, to that party of litigating the case through trial, witnesses (both lay and expert), damages, and discovery plans.

The entire ENE process is confidential, and the parties and the evaluator are not to disclose information regarding the process, including settlement terms to the court or to third persons unless all parties otherwise agree. The parties, counsel and evaluators may, however, respond to confidential inquiries or surveys by persons authorized by the court to evaluate the ENE program. Moreover, the process is to be treated as a compromise negotiation for purposes of the Federal Rules of Evidence and state rules of evidence.

E. Summary Jury Trials

A summary jury trial is a non-binding process in which the parties briefly present their cases to a jury, and the jury deliberates and renders a decision. The jury's decision is then used by the parties as an aid to settlement.

In the Northern District of Ohio any civil case triable to be jury may be assigned for summary jury trial. The plan provides for advance structure of the summary jury trial. Among the subjects to be considered are scheduling, presiding judge, submission of written materials, attendance, size of jury, voir dire, opening statements, transcripts of recordings, case presentations, jury instructions, jury deliberations, debriefing of jurors, settlement negotiations, trial and limitation on admission of evidence. There is also a separate rule for a summary bench trial for cases not triable to a jury. A summary bench trial "is a court-annexed pretrial procedure intended to facilitate settlement consisting of a summarized presentation of a case to a judicial officer whose decision and subsequent factual and legal analysis serves as an aid to settlement negotiations."

The District of Massachusetts also appears to be one of the few districts to endorse fully the use of the summary jury trial. That district's plan permits the use of a summary jury trial either upon agreement of all parties or upon the judicial officer's determination that a summary jury trial would be appropriate, even in the absence of the agreement of all parties. There are six jurors on the panel of a summary jury trial in the District of Massachusetts, unless the parties agree otherwise, and the panel is authorized to issue an advisory opinion regarding: (a) the respective liability of the parties; (b) the damages of the parties; or (c) both the respective liability and damages of

the parties. The advisory opinion is not binding and is not appealable, unless the parties agree otherwise.

The majority of other districts which use a summary jury trial recommend that it be used with caution and only in particular circumstances. (See App. C-6). In the Southern District of Indiana and the Western District of Oklahoma, for example, a summary jury trial (even when consensual) is encouraged only in a case where the actual trial would be unusually expensive, either because of its length or because of the stakes involved, or where the potential for resolution of a case will be increased. Likewise, in the Southern District of California, the judicial officer is authorized to order a summary jury trial only where he or she finds that the potential judgment does not exceed $250,000 and the use of the procedure will likely resolve the case.

The Eastern District of New York Plan discourages the use of the summary jury trial altogether. That Plan cites to the Advisory Group's conclusion that the summary jury trial has not been established with a sufficient degree of clarity to justify its use as an official part of the functioning of the Court. In the District of Utah, the summary jury trial is being used on an "experimental" basis to determine whether it is in demand or not.

Finally, it should be noted that the Seventh Circuit has concluded that federal trial courts have no authority to compel an

unwilling party's participation in a summary jury trial. See Strandell v. Jackson County, Illinois, 838 F.2d 884 (7th Cir. 1987).

F. Reference to Special Masters

The special master procedure appears to be one of the least popular alternative dispute resolution techniques. Only three district plans -- those of the Northern District of Georgia, the Northern District of California, and the Eastern District of New York -- appear to encourage the implementation of the special master procedure. (See App. C-7).

The Northern District of Georgia seems to have the most definitive guidelines for the use of the special masters procedure. That district Plan authorizes the parties in complex litigation to agree jointly upon the selection, appointment, and payment of a special master who is: (1) authorized under a specially tailored Order of Reference to control and manage discovery, conduct a trial of the action, and enter Findings of Fact and Conclusions of Law dispositive of the case; and (2) authorized to render a decision which is binding on the parties. The rules and findings of a special master are reviewable by the Court and can be reversed only if clearly erroneous.

The Northern District of Georgia Plan also recommends that the judge may initiate appointment of a special master in complex

cases, in compliance with the provisions of Fed. R. Civ. P. 53, and may develop a list of persons qualified to serve as a special master from which the parties can select. The special masters on the judge's list are to be paid out of government funds, while the special masters chosen by the parties from outside the list are to be paid by the parties pursuant to a prior agreement.

G. Court-Annexed Arbitration

There are at least six districts which either encourage or have adopted a mandatory court-annexed arbitration program. (See App. C-8). These districts include: the Northern District of Georgia, the Eastern District of Pennsylvania, the Western District of Oklahoma, the District of Delaware, the Southern District of New York, and the Western District of Michigan.

A mandatory court-annexed arbitration program is non-binding. The parties get a neutral evaluation without the risk of compromising the perceived neutrality of the trial judge. Both sides are put in the position of operating on the same information. The intent is to narrow the issues, to spur more settlements or, at a minimum to lead to shorter, more focused, trials.

The Northern District of Georgia has established eligibility standards for arbitrators in court-annexed arbitration. To

qualify to serve as an arbitrator, one must have: (1) been admitted to the practice of law in Georgia for a period of not less than ten years; (2) committed, for not less than five years, fifty percent or more of his or her professional time to matters involving litigation or be a former judge; and (3) satisfactorily completed a training program for arbitrators approved by the judges of the Northern District of Georgia.

The Northern District of Georgia and the Eastern District of Pennsylvania have also established provisions for removing a case from the court-annexed arbitration program. In the Northern District of Georgia, a judge may, sua sponte or upon motion by a party, remove a case from the arbitration program because of (a) complex legal issues; (b) the dominance of legal issues; or (c) for other good cause. The Eastern District of Pennsylvania's court- annexed arbitration program provides for timely court or other neutral intervention if the parties are not able to resolve their disputes more quickly among themselves.

H. Arbitration

At least seven districts recommend arbitration as an alternative dispute resolution technique. (See App. C-9). These districts include the Southern District of California, the Eastern District of California, the District of Idaho, the Eastern District of New York, the District of Delaware, the District of Utah, and the District of New Jersey.

Arbitration has long been authorized by federal statute. In arbitration, the arbitrators (usually consisting of a select group of federal practitioners) conduct a hearing under relaxed rules of evidence. They then render a binding or non-binding advisory opinion (depending on the district) on the merits of the case and, where appropriate, determine an award. Arbitration has often been viewed as an attractive alternative to litigation limits the involvement of the judicial officers, diverts cases from the pretrial process, and allows parties to submit their disputes to a neutral individual. It is often an attractive alternative because the procedures are simplified and the hearing is held quickly.

If a party is dissatisfied with an arbitration award in the Eastern District of New York, the Western District of Oklahoma or the District of Idaho, he or she may obtain a trial de novo. If the party seeking the trial de novo in the Eastern District of New York does not obtain a more favorable result than at arbitration, that party is liable for the arbitrators' fees (unless permission was granted to proceed in forma pauperis). If a demand for a trial de novo is not made in the District of Idaho within thirty days, the arbitration award becomes a non-appealable judgment.

In three of the districts which have published the "amount in controversy" requirement for arbitration, the amount varies from $100,000 or less (Eastern District of New York and Southern District of California) to $150,000 or less (District of Idaho).

In the District of New Jersey, the parties may consent to the arbitration of any civil action, regardless of the amount in controversy.

The Southern District of California requires that the case be an even-numbered contract, tort, trademark or copyright case. The District of Idaho requires that the case be a contract or tort case. The Eastern District of New York allows any claims meeting its amount in controversy requirement except for social security cases, prisoners' civil rights cases, and actions asserting constitutional rights.

In the Northern District of Ohio any civil case may be referred to arbitration. Specific provisions describe the conduct of the hearing, the right to a transcript or recording, place of hearing, time of hearing, authority of the arbitrators and ex parte communications. Also, any party may demand a trial de novo in the district court by filing with the ADR administrator a written demand containing a short, plain statement of the reasons for the demand. A judge is not to admit at the trial de novo any evidence that there had been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding unless the evidence would otherwise be admissible under the Federal Rules of Evidence or the parties have otherwise stipulated.

The court rules also describe the mechanism for assessment of costs. Unless a party is proceeding informa pauperis or is the United States, a party requesting a trial de novo must deposit with the ADR administrator a sum equal to the administrators' fees in advance payment of costs. The sum deposited is returned to the party demanding trial de novo if the party obtains a final judgment more favorable to the arbitration award or assigned judge determines that the demand for trial de novo was made for good cause.

Finally, the District of New Jersey has designated certain civil actions that cannot be part of the arbitration program. Such cases are ones where: (1) the case is based on an alleged violation of a right secured by the Constitution of the United States; or (2) a case is jurisdictionally based, in whole or in part, on 28 U.S.C. § 1346(a)(1) (tax refund actions) or 42 U.S.C. § 405(g) (social security actions).

I. Miscellaneous

1. Publicity

In an effort to encourage ADR, at least seven districts have chosen to publish and distribute to all lawyers and litigants some type of pamphlet or brochure on the various alternative dispute resolution techniques. (See App. C-5). These districts include the Southern District of Illinois, the Eastern District of

Arkansas, the Southern District of Indiana, the Western District of Wisconsin, the Eastern District of New York, the Northern District of California, and the District of Idaho. The "published" materials to be disseminated by these districts usually include a description of such alternative dispute resolution mechanisms as early neutral evaluation and mediation; arbitration; mini-hearings; summary jury trials and other available techniques.[11/]

The purpose of publishing materials is to encourage the use of alternative dispute resolution procedures. In the Southern District of Illinois, the published materials will also familiarize and educate lawyers about alternative dispute resolution techniques.

The Northern District of California recommends the most comprehensive approach to publicizing alternative dispute resolution techniques. That district suggests that the Local Rules be supplemented to require that: (1) a written description of the alternative dispute resolution techniques available in the Northern District of California be delivered to all persons filing a complaint; (2) a copy of that written description be served upon all opposing parties with service of the summons and complaint; and (3) a written acknowledgment, signed by each litigating party,

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11/ For example, the Eastern District of New York has always pamphlet discussing each of the ADR devices available to parties and litigants.

be filed with the Court establishing that the litigant has read and understood the alternatives available.

2. Administration and Funding

The plans of several districts propose hiring administrative staff to supervise ADR processes, in addition to the supervision which could be provided by the judges which are assigned to individual cases submitted to ADR. (See App. C-11). Some of these plans propose ways to fund their various ADR programs. For example, the Advisory Group of the Southern District of New York suggested hiring an ADR administrator and increasing filing fees to generate the required revenue. The plans of the Southern District of California and the Eastern District of New York provide for the hiring of an administrator, but do not address compensation. The Advisory Group for the Eastern District of New York contemplated that the expenses would come out of the budget for the court clerk's office.

The Northern District of California, designated a demonstration district, has requested funding under the Act to retain a full-time professional, support staff, and equipment to carry out duties enumerated in its plans. Both the Southern District of West Virginia and the District of Idaho plans suggest that the Administrative Office of the Judicial Conference provide funding to conduct ADR programs.

3. Differential Case Management ("DCM") Districts

The plans of several districts address ADR in a general fashion which does not permit analysis according to the foregoing categories. In some cases, these were districts which adopted DCM, such as the Northern District of Ohio, whose plan assesses the suitability of its cases to ADR based upon the "track" to which they were assigned, with less complex cases perceived as more amenable to ADR. However, the plan does not contain proposals to implement particular forms of ADR.

Most of the DCM districts do not detail the relationship between assignment of a case to a DCM "track" and the use of a particular form of ADR.[12/] Among non-DCM cases, two districts -- the Southern District of Texas and the Western District of Wisconsin -- address ADR generally, as opposed to discussing particular types of ADR processes separately. The Southern District of Texas will adopt a rule authorizing the Court to refer a case to ADR, upon the motion of a party, upon agreement of the

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12/ For instance, the plan of the Northern District of West Virginia, another DCM district, does not address the relationship between the various "tracks" and ADR. Compare, however, the plan of the Northern District of Ohio with that of the Southern District of New York, another DCM district, which requires all expedited cases to be referred to mediation and concludes that its standard and complex cases should be recommended for arbitration; and contrast both of these plans with the plan of the Western District of Michigan, which concludes that ADR would be used rarely in fast-track cases, frequently in standard cases, and almost always in complex cases. It would be interesting to discover what reasoning led these districts to opposite conclusions regarding the relationship between the complexity of a case and its suitability to ADR.

parties, or upon its own motion. The Court also recognizes the following ADR procedures: mediation, mini-trial, summary jury trial and arbitration; however, the Court may approve other methods in particular cases. A panel of the Court shall maintain a list of approved ADR providers; however, the Court may approve other providers in particular cases. The results of ADR are non-binding unless the parties agree otherwise.

Similarly, the plan of the Western District of Wisconsin authorizes the Court to refer appropriate cases to ADR programs designated or made available by the Court, including mediation, mini-trial and summary jury trial.

4. Plans to Monitor ADR Program Success

Many of the districts which have declined to adopt provisions for expanding the use of ADR processes, or have adopted very limited provisions, have done so due to the lack of empirical evidence demonstrating that ADR processes, in fact, reduce expense and delay. Consequently, the plans of many districts provided for the monitoring of various sorts to collect such data from the programs being implemented under the plans.

The Northern District of California has been designated a "demonstration district," which means that it is required to demonstrate, inter alia, the efficacy of its currently existing ADR programs. In the Southern District of New York mandatory

mediation is provided with respect to certain cases, and the effectiveness of that program will be evaluated on an ongoing basis. The plan of the Southern District of California provides for the monitoring of its arbitration/mediation program by means of a similar questionnaire.[13/]

The plan of the Eastern District of California provides for an advisory panel to monitor the use and success of its ADR programs.[14/] The plan of the Eastern District of New York provides for review of the results of its voluntary mediation plan after the earlier of 500 mediations or three years.

5. Use of Sanctions

Several district plans recommend authorizing the imposition of sanctions to strengthen ADR processes. The Western District of Michigan appears to be the strongest advocate of the use of sanctions.[15/] The plan of the Southern District of West Virginia also provides for imposition of sanctions on both parties and counsel: on parties for failure to appear at a final settlement conference and on counsel for failure to confer in settlement

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13/ See Delay and Cost Reduction Plan Adopted by the Southern District of California, p. 3.

14/ See United States District Court for the Eastern District of California Civil Justice Expense and Delay Reduction Plan, p. 2.

15/ See Differentiated Case Management Plan of the United States District Court for the Western District of Michigan, at p. 5.

negotiations as provided in the plan.[16/] Finally, the plan of the Southern District of Texas provides that the sanctions available under Rule 16(f) of the Federal Rules of Civil Procedure shall apply to violations of rules governing ADR processes.[17/]

IV. CONCLUSION

The ABA Litigation Section Task Force on the Civil Justice Reform Act hopes that the foregoing description and the accompanying side-by-side comparisons will help the remaining Advisory Groups to develop their recommendations under the Act. Over the next two years we intend to monitor the various districts' experiences under their plans in an effort to evaluate the pros and cons of the many procedural reforms. We welcome all thoughts and comments from those districts and other interested parties.

16/ See Plan For Implementation of the Civil Justice Expense and Delay Reduction Plan as Adopted and Implemented by the Southern District of West Virginia, p. 87.

17/ See Report and Plan Civil Justice Reform Act Advisory Group of the United States District Court for the Southern District of Texas, p. 76.

TAB A

SIDE-BY-SIDE COMPARISON
OF DISTRICT COURT PLANS WITH RESPECT TO
EARLY AND ONGOING JUDICIAL INVOLVEMENT

District	Early Firm Trial Date	Mandatory Joint Discovery/ Case Management Plan	Discovery/Case Management Conference
District of Alaska	The Court questions utility of setting early firm trial date until after substantial completion of discovery and passage of a firm deadline for filing dispositive motions. The Court endorses the principle of a trial in civil cases within 18 months as a goal for its differentiated case management for all but complex civil cases.	The Court will experiment with mandatory disclosure in connection with revisions to procedures for differentiated case management and rejects concept of "discovery case management plans" in routine cases. Through use of a preliminary pretrial order, Judicial Officer will set early dates for completion of discovery and filing of motions.	Case management procedures to require conduct of formal, face-to-face scheduling and planning conferences in all complex cases.
Eastern District of Arkansas	Court will continue "setting an appropriate and firm trial date" in the scheduling order.	Continue practice of issuing uniform scheduling orders, setting a pretrial schedule and identifying witnesses and exhibits well in advance of the discovery deadline.	Where feasible, Court will continue holding a final pretrial conference when any party requests one. The presiding Judge will not initiate or order a mandatory settlement conference with the Court. A final pretrial conference will be held when either party requests one; a settlement conference is not required.
Eastern District of California	The Court will "continue to exercise a fair but firm policy of setting realistic trial dates affording adequate time for pretrial activity." The trial date to be set at a time when the parties can predict accurately their discovery and motion practice requirements.	Court will explore the staging of discovery in appropriate cases in which particular issues may be dispositive.	The Court will experiment with early settlement conferences and will seek to provide a judicially sponsored settlement conference at the earliest appropriate opportunity in every case (which, depending upon the case, may not be until after discovery and motion practice have ended).

District	Early Firm Trial Date	Mandatory Joint Discovery/ Case Management Plan	Discovery/Case Management Conference
Northern District of California	Presently the Advisory Group and the Court are searching for new procedures and management strategies that might enable the Court to set earlier trial dates.	Case management proposal to be formulated by the parties, after considering all items on a standardized Case Management Checklist provided by the Court. Court will launch a pilot program in case management disclosure/discovery and motion practice. Court will require early, mandatory exchange by the parties of certain core information independent of formal discovery.	Case management and discovery conference to be held early in the pretrial process. Items set forth in case management proposals submitted by parties shall be addressed at the conference. The Judge may limit the number of interrogatories, document production, requests for admissions and depositions. Follow-up conferences are suggested if needed.
Southern District of California	Early trial dates set for trial within 12 to 18 months of filing of the complaint, depending upon type of case. Early trial date settings will be firm, with requests for continuances granted only for good cause shown.	At a reasonable time before the case management conference, counsel are to discuss discovery and endeavor to resolve any disputes; plaintiff's counsel in good faith specifies in an informal writing the essential detail of the claims asserted and the identity of the principal witnesses, and, in response, defense counsel does the same with respect to defenses and principal witnesses.	Case management conferences scheduled by the Judicial Officer at the early neutral evaluation conference (assuming no settlement is reached at the ENE conference). Attendance mandatory by parties and trial counsel (telephonic attendance, if approved by the Judicial Officer). Conference results in preparation of a case management order. Case management order sets a firm pretrial conference date and a mandatory settlement conference unless determined that such a conference should be excused.
District of Delaware	The Judge will set a firm date for trial. The date by which the case must be tried will be decided on at a case management conference.	Joint discovery mandatory for personal injury, medical malpractice, employment discrimination or RICO-related litigation.	Cases deemed complex shall use specific case management techniques. The Judge shall schedule conferences as appropriate.

District	Early Firm Trial Date	Mandatory Joint Discovery/ Case Management Plan	Discovery/Case Management Conference
Southern District of Florida	Trial date to be set in the Judge's scheduling order, preferably no later than 18 months from date of filing of complaint.	Ten days after scheduling conference the parties are to submit a detailed discovery schedule. No later than 90 days after filing, parties are required to exchange all documents referred to in pleadings. Within 40 days of the filing of an answer or 120 after filing of the complaint (whichever occurs first) each Judge shall enter a scheduling order. The Judge need not hold a conference before issuing the order, nor take the parties' suggested schedule into consideration.	Parties to meet within 20 days after answer or 90 days after complaint.
Northern District of Georgia	Judge will set a trial date within 18 months of the date the complaint was filed.	Three tracks, defined by the length of discovery period, will be used. Counsel required to submit preliminary statement and scheduling order. Consolidated pretrial order will be entered by the Judge if settlement conferences are unsuccessful.	Two settlement conferences are required; one 30 days after issue is joined, the second 10 days after the close of discovery. The results of both are to be reported to the Court.
District of Idaho	Scheduling conference order, entered within seven days after the scheduling conference provides "time frames" for the trial date. Case processing goal is disposition of 95% of all civil cases within 18 months of filing.	Prior to any Court involvement, attorneys required to communicate with respect to the issues which will be covered in the scheduling order, and to prepare a detailed litigation plan and submit it to the Court seven days prior to the scheduling conference. After completion of factual discovery and disclosure of expert witnesses, attorneys required to meet or communicate and make a good-faith effort to clarify and narrow issues, resolve disputed matters, and seriously explore settlement.	Scheduling conference held 120 days after the filing of the complaint or 60 days after the appearance of the first defendant, whichever occurs first. Mandatory Court-conducted settlement conferences not required, but Court-involved settlement conferences available upon request by a party who "sincerely believes" it would be valuable. All counsel, clients and insurance carriers expected to attend or participate by telephone in Court-conducted settlement conference.

District	Early Firm Trial Date	Mandatory Joint Discovery/ Case Management Plan	Discovery/Case Management Conference
Northern District of Indiana	Trial date set for "as soon as reasonably practicable and within 18 months if possible." In all cases in which it is feasible to do so, the Judges will set trial dates at the initial pretrial conference and will endeavor to schedule trials within 16 months of the conference.	Setting of deadlines done by Court only after inviting the attorneys' views as to the time necessary for the scheduled events. Court declines to adopt a requirement that counsel submit a specific and detailed joint plan for discovery and management of the case in all cases, but the Judges will consider ordering such a submission in appropriate cases.	Initial pretrial conference requires attendance by attorneys with authority to bind the parties. Judges will continue to make themselves available for judicially-hosted settlement conferences, and to order settlement conferences upon appropriate request or when deemed appropriate by a Judge. A Judge conducting a settlement conference "will consider" requiring attendance by, or telephonic availability of, persons with settlement authority.
Southern District of Indiana	"All trials shall commence within 6 to 18 months after the filing of the Complaint, unless the Court determines that, because of the complexity of the case, staging provided by the case management plan, or the demands of the Court's docket, the trial cannot reasonably be held within such time." If counsel agree that the case cannot reasonably be ready for trial within 18 months, counsel's joint case management plan shall state in detail the basis for that conclusion. Firm trial date set after initial pretrial conference or, if pretrial conference setting is vacated, upon the Court's acceptance of counsel's case management plan, with or without amendments by the Court. Case management order may set alternative trial date in the event parties thereafter consent to referral of the case to a Magistrate Judge.	Order setting initial pretrial conference requires counsel to confer and prepare a case management plan and to file such a plan at least 15 days before the pretrial conference setting. Order may provide that pretrial conference setting shall be vacated upon approval of the case management plan by the Court.	Order setting initial pretrial conference to issue promptly following the appearance of counsel for all defendants and in any event no later than 60 days after the filing of the complaint, and to be scheduled for no more than 120 days after the filing of the complaint. Pretrial conference setting shall be vacated upon Court approval of counsel's joint case management plan. Additional pretrial conference(s) shall be held as ordered by the Court, such pretrial conferences to be preceded by conference of counsel for all parties, in person or by telephone. Pre-conference discussions of counsel shall be summarized by one of the counsel who shall prepare an agenda for the pretrial conference reflecting agreements of counsel, including proposed supplements or amendments to the case management plan.

District	Early Firm Trial Date	Mandatory Joint Discovery/ Case Management Plan	Discovery/Case Management Conference
District of Kansas	Initial scheduling order should address the setting, at the earliest appropriate time, of a definite date for the final pretrial conference and trial.	The Judges and Magistrate Judges are to jointly establish a procedure for the entry of an initial scheduling order tailored to particular cases. Examples given of such a procedure include requiring the attorneys to develop such an order within 30 days of the date the defendant appears in the case.	Judicial Officer to conduct initial scheduling conferences "in those cases which the Article III Judge, either acting alone or in conjunction with a Magistrate Judge, deems may require a conference to control the cost and duration of discovery." Otherwise the order will be that developed by counsel. Judicial officer shall conduct additional conferences with counsel where necessary to eliminate or minimize delays and expense in the discovery or trial process. In complex cases, the Article III Judge should conduct the final pretrial conference to finalize issues, complete the final pretrial order, narrow the issues to be tried where appropriate, and, if possible, establish a firm trial date.
District of Massachusetts	Date for final pretrial conference or trial should be set as early as possible. The final pretrial conference or trial date may be set according to such criteria as case complexity or specific "case events" that signal the trial date.	Joint statement scheduling time and length of discovery, including phased discovery, a schedule for filing of motions and certification that counsel have reviewed with parties budget for the case and alternatives to litigation, to be submitted by parties 5 days before scheduling conference. Scheduling order that will govern pretrial phase of case, entered by the Judge after the initial conference, shall include the date of the final pretrial conference (within 18 months of the filing of the complaint) and one or more case management conferences. Limit to volume and time of discovery is at the Judge's discretion.	No mandatory case management conference. Employment of this procedure is up to Judicial Officer who in furtherance of the scheduling order may explore possibility of settlement, identify principal issues in contention, prepare or order attorneys to prepare discovery schedule and plan and establish deadlines for filing motions and time framework for their disposition. Judicial Officer may convene additional case management conferences.

District	Early Firm Trial Date	Mandatory Joint Discovery/ Case Management Plan	Discovery/Case Management Conference
Western District of Michigan	Firm trial date established upon assignment of case to its appropriate track. All trials scheduled to occur within 18 months of filing unless a Judicial Officer certifies it is not feasible.	Following the initial case management conference and before a Rule 16 status conference, counsel will be instructed to prepare a joint status report and joint discovery plan for submission to the Court.	Early status conference conducted pursuant to Rule 16, either by personal attendance or telephone conferencing, will include assignment of civil litigation to tracks. In most cases, a formal case management conference under Rule 16 will also be held, at which time any issues not resolved at the initial conference, including the assignment of the case to a specific track, will be settled.
District of Montana	Judicial Officer presiding at the preliminary pretrial conference shall determine whether a trial date is appropriately established at the time of the preliminary pretrial conference. Cases placed upon the expedited trial docket shall be placed on the trial calendar for a date certain not later than six months from the date of the preliminary pretrial conference. For the general trial docket, where a trial date is not established at the time of the preliminary pretrial conference, the Judicial Officer, within 30 days of the submission of a proposed final pretrial order, is to convene a status conference for the purpose of determining the readiness of the case for trial and establishing a trial date. Trial date shall not be more than 60 calendar days from the date of the status conference unless Judicial Officer's trial docket precludes that trial setting.	Judicial Officer shall assess the complexity of the case and the anticipated discovery attendant to the case, and in consultation with counsel for the parties, implement a case management plan which establishes appropriate deadlines. Prior to Rule 16 pretrial conference, counsel for all parties are required to file a written statement specifically addressing all matters critical to the development of a reaslistic and efficient case management plan.	Judicial Officer is to timely convene and conduct the preliminary pretrial conference contemplated by Rule 16. Preliminary pretrial conference to be attended by an attorney with authority to enter into stipulations and make admissions regarding all matters reasonably anticipated to be discussed. The Judicial Officer who presides over the preliminary pretrial conference shall immediately enter an order summarizing the matters discussed and action taken in establishing a case management plan which establishes time limits for the accomplishment of pretrial matters, and specifically designating whether the case has been placed upon the Court's expedited trial docket.

District	Early Firm Trial Date	Mandatory Joint Discovery/ Case Management Plan	Discovery/Case Management Conference
	In the event the trial date is established beyond 18 months from the date the complaint was filed, Judicial Officer must enter an order certifying either that the demands of the case and its complexity render a trial date within 18 months incompatible with serving the ends of justice or the trial cannot be reasonably held within the 18-month period because of the Judicial Officer's trial docket. An established trial date shall not be vacated unless there exists a compelling reason necessitating the continuance. Plan provides procedure when scheduled trial date cannot be met, including consideration of reassignment to other Judicial Officers.		
District of New Jersey	Trial date set in the joint discovery plan.	Detailed discovery memorandum to be submitted by parties 7 days prior to initial conference. Magistrate shall enter a scheduling order: Track I cases shall have infrequent judicial intervention; Track II cases shall have conferences scheduled on a regular basis.	Scheduling conference to be conducted by a Magistrate within 60 days of an answer. Magistrate may at any time request a settlement conference.
Eastern District of New York	Adoption of goal requiring all cases to be tried within 18 months is neither desirable nor consistent with the goal of differentiated case management. The setting of a trial date is left to the determination of each Judicial Officer in each individual case.	Automatic disclosure prior to discovery of persons involved and documents, and authorization to obtain records within 30 days of service of an answer. Counsel shall confer regarding a scheduling order prior to any scheduling conferences.	Require initial pretrial conference to be face to face with the Judicial Officer; subsequent conferences are at the discretion of the Court, with the exception of a mandatory final pretrial conference and a requirement that for complex cases, status conferences be held every six months at the minimum.

District	Early Firm Trial Date	Mandatory Joint Discovery/ Case Management Plan	Discovery/Case Management Conference
Southern District of New York	Expedited cases: case will be set for trial within one year of service of complaint, unless good cause is shown, at the case management conference. Complex and Standard Cases: firm trial date set no later than 18 months after service of complaint.	Case Management Plan will be developed at the case management conference.	An initial case management conference is to be held 120 days from the filing of the complaint. Periodic conferences will be scheduled to ensure adequate Court supervision.
Northern District of Ohio	Firm trial date will be set at the status conference. If a Judge cannot hear the case when originally scheduled, it shall be reassigned for immediate trial to any available District Judge.	Case Management Plan to be issued after the conference. Discovery to have two phases. First, an exchange of information to explore settlement. Second, exchange information necessary to prepare for trial.	Mandatory case management conference to be held within 10 days after track recommendation. At the midpoint between the case management conference and the discovery cut-off date, a status hearing will be held. Final pretrial conference is to be no earlier than 30 days prior to trial.
Western District of Oklahoma	Whenever practicable, the Court at the status/scheduling conference shall designate a month certain for trial. Except for matters requiring special management, cases shall normally be tried within 12 months from the date of filing the action. Once a trial date has been set, no continuances will be granted without compelling reasons. In all cases that cannot be set for trial within 18 months after filing of the complaint, the Judicial Officer shall certify that the demands of the case and its complexity make such a trial incompatible with serving the ends of justice or 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.	Prior to the status/scheduling conference, counsel must confer and jointly prepare a status report, to be filed no less than five work days prior to the status/scheduling conference. In cases designated at the status/scheduling conference as requiring specialized and more intense management, Court may in addition direct counsel to jointly prepare and present a proposed case management plan addressing additional matters.	Status/scheduling conference is to be held within 120 days from the filing of the Complaint, and ordinarily within 30 days following the filing of an Answer. Conference must be attended by at least one fully participating, responsible trial counsel with authority to commit his or her co-counsel and client for all purposes. Telephonic participation permitted when justified by the circumstances and allowed by the Court. Deadlines ordered at the status/scheduling conference shall be immediately incorporated in the scheduling order and distributed to counsel.

District	Early Firm Trial Date	Mandatory Joint Discovery/ Case Management Plan	Discovery/Case Management Conference
District of Oregon	Firm trial dates will be set and, if the trial date cannot be kept, the Court will do everything in its power to find another active, Senior, visiting District, or Magistrate Judge to try the case as scheduled. In order to maintain firm trial dates, attorneys, parties and witnesses should be prepared for extended trial days. The Court encourages civil litigants to file written consents to trial by Magistrate Judge. Where Magistrate Judge is not consented to, most Judges employ a "trailing calendar," in which cases are set to a day certain, but in the event of trial conflicts with criminal cases, civil litigants will often be informed to "be available" later in the day or week to begin their trial.	Except in selected cases, a discovery and pretrial scheduling order will be issued at time of filing of case, fixing the time for filing of all pleadings and motions, joining all parties and claims, completing all discovery, and lodging a joint pretrial order.	In cases determined upon initial review by a Judicial Officer to have complex factual or legal issues or involve numerous parties, thereby warranting "early judicial intervention" beyond the normal scheduling order, the assigned Judge may hold an early status conference, at which entry of a "full" scheduling order may be made, including discovery deadlines, motion deadlines, pretrial order lodging dates, pretrial conference and trial dates. In any case, the assigned Judge should arrange for an immediate telephone conference, whenever any application or stipulation for extension of time to complete discovery is made, there is evidence of repeated discovery squabbles, there is a suggestion of an overly active motions practice, or there is any motion to extend the pretrial order lodging date. At the conclusion of the telephone conference, the Judge should set a "full" schedule for the remainder of the case, to include any revised discovery deadlines, motions deadlines, pretrial order lodging date, pretrial conference date, and most importantly, a firm trial date. The Court will schedule status conferences as often as may be needed to expedite cases and assist in case management.

District	Early Firm Trial Date	Mandatory Joint Discovery/ Case Management Plan	Discovery/Case Management Conference
Eastern District of Pennsylvania	Standard Track must go to trial within a year; Special Management Track within eighteen months. The trial date for Special Management cases will be set at the settlement conference.	Cases on different tracks will have different case management requirements. Cases on the Standard Track do not require a scheduling order or close judicial involvement. Procedures for resolving discovery disputes shall be determined at the initial conference.	Pretrial conferences shall generally occur within 30-60 days of the complaint but can be dispensed of, at the discretion of the Judicial Officer. At the second pretrial conference, to be held 3-4 months after the initial conference, it will be determined if the case can be settled. The Court may continue to hold conferences on a frequent basis.
Western District of Tennessee	Early firm trial date set within 18 months of filing of complaint unless Judicial Officer specifies otherwise.	Court will implement requirement that counsel for each party present a discovery and case management plan or specify reasons for not doing so at initial Rule 16(b) conference.	Court will monitor and manage complex cases beginning with the initial conference and review discovery and case management plan at subsequent discovery-case management conferences.
Eastern District of Texas	Traditional docket calls are abolished. Each Judicial Officer shall endeavor to set early and firm trial dates which will eliminate the need for multiple-case docket calls. At management conference, Judicial Officer establishes firm trial date.	Prior to the management conference, attorneys for each party shall have met and conferred with the other attorneys in the action concerning stipulations of fact and issues to be tried.	Within 120 days after issues have been joined, the Judicial Officer in cases assigned to tracks 3, 4 and 5 shall convene a management conference. Management conference to be attended by any attorney of record with full authority to make decisions and agreements that bind the client (except in extraordinary circumstances, this will be the attorney who will actually try the case), and by the party or representative of the party who has authority to settle. Standardized pretrial orders to be prepared after case management conference.

District	Early Firm Trial Date	Mandatory Joint Discovery/ Case Management Plan	Discovery/Case Management Conference
Southern District of Texas	The concept of differentiated case management included accurate scheduling of trials, with date certainty. Such scheduling should include time limitations for litigation events, tailored for each case management track.	Counsel must meet and prepare a joint discovery/case management plan for presentation at the initial pretrial conference, in all cases other than bankruptcy appeals, social security appeals, FDIC, FTC, FSLIC cases, pro se plaintiff cases, and removed cases. As to removed cases, a discovery/case management plan may be required in appropriate cases.	Within 140 days after a party files a complaint or notice of removal, the Judicial Officer will conduct an initial pretrial conference under Federal Rule 16 and enter a scheduling order, except in prisoner civil rights actions, state and federal habeas corpus actions, student and veteran loan actions, social security appeals, bankruptcy appeals, and complaints to forfeit seized assets (as to any of which a Judge may in his discretion conduct an initial pretrial conference and enter a scheduling order). Additional pretrial/settlement/ discovery conferences will be scheduled by the Court as the need is identified in specific cases. By individual notice, the Court will require attendance at pretrial/ settlement conferences by attorneys with the authority to bind the party.
District of Utah	Under current rules, matters are set for trial at an appropriate point in the life of a case, compatible with the schedule of the Court and counsel, usually by agreement and with a firm, first-place specific date setting. On occasion, a second-place setting will be fixed when there is reason to believe the first-place case will be disposed of otherwise.		Under the current rules, the initial status and scheduling conference provides the framework for case management. It is generally the practice of the Judges of this Court to target particular dates, in such a fashion that a case will automatically come to the attention of the Court at a critical juncture and, once the case is placed "in the pipeline," it is the Court's practice to never continue a particular case without date, but to change or continue to a date certain.

District	Early Firm Trial Date	Mandatory Joint Discovery/ Case Management Plan	Discovery/Case Management Conference
District of Virgin Islands	No mention	A joint management plan is not required because it would increase cost for litigants in simple cases, and the conference has the same result for complex cases. Automatic disclosure of discovery is required.	No mention
Eastern District of Virginia	Firm trial date to be set no later than 18 months from date of filing of complaint.	Initial and pretrial orders to be filed by the Judicial Officer, but no systematic differential treatment of cases. Scheduling order ensures that the Judicial Officer has strict control over the case.	There is no general and formal requirement for discovery - case management conferences. Counsel is required to consult before filing discovery-related motions, eliminating the need for formal conferences. Settlement conferences are not required by the Court and are held only if both parties request one.
Southern District of Virginia	Presumptive trial date set by Judicial Officer anywhere between 6 months and 16 months from filing of complaint. The firm trial date will be set forth in the final pretrial and scheduling order (for Track B&C cases).	Initial pretrial scheduling and discovery order, and a final pretrial conference order will be issued. After the conference, counsel is to sign a consent order including all the topics agreed upon in the conference.	Initial pretrial scheduling and discovery conference to be held within 30 days of the first appearance of the defendant. A settlement conference within 45 days of the discovery cutoff date, and a final pretrial conference no less than seven days before trial date also required.
Northern District of West Virginia	Firm trial dates given if settlement conference week is unsuccessful.	Initial disclosure is required at the conference. When discovery is complete, except for simple Type I civil cases, all cases will be referred to settlement week conferences.	Case management conference scheduled if a case is deemed complex.
Southern District of West Virginia	If a Judge cannot hear a case on the date it was scheduled, can refer it to another District or Magistrate Judge.	All discovery disputes will be assigned to the Magistrate Judge to decide.	Standard time frame orders will be completed by the Judicial Officer. In complex cases or at the request of counsel, a conference will be held to set time frames.

District	Early Firm Trial Date	Mandatory Joint Discovery/ Case Management Plan	Discovery/Case Management Conference
Eastern District of Wisconsin		The parties are required to answer mandatory interrogatories and only thereafter will timing and sequence of all other discovery proceed.	Court to require the parties to appear at preliminary pretrial conference to consider the future conduct of the case. In all actions, counsel must state nature of case; contemplated motions; amount of further discovery and time for completion and such other matters that may affect further scheduling.
Western District of Wisconsin	The preliminary pretrial conference order will establish a trial date that will be changed only under the most compelling circumstances. Trial date to be set based upon the submissions and representations of counsel as well as the Court's analysis of the time necessary for preparation of the case. Except in exceptionally complex cases, trial will be set less than 12 months from the date of filing the complaint.	Several days prior to the pretrial conference, parties must submit a report to the Court describing the case, the issues involved, and any contemplated amendments to pleadings, and making recommendations concerning the timing of deadlines and trial dates. The Court considered but rejected the requirement for a discovery plan in all cases, but makes provision for the implementation of a discovery plan where one or both of the parties deem it appropriate.	Preliminary pretrial conference before the Judge to whom the case has been assigned will be set for a date less than 60 days from when the case was filed. Preliminary pretrial conference order issued as a result of the conference serves as the agenda for case's development and trial. Preliminary pretrial conference may be held by telephone when either party is represented by counsel located outside Madison, Wisconsin, or when requested by one of the parties. Each party shall be represented at the pretrial conference by an attorney who has authority to bind the party as to all matters to be addressed at the conference.
District of Wyoming	After initial pretrial conference, the case is reviewed by a trial Judge to determine the earliest available trial date and establish a date for hearing dispositive motions. With rare exception, cases are completed within a period of eight months. Requires drafting of local rules to provide that the trial Court will set "stacked" trials in the order they are intended to proceed to trial. In non-complex cases, current method of setting trial dates five months after the initial pretrial conference and the strict adherence to those dates shall be continued.	Local rule to be adopted providing that in cases identified as complex, the Court may require the parties to meet in advance of any scheduling conferences and develop joint plans to assist the Court in the overall management of the case.	Court will continue its local rule which requires a Magistrate Judge to conduct an initial pretrial conference, during which the case is assessed for its complexity and a schedule is established for the discovery phase of the case. After initial pretrial conference, the case is reviewed by a trial Judge to determine the earliest available trial date and establish a date for hearing dispositive motions. Local rules to be adopted providing that once a case has been identified as complex, the Magistrate Judge will set scheduling conferences as needed and determine a plan.

PLAN PROVISIONS RELATING TO DIFFERENTIAL CASE MANAGEMENT

	Case Differentiation	Discovery/Trial Time Limits
D. Alaska	Court rejects immediate adoption of "fast track" rule; asks Advisory Group Subcommittee to conduct further study.	N/A
E.D. Arkansas	N/A	N/A
E.D. California	N/A	N/A
N.D. California	N/A	N/A
S.D. California	1. In criminal cases, judges should preside and committees should be formed to recommend settlement procedures. a. Social security matters, enforcement of judgments, prisoner petitions challenging conditions of confinement, and forfeiture and penalty cases. b. Federal Tort Claims Act cases. c. Twenty-five percent of the remaining civil cases that are not complex.	Trial Dates a. A trial date should be set within twelve months of the filing of the initial complaint. b. A trial date should be set within fifteen months of the filing of the FICA complaint. c. A trial date within eighteen months of the filing of the complaint.

Case Differentiation	Discovery/Trial Time Limits
	d. A case should be exempted from these requirements only if it involves complex issues of fact or law requiring greater time for resolution, if new parties are added, or if the trial judge finds such other exceptional reason as may require an extension.
	Other:
	a. If the potential judgment does not exceed $250,000 and the use of the procedure will probably resolve the case, after a hearing with an opportunity to be heard, the judicial officer shall order a non-binding mini-trial or summary jury trial in the case.
	b. In all even numbered simple contract and simple tort cases (excluding FICA cases) where the Judicial officer finds the potential judgment does not exceed

	Case Differentiation	Discovery/Trial Time Limits
		$100,000, and in every even numbered trademark and copyright case, the Judicial officer must order a non-binding arbitration/mediation.
D. Delaware	1. Determine complexity by considering the following: a. type of action b. number of parties and their capacities c. factual and legal issues raised by the pleadings d. technical complexity of the factual issues e. retroactivity of the circumstances giving rise to the claims and defenses f. volume and nature of the documents subject to discovery g. amount of third party and foreign discovery necessary h. number of deposition witnesses and their locations	2. Scheduling procedure will vary among: a. expedited cases b. standard cases, and c. complex cases

	Case Differentiation	Discovery/Trial Time Limits
	i. need for expert testimony j. nature of the issues to be determined pre-trial	
S.D. Florida	Expedited Cases a. A relatively non-complex case requiring only one to three days of trial. Standard Cases a. A case requiring three to ten days of trial. (Ex. torts, contracts, civil rights, discrimination, asbestos, admiralty, labor, copyright and trademark, etc.), i.e., the majority of civil cases. Complex Cases a. An unusually complex case requiring over ten days of trial. EX) antitrust, patent infringement, class actions, major disasters, environmental, securities, and tax suits, i.e., less than ten percent of civil cases.	Discovery Schedules/Deadlines a. 90-179 days for expedited cases b. 180-269 days for standard cases c. 270-365 days for complex cases

	Case Differentiation	Discovery/Trial Time Limits
N.D. Georgia	a. Contracts, prisoner petitions, bankruptcy, social security.	a. Zero months discovery period for these types cases.
	b. (Other) contract, real property, torts, property rights, truth-in-lending, civil rights, deportation, prisoner civil rights, selective service, federal tax suits, forfeiture/penalty, labor, other statutes.	b. Eight months discovery period.
	c. Antitrust, securities/commodities, patents.	c. Four months discovery period.
		d. Complex Case Criteria: unusually large number of parties, unusually large number of claims or defenses, factual issues are exceptionally complex, greater than normal volume of evidence, extended discovery period is needed, problems locating or preserving evidence, pending parallel investigations or actions by government, multiple use of experts, need for discovery outside of U.S. boundaries, existence of highly technical issues and proof.

PLAN PROVISIONS RELATING TO DIFFERENTIAL CASE MANAGEMENT

	Case Differentiation	Discovery/Trial Time Limits
D. Idaho	N/A	N/A
S.D. Illinois	Track "A"	Set between six to eight months after filing initial complaint; includes all cases exempt from the requirements of pre-trial and settlement conferences by Local Rule 13(a).
	Track "B"	Set between ten and twelve months after filing of initial complaint; includes such cases as simple tort and contracts.
	Track "C"	Set between thirteen and sixteen months after the initial filing; includes cases such as multi-party, products liability, malpractice, antitrust and patents.
N.D. Indiana	N/A	N/A
S.D. Indiana	The objective of the case management plan is to promote the ends of justice by providing for the timely and efficient resolution of the case by trial, settlement or pretrial adjudication.	The plan should be premised on a trial setting between six and eighteen months after the filing of the complaint and should recommend a trial date by month and year.

	Case Differentiation	Discovery/Trial Time Limits
D. Kansas	a. Social Security Appeal	should be decided no more than sixty days after it is deemed submitted under D. Kan. Rule 503.
	b. Bankruptcy Appeal	should be decided no more than 120 days from when the reply brief is filed or when the time for filing a reply brief has expired.
	c. Prisoner habeas corpus cases	should generally be resolved within 180 days of filing, and non-dispositive motions in prisoner cases should be ruled upon within 90 days of filing. Highest immediate priority should be given to reducing the back log of habeas corpus cases.
D. Massachusetts	1. Factors Determining Complexity and Course of Case	
	a. number of parties	
	b. number of claims	

	Case Differentiation	Discovery/Trial Time Limits
	c. number of defenses raised	
	d. legal difficulty of subject matter	
	e. factual difficulty of subject matter	
	f. amount of time needed for preparation	
	g. amount of time needed for discovery	
	h. public interest in case	
W.D. Michigan	Track I: Super Fast Track;	case scheduled within six months of filing; low degree of judicial involvement.
	Track II: Fast Track;	case scheduled within six to nine months of filing; summary jury trials and mini-hearings under Local Rule 44 may not be suitable; comparatively simple cases.

Case Differentiation	Discovery/Trial Time Limits
Track III: Standard Track;	case scheduled within nine months to one year; multiple parties, third party claims, multi-count complaints, or a number of disputed factual and legal issues will be suited here.
Track IV: Complex Track;	case scheduled within one to two years; alternative dispute resolution included; also, neutral evaluation (mediation) under Local Rule 42 or court-annexed arbitration under Local Rule 43.
Track V: Highly Complex Track;	case scheduled longer than two years; large number of parties; alternative dispute resolution used.
Track VI; Minimally Managed Track; (Control Group)	approximately ten percent of all civil cases except highly complex ones will be randomly drawn for assignment to a track which will be minimally managed. This is necessary to evaluate effectiveness.
The judicial officer assigned to the case should ultimately make case track decision.	

PLAN PROVISIONS RELATING TO DIFFERENTIAL CASE MANAGEMENT

	Case Differentiation	Discovery/Trial Time Limits
D. Montana	Expedited Trial Docket:	placed on trial calendar
	General Trial Docket:	in cases where a trial date is not established at the time of the preliminary pre-trial conference, the judicial officer, within thirty days of submission of a proposed final pretrial order, will convene a status conference for the purpose of determining the readiness of the case for trial and establishing a trial date, no more than sixty days.
D. New Jersey	Track I:	Those cases not subject to General Rule 47 arbitration; presumed to require infrequent judicial intervention; conducted within one year of filing initial answer; counsel must agree on joint discovery plan.
	Track II:	Cases that appear to require frequent judicial intervention
E.D. New York	N/A	N/A
S.D. New York	N/A	N/A

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PLAN PROVISIONS RELATING TO DIFFERENTIAL CASE MANAGEMENT

	Case Differentiation	Discovery/Trial Time Limits
N.D. Ohio	Civil Cases	95% should be disposed of within 18 months of filing.
	Complex Cases	are exempt from this.
	Types of Tracks:	
	a. Expedited	Completion within 9 months after filing; no more than 100 days of discovery.
	b. Standard	Completion within 15 months after filing; no more than 200 days of discovery.
	c. Complex	Completion goal of no more than 24 months after filing.
	d. Administrative (social security, student loan, foreclosure, etc.)	Completion within 6 months after filing; little or no discovery.
	Mass Torts	No set time.

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	Case Differentiation	Discovery/Trial Time Limits
W.D. Oklahoma	Types of Tracks:	
	a. Prisoner litigation (referred to magistrate judge)	At time of plan, effective date median time for all cases from issue to trial - 9
	b. Social Security (referred to magistrate judge)	Except for special management cases, goal from filing to trial - 12 months.
	c. Asbestos (assigned for special management)	
	d. Special management	
	e. Standard management (all cases except a - d)	
D. Oregon	Types of Tracks:	
	a. Social security	Ultimate goal - trial within 12 months of filing.
	b. Habeas corpus	
	c. Bankruptcy appeals or withdrawals	
	d. Asbestosis personal injury (all assigned to one judicial officer)	
	e. Government collection cases (all assigned to senior district judges)	

	Case Differentiation	Discovery/Trial Time Limits
	f. IRS summons enforcement cases	
E.D. Pennsylvania	Types of Tracks: a. Habeas corpus b. Social security c. Arbitration (special rule)	Except for asbestos and special management cases, trial within 12 months of filing.
	d. Asbestos (managed pursuant to Master Case Management Order issued 12/16/87)	Asbestos and special management, trial within 19 months of filing.
	Compulsory Arbitration (Local Court Rule 8) a. Mandatory arbitration for most civil cases filed after 5/18/89 where damages are less than $100,000 or where parties consent. b. Trial de novo as a matter of right.	
W.D. Tennessee	Types of Tracks: Pro se prisoner litigation	Discovery cut-off in 4 months; pretrial motion within 5 months; trial: 9-12 months.

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	Case Differentiation	Discovery/Trial Time Limits
	Habeas petitions	To be disposed of within 9 months.
	Bankruptcy appeals	Briefing schedule will be set pursuant to Bankruptcy Rule 8009.
	United States debt cases	No case management required.
	Social Security cases	To be disposed of within 9 months.
	General civil litigation (to be further categorized by Court at initial scheduling conference)	To be managed on case-by-case basis.
E.D. Texas	Types of Tracks:	
	Track One	No discovery
	Track Two	Disclosure only
	Track Three	Disclosure plus 15 interrogatories and admissions, depositions of parties, and depositions by written questions on custodians of business records.

	Case Differentiation	Discovery/Trial Time Limits
	Track Four	Track Three discovery plus three other depositions per side.
	Track Five	Discovery plan tailored by judicial officer.
	Track Six	Specialized treatment as determined by judicial officers.
		No provisions with respect to timing of depositions.
S.D. Texas	Types of tracks: a. Existing differential case management of asbestos cases (through a Special Master), Veteran's Administration and student loan cases through assignment to single Senior Judge, and prisoner civil rights and habeas corpus through Staff Attorney screening and processing expanded to include bankruptcy appeals, social security appeals, FDIC, RTC, FSLIC and pro se and removal cases all designed for special specific treatment.	

	Case Differentiation	Discovery/Trial Time Limits
	b. All other cases go through discovery/case management plan tailored for each case.	
D. Utah	N/A	N/A
D. Virgin Islands	N/A	N/A
E.D. Virginia	N/A	N/A
N.D. West Virginia	Type I (student loan, veterans' benefits, social security appeals, prisoner, habeas corpus, bankruptcy court appeals, land condemnation, asbestos cases - same as in the past)	Court will rule on motion when brought to their attention by Clerk's Office.
	Type II	
	a. Standard - all but complex	Discovery (excluding expert) completed within 180 days.
	b. Complex - use FRCP 16 conference to address scheduling and timing	Case by case management.

PLAN PROVISIONS RELATING TO DIFFERENTIAL CASE MANAGEMENT

	Case Differentiation	Discovery/Trial Time Limits
S.D. West Virginia	Class A	Set for trial six months from filing.
	Class B	Set for trial 9 months from
	Class C	Open end period as to trial date. Date set after conference with counsel.
E.D. Wisconsin	N/A	N/A
W.D. Wisconsin	N/A	N/A
D. Wyoming	a. Non-complex	(well defined legal issues, not more than 20 witnesses, not more than 100 exhibits, number of parties)
	b. Complex (all others)	No provision with respect to timing of deposition.

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PLAN PROVISIONS RELATING TO PHASED DISCOVERY
EXPERT TRIAL TESTIMONY AND BIFURCATION OF TRIALS

District	Phased Discovery	Expert Trial Testimony	Bifurcation of Trials
D. Alaska	"The Court concurs in the Advisory Group's recommendation that bifurcation of issues and staged discovery receive more active consideration in case management. These concepts shall be included in the court's procedures for differential case management and in its procedures for the management of complex cases." (p. 6)	N/A	"The concerns of bifurcation of issues and staged discovery "shall be included in the court' procedures for differential case management and in its procedures for the management of complex cases." (p. 6)
E.D. Arkansas	N/A	N/A	N/A
E.D. California	"The Court will explore the staging or staying of discovery in appropriate cases in which particular issues may be dispositive." (p. 6, Point 14).	N/A	N/A
N.D. California	Counsel will be required to meet and confer concerning: "issues arising in class actions (e.g., discovery necessary to prepare for certification, . . ., relation	1. No party may call an expert witness at trial not previously listed except for good cause shown. 2. In all bench trials, and	A case management checklist supplied by the court compels counsel to discuss staged resolution or bifurcation of issues. (p. 20).

District	Phased Discovery	Expert Trial Testimony	Bifurcation of Trials
	between class discovery and merits discovery, etc.); . . . shaping early discovery to position the parties for productive settlement negotiations as early as possible; . . staged resolution or bifurcation of issues." (p. 21).	in jury trials as ordered by the court: a. Direct examination of experts to be submitted and exchanged in narrative form ten days before Pretrial Conference II. b. Rulings on objections to expert narrative statements made at Pretrial Conference II. c. Approved narrative statements constitute the direct examination of experts. d. Proposed Rule 702 and 45 adopted with respect to experts.	
S.D. California	N/A	N/A	N/A
D. Delaware	In complex cases, the Court is directed to use case management techniques, including, "limit discovery (e.g., the number of depositions or the sequence of	In the case of complex litigation, the Court may. . . (vi) limit or restrict the use of expert testimony; (vii) limit the length of time for presentation of evidence or	N/A

District	Phased Discovery	Expert Trial Testimony	Bifurcation of Trials
	discovery) without court order." (p. 4-5).	the number of witnesses or documents that may be presented at trial;. . . .	
S.D. Florida	N/A	N/A	N/A
N.D. Georgia	N/A	N/A	N/A
D. Idaho	N/A	N/A	N/A
S.D. Illinois	In the case of extraordinarily complex cases, court may set cut-off date for completion of "core discovery". (p. 7).	. . .direct testimony at trial may not be inconsistent with nor go beyond the fair scope of the facts known or opinions disclosed in such discovery proceedings.	Pre-trial conference issue and to be included in final pre-trial order.
S.D. Indiana	The parties are required to submit a case management plan which will include "taking into account the desirability of phased discovery where discovery in stages might	N/A	Case Management Plan mandatory issue and issue for pre-trial conference.

District	Phased Discovery	Expert Trial Testimony	Bifurcation of Trials
	materially advance the expeditious and efficient resolution of the case." (p. 6).		
N.D. Indiana	At the initial and/or interim pre-trial conference one topic that must be discussed is: "whether it will be useful to separate claims, defenses, or issues for trial or discovery." (p. 13, § 2.04(a)(16).	N/A	N/A
D. Kansas	This Plan requires an initial scheduling order to address: "(a) whether a limited amount of discovery would enable parties to present substantive issues for the Court's resolution which would narrow the scope of remaining discovery. . .	N/A	N/A

District	Phased Discovery	Expert Trial Testimony	Bifurcation of Trials
	(f) the placing of cases in categories for case management by identifying, inter alia,. . . . (ii) cases in which only limited discovery would be permitted prior to the filing of motions; (iii) cases in which discovery would be stayed pending resolution of a substantive issues (p. 5-6)."		
D. Massachusetts	The judicial officer may consider the desirability of conducting phased discovery, limiting the first phase to developing information needed for a realistic assessment of the case. If the case does not terminate, the second phase would be directed at information needed to prepare for trial. After the initial document and disclosure phase of discovery, use of	At the final pretrial conference, the judicial officer shall consider: (2) precluding use of any trial testimony by an expert at variance with the written statement and any deposition testimony; (4) making a ruling on the admissability of expert testimony at the trial.	Bifurcation on agenda of final pretrial conference. Page 60.

District	Phased Discovery	Expert Trial Testimony	Bifurcation of Trials
	interrogatories and demands for production of documents by parties shall be phased by the judicial officer to ensure efficiency.	A party who intends to object to the qualifications of an expert witness, . . . shall give written notice. . . within three (3) days following the final pretrial conference.	
W.D. Michigan	N/A	N/A	N/A
D. Montana	N/A	N/A	Final pre-trial order must address whether bifurcating is feasible and advisable. Page 37.
D. New Jersey	In connection with the initial scheduling conference, the Magistrate may enter a scheduling order which includes: "such limitations on the scope, method, or order of discovery as may be warranted by the circumstances of the particular case to avoid	N/A	Bifurcation shall be discussed by counsel prior to submitting joint discovery plan. Page 19.

District	Phased Discovery	Expert Trial Testimony	Bifurcation of Trials
	duplication, harassment, delay, or needless expenditure of costs." (p. 18). Attorneys are directed to discuss phased discovery prior to such conferences.		
E.D. New York	In connection with complex litigation, the Plan provides for: "Staged, Tiered or Milestone Discovery. In complex cases, the court should consider implementing staged, tiered or milestone discovery. Under this approach, discovery would be prioritized and channelled to cover certain issues but not others. For example, discovery might be limited in the first instance to matters that might be dispositive, such as jurisdictional defects or particular defenses that would either terminate the litigation or eliminate particular parties. In addition, discovery on liability issues might be separated from discovery on damages issues; fact discovery	1. In bench trials, the court may direct that an expert's direct testimony shall be submitted in writing and that only the cross-examination be done before the fact-finder. 2. In bench trials, where appropriate, expert testimony may be taken by deposition. 3. The court may take expert testimony out of the regular order of proof where to do so would avoid delay or facilitate a better understanding of the issues.	Pre-trial conference discussion to include early evidence on "manageable issue" for judgment (50(a)) or partial findings, Page 13.

District	Phased Discovery	Expert Trial Testimony	Bifurcation of Trials
	might be ordered prior to expert discovery." (pp. 14-15).		
S.D. New York	"In Complex and Standard cases, a Case Management Plan will be developed at the Case Management Conference. At that conference the Court and counsel shall address, as necessary,. . . b. the discovery proceedings that are anticipated to be necessary and the sequence of such proceedings, including an identification of the parties with knowledge of the factual background at issue and relevant documents." (p. 3, ¶ 6).	N/A	N/A
N.D. Ohio	N/A	N/A	Discovery case management conference with Judicial Officer shall in appropriate cases provide for bifurcation of issues consistent with FR 42. Page 3.

PLAN PROVISIONS RELATING TO PHASED DISCOVERY
EXPERT TRIAL TESTIMONY AND BIFURCATION OF TRIALS

District	Phased Discovery	Expert Trial Testimony	Bifurcation of Trials
W.D. Oklahoma	In cases assigned to the special management track, counsel may be directed by the court to prepare a Case Management Plan which includes: "(c) a description of, and the sequence of, discovery to be had under relevant provisions of the Federal Rules of Civil Procedure; (d) in class action cases, a proposed timetable for class issue discovery, briefing, and hearing." (p. 6). At initial scheduling conference, Counsel must also identify all dispositive issues or other matters critical to early case evaluation and consider limiting initial discovery to them. This is to ensure that necessary discovery as to dispositive issues is given first priority and completed as quickly as practicable."	N/A	Bifurcation as an item in Final Pre-trial Order or prior status report. Page 1-3.

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PLAN PROVISIONS RELATING TO PHASED DISCOVERY
EXPERT TRIAL TESTIMONY AND BIFURCATION OF TRIALS

District	Phased Discovery	Expert Trial Testimony	Bifurcation of Trials
D. Oregon	N/A	N/A	Subject of Joint Specialized Case Management Plan. Page 2-2.
E.D. Pennsylvania	This Plan provides for mandatory disclosure to be completed in specified time periods and that a party: "may not seek discovery from any source before making the disclosures . . . and may not seek discovery from another party before the date such disclosures have been made by, or are due from, such other party." (p. 14) Also, in connection with cases that are assigned to the special management track, the parties are required to: "convene prior to the first pretrial conference for the purpose of developing a Joint Discovery-Management Plan," which should include "(3) A Plan setting forth a description of, and the sequence of, discovery to be had under relevant provisions	N/A	Bifurcation to be addressed in proposed case management plan and in court order after second pretrial conference. Page 11-12.

District	Phased Discovery	Expert Trial Testimony	Bifurcation of Trials
	of the Fed. R. Civ. P...." In addition, § 7.02 of the Plan provides: "It is contemplated that discovery in such a Plan will proceed simultaneously with the completion of other obligations of the parties under the Plan and the parties can only expect a stay of all or part of any discovery for the most extraordinary and compelling reasons." (p. 16).		
W.D. Tennessee	Generally states that the Court will consider the phased discovery case management technique at its initial Rule 16(b) conference.		A case management conference identifies principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues. (p. 2)
E.D. Texas	Provides for timing of mandatory disclosures and expert testimony disclosure, but no specific provision for phased discovery.	N/A	N/A

PLAN PROVISIONS RELATING TO PHASED DISCOVERY
EXPERT TRIAL TESTIMONY AND BIFURCATION OF TRIALS

District	Phased Discovery	Expert Trial Testimony	Bifurcation of Trials
S.D. Texas	With respect to complex cases, this Plan provides: "In cases so identified, consideration will be given to necessary discovery conferences and sequencing of discovery in 'waves' identified in the Manual for Complex Litigation, Second, § 21.421 (1985). (p. 5).	The Court as a whole deals with limitation of expert witness testimony on a case by case basis, tailoring any limitation of testimony to the individual case.	N/A
D. Utah	The Plan notes that one of the principles of the Civil Justice Reform Act suggests that discovery be phased. It then notes that the District's courts already have scheduling conferences which provide a framework for case management. As such, the Plan concludes that the current practice embraces this principle and no change is needed. (p. 6).	N/A	(12/91) Quotes CRJA of 1990 at 473(a)(3) on bifurcation and generally comments that the status and scheduling conference provides a framework. No specific bifurcation rule. Page 6.

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PLAN PROVISIONS RELATING TO PHASED DISCOVERY
EXPERT TRIAL TESTIMONY AND BIFURCATION OF TRIALS

District	Phased Discovery	Expert Trial Testimony	Bifurcation of Trials
D. Virgin Islands	Other than providing for automatic disclosure, the Plan does not address the issue of phased discovery.	The testimony of an expert witness at trial shall be based upon the options advanced in the written report and/or the expert's deposition . . . (a) Experts shall not be permitted to testify on matters beyond the scope of the . . . report and the depositions, absent extenuating circumstances based upon newly discovered evidence. . . (1) The video taping of the testimony of expert witnesses is encouraged. (2) Absent good cause shown, if a firm trial date has been set. . . and the testimony of an expert witness has not been video taped, and the witness is unavailable for the trial, the parties will be required to proceed at trial without the benefit of the expert's testimony.	N/A
E.D. Virginia	N/A	N/A	N/A

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PLAN PROVISIONS RELATING TO PHASED DISCOVERY
EXPERT TRIAL TESTIMONY AND BIFURCATION OF TRIALS

District	Phased Discovery	Expert Trial Testimony	Bifurcation of Trials
N.D. West Virginia	The Plan provides for timing of certain discovery matters, such as initial disclosure and expert witnesses. As to complex civil cases, the Plan provides: "If the case is classified as complex, the court shall set a conference pursuant to Rule 16 of the Fed. R. Civ. P. for the purpose of scheduling or sequencing discovery or utilizing such other forms of case management as will assist in reducing costs and/or delay." (p. 80).	N/A	N/A
S.D. West Virginia	The Plan does not include any specific provision for phased discovery, except to the extent that the Plan requires a court to set up a time frame for discovery.	N/A	N/A

PLAN PROVISIONS RELATING TO PHASED DISCOVERY
EXPERT TRIAL TESTIMONY AND BIFURCATION OF TRIALS

District	Phased Discovery	Expert Trial Testimony	Bifurcation of Trials
E.D. Wisconsin	"Section 7.08 - Timing and Sequence of Discovery. Except with leave of court or upon agreement of the parties, a party required to file mandatory interrogatories under Rule 7.07 may not seek discovery from any source before making rule 7.07 disclosures and may not seek discovery from another party before the date such disclosures have been made by, or are due from, such other party." (p. 17).	N/A	N/A
W.D. Wisconsin	The Plan does not directly address phased discovery although it does provide for a pretrial conference in which discovery will be discussed as follows: "Based upon the materials submitted to the court and upon the representations of counsel at the preliminary pretrial conference, the court will set a deadline for the completion of discovery. In most cases, the parties will	N/A	Pre-trial conference to address bifurcation. "Bifurcation of liability issues from damage issues usually shortens trials and reduces expenses." Page 7; appendix I; page 3.

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District	Phased Discovery	Expert Trial Testimony	Bifurcation of Trials
	regulate their own discovery within the bounds of the Fed. R. Civ. P. In an appropriate case, counsel may move pursuant to Rule 26(f), Fed. R. Civ. P., for the development by the court of a discovery plan that will limit and schedule discovery as appropriate." (p. 6).		
D. Wyoming	"A local rules [sic] shall be adopted which provides that, once a case has been identified as complex, the Magistrate Judge will set scheduling conferences as needed and determine a plan which may include routine discovery, joint discovery, phased discovery, early settlement, limitation of factual and legal issues, bifurcation of various aspects of the litigation, use of the Complex Litigation Manual, and the early involvement of the trial judge assigned to the case." (p. 11).	N/A	Complex case scheduling conference to consider bifurcation of various aspects of the litigation. Page 11.

PLAN PROVISIONS RELATING TO PRETRIAL MOTIONS

COURTS	MOTION HEARING DATES	DEADLINE FOR COURT FILING	DEADLINE FOR COURT DECISIONS	OTHER INFORMATION
ALASKA	N/A	A Preliminary Pre-Trial Order will issue in all civil cases and will include a date for filing all motions. Requests for extensions may be limited to 60 days. Multiple extensions will be precluded without the approval of all clients.	Motions which are ready for consideration will be screened in order to dispose of routine motions as the second priority after consideration of applications for emergency relief and matters for which consideration on shortened time is sought.	
E.D. ARK	One person for each Judge to coordinate scheduling.	Scheduling order sets firm pretrial sched.; order issued shortly after case is filed.	More complete and frequent monitoring.	Continuances not granted without good cause. Impose sanctions only as needed to control litigation abuses. Pretrial and other conferences and oral arguments on motions shall be by telephone when requested and when saves time or money.
N.D. CAL	If Court believes no argument required, the Court should so notify the parties not less than 2 days before the hearing. If argument is necessary, the tentative ruling should so state and identify subjects on which argument is required.	N/A	Two days before the scheduled hearing, the judge should issue a tentative ruling with short statement of the basis. Oral argument optional for the losing party. Rulings on motions should be issued w/in 45 days of scheduled hearing date.	Motion papers limited to memo of points & auth. and supporting declarations. Motion papers should also be limited to opening, opposition and closing memoranda. No supplemental pleading or letters permitted. Memoranda limited to max. of 25 pages.

PLAN PROVISIONS RELATING TO PRETRIAL MOTIONS

COURTS	MOTION HEARING DATES	DEADLINE FOR COURT FILING	DEADLINE FOR COURT DECISIONS	OTHER INFORMATION
S.D. CAL	Non-emergency motions may be displaced to facilitate hearing of motion to dismiss within 60 days of its filing.	W/in 45 days of filing answer, Early Neutral Evaluation ("ENE") Conference; if no settlement and no mediation agreed on, set Case Management (CM) Conference. CM Order will set deadline for filing pretrial motions.	N/A	Continuance granted only for good cause. All Counsel "meet and confer" before filing any discovery motion and seek to resolve; written correspondence not allowed.
E.D. CAL	Lengthy proceedings should be scheduled at the end of the motion calendar to avoid delay for other attorneys.	N/A	N/A	Close scrutiny to Ex Parte last minute requests for continuance; should be by stipulation.
DEL	N/A	Scheduling procedures vary among expedited, standard, and complex cases; scheduling orders will include dates of filing various motions.	N/A	
S.D. FLA	Court to set hearing on any motion pending and briefed with no hearing for 90 days, upon written notice by counsel at the expiration of 60 days.	Within 40 days of filing answer, or 120 days after filing complaint, each judge shall enter a scheduling order to include a date certain for filing and resolution of all pretrial motions.	Scheduling order to contain a date certain for resolution of all pretrial motions.	

PLAN PROVISIONS RELATING TO PRETRIAL MOTIONS

COURTS	MOTION HEARING DATES	DEADLINE FOR COURT FILING	DEADLINE FOR COURT DECISIONS	OTHER INFORMATION
N.D. GA	N/A	Motions to be filed w/in 100 days of complaint (See Local and Federal Rules for set filing times).	N/A	For disputes arising during discovery, a certificate signed by moving party that resolution was attempted must be attached to motion to compel.
IDAHO	After filing motion, attorney contacts courtroom deputy re: oral hearing. The deputy, in consultation with the Court, will determine if an oral hearing is required. If an oral hearing is needed, the deputy will provide the moving attorney with a date. The moving attorney will be responsible for noticing all parties of record.	Scheduling conference held 120 days after complaint filed, or 60 days after 1st defendant appears. Sched. Order issued 7 days after conference; trial date, motion & discovery deadlines set at conference. Motion briefing deadlines: response due 14 days after filing of motion; reply due 14 days after filing of response. Failure to file necessary docs. in a timely manner may be deemed a waiver of the motion or consent to sustain such motion. The matter is then considered submitted unless scheduled for hearing by the Court.	Motions disposed or decided within 60 days of hearing date or within 60 days after completion of briefing if there is no oral argument.	Involuntary dismissal sent after 180 days of no activity. Discovery motions considered only after effort to resolve. Clients required to approve continuances for trial.
S.D. ILL	Oral argument only if ordered by judicial	Pretrial, scheduling and discovery confs.	Motions ruling issued 45 days after due	Motions to dismiss, strike, for judgment,

PLAN PROVISIONS RELATING TO PRETRIAL MOTIONS

COURTS	MOTION HEARING DATES	DEADLINE FOR COURT FILING	DEADLINE FOR COURT DECISIONS	OTHER INFORMATION
	officer; may allow phone hearing upon request.	held w/in 30 days of first defendant appearance. Opposition to motion for summary judgment to be served & filed 10 days from service with answering brief (see Fed. Rule 56). For other motions, adverse party has 10 days to file answer.	date of answering brief, except where oral argument is ordered and the ruling will be issued within 45 days after the hearing.	trial motions, etc. shall be supported by separate brief with motion; failure is grounds for denial. No brief to be longer than 20 pages without special leave.
N.D. IND	N/A	Judge to establish & enforce deadlines for filing of dispositive motions. Deadlines set at pretrial conf. not to change without good cause.	N/A	
S.D. IND	N/A	Initial pretrial conf. no more than 120 days after complaint. All counsel to prepare case management plan. Conf. and CM Plan to set schedule for filing & briefing of motions. As an outer limit, in complex cases, scheduling orders should set summary judgment motions to be filed and briefed no less than 90 days before trial and in all other cases, no less	High priority to summary judgment motions with trial in 60 days.	

PLAN PROVISIONS RELATING TO PRETRIAL MOTIONS

COURTS	MOTION HEARING DATES	DEADLINE FOR COURT FILING	DEADLINE FOR COURT DECISIONS	OTHER INFORMATION
		than 60 days before trial.		
KANSAS	N/A	20 days to respond to motions to dismiss or for summary judgment and 10 days for reply; 10 days for other motions.	N/A	
MASS	Motions may be decided without oral hearing. Judicial officer may set specific or general guidelines for filing motions. No motion shall be filed unless counsel certify that they have conferred and attempted to resolve or narrow the issue.	N/A	Rule on motions as soon as practical.	Memos in support of or in response not to exceed 20 pages.
W.D. MICH	N/A	N/A	Upon motion, Court to stay proceedings if motion is without decision for more than 60 days.	N/A
MONTANA	N/A	Case Management Plan identifies issues for pretrial resolution, sets time frame for pretrial motion disposition, sets deadline for pretrial motion presentation.	Clerk advises Judge of motions pending in excess of 60 days; judge has 30 days to render decision or issue status report to Chief Judge.	Court approval for memos in excess of 20 pages, (excluding exhibits, table of contents and cover). Motion for Summary Judgment should specifically identify

PLAN PROVISIONS RELATING TO PRETRIAL MOTIONS

COURTS	MOTION HEARING DATES	DEADLINE FOR COURT FILING	DEADLINE FOR COURT DECISIONS	OTHER INFORMATION
				the facts the movant believes are uncontroverted. The response should specifically identify the facts establishing a genuine issue of material fact. If there is no genuine issue of material fact, the parties may file a joint stipulation of facts.
NJ	No oral argument on discovery motions except as permitted by Magistrate; oral argument in open court or by phone.	Sched. Conf. within 60 days of initial answer, unless deferred. Sched. order has dates of filing dispositive motions. Magistrate designates Track I (infrequent judge intervention, pretrial conf. W/in 1 year of answer), or Track II (frequent, status conferences on regular basis).	N/A	Discovery motions must be accompanied by affidavit certifying that the moving party has conferred with opposing party and attempted to resolve the issues.
S.D. NY	N/A	N/A	Motions not decided w/in 60 days are on quarterly report to all Court members.	
E.D. NY	Pretrial conf. include schedule of	Schedule discussed at pre-trial conference. The Court may convene	Clerk to contact Chambers re: motions pending over 6 months	

COURTS	MOTION HEARING DATES	DEADLINE FOR COURT FILING	DEADLINE FOR COURT DECISIONS	OTHER INFORMATION
	filing, motion hearing dates.	a pre-motion conference on dispositive motions.	and to repeat every 3 months until decided.	
N.D. OHIO	Part or all of a day shall be set aside at least on a monthly basis for civil motions. Any party may waive oral argument on 3 days notice. Unless argument is waived, the moving party and all parties filing an opposition shall attend the hearing. Oral argument may be heard on any motion by telephone conference.	Memos in opposition filed 10 days after service; reply memo 5 days after.	Judge may announce preliminary ruling prior to oral argument and limit argument to reasons why the prelim ruling is/is not correct. Rule w/in 30 days for non-dispositive, 60 days for dispositive. Discovery suspended during pendency.	Memoranda re: dispositive motions shall not exceed 10 pages for expedited and admin. cases, 20 pages for standard cases, 30 pages for complex cases and 40 pages for mass tort cases. Memoranda re: all other motions shall not exceed 15 pages and shall have a table of contents, table of authorities, brief statement of the issues to be decided and a summary of the argument presented.
W.D. OKLAHOMA	N/A	Status/schedule conf. w/in 120 days of complaint, establish deadlines for all subsequent events.	N/A	
OREGON	N/A	Firm pretrial and discovery deadlines are established for all cases immediately at the time of filing. Dispositive motions will be decided promptly.	N/A	

PLAN PROVISIONS RELATING TO PRETRIAL MOTIONS

COURTS	MOTION HEARING DATES	DEADLINE FOR COURT FILING	DEADLINE FOR COURT DECISIONS	OTHER INFORMATION
E.D. PENN	Sched conf set within 30 to 60 days after filing complaint; parties to confer and provide proposed case management plan.	Dispositive motion deadline set in sched. order.	Dispositive motions will be decided promptly.	
W.D. TENN	N/A	N/A	Any matter under advisement for over 6 months will be automatically flagged and given priority over all other civil matters by the judge to whom the case is assigned.	A page limit on memoranda will be imposed. Motions and responses, except Motions pursuant to Rules 12(b)(6) and 56, must be accompanied by a proposed order.
S.D. TEX	N/A	Within 140 days after complaint, a pretrial conf and scheduling order done.	N/A	
E.D. TEX	N/A	Mgmt. conference within 120 days after issues joined; establish deadlines for filing motions.	Motions determined w/in 30 days after response (non-disp.); w/in 60 days for dispositive motions.	Leave of court to file motion except injunctive relief, dismissal, summary judgment, judgment on pleadings, default, class cert, remand, change of venue. Motions not to exceed 8 pages.
UTAH	Initial status and sched conf. held.	Motion target dates set at sched conf.	N/A	

PLAN PROVISIONS RELATING TO PRETRIAL MOTIONS

COURTS	MOTION HEARING DATES	DEADLINE FOR COURT FILING	DEADLINE FOR COURT DECISIONS	OTHER INFORMATION
VIRGIN ISLANDS	N/A	Opposition to motion for summary judgment due w/in 20 days after filing. In the absence of timely response, the court may render appropriate judgment on the merits.	N/A	
E.D. VA	N/A		Court rules promptly on pretrial motions, from bench or within days of hearing.	
N.D. WVa	N/A	N/A	Motions to dismiss, for summary judgment, or discovery not ruled within 30 days, discovery period tolled, to resume when court rules.	
S.D. WVa	Hearings or oral arguments set at Court's discretion; otherwise, ruled without hearing.	Once issues are joined, the Court shall enter a Time Frame Order establishing the dates for completion of pre-trial matters. Opposition to motions filed w/in 14 days of service; replies w/in 7 days of service. All dispositive motions unsupported by memoranda will be denied w/o prejudice.	Priority to Motions to Dismiss. Non-disp. motions referred to Magistrate; other dispositive motions may be referred.	

PLAN PROVISIONS RELATING TO PRETRIAL MOTIONS

COURTS	MOTION HEARING DATES	DEADLINE FOR COURT FILING	DEADLINE FOR COURT DECISIONS	OTHER INFORMATION
E.D. WISC	Oral argument may be scheduled at the discretion of the judicial officer.	Court may require prelim pretrial conf. Opposition to summary judgment due w/in 30 days; reply due in 15 days. For other motions, answer in 21 days, reply in 14.	N/A	Principal briefs not to exceed 30 pages; reply briefs not to exceed 15 pages.
W.D. WISC	N/A	Pretrial conference set shortly after filing; order to include sched for dispositive motions.	N/A	In discovery disputes, moving party must certify good faith attempts to resolve.
WYOMING	Magistrate conducts pretrial conf; trial judge determines trial date and dates for hearings on dispositive motions. Non-disp. referred to Magistrate to hear.	N/A	Rule on Dispositive motions at oral hearing; taken under advisement only when complex issues exist.	Prior to hearing on dispositive motions, counsel shall provide the Court w/proposed findings of fact and conclusions of law and proposed orders.

TAB B

DISCLOSURE -- WITNESSES AND DOCUMENTS

District	Documents and Other Tangible Things	Expert Witnesses	Other Witnesses
E.D. Arkansas	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
E.D. California	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
S.D. California	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
D. Delaware	(In personal injury, medical malpractice, employment discrimination and civil RICO only) "A general description of documents in the possession, custody or control of the party which are reasonably likely to bear significantly on the claims or defenses asserted."	(In personal injury, medical malpractice, employment discrimination and civil RICO) "An identification of all expert witnesses presently retained by the party or whom the party expects to retain, together with the dates of any written opinions proposed by the experts."	"The names, addresses and telephone numbers of all persons interviewed in connection with the litigation; the names, addresses and telephone numbers of each person who conducted any interview."
S.D. Florida	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
N.D. Georgia	Mandatory interrogatories developed by the court to be answered by each party.	No additional requirements adopted.	No additional requirements adopted.

District	Documents and Other Tangible Things	Expert Witnesses	Other Witnesses
D. Idaho	"Copy of, or a description by category and location of relevant medical records, reports, photographs, accident reports or other potential trial exhibits known by the party to be used at trial."	"The disclosure of expert testimony shall be in the form of a written report prepared and signed by the witness which will include: (i) a complete statement of all opinions to be expressed and the basis and reasons thereof; (ii) the data or other information relied upon in forming such opinions; (iii) any exhibits to be used as a summary of or support for such opinions; (iv) the qualifications of the witness; and (v) a listing of any other cases in which the witness has testified as an expert at trial or in deposition within the preceding four years."	"A list of the persons, and their addresses and telephone numbers, who have knowledge that significantly bears on any claim or defense contained in the pleadings." "A list of the witnesses then known to be called at trial."
S.D. Illinois	"A general description including location of all documents, data, compilations and tangible things in the possession, custody or control of that party that are likely to bear significantly on the claims and defenses."	No additional requirements adopted.	"The name and last known address of each person reasonably likely to have information that bears significantly on the claims and defenses, identifying the subjects of the information."

DISCLOSURE -- WITNESSES AND DOCUMENTS

District	Documents and Other Tangible Things	Expert Witnesses	Other Witnesses
N.D. Indiana	(Judge Miller): "The production, or description by category and locaiton, of all documents or tangible things that bear significantly upon any claim, defense, or entitlement to releif."	No additional requirements adopted.	No additional requirements adopted.
S.D. Indiana	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
D. Kansas	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
D. Mass.	"A description, including the location, of all documents that reasonably are likely to bear substantially on any of the claims or defenses in the action. By agreement, copies of documents may be submitted in lieu of a description."	"Any report of any expert who may be called at trial."	No additional requirements adopted.
W.D. Michigan	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.

District	Documents and Other Tangible Things	Expert Witnesses	Other Witnesses
D. Montana	"A description including the location and custodian of any tangible evidence or relevant documents that are reasonably likely to bear on the claims or defenses."	No additional requirements adopted.	No additional requirements adopted.
D. New Jersey	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
E.D. New York	"A general description of all documents, in the custody and control of the parties bearing significantly on claims and defenses. [Also] documents relied on by the parties in preparing the pleadings or documents that are expected to be used to support allegations."	No additional requirements adopted.	No additional requirements adopted.
S.D. New York	(In expedited cases only): "Defined categories of relevant documents will be produced." As set forth in the Southern District of New York Advisory Group Report, "a plaintiff must serve on all defendants legible copies of all documents that (i) support	No additional requirements adopted.	No additional requirements adopted.

District	Documents and Other Tangible Things	Expert Witnesses	Other Witnesses
	the material averments of the complaint and (ii) contradict or otherwise make less probable the material averments of the complaint." Defendants must serve the same documents regarding the answer. "In lieu of serving copies of the documents, either party may serve a list of and make available for copying, if asked, the documents required to be disclosed with sufficient identifying information as to the nature and content of the documents."		
N.D. Ohio	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
W.D. Oklahoma	"A general description, including the location of all books, documetns, data, compilations, and tangible things in the possession, custody or control of the party that are likely to bear significantly on any claim or defense."	"The identity of any expert witness whom the party intends to call, together with the expert's qualifications, a statement of the substance of the expert's expected testimony and a summary of the grounds for the expert's opinion."	No additional requirements adopted.

District	Documents and Other Tangible Things	Expert Witnesses	Other Witnesses
D. Oregon	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
E.D. Pa.	(See S.D. Illinois)	(See S.D. Illinois)	(See S.D. Illinois)
E.D. Texas	"Copy of, or description by category and location, all documetns, data compilations, and tangible things in the possession, custody, or control of the party that are likely to bear significantly on any claim or defense."	No additional requirements adopted.	"The name and, if known, the address and telephone number of each person likely to have information that bears significantly on any claim or defense, identifying the subjects of the information, and a brief, bare summary of the substance of the information known by the person."
S.D. Texas	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
D. Utah	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
D. Virgin Islands	"A general description, including locaiton, of all documents, data, compilations,	No additional requirements adopted.	(See S.D. Illinois)

District	Documents and Other Tangible Things	Expert Witnesses	Other Witnesses
	the existence and contents of medical records, claims, and tangible things in the possession, custody or control of that party that are likely to bear significantly on the claims and defenses."		
E.D. Virginia	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
N.D. West Virginia	(See E.D. Texas)	"This disclosure shall be in the form of a written report prepared and signed by the witness which includes a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information relied upon in forming such opinions; any exhibits to be used as a summary of or support for such opinions; the qualifications of the witness; and a listing of any other cases in which the witness has testified as an expsert at trial or in deposition within the preceding four years." "Unless the court designates a different time, these	"The name and, if known, the address and telephone number of each individual reasonably likely to have information that bears significantly on any claim or defense, identifying the subjects of the information."

District	Documents and Other Tangible Things	Expert Witnesses	Other Witnesses
		disclosures shall be made (i) by plaintiff within 150 days after the service of an answer to its complaint, and (ii) by a defendant within 45 days after disclosure by the plaintiff."	
S.D. West Virginia	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
E.D. Wisconsin	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
W.D. Wisconsin	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
D. Wyoming	"Copies of contracts in dispute: medical reports and laboratory tests; a copy, of description by category and location of all documents, data compilations, and tangible items in the possession, custody, or control of the party that are likely to bear significantly on any claim or defense."	No additional requirements adopted.	"List of fact witnesses with a summary of their expected testimony."

District	Claims and Damage Theories	Insurance Agreements	Timing of Disclosure
D. Alaska	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
E.D. Arkansas	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
E.D. California	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
N.D. California	"A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered.	"For inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment."	"Unless the court otherwise directs or the parties otherwise stipulate with the court's approval, these disclosures shall be made (1) by a plaintiff within 30 days after service of an answer to its complaint; (ii) by a defendant within 30 days after serving its answer to the complaint; and in any event, (iii) by any party that has appeared in the case within 30 days after receiving from another party a written demand for accelerated disclosure accompanied by the demanding party's disclosures."

DISCLOSURE -- DAMAGES, INSURANCE, AND TIMING

District	Claims and Damage Theories	Insurance Agreements	Timing of Disclosure
S.D. California	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
D. Delaware	No additional requirements adopted.	"A brief description of any insurance coverage applicable to the litigation."	"Party must provide disclosure with its initial pleading."
S.D. Florida	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
N.D. Georgia	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
D. Idaho	No additional requirements adopted.	"Any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment."	"The plaintiff, within 30 days after service of the complaint, and the defendant, within 30 days after service of the answer."
S.D. Illinois	No additional requirements	"The existence and contents of	"By each plaintiff within

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District	Claims and Damage Theories	Insurance Agreements	Timing of Disclosure
	adopted.	any insurance agreement under which any person or entity carrying on an insurance business may be liable to satisfy part or all of the judgment that may be entered in the action, or indemnify or reimburse for payments made to satisfy the judgment, making available such agreement for inspection and copy."	twenty days after a defendant enters an appearance, by each defendant within twenty days of entering an appearance; and, in any event by any party that has appeared in the case within twenty days after receiving from another party a demand for early disclosure accompanied by the demanding party's disclosures."
N.D. Indiana	(Judge Miller): "A computation of any category of damages claimed by the disclosing party, making available for inspection and copying any evidentiary material on which the claim is based."	(Judge Miller): "The production of all potentially pertinent contracts for insurance."	(Judge Miller): Judge Miller's order will require disclosure of the required documents or lists, "in writing, to the extent then known, before the date originally scheduled for the initial pretrial conference to be held under FRCP 16(b)." The court adopts no presumptive deadlines, instead the court will tailor deadlines to a given case's needs."
S.D. Indiana	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.

District	Claims and Damage Theories	Insurance Agreements	Timing of Disclosure
D. Kansas	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
D. Massachusetts	No additional requirements adopted.	"Any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment." "Any report by an insurance agent or investigator not protected by Federal Rule 26(b)(3)."	"Before any party may initiate any discovery." In the case of removal or transfer, where discovery has already commenced, disclosure shall be made "within twenty (20) days of the removal or transfer."
W.D. Michigan	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
D. Montana	"(i) The factual basis of every claim or defense advanced by the disclosing party. In the event of multiple claims or defenses, the factual basis for each claim or defense; (ii) the legal theory upon which each claim or defense is based including, where necessary for	"The substance of any insurance agreement that may cover any resulting judgment."	"Without awaiting a discovery request; not later than fifteen (15) days in advance of the preliminary pretrial conference."

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District	Claims and Damage Theories	Insurance Agreements	Timing of Disclosure
	a reasonable understanding of the claim or defense, citations of pertinent legal or case authorities, (iii) a computation of any damages claimed."		
D. New Jersey	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
E.D. New York	No additional requirements adopted.	"The content of any insurance agreement."	"Unless the court otherwise directs or the parties otherwise stipulate with the court's approval, these disclosures shall be made (i) by a plaintiff within 30 days after service of an answer to its complaint; (ii) by a defendant within 30 days after serving its answer to the complaint; and, in any event, (iii) by any party that has appeared in the case within 30 days after receiving from another party a written demand for accelerated disclosure accompanied by the demanding party's disclosures."

DISCLOSURE -- DAMAGES, INSURANCE, AND TIMING

District	Claims and Damage Theories	Insurance Agreements	Timing of Disclosure
S.D. New York	No additional requirements adopted.	No additional requirements adopted.	"Within 21 days of a filing a complaint, a plaintiff must serve on all defendants [the required documents or a list] . . . Within 21 days of filing an answer, defendants must serve on all plaintiffs [the required documents or a list]."
N.D. Ohio	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
W.D. Oklahoma	No additional requirements adopted.	"The existence and content of any insurance agreement under which any person or entity carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment."	"Prior to the status/scheduling conference, which shall be held within 120 days from the filing of the complaint, each party shall, without awaiting a discovery request disclose. . ."
D. Oregon	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.

District	Claims and Damage Theories	Insurance Agreements	Timing of Disclosure
E.D. Pennsylvania	No additional requirements adopted.	"The existence and contents of any insurance agreement under which any person or entity carrying on an insurance business may be liable to satisfy part or all of the judgment that may be entered in the action, or indemnify or reimburse for payments made to satisfy the judgment, making available such agreement for inspection and copying as under local Civil Rule 24."	"Unless the court otherwise directs, these disclosures shall be made (i) by each plaintiff within 30 days after service of an answer to its complaint; (ii) by each defendant within 30 days after serving its answer to the complaint; and, in any event, (iii) by any party that has appeared in the case within 30 days after receiving from another party a written demand for early disclosure accompanied by the demanding party's disclosures."
W.D. Tennessee	Requirements set by Preliminary Pre-Trial Order.	Requirements set by Preliminary Pre-Trial Order.	Requirements set by Preliminary Pre-Trial Order.
E.D. Texas	"A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34, the documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered."	"For inspection and copying as under Rule 34, any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment."	By a plaintiff within 30 days after service of an answer to its complaint or removal of the action from state court, whichever occurs last; by a defendant within 30 days after serving its answer to the complaint or removal of the action from state court, whichever occurs last; in any event by any party that has

District	Claims and Damage Theories	Insurance Agreements	Timing of Disclosure
			appeared in the case within 30 days after receiving from another party a written demand for accelerated disclosure accompanied by the demanding party's disclosures."
S.D. Texas	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
D. Utah	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
D. Virgin Islands	No additional requirements adopted.	"The existence and contents of any insurance agreement under which any person or entity carrying on an insurance business may be liable to satisfy part or all of the judgment that may be entered in the action, or indemnify or reimburse for payment made to satisfy the judgment, making available such agreement for inspection and copying, as well as reports or documents bearing on reservation of rights or denial of coverage."	(See E.D. Pennsylvania)

District	Claims and Damage Theories	Insurance Agreements	Timing of Disclosure
E.D. Virginia	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
N.D. West Virginia	(See E.D. Texas)	(See E.D. Texas)	"Unless the court otherwise directs or the parties otherwise stipulate with the court's approval, these disclosures shall be made (i) by a plaintiff within 30 days after service of an answer to its complaint; (ii) by a defendant within 30 days after serving its answer to the complaint; and, in the event, (iii) by any party that has appeared in the case within 30 days after receiving from another party a written demand for accelerated disclosure accompanied by the demanding party's disclosures." Unless the court designates a different time, the disclosure of expert testimony "shall be made (i) by plaintiff within 150 days after the service of an answer to its complaint, and (ii) by a defendant within 45 days after disclosure by the plaintiff."

District	Claims and Damage Theories	Insurance Agreements	Timing of Disclosure
S.D. West Virginia	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
E.D. Wisconsin	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
W.D. Wisconsin	No additional requirements adopted.	No additional requirements adopted.	No additional requirements adopted.
D. Wyoming	(See E.D. Texas)	(See E.D. Texas)	(See E.D. Texas)

CHART I

DISCOVERY LIMITS - CJRA DISTRICT COURT PLANS[1]

	Interrogatories/ Numerical Limits	Requests for Admissions/ Numerical Limits	Depositions/ Numerical Limits	Depositions/ Duration Limits	Standardized Discovery Cut-Off Dates
1. D. Alaska[2]	N	N	N	N	N
2. E.D. Arkansas	N	N	N	N	N
3. E.D. California	N	N	N	N	N
4. N.D. California[3]	N	N	N	N	N
5. S.D. California[3]	N	N	N	N	N
6. D. Delaware[3]	N	N	N	N	N
7. S.D. Florida[3]	N	N	N	N	Y
8. N.D. Georgia[3]	N	N	N	N	Y
9. D. Idaho	40	N	N	N	N
10. S.D. Illinois[3]	N	N	N	N	N
11. N.D. Indiana[3]	N	N	N	N	N
12. S.D. Indiana[3]	N	N	N	N	N
13. D. Kansas[3]	N	N	N	N	N
14. D. Massachusetts[3,4]	30	2[5]	5	N	N
15. W.D. Michigan	N	N	N	N	N
16. D. Montana	50	N	N	N	N

DISCOVERY LIMITS - CJRA DISTRICT COURT PLANS

	Interrogatories/ Numerical Limits	Requests for Admissions/ Numerical Limits	Depositions/ Numerical Limits	Depositions/ Duration Limits	Standardized Discovery Cut-Off Dates
17. D. New Jersey	N	N	N	N	N
18. E.D. New York	15	N	10	N	N
19. S.D. New York[6]	N	N	N	N	N
20. N.D. Ohio[7]	Y	N	Y	N	Y
21. W.D. Oklahoma[3]	N	N	N	N	N
22. D. Oregon[3]	N	N	N	N	N
23. E.D. Pennsylvania	N	N	N	N	N
24. E.D. Tennessee[2,3]	N	N	N	N	N
25. W.D. Tennessee[2,3]	N	N	N	N	N
26. E.D. Texas[8]	Y	Y	Y	Y	N
27. S.D. Texas[3]	N	N	N	N	N
28. D. Utah[9]	N	N	N	N	N
29. D. Virgin Islands[3]	Not Available	Not Available	Not Available	Not Available	Not Available
30. E.D. Virginia[3]	N	N	N	N	N
31. N.D. West Virginia[3]	N	N	N	N	Y

DISCOVERY LIMITS - CJRA DISTRICT COURT PLANS

	Interrogatories/ Numerical Limits	Requests for Admissions/ Numerical Limits	Depositions/ Numerical Limits	Depositions/ Duration Limits	Standardized Discovery Cut-Off Dates
32. S.D. West Virginia[3]	N	N	N	N	N
33. E.D. Wisconsin[3]	Y	N	N	Y	N
34. W.D. Wisconsin	N	N	N	N	N
35. D. Wyoming[3]	N	N	N	N	N

1. This chart does not include discovery limits that would be set on a case-by-case basis, perhaps through a mandatory pretrial conference.

2. The local rules were being revised at the time the Plan was adopted.

3. There are existing discovery limits that would remain in place. See Chart III.

4. The court states, however, that these limits are intended only as guidelines.

5. This is a limit on requests for production, not requests for admissions.

6. The court accepts the need for limited discovery in expedited cases and for unspecified, generally applicable guidelines for interrogatories and depositions.

7. The Plan establishes 5 management tracks: Expedited (15 interrogatories, 1 fact witness deposition, 100-day discovery cut-off period); standard (35 interrogatories, 3 fact witness depositions, 200-day discovery cut-off period); complex (discovery limits set on case-by-case basis); administrative (no discovery without prior leave of court); and mass torts (discovery limits set on case-by-case basis).

8. The exact limits applicable to a case are dependent on the management track of the case.

9. The court forwarded the advisory group's recommended discovery limits to its Standing Committee on rule revisions for consideration.

CHART II

DISCOVERY LIMITS - CJRA ADVISORY GROUP REPORTS[1]

	Interrogatories/ Numerical Limits	Requests for Admissions/ Numerical Limits	Depositions/ Numerical Limits	Depositions/ Duration Limits	Standardized Discovery Cut-Off Dates
1. E.D. Arkansas	N	N	N	N	N
2. E.D. California	N	N	N	N	N
3. N.D. California[2]	N	N	N	N	N
4. S.D. California[2]	N	N	N	N	N
5. D. Delaware[2]	N	N	N	N	N
6. S.D. Florida[2]	N	N	N	N	N
7. N.D. Georgia[2]	N	N	N	N	N
8. D. Idaho	40	N	N	N	N
9. S.D. Illinois[2]	N	N	N	N	N
10. N.D. Indiana	N	N	N	N	N
11. S.D. Indiana[2]	N	N	N	N	N
12. D. Kansas[2]	N	N	N	N	N
13. D. Massachusetts[2]	N	N	N	N	N
14. W.D. Michigan	N	N	N	N	N
15. D. Montana	50	N	N	N	N
16. D. New Jersey	N	N	N	N	N

DISCOVERY LIMITS - CJRA ADVISORY GROUP REPORTS

	Interrogatories/ Numerical Limits	Requests for Admissions/ Numerical Limits	Depositions/ Numerical Limits	Depositions/ Duration Limits	Standardized Discovery Cut-Off Dates
17. E.D. New York	15	N	10	N	N
18. S.D. New York[3]	N	N	N	N	N
19. N.D. Ohio[4]	Y	N	Y	N	Y
20. W.D. Oklahoma[2]	N	N	N	N	N
21. D. Oregon[2]	N	N	N	N	N
22. E.D. Pennsylvania	N	N	N	N	N
23. W.D. Tennessee[2]	N	N	N	N	N
24. E.D. Texas	Not Available	Not Available	Not Available	Not Available	Not Available
25. S.D. Texas[2]	N	N	N	N	N
26. D. Utah	15	25	N	Y	N
27. D. Virgin Islands[2]	N	N	N	Y	N
28. E.D. Virginia[2]	N	N	N	N	N
29. N.D. West Virginia[2]	N	N	N	N	Y

DISCOVERY LIMITS - CJRA ADVISORY GROUP REPORTS

	Interrogatories/ Numerical Limits	Requests for Admissions/ Numerical Limits	Depositions/ Numerical Limits	Depositions/ Duration Limits	Standardized Discovery Cut-Off Dates
30. S.D. West Virginia	N	N	N	N	N
31. E.D. Wisconsin[2]	Y	N	N	Y	N
32. W.D. Wisconsin	N	N	N	N	N
33. D. Wyoming[2]	N	N	N	N	N

1. This chart does not include discovery limits that would be set on a case-by-case basis, perhaps through a mandatory pretrial conference.

2. There are existing discovery limits that would remain in place. See Chart III.

3. The advisory group recommends unspecified limits on discovery in expedited cases.

4. The exact limits depend on the case management track applicable to a particular case.

CHART III

DISCOVERY LIMITS - EXISTING LOCAL RULES[1]

	Interrogatories/ Numerical Limits	Requests for Admissions/ Numerical Limits	Depositions/ Numerical Limits	Depositions/ Duration Limits	Standardized Discovery Cut-Off Dates
1. N.D. Alabama	N	N	N	N	N
2. S.D. Alabama	N	N	N	N	N
3. M.D. Alabama	N	N	N	N	N
4. D. Alaska	20	N	N	N	N
5. D. Arizona	N	N	N	N	N
6. E.D. Arkansas	N	N	N	N	N
7. W.D. Arkansas	N	N	N	N	N
8. C.D. California	30	N	N	N	N
9. N.D. California	35	N	N	N	N
10. S.D. California	25	25	N	N	N
11. E.D. California	N	N	N	N	N
12. D. Colorado	N	N	N	N	N
13. D. Connecticut	30	N	N	N	N
14. D. Delaware	50	25	N	N	N
15. D. District of Columbia	N	N	N	N	N
16. S.D. Florida	40	N	N	N	N

DISCOVERY LIMITS - EXISTING LOCAL RULES

	Interrogatories/ Numerical Limits	Requests for Admissions/ Numerical Limits	Depositions/ Numerical Limits	Depositions/ Duration Limits	Standardized Discovery Cut-Off Dates
17. N.D. Florida	50	N	N	N	N
18. M.D. Florida	50	N	N	N	N
19. M.D. Georgia	N	N	N	N	N
20. N.D. Georgia	40	N	N	Y	Y
21. S.D. Georgia	25	N	N	N	Y
22. D. Guam	30	30	N	N	N
23. D. Hawaii	30[2]	N	N	N	N
24. D. Idaho	N	N	N	N	N
25. C.D. Illinois	20	N	N	N	N
26. N.D. Illinois	N	N	N	N	N
27. S.D. Illinois	20	N	N	N	N
28. N.D. Indiana	30	30	N	N	N
29. S.D. Indiana	30	30	N	N	N
30. N.D. Iowa	30	N	N	N	N
31. S.D. Iowa	30	N	N	N	N
32. D. Kansas	30	N	N	N	Y
33. E.D. Kentucky	30	30	N	N	N

DISCOVERY LIMITS - EXISTING LOCAL RULES

	Interrogatories/ Numerical Limits	Requests for Admissions/ Numerical Limits	Depositions/ Numerical Limits	Depositions/ Duration Limits	Standardized Discovery Cut-Off Dates
34. W.D. Kentucky	30	30	N	N	N
35. E.D. Louisiana	25	N	N	N	N
36. M.D. Louisiana	25	N	N	N	N
37. W.D. Louisiana	25	N	N	N	N
38. D. Maine	N	N	N	N	N
39. D. Maryland	30	30[3]	N	N	N
40. D. Massachusetts	30	N	N	N	N
41. E.D. Michigan	N	N	N	N	N
42. W.D. Michigan	N	N	N	N	N
43. D. Minnesota	50	N	N	N	N
44. N.D. Mississippi	30	N	N	N	Y
45. S.D. Mississippi	30	N	N	N	Y
46. W.D. Missouri	30	N	N	N	N
47. E.D. Missouri	20	N	N	N	N
48. D. Montana	N	N	N	N	N
49. D. Nebraska	50	N	N	N	N
50. D. Nevada	40	N	N	N	Y

DISCOVERY LIMITS - EXISTING LOCAL RULES

	Interrogatories/ Numerical Limits	Requests for Admissions/ Numerical Limits	Depositions/ Numerical Limits	Depositions/ Duration Limits	Standardized Discovery Cut-Off Dates
51. D. New Hampshire	N	N	N	N	N
52. D. New Jersey	N	N	N	N	N
53. D. New Mexico	50	N	N	N	N
54. S.D. New York	N	N	N	N	N
55. E.D. New York	N	N	N	N	N
56. W.D. New York	N	N	N	N	N
57. N.D. New York	N	N	N	N	N
58. M.D. North Carolina	50	N	N	N	N
59. W.D. North Carolina	N	N	N	N	Y
60. E.D. North Carolina	N	N	N	N	N
61. D. North Carolina	N	N	N	N	Y
62. D. North Mariana Islands	30[4]	N	N	N	N
63. S.D. Ohio	40	40	N	N	N
64. N.D. Ohio	N	N	N	N	N
65. W.D. Oklahoma	30	30	N	N	N
66. E.D. Oklahoma	30	N	N	N	N

DISCOVERY LIMITS - EXISTING LOCAL RULES

	Interrogatories/ Numerical Limits	Requests for Admissions/ Numerical Limits	Depositions/ Numerical Limits	Depositions/ Duration Limits	Standardized Discovery Cut-Off Dates
67. N.D. Oklahoma	30	30	N	N	N
68. D. Oregon	20	N	N	N	N
69. E.D. Pennsylvania	N	N	N	N	N
70. M.D. Pennsylvania	40	40	N	N	Y
71. W.D. Pennsylvania	N	N	N	N	Y
72. D. Puerto Rico	N	N	N	N	Y[5]
73. D. Rhode Island	N	N	N	N	N
74. D. South Carolina	50	20	N	N	N
75. D. South Dakota	N	N	N	N	N
76. E.D. Tennessee	30	N	N	N	N
77. M.D. Tennessee	30	N	N	N	Y
78. W.D. Tennessee	30	N	N	N	N
79. S.D. Texas	30	N	N	N	N
80. W.D Texas	20	10	N	N	N
81. N.D. Texas	N	N	N	N	N
82. E.D. Texas	N	N	N	N	N
83. D. Utah	N	N	N	N	N

DISCOVERY LIMITS - EXISTING LOCAL RULES

	Interrogatories/ Numerical Limits	Requests for Admissions/ Numerical Limits	Depositions/ Numerical Limits	Depositions/ Duration Limits	Standardized Discovery Cut-Off Dates
84. D. Vermont	N	N	N	N	N
85. D. Virgin Islands	25	N	N	N	N
86. E.D. Virginia	30	N	5	N	N
87. W.D. Virginia	N	N	N	N	N
88. E.D. Washington	30	15	N	N	N
89. W.D. Washington	35	N	N	N	Y
90. N.D. West Virginia	40	40	N	N	Y
91. S.D. West Virginia	40	N	N	N	N
92. E.D. Wisconsin	35	N	N	N	N
93. W.D. Wisconsin	N	N	N	N	N
94. D. Wyoming	50	N	N	N	N

1. The existing local rules summary generally does not reflect any changes to local rules implemented by the CJRA plans.

2. This limit applies only to the plaintiff and within 20 days of serving a complaint.

3. This limit is on requests for production, not requests for admission.

4. This limit applies only prior to the filing of a responsive pleading.

5. The local rules are ambiguous as to this limit.

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TAB C

SETTLEMENT CONFERENCE

District of Massachusetts

At every conference conducted under these rules, the judicial officer shall inquire as to the parties conducting settlement negotiations, explore means of facilitating those negotiations, and offer whatever assistance that may be appropriate in the circumstances. Assistance may include a reference of the case to another judicial officer for settlement purposes. Whenever a settlement conference is held, a representative of each party who has settlement authority shall attend or be available by telephone.

Eastern District of New York

The Advisory Group recommends that the court establish a presumption that a settlement conference, hosted by a judge or magistrate, will be held in every case except those in which it appears to the judicial officer to be unwarranted.

Northern District of California

We have concluded that substantial unnecessary cost and delay can be eliminated by the use of judge supervised settlement conferences. In order to achieve maximum benefits and encourage the necessary investment of judicial resources in this ADR procedure, we believe it is essential that credit be given under FJC statistics for judicial work in conducting settlement conferences. The ADR committee plans to work with the Judicial Liaison Committee towards this goal.

Eastern District of Virginia

No recommendation.

SETTLEMENT CONFERENCE

Southern District of California

At the Case Management Conference, the Judicial Officer will set a date for a Mandatory Settlement Conference, unless it is determined that such a conference should be excused.

If at any time prior to the Mandatory Settlement Conference, a particular case is determined ready for settlement by a Judicial Officer, it may be calendared for a settlement conference even over the objection of one or more parties or their counsel. In this regard:

a. The Judicial Officer handling settlement will be disqualified from trying the case unless there is agreement by the parties to waive this restriction;

b. The Judicial Officer handling settlement may receive communications in camera from each party and its counsel, and shall maintain such in confidence unless there is a stipulation to the contrary;

c. Each party will send a representative to the settlement conference with full authority to enter into an agreement to settle the case unless good cause is shown waiving this requirement;

d. The Judicial Officer handling settlement should schedule as many follow up settlement conferences as the Judicial Officer finds appropriate in light of the complexity of the matter or other factors.

Northern District of West Virginia

[The Court has ordered that] in all civil cases in which discovery is completed, except for Type I civil cases, and those cases exempted pursuant to provisions hereof, will be referred to a Settlement Week Conference. Settlement Week Conferences shall be conducted at regular intervals and not less than three times in a calendar year.

A case will be exempted from Settlement Week Conferences if the parties, with the consent of the court, agreed to some other form of [ADR] such as arbitration, summary jury trial, mini-trial, or mediation with a magistrate judge or settlement judge. A case will also be exempt if the court finds there would be no beneficial purposes served by requiring the case to be submitted to a Settlement Week Conference.

* * *

Settlement Week Conferences shall be conducted pursuant to rules and procedures developed for Settlement Weeks currently used in this district.

Southern District of West Virginia

Lead trial counsel shall attend the final settlement conference. All parties or their representatives authorized to settle the case shall attend the final settlement conference in person or be available for consultation by telephone with the Court.

During no later than the 10-day period prior to the conference, the parties and their lead trial counsel shall meet together and conduct negotiations looking toward the settlement of the action, and counsel will be prepared at the conference to certify that they have done so. . . .[S]hould a party (or his authorized representative) and his lead trial counsel fail to appear . . . at any final settlement conference, [or] should lead trial counsel for the parties otherwise fail to confer in settlement negotiations as provided herein, the Court may impose appropriate sanctions, including, but not limited to, sanctions by way of imposition of attorneys' fees against the attorney and/or his client pursuant to Rule 16(f), F. R. Civ. P..

Eastern District of California

All judges within the Eastern District offer to conduct settlement conferences for the litigants. In addition to the district judges, magistrate judges are also available and willing to assist in civil settlement conferences. . . .The court will seek to provide a judicially-sponsored settlement conference at the earliest appropriate opportunity in every case.

SETTLEMENT CONFERENCE

Eastern District of Wisconsin

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

(1) a conference with the judge or a magistrate judge to be held within a reasonable time;

(2) the appointment of a special master;

(3) the referral of the case for neutral evaluation, mediation, arbitration, or some other form of alternative dispute resolution.

2. Judges may make referrals under this section to those persons or entities who, in the opinion of the referring judge, 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.

3. All cases subject to mandatory discovery under Rule 7.07 will presumptively be subject to one of the settlement procedures authorized by this rule.

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

Western District of Oklahoma

1. Unless the Court otherwise directs, each case shall be scheduled for a mandatory settlement conference at the earliest practicable time pursuant to Local Rule 17(H). To this end, counsel shall determine the dispositive issues or facts especially bearing on settlement prospects as early in the case as practicable, and conduct early discovery thereon.

2. The settlement conference shall ordinarily be held before a magistrate judge, as the Court may direct.

3. At least one trial counsel for each party shall attend.

4. For each party, a person empowered to fully settle the case shall also attend.

5. At any time counsel believes the prospects of a fruitful settlement exist, counsel shall so advise the Court.

District of Wyoming

1. Local Rule 220 makes the services of a magistrate judge available to parties upon request for settlement conferences. The conferences have been well accepted and used frequently by litigants. The Court remains committed to the use of its resources to resolve disputes short of trial.

2. The Court proposes that a standing committee on local rules amend current local rules to provide as follows:

a. Procedures which shall require the parties to consider early settlement discussion and report the of such discussion at the initial pretrial conference;

b. Assignment of settlement conferences to retired judges or other counsel subject to the approval of the Court, in addition to existing practices;

c. Procedures which permit the Court to mandate alternative dispute resolutions in appropriate cases;

d. Continuation of the use of Local Rule 220, which requires that an individual having binding authority to settle a dispute be present in person during settlement conferences; and

e. Consideration by the Court to utilize other alternative dispute resolution techniques on an ad hoc basis when they are deemed appropriate.

Northern District of Indiana

1. The Court believes that private settlement discussions offer the best opportunity for reduction of delay and expense.

2. The Court will expand the range of court-assisted settlement programs; but continues to view private negotiations as the most cost-effective approach to settlement.

3. Attorneys should not rely exclusively on settlement procedures offered by the Court. No court-sponsored procedure is quicker or less expensive than settlement negotiations between counsel.

4. Attorneys should not view private discussion of settlement as a sign of weakness on the part of the side opening the discussion. Attorneys should consider engaging in private settlement discussions even before, or immediately after, the scheduling order is entered.

5. If private settlement discussions might be enhanced by staged discovery or by a court-hosted settlement conference before discovery is begun, counsel should so inform the Court.

SETTLEMENT CONFERENCE

District of Kansas

1. Consistent with Fed. R. Civ. P. 16, the judge to whom a case has been assigned may encourage the counsel and the parties, at the earliest appropriate opportunity, to resolve or settle their dispute using such extrajudicial proceedings as mediation, mini-trials, summary jury trials or other alternative dispute resolution programs. The judge shall not make this a requirement in a case where it would be futile.

2. The judge may refer a case to a settlement conference before a mediator, an attorney-mediator chosen from a panel of local attorneys, a magistrate judge, or any trial judge consenting thereto. The settlement conference shall be conducted in such a way as to permit an informative discussion between counsel, the parties, and the judge, magistrate judge, attorney-mediator, or mediator of every possible aspect of the case bearing on its settlement, thus permitting the judge, magistrate judge, attorney-mediator, or mediator to privately express his views concerning the settlement of the case. Attendance by a party representative with settlement authority at such conferences is mandatory, unless the Court orders otherwise.

3. The Civil Justice Reform Act advisory Group for the District of Kansas shall develop the initial panel of attorneys after consultation with all interested bar associations. The list of attorneys shall be approved after additions and deletions, and maintained by the Court. The Court may thereafter add names

Northern District of Indiana

1. The judges will continue to make themselves available for judicially-hosted settlement conferences, and to order settlement conferences upon appropriate request or when deemed appropriate by a judge.

2. The Court will consider formulation of a rule to allow a judge to exercise the sanctioning power based in Fed. R. Civ. P. 16(f) when settlement results from a party's unreasonable, substantial change of a settlement posture announced in a conference held within thirty days of trial.

3. A judge conducting a settlement conference will consider requiring attendance by, or telephonic availability of, those persons with settlement authority.

Southern District of Indiana

The Court should continue actively to encourage settlement. Efforts should include discussion of settlement possibilities at every appropriate pretrial conference, solicitation of settlement offers from the parties, early neutral evaluation by magistrates in non-consent cases, "shuttle diplomacy," and other techniques.

to or strike names from the list, after consultation with the Advisory Group or interested local bar association.

4. Settlement conference statements or memoranda submitted to the Court or any other communications that take place during the settlement conferences shall not be used by any party in the trial of the case. The judge, magistrate judge, attorney-mediator, or mediator presiding over the settlement conference shall not communicate to the trial judge the confidences of the conference except to advise whether or not the case has been settled. If the conference is conducted by a mediator, an attorney-mediator, or panel of attorney-mediators, the costs of the conference, including the reasonable fees of the mediator, attorney-mediator or panel of attorney-mediators, shall be assessed to the parties in such proportions as shall be determined by the trial judge.

5. The Court does not intend that alternative dispute resolution methodology be used soley for its sake. It does, however, encourage attorneys and judges to use their creativity to develop procedures appropriate in this District for each particular case to encourage the fair, just and efficient resolution of disputes in order to better serve party litigants and to improve the trial system.

District of Tennessee

The court already requires a presence or availability of party representatives at settlement conferences. It will continue this practice and incorporate the requirement in a new local rule.

District of Alaska

Court is unable to seriously consider implementing ADR program involving judicial officers beyond the continuation of the present settlement conference program because of judicial vacancy which remains unfilled.

SETTLEMENT CONFERENCE

District of Oregon

Throughout the pretrial process, the judge should apprise counsel of alternate dispute resolution options, e.g., possibility of a settlement judge (L.R.240-1); use of the court's voluntary mediation program (L.R.240-2); or the use of other local mediation or settlement services.

District of Idaho

After the completion of factual discovery and the disclosure of expert witnesses, the attorneys will be required to meet or communicate between themselves and make a good faith effort to clarify and narrow issues, attempt to resolve certain disputed matters, and seriously explore the possibility of settlement.

The Advisory Committee recommended that a court-conducted settlement conference be mandatory in all cases except those where both parties certify to the court that they believe the Court's involvement in future settlement efforts would be unproductive. However, it is the belief of this Court, based upon its vast experience, that if a particular party is adamantly opposed to settlement attempts and remains rigid in their position, Court involvement may be a waste of judicial resources. This practice would also result in additional cost and delay to the respective litigants.

Subsequent to the required meeting between counsel, if a party sincerely believes that a court-involved settlement conference would be valuable, that party may "request" a judicially-conducted settlement conference pursuant to Local Rule 68.1. Such conference may be held before the assigned judge, or, at the request of the parties or on the assigned judge's own motion, before such other judge or magistrate judge as may be designated.

District of Montana

Judicial Officer hearing case shall consider the advisability of requiring parties to participate in settlement conference to be convened by the court. Any party may request a settlement conference. Each party or representative of each party with authority to participate in settlement negotiations and effect a complete compromise of the case shall be required to attend. Any judicial officer of district may preside over a settlement conference. Judicial officer to whom the case is assigned for disposition may, in his or her discretion, preside over the settlement conference.

SETTLEMENT CONFERENCE

When a court-conducted settlement conference takes place, all counsel, clients and insurance carriers are expected to attend or participate by telephone unless otherwise excused by the Court. The manner in which settlement conferences are conducted will be left to the discretion of the individual judge.

[T]he Court will periodically schedule a settlement week. . . . The selection of cases will be at the discretion of the Court or upon the request of one or more of the litigants.

Neutral attorneys who have received specialized training in the state settlement week program and who practice in and are familiar with federal court actions will be randomly assigned cases. The neutral attorney will serve as a settlement master or mediator. This third party neutral does no decide the case or adjudicate the dispute, but rather, participates in the discussions that may improve the resolution of the parties' differences.

Settlement masters shall either serve on a volunteer basis or be paid a nominal fee, such as $100 per case, to be split among the parties.

SETTLEMENT CONFERENCE

District of Utah

The Court currently has an effective settlement conference process with characteristics of mediation as part of that process. Thus, a litigant and his attorney with a genuine interest in exploring settlement in either a formal or informal setting has that service available before a judge other than the trial judge, the same being totally off the record. (Rule 204[c])

District of Massachusetts

(1) The judicial officer may convene a mini-trial upon the agreement of all parties, either by written motion or their oral motion in open court entered upon the record.

(2) Each party, with or without the assistance of counsel, shall present his or her position before:

(A) selected representatives for each party, or

(B) an impartial third party, or

(C) both selected representatives for each party and an impartial third party.

(3) An impartial third party may issue an advisory opinion regarding the merits of the case.

(4) Unless the parties agree otherwise, the advisory opinion of the impartial third party is not binding.

(5) The impartial third party's advisory opinion is not appealable.

(6) Neither the advisory opinion of an impartial third party nor the presentations of the parties shall be admissible as evidence in any subsequent proceeding, unless otherwise admissible under the rules of evidence. Additionally, the occurrence of the mini-trial shall not be admissible.

Southern District of New York

We recommend that the Court provide for other voluntary ADR options, including early neutral evaluation ("ENE"), mini-trials and summary jury/non-jury trials.

Western District of Tennessee

The local rules should be amended to authorize the court to refer appropriate cases to alternative dispute resolution programs that
A) have been designated for use in a district court; or
B) the court may make available, including mediation, minitrial, and summary jury trial.

Eastern District of Virginia

No recommendation.

MINI-TRIAL

Southern District of California

[The Court] order[s] that after a hearing with an opportunity to be heard, the Judicial Officer shall order a non-binding mini-trial or summary jury trial in all cases s/he finds that (1) the potential judgment does not exceed $250,000 and (2) that the use of this procedure will probably resolve the case.

Northern District of Indiana

1. The Court will make cautious use of minitrials in cases in which the actual trial would be unusually expensive.

2. The Court will review the experiences with these devices in Pilot Districts over the next three years

3. The Court believes that even the consensual use of minitrials generally should be limited to cases in which the actual trial would be unusually expensive, either because of its length or because of the stakes involved.

4. The Advisory Group recommended caution in the use of mechanisms such as the minitrial, while generally recommending expansion of other techniques such as early neutral evaluation programs and judicial mediation in settlement conferences.

District of Utah

The Court will experiment with court-supervised mediation, arbitration, minitrials or summary jury trials for a limited period of time to determine whether services of that kind are in demand, and will refer appropriate cases to such programs and observe the kind and quality of results of such experimentation. The Court will endeavor to provide services on an experimental basis within the next year, structured and staffed in a form yet to be determined.

District of Massachusetts

(1) The judicial officer may grant mediation upon the agreement of all parties, either by written motion or their oral motion in court entered upon the record.

(2) A mediator may be selected and assigned to the case who shall be qualified and knowledgeable about the subject matter of the dispute, but have no specific knowledge about the case. The mediator shall be compensated as agreed by the parties, subject to the approval of the judicial officer.

(3) The mediator shall meet, either jointly or separately, with each party and counsel for each party and shall take any other steps that may appear appropriate in order to assist the parties to resolve the impasse or controversy.

(4) The mediation shall be terminated if, after the seven (7) day period immediately following the appointment of the mediator, any party, or the mediator, determines that mediation has failed or no longer wishes to participate in mediation.

(5) If an agreement is reached between the parties on any issues, the mediator

Southern District of N.Y.

[The Advisory Committee recommends] the SDNY implement a pilot mandatory court-annexed mediation program for a two year period. We recommend that the court-annexed mediation program include the specific provisions listed below:

a. Case Eligibility Criteria

We recommend that the ADR Administrator designate and process for compulsory mediation two-thirds of all civil cases (randomly selected) or parts thereof wherein money damages only are being sought, excluding social security cases, tax matters, prisoners' civil rights cases, pro se cases, and intentional tort cases in which the United States is a party.

b. Certification of Mediators

We recommend that the chief judge certify as many mediators as are determined to be necessary to meet the program's needs.

An individual may be certified to serve as a mediator if he or she: (a) has been, for at least five years, a member of the bar of any state or the District of Columbia; (b) is admitted to practice in the Southern District and (c) is certified by the chief judge to be competent to perform the duties of a mediator. Each individual certified as a mediator should take the oath or affirmation prescribed by 28 U.S.C. § 453 before serving as a mediator. The ADR Administrator's office will be maintain a list of

Northern District of California

We have preliminarily concluded that it would be helpful in meeting the statutory goals to establish a court annexed pilot program offering an ADR mediation program. Such a pilot program would require at a minimum:

a. Guidelines for case selection;
b. Standards for use; and
c. Sources and selection of mediators.

We plan to complete our study and recommendations during 1992.

Eastern District of Virginia

No recommendation.

shall make appropriate note of that agreement and refer the parties to the judicial officer for entry of a court order.

(6) Mediation proceedings shall be regarded as settlement proceedings and any communication related to the subject matter of the dispute made during the mediation by any participant, mediator, or any other person present at the mediation shall be a confidential communication. No admission, representation, statement, or other confidential communication made in setting up or conducting the proceedings not otherwise discoverable or obtainable shall be admissible as evidence or subject to discovery.

The value of mediation, unlike summary jury trials, is that mediators bring professional experience to bear that can compensate for the abridged nature of the proceedings. More important, good mediators can be persuasive advocates of settlement, unlike a summary jury trial, which does not directly further the negotiation process. The court should be more active in encouraging the use of the Boston Bar Association's federal mediation program. Perhaps parties could be asked at an early case management conference to agree to submit to the process. Although mediation works best after basic discovery is completed, a case management conference

all persons certified as mediators, identifying each mediator's area(s) of expertise. All mediators will serve without compensation and be given credit for pro bono service.

c. Mediation Process

We recommend that every action subject to compulsory mediation be assigned to a judge upon filing in accordance with the court's assignment plan. The assigned judge would retain the authority to supervise the action. Upon the filing of the last responsive pleading, the ADR Administrator should determine the action's eligibility for mediation and notify the parties and the assigned judge. The judge may sua sponte, or upon motion of any party made within twenty days from the date of the Notice of Mediation, remove the case or any part(s) thereof from the mandatory mediation program based upon a determination that the action involves a significant, complex or novel question of law, there is a predominance of legal issues over factual issues, or there exists other grounds for finding good cause to exempt the action.

We recommend that compulsory mediation be discussed at the initial Rule 16 conference held before the assigned judge. The assigned judge will then prepare an order referring the case to mediation within the agreed-upon time frame.

Within ten days from the date of the order referring the case to mediation, the ADR Administrator should choose a mediator at random from among those individuals on the list of certified mediators with expertise in the subject matter of the case and promptly notify both the parties and the mediator as to the selection.

might be used to encourage voluntary and prompt document production and to identify a limited number of depositions essential to the mediation process. That could place mediation on an accelerated track, and possibly result in early settlement.

MEDIATION

District of Montana

The court shall establish and maintain a list of court approved mediation masters available to assist a party informally mediating several disputes. Applications of individuals seeking placement on the list to be received by a Clerk of Court represented a majority approval of the Article III judges on active status.

Western District of Tennessee

The local rules should be amended to authorize the court to refer appropriate cases to alternative dispute resolution programs that
A) have been designated for use in a district court; or
B) the court may make available, including mediation, minitrial, and summary jury trial.

Western District of Michigan

The Western District of Michigan has enacted local rules that provide for two primary means of alternative dispute resolution. Rule 42 provides for mediation . . . .

Mediation and arbitration will frequently be used for standard track cases. . . .

Eastern District of New York

The consensus of the Advisory Group is that a program of voluntary court-annexed mediation be approved on an experimental basis under which results would be reviewed after 500 mediations or three years, whichever comes first. . . . The Advisory Group recommends that the Court select a panel of volunteers well-qualified to serve as mediators who will be compensated on a basis similar to members of the court's arbitration panel and that litigants be offered the options of (a) using a mediator from the court's panel, (b) selecting a mediator on their own, or (c) seeking the assistance of a reputable neutral ADR organization in the selection of a mediator.

App. C-3

Southern District of California

[The Court] order[s] that the Judicial Officer order non-binding arbitration/mediation in all even numbered simple contract and simple tort cases excluding FTCA cases) where the Judicial Officer finds the potential judgment does not exceed $100,000, and in every even numbered trademark and copyright case. Data from this procedure is to be collected and analyzed to evaluate effectiveness.

We authorize the Chief Judge to establish a committee to seek competent volunteers to staff a panel of arbitrators/mediators who will commit to accept the referral of one case per year without compensation with the expectation of devoting up to eight (8) hours of time to the process.

Southern District of West Virginia

The Southern District of West Virginia's Mediation Program shall be a mandatory mediation program involving those cases deemed by the assigned judge as appropriate for mediation. The selection of cases for inclusion will be made by the Court. The neutral mediators are to be drawn from experienced litigators in the Southern District who will donate their time to the program. . . . All discussions during the mediation sessions will be absolutely and completely confidential and shall not be referred to or discussed with the presiding judge should the case remain unsettled after the mediation effort.

All civil cases within the Southern District are potentially eligible for inclusion in the Mediation Program. The Court, however, shall make the ultimate decision regarding which cases to include an shall order mandatory participation of these cases in the Mediation Program.

Once a case has been determined appropriate for mediation by the Court, a notice will be sent to the parties and the matter shall proceed to mediation unless good cause can be shown by the litigants why the case should not be included in the program. Cases typically excludable from the mediation program are:

1. Administrative Agency Appeals;
2. Habeas Corpus and Other Prisoner Petitions;
3. Forfeitures of Seized Property;
4. Bankruptcy Appeals.

Mediators will be selected from the experienced litigators at the bar in the Southern District. They will be matched with cases that need to be mediated based upon the mediator's

District of Oregon

Throughout the pretrial process, the judge should apprise counsel of alternate dispute resolution options, e.g., possibility of a settlement judge (L.R.240-1); use of the court's voluntary mediation program (L.R.240-2); or the use of other local mediation or settlement services.

District of Delaware

The Court shall adopt, with due consideration of the need for drafting, public notice and formal approval, a Rule which:

(1) requires counsel to certify that they have conferred prior to the Rule 16 conference to discuss settlement;

(2) identifies the matters to be discussed at a Rule 16 conference, including:

a. whether the matter could be resolved by <u>voluntary mediation</u> or <u>binding arbitration</u>;

b. the possibility of settlement;

c. the briefing practices to be employed in the case, including what matters are or are not to be briefed and the length of briefs; and

d. the date by which the case is to b tried.

experience in the relevant area of law. Volunteers will be invited to participate in a letter issued by the Chief Judge . . . . Training will be coordinated with the State Bar . . . Efforts will be made to obtain Mandatory Continuing Legal Education credits for volunteers who undergo the training program and who participate in the mediation program.

The mediator in a particular case will be selected from a panel of three mediators named by a District Judge. The plaintiff's side and the defendant's side will each strike one mediator, with the one remaining automatically being named the mediator for that case.

After the Court had determined a case to be appropriate for mediation, notice will be given requiring trial counsel and a party with settlement authority to attend. Each notice will be signed by the Judge to whom the case is assigned and be transmitted as a court order. The order will also state that the parties are required to participate in good faith.

The notice of mediation will indicate that counsel for each party is to file a written factual presentation not to exceed five pages in length, with the attachment of any pertinent supporting documents at least ten days prior to the mediation. At the mediation session, counsel for each party will be given five to ten minutes to clarify any facts which need additional development. Up to fifteen minutes will be permitted for each party in the form of argument. Mediators may then meet with the parties and their counsel together and separately in an effort to encourage settlement.

Southern District of Florida

1. The approval or adoption of a voluntary mediation program does not represent a departure from the Court's conviction that trial by jury remains the bedrock of this nation's dispute resolution system. Nonetheless, to the extent that voluntary mediation has become an increasingly useful tool by which parties may resolve their differences in an expeditious and less costly fashion, the Court desires to have such a program available.

2. The Court is to create a Mediation Committee to recommend a plan to the Court for implementing a mediation program in this District.

3. However, individual judges may use any type of alternative dispute resolution procedure currently permitted under the laws.

Western District of Oklahoma

1. Local Court Rule 46 provides for a court-annexed mediation program to augment the Court's previously existing alternate dispute resolution procedures.

2. Although available at any stage in the case, it is intended as a mechanism for especially early resolution of civil cases, with resultant savings in time and expense.

District of Utah

1. The Court is of the opinion that the function of the Court is to assist litigants to resolve problems they have been unable to resolve for themselves. The Court is of the opinion that resort to the litigation process is almost always a last resort. The Court is further of the opinion that alternative dispute resolution has always been available to litigants either before or after a case has commenced, and that the most efficient method to arrive at resolution is the method found in traditional court processes, with traditional court safeguards. The Court is of the opinion that a supermarket of services available at the courthouse has a tendency to weaken, rather than strengthen, the litigation process.

2. The Court currently has an effective settlement conference process with characteristics of mediation as part of that process. Thus, a litigant and his attorney with a genuine interest in exploring settlement in either a formal or informal setting has that service available before a judge other than the trial judge, the same being totally off the record. (Rule 204[c])

3. The Court will experiment with court-supervised mediation, arbitration, minitrials or summary jury trials for a limited period of time to determine whether services of that kind are in demand, and will refer appropriate cases to such programs and observe the kind and quality of results of such experimentation. The Court will endeavor to provide services on an experimental basis within the next year, structured and staffed in a form yet to be determined by the Court.

Eastern District of Pennsylvania

1. Court-annexed mediation is the equivalent of an early settlement conference.

2. A noted benefit of court-annexed mediation is that the setting of a firm date for the procedure should stimulate earlier settlements.

3. In addition, trial judges experience a reduction in caseload burden because some cases are diverted from the normal processing track. This is demonstrated by the fact that, of the 995 cases eligible for mediation since January 1991, 145 have settled. Of the like number of cases not eligible for mediation, only 76 have settled.

4. Local Civil Rule 15, Court-Annexed Mediation, shall govern where applicable.

5. If the mediation program, now in its experimental stage, proves to be successful, a plan of modest compensation should be instituted for the mediators. This is especially so since the program has just been modified to provide three-case assignments to the mediators, just as the arbitration program does.

District Court of the Virgin Islands

1. "Mediation" means a process whereby a neutral third party called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decision making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem-solving and exploring settlement alternatives.

2. The presiding judge may order any contested civil matter or selected issues to be referred to mediation, upon agreement of the parties. The parties to any contested civil matter may file a written stipulation to mediate any issue between them at any time. Such stipulation shall be incorporated into the order of referral.

3. Counsel to the parties shall not participate in, interfere with, or attend any portion of the mediation conference. The role of counsel shall be limited to general consultation pursuant to the rules governing the attorney-client privilege.

4. A party may move, within 15 days after the order of referral, to dispense with mediation if:

(1) The issue to be considered has been previously mediated between the same parties;

(2) The issue presents a question of law only;

Western District of Wisconsin

1. At any appropriate point during the development of a case, the Court may refer the case to a magistrate judge for mediation. This may be accomplished either by requiring the parties to make submissions to a magistrate judge or by requesting that a magistrate judge contact the parties.

2. The magistrate judge shall have authority to compel attendance at any conference of the parties or of any individuals who have authority to bind the parties as to all matters to be discussed at the conference.

(3) The order violates the exclusions rule, pursuant to 5 V.I.C. App.5 R-(b) [exclusions of mediation]; or

(4) Other good cause is shown.

5. The Court shall certify as many mediators as it determines to be necessary. Each individual certified as a mediator shall take the oath or affirmation prescribed by Title 28, U.S.C. Section 453 before serving as a mediator. A list of all persons certified as mediators shall be maintained with the Court.

6. The mediator has a duty to define and describe the process of mediation and its costs during an orientation session with the parties before the mediation conference begins. The orientation should include the following:

(1) Mediation procedures;

(2) The differences between mediation and other forms of conflict resolution, including therapy and counseling;

(3) The circumstances under which the mediator may meet alone with either of the parties or with any other person;

(4) The confidentiality provision as provided for by Title 5, Section 854 of the Virgin Islands Code;

(5) The duties and responsibilities of of the mediator and the parties;

(6) The fact that any agreement reached must be reached by mutual consent of the parties.

7. The mediator has a duty to be impartial, and to advise all parties of any circumstances bearing on their possible bias, prejudice or lack of impartiality.

8. Mediation shall be completed within 45 days of the first mediation conference unless extended by order of the Court or by stipulation of the parties, but in any event the process shall not exceed 90 calendar days.

9. The following actions shall be referred to mediation:

(1) Criminal actions;

(2) Appeals from rulings of administrative agencies;

(3) Forfeitures of seized property;

(4) Habeas corpus and extraordinary writ;

(5) Declaratory relief;/

(6) Any case assigned by the court to a multidistrict tribunal;

(7) Any litigation expedited by statute or rule, except issues of parental responsibility; or

(8) Other matters as may be specified by order of the presiding judge in the district.

10. Discovery may continue throughout mediation. Such discovery may be delayed or deferred upon agreement of the parties or by order of the Court.

11. Each party involved in a court-ordered mediation conference has a privilege to refuse to disclose, and to present at the proceeding from disclosing communications made during such proceeding.

12. Any or all communications, written or oral, made in the course of a mediation proceeding, other than an executed settlement agreement, shall be inadmissible as evidence in any subsequent legal proceeding, unless all parties agree otherwise.

13. A mediator may apply to the Court for interim or emergency relief at any time, at the initiation of the mediator upon consultation with the parties, or at the parties' request. Mediation shall continue while such a motion is pending absent a contrary order of the Court or a decision of the mediator to adjourn pending disposition of the motion.

14. If a party fails to appear at a duly noticed mediation conference without good cause, the Court upon motion shall impose sanctions, including an award of mediator and attorney fees and other costs, against the party failing to appear.

15. The mediator may meet and consult with the parties or their counsel on any issue pertaining to the subject matter of the mediation. Should the mediator wish to discuss a matter with the parties or their counsel, the mediator must inform all parties to the mediation of the location and subject matter of such meeting.

16. The mediator shall be compensated by the parties. The presiding judge may determine the reasonableness of fees charged by the mediator.

17. If the parties do not reach any agreement as to any matter as a result of mediation, or if the mediator determines that no settlement is likely to result from the mediation, the mediator shall report the lack of an agreement to the Court without comment or recommendation. With the consent of the parties, the mediator's

report may also identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

18. If an agreement is reached, it shall be reduced to writing and signed by the parties and their counsel, if any. The agreement shall be filed when required by law or with the parties' consent. If the agreement is not filed, a joint stipulation of dismissal shall be filed.

EARLY NEUTRAL EVALUATION

Southern District of N.Y.

The Advisory Group] recommend[s] hat the Court provide for other oluntary ADR options, including arly neutral evaluation ("ENE"), ini-trials and summary jury/ on-jury trials.

Eastern District of N.Y.

The Advisory Group recommends that an experimental ENE program be established in the Eastern District. We are not prepared at this time to detail the precise format or dimension of the experiment. We suggest that the Eastern District seek out talented attorneys to serve as evaluators and to provide evaluators with some tangible form of recognition, such as certificates, for their efforts.

Southern District of Texas

The Advisory Group considered the possibility of an early neutral evaluation program and discussed the experiences of the Northern District of California and the District of Columbia with their pilot programs. The Advisory Group again concluded that based on the lack of fully developed experience with these programs, the district would instead prefer to experiment with a new ADR rule to implement the spirit of these sections of the statute.

Northern District of California

Pursuant to funding recently provided under the Act, the Advisory Group has retained the University of San Francisco School of Law to consult with us to evaluate our ENE program, particularly focusing on how well it has worked to reduce unnecessary cost and delay, and to achieve participant satisfaction. This study will be designed to answer five questions:

1. Does the ENE program reduce litigation cost and, if so, how much?

2. Does the ENE program reduce case processing time and, if so, how much?

3. Does ENE improve justice delivered?

4. How can the ENE process be improved?; and

5. How can the ENE process best be monitored?

We plan to complete our initial study of the Northern District's ENE program during 1992. Assuming our conclusions are consistent with the prior experience of informed participants, neutral evaluators and judges, our plan would be as follows:

1. Make recommendations to extend and improve the use of ENE in the Northern District and nationally; an

2. Address the expected needs for:

District of Alaska

In considering advisory group recommendation that court experiment with what appears to be an equivalent of early neutral evaluation, the court rather than some neutral party would undertake the early evaluation, court perceives that bar must take initiative in this area. Court will support bar in implementing an early neutral evaluation program which will demonstratably divert cases from a normal judicial track. Court unable to undertake such an evaluation on its own at this time, except in complex litigation which, by its very nature, requires substantial special treatment.

(a) obtaining and training new evaluators;

(b) Continuing education and replacement of present evaluators;

(c) Consideration and avoidance of evaluator "burnout";

(d) Further local rules changes and modifications; and

(e) Continued systematic monitoring and study.

EARLY NEUTRAL EVALUATION

Western District of Tennessee

One ADR program that should be explored further is a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a non-binding conference conducted early in the litigation.

Western District of Michigan

Rule 44 stipulates that a case may also be selected for a summary jury trial, mini-hearing, or early neutral evaluation.

Eastern District of Virginia

No recommendation.

EARLY NEUTRAL EVALUATION PROGRAM

Western District of Wisconsin

1. The pilot early neutral evaluation program starts with an assessment by the clerk that such a procedure might be helpful in a specific case.

2. The pilot early neutral evaluation program is designed for the presentation of the legal and factual basis of a case to a neutral court representative selected by the Court at a nonbinding conference conducted early in the litigation.

3. Early neutral evaluation is available on a voluntary basis to all parties.

4. The Court should support and give information about early neutral evaluation of a case, but specific neutral evaluators other than Court personnel should be selected without participation of the judges.

5. The clerk's office should be authorized to undertake a pilot project attempting to identify cases appropriate for early neutral evaluation and to offer it in selected cases.

Northern District of Indiana

The Court will expand, on an experimental basis, the early neutral evaluation process now available in the Fort Wayne Division. The early neutral evaluation program will be completely voluntary.

Southern District of California

Within forty-five (45) days of the filing of an answer, counsel and the parties shall appear before the assigned Judicial Officer supervising neutral evaluator who possesses expertise and experience in that particular subject area.

The evaluator will seek to identify the primary issues in dispute, clarify areas of agreement, articulate a frank assessment of the relative strengths and weaknesses of the respective parties' positions, assess the value of the case, assist in the formulation of a cost effective case plan, and explore the possibility of settlement.

There shall be a $500 fee for the evaluation, to be split between the parties.

The neutral evaluator shall conduct an informal, non-binding conference attended by all parties and their counsel, where the factual and legal basis for the case will be presented. . . . The Federal Rules of Evidence shall not apply and there will be no examination of witnesses.

Prior to the session, each party shall submit a written evaluation summary of no more than ten pages, together with any relevant documentation. At the evaluation session, each party, through counsel or otherwise, will be permitted to make an oral presentation of their position.

The evaluator's assessments and recommendations will be purely advisory. They will not be communicated to the Court and will have no binding effect on discovery, motion practice, or other aspects of trial preparation.

Northern District of West Virginia

At any time after service of an answer the parties may request that the case be referred for early neutral evaluation, by an evaluator agreed upon by discovery for an ENE Conference; this appearance shall be made with authority to discuss and enter into settlement.

i. At the ENE Conference, the parties shall discuss the claims and defenses and seek to settle the case.

ii. The ENE Conference will be informal, off the record, privileged and confidential.

iii. Attendance may be excused only for good cause shown and by written order. Sanctions may appropriate for an unexcused failure to attend.

As the ENE Procedures proceed, no stay in discovery may occur unless specifically ordered by the Judicial Officer for good cause shown.

Southern District of West Virginia

The Court has developed an informal neutral evaluation program among the judges to allow for the presentation of the legal and factual basis of a the parties, or to some other agreed upon method for alternative dispute resolution. . . . If the request is granted by the court, the running of discovery time periods established for the case shall be tolled until the early neutral evaluation is completed, or it is reported to the court that the alternate dispute resolution has been unsuccessful, or the court determines that one or more of the parties are no longer participating in the alternative process in good faith.

District of Idaho

Upon the consent of all parties, any civil case, including those matters involving injunctive relief, may be referred to a court-authorized case to a neutral court representative (District Judge or Magistrate Judge) at a non-binding conference conducted early in the litigation to facilitate settlement.

PUBLICITY

Southern District of Illinois

1. Many of the lawyers in the Southern District of Illinois are not familiar with the various alternative dispute resolutions techniques and, therefore, may be reluctant to recommend their use to clients. Based on the foregoing, the Court has requested the Advisory Group to prepare a pamphlet on the various alternative dispute resolution techniques for distribution to lawyers and litigants who have cases in this District.

2. The Court entertains an initial pre-trial scheduling and discovery conference within thirty days after the first appearance of a defendant. The purpose of this conference is to, inter alia, discuss the possibility of using a voluntary alternative dispute resolution device (e.g., mediation, arbitration, summary jury trial, mini-trial) to resolve the dispute.

Eastern District of Arkansas

The Court will continue to refine and implement those measures which have reduced delay successfully, including:

Publishing and distributing to all lawyers and litigants in federal court cases a pamphlet informing them about available voluntary alternate dispute resolution options.

Southern District of Indiana

1. The Court directs the Clerk of the Court for the Southern District of Indiana to include in the Practitioner's Handbook descriptions of the following Alternative Dispute Resolution mechanisms: (1) Early Neutral Evaluation and Mediation; (2) Arbitration; (3) Mini-Hearings; (4) Summary Jury Trials.

2. The Court also directs the Clerk for the Southern District of Indiana to prepare and promulgate a brochure for litigants as well as attorneys, describing these Alternative Dispute Resolution mechanisms.

Western District of Wisconsin

The clerk's office shall distribute to counsel and the litigants information concerning the availability of alternative dispute resolution techniques in this district.

2. These materials will include a description of the availability of a magistrate judge to mediate claims and will describe alternate dispute resolution mechanisms available to the parties including arbitration, early neutral evaluation, mediation, and other available mechanisms.

3. These materials provided by the clerk's office will encourage the use of these available mechanisms while advising the litigants that the presiding judge will not participate in alternate dispute resolution and that the trial date and other case deadlines will be unaffected by the litigants' use of alternate dispute resolution procedures.

PUBLICITY

Eastern District of N.Y.

The Advisory Group recommends that there be more publicity given to the availability of voluntary submission of claims to the arbitration process.

The Advisory Group recommends that the Eastern District publish and distribute to plaintiff's counsel, with a direction to send to all counsel, a pamphlet describing the various ADR methods and their use by the court. We further recommend that the judicial officer hosting the initial pretrial conference advise the litigants of the availability of possible alternatives to litigation.

Northern District of California

We recommend that three relatively modest changes to the Local Rules regarding notice of the availability of ADR procedures be implemented in 1992. We recommend that procedures be put in place to ensure that all counsel and all litigating parties are aware of the various alternatives to federal litigation available to them.

To this end, we recommend that the Local Rules be supplemented to require that: (1) a written description of the ADR techniques available in the Northern District be delivered to all persons filing a complaint; (2) a copy of that written description be served upon all opposing parties with service of the summons and complaint; and (3) a written acknowledgment, signed by each litigating party, be filed with the court establishing that the litigant has read and understood the ADR alternatives available.

Eastern District of Virginia

No recommendation.

District of Idaho

An appropriate brochure will be created to apprise the federal bar details of these optional ADR programs. In addition, information concerning these programs will be published in The Advocate and the Court will conduct CLE programs on this topic. A notice will also be available for those parties filing an initial complaint or answer.

SUMMARY JURY TRIALS

Western District of Tennessee

The local rules should be amended to authorize the court to refer appropriate cases to alternative dispute resolution programs that .

(A) have been designated for use in a district court; or

(B) the court may make available, including meditation, minitrial, and summary jury trial.

Western District of Michigan

Rule 44 stipulates that a case may also be selected for a summary jury trial, mini-hearing, or early neutral evaluation.

Mediation and arbitration will frequently be used for standard track cases, while summary trials will rarely be used.

Eastern District of Virginia

No recommendation.

Western District of Oklahoma

1. A summary jury trial may be ordered by the Court where the expense is reasonably justified by the circumstances.

2. A summary jury trial may also be ordered by the Court where the potential for resolution of the case will be increased. (Local Rule 17[1]).

Northern District of Indiana

1. The Court will make cautious use of summary jury trials in cases in which the actual trial would be unusually expensive.

2. The Court will review the experience with these devices in Pilot Districts over the next

3. The Seventh Circuit has concluded that federal trial courts have no authority to compel an unwilling party's participation in a summary jury trial Strandell v. Jackson County, Ill. 838 F.2d 884 (7th Cir. 1987).

4. Although 28 U.S.C. § 473(b)(6) appears to vest the Court with such authority if a civil justice expense and delay plan so provides, the advisability of establishing such a procedure depends largely upon the untested willingness of the district's litigants and attorneys to consent to such a procedure: establishment of such programs would not be cost-effective if litigants and attorneys decline voluntary participation.

5. The Advisory Group recommended caution in the use of mechanisms such as the summary jury trial, while generally recommending expansion of other techniques such as early neutral evaluation programs and judicial mediation in settlement conferences.

Southern District of California

[The Court] order[s] that after a hearing with an opportunity to be heard, the Judicial Officer shall order a non-binding mini-trial or summary jury trial in all cases s/he finds that (1) the potential judgment does not exceed $250,000 and (2) that the use of this procedure will probably resolve the case.

District of Utah

The Court will experiment with court-supervised mediation, arbitration, minitrials or summary jury trials for a limited period of time to determine whether services of that kind are in demand, and will refer appropriate cases to such programs and observe the kind and quality of results of such experimentation. The Court will endeavor to provide services on an experimental basis within the next year, structured and staffed in a [illegible]m yet to be determined.

6. The Court believes that even the consensual use of summary jury trials and minitrials generally should be limited to cases in which the actual trial would be unusually expensive, either because of its length or because of the stakes involved.

SUMMARY JURY TRIALS

District of Massachusetts

(1) The judicial officer may convene a summary jury trial:

(A) with the agreement of all parties, either by written motion or their oral motion in court entered upon the record, or

(B) upon the judicial officer's determination that a summary jury trial would be appropriate, even in the absence of the agreement of all the parties.

(2) There shall be six (6) jurors on the panel, unless the parties agree otherwise.

(3) The panel may issue an advisory opinion regarding:

(A) the respective liability of the parties, or

(B) the damages of the parties, or

(C) both the respective liability and damages of the parties.

Unless the parties agree otherwise, the advisory opinion is not binding and it shall not be appealable.

(4) Neither the panel's advisory opinion nor its verdict, nor the presentations of the parties shall be admissible as evidence in any subsequent proceeding,

Southern District of N.Y.

[The Advisory Group] recommend[s] that the court provide for other voluntary ADR options, including early neutral evaluation ("ENE"), mini-trials and summary jury/non-jury trials.

Eastern District of N.Y.

This device has been employed infrequently in the Eastern District, and we do not encourage its use. The Advisory Group concludes that the case for summary jury trial has not been established with a sufficient degree of clarity to justify its use as an official part of the functioning of the court.

Northern District of California

The Northern District offers its litigants the use of: (1) special masters for case management/discovery and for settlement; (2) nonbinding summary jury and bench trials.

unless otherwise admissible
under the rules of evidence.
Additionally, the occurrence
of the summary jury trial
shall not be admissible.

REFERENCE TO A SPECIAL MASTER

Eastern District of N.Y.

[Reference to a special master] is used rarely in the Eastern District, typically only in especially complex cases. The Advisory Group recommends that the current practice governing the use of special masters be maintained. The Advisory Group will consider that the use of special masters be expanded to additional cases, within the limitations of Rule 53(b), when in the court's judgment a special master is likely to play a useful role.

Northern District of California

The Northern District offers its litigants the use of: (1) special masters for case management/ discovery and for settlement; (2) nonbinding summary jury and bench trials.

Eastern District of Virginia

No recommendation.

Northern District of Georgia

1. The Advisory Group encourages the Court to adopt a new local rule ...authorizing the parties in complex litigation to agree jointly upon the selection, appointment, and payment of a special master...[who] would be authorized under a specially tailored Order of Reference to control and manage discovery, conduct a trial of the action, and enter Findings of Fact and Conclusions of Law dispositive of the case and render a decision which would be binding on the parties. The rulings and findings of a Special Master would be reviewable by reviewable by the Court and could be reversed if clearly erroneous. Otherwise, the Findings and Fact and Conclusions of Law of the Special Master would be entered as the final judgment in the case.

2. The Court adopts this proposal and recommends that it be broadened: (1) to acknowledge the judge's authority, in compliance with the provisions of Fed.R.Civ.P. 53, to initiate appointment of a special master in complex cases; and (2) to develop a list of persons qualified to serve as a special master from which the parties could select a special master to be paid out of government funds appropriate for this pilot program. Special masters chosen by the parties from outside this list would be paid by the parties pursuant to prior agreement between them.

3. New local rules implementing the special master procedure will be prepared when the Court receives confirmation of the presence of funding and statutory authority to support this new program.

Southern District of N.Y.

[The Advisory Group] recommend[s] that the Court adopt a voluntary program providing for court-annexed binding and non-binding arbitration.

Western District of Michigan

The Western District of Michigan has enacted local rules that provide for two primary means of alternative dispute resolution. Rule 43 provides for court Annexed arbitration. Mediation and arbitration will frequently be used for standard track cases . . .

Eastern District of Virginia

No recommendation.

Western District of Oklahoma

1. Certain civil cases are automatically referred to mandatory, non-binding arbitration as required by Local Rule 43.

2. Upon consent of the parties, any civil case may also be referred to this program for purposes of an earlier, more economical resolution of the dispute.

COURT ANNEXED ARBITRATION

Northern District of Georgia

1. The Court has adopted a mandatory court-annexed arbitration program which is nonbinding and implementing on a pilot basis district-wide.

2. The judge may sua sponte or upon motion by a party remove a case from the arbitration program because of (a) complex legal issues; (b) dominance of legal issues; or (c) for other good cause.

3. Attorneys meeting the program's eligibility standards, and not this Court's magistrate judges, will serve as arbitrators. To qualify to serve as an arbitrator, one must have: (1) been admitted to the practice of law in Georgia for a period of not less than ten years; (2) committed, for not less than five years, 50 percent or more of his or her professional time to matters involving litigation or be a former judge; and (3) satisfactorily completed a training program for arbitrators approved by the judges of the Northern District of Georgia.

4. Upon the consent of all parties in the case, a case selected for participation in the Court's court-annexed mandatory arbitration program may instead be referred to mediation before a mediator, selected in accordance with the procedures prescribed in the Advisory Group Report for the selection of arbitration, from the Court's approved list of mediators.

5. No administrator will be hired during the term of the pilot alternative dispute resolution program.

Eastern District of Pennsylvania

1. The established mandatory, non-binding arbitration program of this Court is a nationally recognized mode. It deals effectively with more than 20 percent of the civil litigation caseload in this Court.

2. The Eastern District of Pennsylvania was one of the very first federal courts to adopt a program of court-annexed arbitration.

3. Local Civil Rule 8, Arbitration - - The Speedy Civil Trial, shall govern where applicable.

4. In court-annexed arbitration, the parties get a neutral evaluation without the risk of compromising the perceived neutrality of the trial judge.

5. Another advantage of court-annexed arbitration is that both sides are put in the position of operating on the same information. This may narrow the issues and spur more settlements or shorter, more focused, trials.

6. The program provides for timely court or other neutral intervention if the parties are not able to resolve their disputes more quickly among themselves.

District of Delaware

The Court shall adopt, with due consideration of the need for drafting, public notice and formal approval, a Rule which:

(1) requires counsel to certify that they have conferred prior to the Rule 16 conference, including:

a. whether the matter could be resolved by voluntary mediation or binding arbitration;

b. the possibility of settlement;

c. the briefing practices to be employed in the case, including what matters are or are not to be briefed and the length of briefs; and

d. the date by which the case is to be tried.

6. The Court should apply to the United States government for funds to compensate private attorneys who serve as arbitrators during the term of the pilot alternative dispute resolution program. The Court is not willing to impose the costs of such participation on the litigations, especially in the absence of statistical evidence showing substantial litigation delays in this Court.

7. In the event additional statutory approval is in fact needed in order for the Northern District of Georgia to establish a mandatory, non-binding court-annexed arbitration program, the Court requests that such authority to obtained.

8. New local rules implementing the court-annexed arbitration program will be prepared when the Court receives confirmation of the presence of funding and statutory authority to support this new program.

Southern District of California

[The Court] order[s] that the Judicial Officer order non-binding arbitration/mediation in all even numbered simple contract and simple tort cases excluding FTCA cases) where the Judicial Officer finds the potential judgment does not exceed $100,000, and in every even numbered trademark and copyright case. Data from this procedure is to be collected and analyzed to evaluate effectiveness.

We authorize the Chief Judge to establish a committee to seek competent volunteers to staff a panel of arbitrators/mediators who will commit to accept the referral of one case per year without compensation with the expectation of devoting up to eight (8) hours of time to the process.

Eastern District of California

Local Rule 252 [which currently allows for voluntary reference of a case only to binding arbitration] will be amended to include a voluntary reference of a case to non-binding arbitration.

District of Idaho

Any contract or tort case where the amount in controversy is less than $150,000, excluding punitive damages, interest, and costs, is eligible for referral to arbitration at any point during the litigation upon the consent of all parties.

Arbitrators will conduct a hearing under relaxed rules of evidence and render a non-binding, advisory opinion on the merits of the case, and where appropriate, determine an award. A party dissatisfied with the arbitration decision will have 30 days to demand a trial de novo, which would automatically return the case to the regular docket. If such demand is not made within the prescribed time limit, the arbitration award becomes a non-appealable judgment of the Court. . . .

It is contemplated that cases shall be presented primarily through the written statements and oral arguments of counsel. . . . Individual litigants and representatives of corporate parties shall attend unless otherwise excused.

The arbitrators will consist of a select group of federal practitioners with subject matter expertise in contract and tort cases. A single arbitrator or a panel of three will be selected by the parties from an authorized list provided by the Court. Arbitrators shall be compensated at a rate of $100 per hour, not to exceed $800 per case. The parties will be solely responsible for the arbitrator's fees.

Eastern District of N.Y.

Under the Local Arbitration Rule as amended February 1, 1991, all claims for money damages involving $100,000 or less are sent to arbitration, except for social security cases, tax matters, prisoners' civil rights cases, and actions asserting constitutional rights. Other cases may be submitted to arbitration under the program by consent. The arbitrators are selected at random from a panel of modestly compensated volunteer attorneys. Any party dissatisfied with the arbitration award may obtain a trial de novo. If the party seeking the trial de novo does not obtain a more favorable result than at arbitration, that party is liable for the arbitrators' fees (unless permission was granted to proceed in forma pauperis).

If the legislative cap were increased, we would recommend reconsideration of the amount. [The Advisory Group] believe[s] the rule should be changed to provide for arbitration before a single person unless a party requests three.

ARBITRATION

District of New Jersey

1. At any time prior to the commencement of a plenary trial, the parties may consent to the arbitration of any civil action, regardless of the amount in controversy, and may also consent to participation in any other form of alternative dispute resolution.

2. No civil action shall be designated or processed for compulsory arbitration if the claim therein is:

(a) based on alleged violation of a right secured by the Constitution of the United States: or

(b) jurisdictionally based, in whole or in part, (i) 28 U.S.C. Section 1346(a)(1) (tax refund actions) or (ii) 42 U.S.C. Section 405(g) (Social Security actions).

3. A party may request that an otherwise eligible case be excluded from compulsory arbitration if:

(a) specific policy concerns exist which make formal adjudication, rather than arbitration, appropriate; or

(b) other good cause has been shown.

District of Delaware

The Court shall adopt, with due consideration of the need for drafting, public notice and formal approval, a Rule which:

(1) requires counsel to certify that they have conferred prior to the Rule 16 conference to discuss settlement;

(2) identifies the matters to be discussed at a Rule 16 conference, including:

a. whether the matter could be resolved by voluntary mediation or binding arbitration;

b. the possibility of settlement

c. the briefing practices to be employed in the case, including what matters are or are not to be briefed and the length of briefs; and

d. the date by which the case is to be tried.

District of Utah

The Court will experiment with court-supervised mediation, arbitration, minitrials or summary jury trials for a limited period of time to determine whether services of that kind are in demand, and will refer appropriate cases to such programs and observe the kind and quality of results of such experimentation. The Court will endeavor to provide services on an experimental basis within the next year, structured and staffed in a form yet to be determined by the Court.

Eastern District of New York	Eastern District of Virginia
Magistrate judges have authority to conduct civil trials only with the consent of the parties. We understand that the magistrate judges' current schedules could accommodate additional trials if parties consented, and that they could, with more certainty than can a district judge, offer a firm trial date. We recommend that this availability be more widely publicized to the bar.	No recommendation.

Southern District of N.Y.

The goal of maintaining a high quality program that is used regularly will be best met if funding is provided to hire at least one ADR Administrator who will serve as a resource for judges, ADR neutrals, evaluators, attorneys and litigants.

We recommend that at least one person be hired by this district to oversee the Special Mediator Program and to coordinate the voluntary ADR program. We recommend that the court increase its filing fee to generate the revenue necessary to operate the pilot program.

Eastern District of New York

The Advisory Group proposes that an administrator be assigned to supervise court-annexed ADR programs, and it recommends that such a position be established. Responsibilities would include educating the bench and bar as to the availability and advantages of ADR, as well as oversight of all ADR programs, including training, maintenance of volunteer panels, and other necessary the design and implementation of an administration.

Northern District of California

The Advisory Group requested funding provided under the Act to retain a full-time staff professional, together with associated support staff and equipment, to supervise the ADR program.

The specific duties of the ADR staff will include:

a. Program Structure

The ADR staff will be responsible for improving program structure, including the design and implementation of an adminstrative system for all ADR programs. The staff will also coordinate the activities of the ADR evaluation consultant . . . and potentially other ADR consultants.

b. Case selection.

The ADR staff will help to evaluate and refine the selection criteria by which cases are assigned to particular ADR programs. This project will include developing additional criteria for identifying those cases (or subsets thereof) in which an ADR process promises to be more productive, analyzing which ADR processes are most appropriate for use in particular categories of cases, and working with the bench and bar to identify additional categories of cases which are appropriate for some form of ADR (e.g., civil rights cases, mass tort cases, prisoner applications).

c. Recruitment, training and outreach

The ADR staff will also be responsible for the development of screening mechanisms and recruitment of a

Eastern District of Virginia

No recommendation.

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substantial number of additional attorneys to supplement to pool of neutrals in the ENE, arbitration and, if funded, mediation programs. . . . Intensive and repeated training programs for the neutrals must be designed and conducted. Intensive and repeated educational programs for members of the bench, bar and client groups must be designed and conducted to explain the ADR programs, and to teach users to utilize these programs in the most productive manner. Finally, the ADR staff will provide a visible, accessible resource to respond to questions.

d. Evaluation

The ADR staff is intended to assist in the effort to design and implement mechanisms to systematically collect data about the Northern District's ADR programs.

* * *

e. Coordination

Finally, the ADR staff will work with our ADR consultant(s) in seeking support from, and coordinating the delivery of service among, the many bar associations and state courts within our jurisdiction. . . . The final charge of the ADR staff is to work with neutrals and the Advisory Group to draft changes in the Northern District's Local Rules and General Orders, especially as they relate to ADR (e.g., General Order No. 26).

Southern District of West Virginia

Initial planning for the Southern District [mediation] program will be undertaken by a committee consisting of the Chief Judge, one magistrate judge, the clerk of the court and two representatives of his office, and three members of the Advisory Group.

* * *

It is estimated that the cost of training mediators, including notices, etc., will be approximately $7000. The Court petitions the Judicial Conference, through the Administrative Office, to fund this cost pursuant to 28 U.S.C. § 482(c)2 from funds appropriated to the Judiciary pursuant to § 106(a).

Eastern District of California

An advisory panel of attorneys and other litigant representatives will be established for the purpose of monitoring the use and success of early neutral evaluation (ENE), court-annexed arbitration (CAA), and other alternative dispute resolution (ADR) programs which may be authorized by the Court.

District of Idaho

The costs of the . . . training sessions, postage, copying fees and administration [required to conduct settlement week] will be borne by the Court. . . . It is also suggested that the Administrative Office appropriate funds for these kinds of ADR programs.

Northern District of Ohio

1. The Northern District should implement a DCM program whereby civil cases will be channeled into processing tracks that provide the appropriate level of judicial, staff and attorney attention needed to move the cases to disposition.

Cases on the Expedited track would be highly suited for ADR.

Cases on the Standard track will have moderate to high ADR suitability.

A Complex track case would have some ADR suitability.

2. A case Information Statement (CIS) will be filed with each new pleading for every civil case filed within the Northern District of Ohio. . . . The CIS would also be used to screen cases for referral to Alternative Dispute Resolution (ADR) programs.

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

* * *

B. Direct early neutral evaluation or any other appropriate ADR program (with the exception of arbitration

Southern District of Texas

The Advisory Group recommends the use of alternative dispute resolution to offset the often costly and time-consuming process of litigation. Successful dispute resolution requires that the parties involved approach ADR settlement procedures voluntarily and that the court be actively involved in the referral process.

The Advisory Group proposes the following ADR referral plan based upon comments and suggestions from Southern District judges, alternative dispute resolution providers, and Advisory Group subcommittee members who, among other things, researched the mechanisms used in other courts.

Proposed Local Rule on ADR
Local Rule __. ALTERNATIVE DISPUTE RESOLUTION

This court recognizes that alternative dispute resolution procedures may facilitate settlement or narrowing of issues in certain civil actions. Therefore, the court adopts the following ADR procedures:

A. Timing of the ADR Decision

1. Before the initial pretrial conference in a case, counsel shall discuss the appropriateness of ADR in the litigation with their clients and with opposing counsel.

Western District of Michigan

Legislation should be enacted to strengthen alternative dispute resolution processes by allowing fee shifting as a sanction. By infusing new life into ADR processes, courts and litigants (5) The impartial third party's may be more willing to use them as cost efficient methods of conflict resolution.

Former Local Rule 42 of the Western District of Michigan provided for similar fee shifting sanctions until the Sixth Circuit Court of Appeals invalidated it in Tiedel v. Northwestern Michigan College, 865 F.2d 88 (1988). The Tiedel decision held that a federal district court does not have authority to promulgate a local rule imposing attorney fees as sanctions, although the parties can agree to them without order. Thus the teeth were removed from ADR methods; the Advisory Group believes this is the primary cause of ineffectiveness in arbitration and mediation.

Eastern District of Virginia

No recommendation.

which must be agreed upon by the parties). Nontrial resolution potential should be explored at all appropriate times throughout the pendency of each case.

4. The Court should adopt local Rule 7, Alternative Dispute Resolution (ADR), and all ADR programs should be available for use in the implementation of the DCM plan. The Court will direct the parties to an appropriate ADR program when, in its judgment, such referral is warranted. No ADR hearing date will be modified without leave of Court.

5. Alternative Dispute Resolution programs already plan an important role in processing the court's civil docket. The DCM Plan mandates full integration of ADR into the civil case processing system. Rule 8:6.1 requires the Judicial Officer to explore ADR programs and authorizes the Judicial Officer, when appropriate, to mandate the use of ADR programs. While the rule does not mandate the Judicial Officer to refer matters for ADR resolution, the Judicial Officer, however, may order the use of ADR procedures when warranted.

2. At the initial pretrial conference the parties shall advise the court of the results of their discussions concerning ADR. At that time and at subsequent conferences, if necessary, the court shall explore with the parties the possibility of using ADR.

B. ADR Referral

The court may refer a case to ADR on the motion of any party, on the agreement of the parties, or on its own motion. If the parties agree upon an ADR method or provider, the court will respect the parties' agreement unless the court believes another ADR method or provider is better suited to the case and parties. The authority to refer a case to ADR does not preclude the court from suggesting or requiring other settlement initiatives.

C. Opposition to ADR Referral

A party opposing either the ADR referral or the appointed provider must file written objections with the court within ten days of receiving notice of the referral or provider, explaining the reasons for any opposition.

D. ADR Methods Available

The recognizes the following ADR methods: mediation, mini-trial, summary jury trial, and arbitration. The court may approve any other ADR method the parties suggest or the court believes is suited to the litigation.

E. List of Providers

The court shall have a standing panel on ADR providers. The court will appoint three members and designate one member as chairperson. The panel

will review applications from poviders and annually prepare a list of those qualified under the criteria contained in this rule. A provider denied listing may request a review of that decision.

1. To be eligible for listing, providers must meet the following minimum qualifications:

   a. Membership in the bar of the United States District Court for the Southern District of Texas;

   b. Licensed to practice law for at least ten years;

   c. Completion of at least forty hours training in dispute resolution techniques in an alternative dispute resolution course approved by the State Bar of Texas Minimum Continuing Legal Education Department.

2. A provider must submit a completed application which contains:

   a. The ADR method(s) in which the provider seeks to be listed;

   b. A concise summary of the provider's training, experience, and qualifications for the ADR method(s) in which the provider seeks to be listed;

   c. The subject matter area(s) in which the provider has particular expertise;

   d. The provider's fee schedule;

   e. A commitment to accept some cases for no fee or a reduced fee;

3. Annualy after listing the provider must participate in at least five hours of ADR training.

4. Each provider shall remain on the list for five years. After a five-year term the provider may apply for relisting.

5. The court may approve any other provider the parties agree upon even though the provider is not listed.

F. Attendance; Authority to Settle. Party representatives with authority to negotiate a settlement and all other persons necessary to negotiate a settlement, including insurance carriers, must attend the ADR session.

G. Fees. The provider and the litigants will determine the fees for the ADR. However, the court may on its own motion or the motion of a party review the reasonableness of fees.

H. Binding Nature. The results of ADR are non-binding unless the partners agree otherwise.

I. Confidentiality; Privileges and Immunities. All communications made during ADR procedures are confidential and protected from disclosure and do not constitute a waiver of any existing privileges and immunities.

J. Disqualification. All providers are subject to disqualification pursuant to 28 U.S.C. § 455 (1988).

K. Conclusion of ADR Proceedings. At the conclusion of each ADR proceeding the provider, parties, and the court will take the following action:

1. The ADR provider will send the the court clerk a memorandum stating the style and civil action number of the case; the

names, addresses, and telephone numbers of counsel; the type of the case; the method of ADR proceeding; whether ADR was successful; and the provider's fees.

2. The court clerk shall submit a questionnaire to the parties and will require counsel and their clients to complete and return the questionnaire for reference by the court, attorneys, and public.

3. The court clerk annually shall tabulate, analyze, and report on the disposition of ADR proceedings. The clerk shall keep on file the questionnaire from closed ADR proceedings.

L. Sanctions. The sanctions available under Federal Rule of Civil Procedure 16(f) shall apply to any violation of this rule.

Western District of Wisconsin

1. The Court has authority to refer appropriate cases to alternative dispute resolution programs that —
(A) have been designed for use in a district court; or

(B) the Court may make available, including mediation, minitrial, and summary jury trial.

2. The Court encourages the voluntary use of alternate dispute resolutiontechniques by providing for the dissemination of information concerning the availability of such techniques.

3. Based upon the recommendation of the Advisory Group as well as the Court's experience, no alternative dispute resolution proceeding provides for the involvement of the presiding judge.

4. A case schedule is not permitted to be delayed or altered based upon alternate dispute resolution proceedings.

Northern District of Georgia

1. The Court has concluded that the Advisory Group was correct in its assessment that the Court, it bar, and its litigants will best be served by first gaining experience with a more familiar adjudicatory type of alternative dispute resolution program, such as arbitration, before turning to a less familiar negotiative procedure, such as mediation.

2. The Court also believes that more extensive training is needed to prepare attorneys to become good mediators as opposed to training attorneys to become good arbitrators. It is the Court's opinion that prior experience with arbitration will enable the Court to develop a stronger pool of mediators in the event the Court determines, at a later time, that a mediation program should be established.

District of Alaska

Although in court endorses a concept of ADR as a useful, appropriate technique for diverting cases from the normal judicial track in the interest of reducing costs and delay, court is concerned that the bar is relatively young compared to those where ADR programs have been successfully instituted.

The court unwilling to undertake the study of implementing other ADR programs on its own. This is an area where the bar itself must assume a substantial role in the reduction of costs and delay in litigation.