

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO



CIVIL JUSTICE REFORM ACT
EXPENSE AND DELAY REDUCTION PLAN

NOVEMBER 1993

Preface

The United States District Court for the District of Colorado has adopted and implemented, effective immediately, an expense and delay reduction plan in accordance with the Civil Justice Reform Act of 1990 (the "Act"). The plan has been developed by the court to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes. The plan is based on the Local Rules which became effective June 1, 1992.¹ These rules were written after considering public comment and with participation of the Advisory Group. This court's compliance with the requirements of the Civil Justice Reform Act and responses to the recommendations of the advisory group have been made with a recognition of the importance of the primary mission -- the fair trial of both civil and criminal cases using the fundamental principles of the adversary system inherent in the constitutional protection of due process of law. While case management techniques are necessary, they must not be applied to require the sacrifice of the right to a full and fair hearing. Cases require individual consideration -- custom tailoring, not mass production.

The court does not have the power to block access to the litigation process, including jury trial, in the name of efficiency. Accordingly, any alternative dispute resolution technique must be used only with the informed voluntary consent of the parties.

¹A summary of the Rules is found in APPENDIX A.

Moreover, the public interest and the mandate of the Speedy Trial Act require that priority be given to criminal proceedings. Currently, the strain on judicial resources caused by the criminal caseload prevents the court from adopting rules requiring disposition of motions and trial of civil cases within any set periods of time as recommended by the advisory group.

Content of the Civil Justice Expense and Delay Reduction Plan

In formulating its plan, the court, in consultation with the CJRA Advisory Group, considered each of the principles and guidelines of litigation management and cost and delay reduction techniques set forth in the Act (28 U.S.C. § 473). The Advisory Group analyzed the Local Rules in the context of the principles, guidelines and techniques of the Act and made new recommendations which the court considered.² The court found the Advisory Group's assessment very helpful in formulating its plan.

The court's plan corresponds to the Act's principles and guidelines of litigation management (28 U.S.C. § 473(a)) followed by the litigation management and cost and delay reduction techniques (28 U.S.C. § 473(b)) presented in the statute.³ The District of Colorado's Local Rules of Practice are the key components of the court's plan.

²The court's responses to the Advisory Group's recommendations are found in APPENDIX D.

³A summary of the CJRA statutory provisions corresponding to sections of the Plan is found in APPENDIX C.

THE PLAN

Section I.

Civil case management shall be tailored to the complexity of the particular case. Uniform pretrial orders (D.C.COLO.LR 16.1)⁴ and scheduling orders (D.C.COLO.LR 16.2(B)) provide case management tools for all cases. Discovery is managed at a level appropriate to the needs of the individual case (D.C.COLO.LR 29.1). Assignment of cases (D.C.COLO.LR 40.1) is done randomly, while reviewing workloads to assure that litigants are not affected adversely. Selected cases may be expedited by the assigned judge sua sponte or on motion of any party (D.C.COLO.LR 40.3). Case management is further enhanced by the magistrate judges through their ability to handle criminal proceedings and their pairing with designated district judges in processing civil cases (D.C.COLO.LR 72.1).

Section II.

Early and on-going judicial control of the pretrial process shall be reinforced by the scheduling conference held within forty-five days⁵ after a defendant enters a court appearance. The attorneys who will be responsible for the case through pretrial and trial shall attend the conference and be prepared to address all matters related to discovery, motions, settlement conferences, and all other aspects of the litigation. All attorneys must meet in advance and attempt in good faith to agree on a proposed

⁴This refers to the Local Rules of Practice; this and other rules are found in APPENDIX B.

⁵The time limits here provided may be affected by changes in the Fed. R. Civ. P.

scheduling order. If counsel cannot agree on certain points, they shall submit a proposed order setting forth those items agreed upon, and each shall separately set forth a proposal on items where there is disagreement. The conference will expedite litigation and promote more active case management by having the trial judge take firm control of the process of the litigation at an early date. The judicial officer presiding will discuss alternative dispute resolution possibilities. Following the conference, the trial judge will enter a scheduling order under will govern the case unless modified by further written order. (D.C.COLO.LR 29.1).

Section III.

Complex and any other special cases require careful, deliberate monitoring through discovery case management conferences. The court may limit the number of depositions, interrogatories, requests for admissions, and requests for production. (D.C.COLO.LR 29.1).

Section IV.

Informal, voluntary discovery is encouraged (D.C.COLO.LR.29.1). Before scheduling any discovery, attorneys must confer in an effort to limit time and expense. This requirement focuses on reducing litigation cost and streamlining the process (D.C.COLO.LR 30.1A).

Section V.

The court, recognizing the possibility of deposition and discovery abuse, has included in its Local Rules an extensive outline of prohibited behavior and activity. Sanctions for abusive conduct will be strictly enforced. (D.C.COLO LR 30.1C).

Section VI.

Attorneys shall confer in good faith to resolve disputed matters prior to filing motions with the court. Except for Motions to Dismiss or for Summary Judgment, attorneys shall, by certification filed concurrently with any motion, specify what efforts have been made to resolve the dispute without court intervention. The court's goal is to foster cooperation among attorneys, minimize the number of motions filed, expedite litigation, and reduce litigation expense. (D.C.COLO.LR 7.1(A)).

Section VII.

The court may order the parties to engage in settlement discussions. To facilitate settlement, the court may call a "time-out period" and stay non-settlement aspects of the action at any stage of the proceedings. By directing early settlement exploration, the court seeks not only to settle cases, but also to reduce discovery and pretrial costs. Settlements reached at the eleventh hour before trial unnecessarily waste resources. If all parties consent, a magistrate judge may conduct a summary jury trial or any other form of alternative dispute resolution procedure. (D.C.COLO. LR 53.2).

Section VIII.

Counsel for all parties shall meet and attempt to agree on a proposed scheduling order to be filed with the court no later than five days before the conference. The conference will be convened by the judge to whom the case is assigned or a magistrate judge to whom it has been referred. (D.C.COLO.LR 29.1).

Section IX.

Counsel are directed to meet in advance of the pretrial conference and agree on the contents of the proposed pretrial order. Counsel for the plaintiff draft the proposed pretrial order. (D.C.COLO.LR 16.1 and D.C.COLO.LR APPENDIX A.).

Section X.

Any counsel appearing at conferences and hearings are held responsible for and must be authorized to bind their clients on all matters that arise.

Section XI.

Requests for extensions of deadlines for completion of discovery and motions for extension of time shall be signed by the attorney. Proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record, and all pro se litigants must be filed. (D.C.COLO.LR 7.1(C)).

Section XII.

Any judicial officer may require a person with full settlement authority to be present at any hearing or conference.

Section XIII.

The court recognizes the importance of prompt rulings on motions but also recognizes the obligation to apply judicial resources under priorities that are in the public interest.

Section XIV.

Greater coordination and cooperation between state and federal courts shall be promoted by requiring attorneys to list related cases pending in any state or other federal courts. Counsel who removes an action from state court to federal court, after a hearing has been set in the state court, must notify both state and federal judges of the removal. (D.C.COLO.LR 7.1(K), 40.1, AND 81.2).


IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO


In the Matter of)
Civil Justice Reform Act) General Order 1993 - 4
)
)


Pursuant to 28 U.S.C. §§ 472(d), 473, and 474, it is hereby ordered that the District of Colorado's plan be adopted and implemented, and effective immediately.

Dated this 30th day of NOVEMBER, 1993.

BY THE COURT



Sherman G. Finesilver
Chief Judge

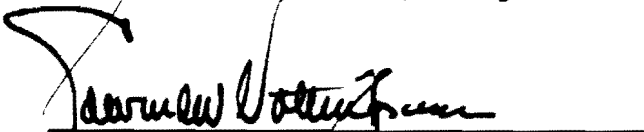

Richard P. Matsch, Judge

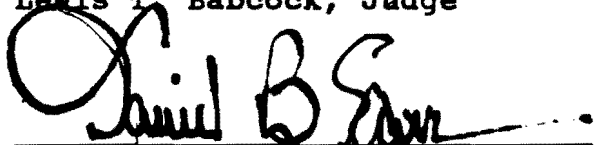

John L. Kane, Jr., Judge


Jim R. Carrigan, Judge


Zita L. Weinshienk, Judge


Lewis T. Babcock, Judge


Edward W. Nottingham, Judge


Daniel B. Sparr, Judge

CERTIFICATE OF MAILING

I hereby certify that on this 22ND day of NOVEMBER, 1993, I placed a copy of the Civil Justice Reform Act report and plan in the United States mail, to the following:

The Honorable Monroe G. McKay
Chief Judge, Tenth Circuit, U. S. Court of Appeals (1);

The Honorable Patrick F. Kelly
Chief Judge, District of Kansas (1);

The Honorable Juan G. Burciaga
Chief Judge, District of New Mexico (1);

The Honorable Frank H. Seay
Chief Judge, Eastern District of Oklahoma (1);

The Honorable James O. Ellison
Chief Judge, Northern District of Oklahoma (1);

The Honorable Lee R. West
Chief Judge, Western District of Oklahoma (1);

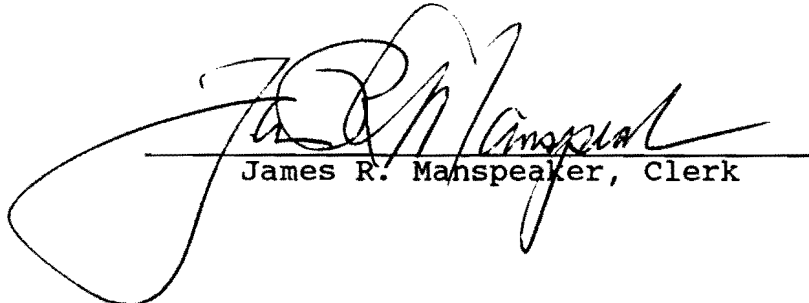
The Honorable David K. Winder
Chief Judge, District of Utah (1);

The Honorable Alan B. Johnson
Chief Judge, District of Wyoming (1);

Judicial Conference's Committee on Court Administration and
Case Management (1);

Federal Judicial Center (3);

Administrative Office of the United States Courts (5); and the
West Publishing Company (3).


James R. Manspeaker, Clerk

APPENDIX A

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLORADO
Statement by Sherman G. Finesilver, Chief Judge

New Era of Federal Practice Ushered in by Revisions to the Local Rules of Practice

In preparation for over two years, the Local Rules of Practice for this Court embody the most up-to-date thinking by experienced federal trial judges, veteran trial attorneys, and law professors. The Rules are innovative in many respects and will serve as a national prototype.

The Rules of Practice include provisions that strengthen the case management responsibility of the trial judge, mandate greater cooperation among attorneys in pretrial fact finding and motions, create a positive settlement atmosphere early in the litigation, and permit the judge to facilitate settlement discussions by calling a "time-out period" that is dedicated exclusively to exploring settlement options. The Rules also provide strong sanctions for abuse of depositions during discovery.

The objectives of the changes are to reduce the costs of litigation, bring cases to trial sooner, and provide an earlier opportunity to explore settlement options. The Rules discourage unnecessary motions and court filings.

Some of the noteworthy provisions are:

- A scheduling or planning conference must be held within forty-five days after a defendant enters a court appearance. At the conference, a blueprint of the entire case will be discussed, provisions for discovery will be addressed, other aspects of the litigation outlined, and an appropriate court order entered. Attorneys must meet

in advance and attempt to agree on a scheduling order. If counsel cannot agree on certain points, areas of disagreement shall be set forth separately in the proposed order. The purpose of this conference is to expedite litigation and promote more active case management by having the trial judge take firm control of the progress of the litigation at an early date. Rule 29.1.

- The judge has the discretion to limit the number of depositions, interrogatories, requests for admissions, and requests for production. In ordinary cases with simple facts, the parties may be limited to taking a modest number of depositions. The judge retains discretion to broaden discovery in more complex cases. Under this approach, attorneys will not have a blank check in taking depositions and litigation costs should be kept under control. Rule 29.1.

- The Court may order the parties to engage in settlement discussions or other alternative dispute resolution techniques. To facilitate settlement, the court may call a "time-out period" and stay other aspects of the action at any stage of the proceedings during this period of exploring settlement options. By directing the parties to explore settlement at an earlier stage in the proceedings, the court has the opportunity not only to settle cases, but also to reduce significantly discovery and pretrial costs and resolve disputes more

expeditiously. Such an approach provides a more attractive alternative in terms of cost and time than settlements reached at the eleventh hour before trial. Rule 53.2.

- Prior to scheduling any depositions, attorneys must confer in an effort to limit the time and expense of taking depositions. Counsel must attempt to agree on less expensive and time-consuming means of obtaining discovery. This requirement forces counsel to focus on reducing the cost of litigation and streamlining the litigation process. Rule 30.1A.

- Sanctions and penalties may be imposed for five types of abusive conduct at depositions: (1) objections that have the effect of coaching or instructing the witness, (2) interrupting the examination for off-the-record conferences, (3) instructing a deponent not to answer a question absent a clear legal basis, (4) filing a motion for protective order without a substantial basis in law, and (5) asking questions that unfairly embarrass, humiliate, intimidate, or harass the deponent, or that invade the privacy of the deponent. The sanctions provision will be treated as a standing order of the court. Whenever it appears that an attorney or party has engaged in abusive conduct, the court may appoint a special master under Fed. R. Civ. P. 53, at the expense of the abusive party, to attend future depositions and exercise such supervisory authority as directed by the

court. This approach promotes cooperation in discovery by providing for a swift and definitive response to discovery abuses. Rule 30.1C.

- Attorneys must confer in good faith to resolve disputed matters prior to filing motions with the court. The Rule does not apply to Motions to Dismiss or for Summary Judgment. By certification filed concurrently with any motion, attorneys must specify what efforts have been made to resolve the dispute without court intervention. This procedure fosters cooperation among attorneys, reduces the number of motions that the court must address, expedites litigation, and reduces the cost of litigation. Rule 7.1A.

- Attorneys must list pending or related cases in state or other federal courts. Counsel who removes an action from state court is required to notify both the state and federal judges of the removal if a hearing has been set in the state court action. These rules are designed to promote greater cooperation between state and federal courts and facilitate the coordination of related cases. Rules 7.1K, 40.1, and 81.2.

- Attorneys and parties are prohibited from orally contacting any judicial officer in person, by telephone, or other means, unless all other parties are present. This rule promotes efficiency by directing all communications through the Clerk's Office and prevents inappropriate ex parte contacts with judges. Rule 77.7.

- The Rules set forth requirements for admission to the bar of the United States District Court for the District of Colorado. Attorneys cannot practice in this federal court unless they are admitted to practice before the Colorado Supreme Court and are members in good standing of every court and jurisdiction where they have been admitted. Attorneys may be admitted to appear in a particular case. Rule 83.5.

By enacting the new Local Rules (which are effective June 1, 1992), the District of Colorado has taken significant strides toward securing the just, speedy, efficient, and inexpensive resolution of all actions. The Local Rules provide a reference for practice in this court and foster a spirit of cooperation among attorneys and between the bench and the bar. The above Rules conform to the spirit of Rule 1 of the Federal Rules of Civil Procedure and recent legislation, such as the Civil Justice Reform Act.

APPENDIX B

Local Rules of Practice Referenced in the Plan
United States District Court
District of Colorado

Local Rule Referenced	Appendix Page
D.C.COLO.LR 7.1	B - 2
D.C.COLO.LR 16.1	B - 5
D.C.COLO.LR 16.2(B)	B - 5
D.C.COLO.LR 29.1	B - 6
D.C.COLO.LR 30.1A	B - 8
D.C.COLO.LR 30.1C	B - 8
D.C.COLO.LR 40.1	B - 10
D.C.COLO.LR 40.3	B - 13
D.C.COLO.LR 53.2	B - 14
D.C.COLO.LR 72.1	B - 14
D.C.COLO.LR 81.2	B - 15
D.C.COLO.LR 83.6	B - 15
D.C.COLO.LR APPENDIX A.	B - 16

D.C.COLO.LR 7.1

MOTIONS

- A. The court will not consider any motion, other than a motion under Fed. R. Civ. P. 12 or 56, unless counsel for the moving party, before filing the motion, has conferred or made reasonable, good faith efforts to confer with opposing counsel to resolve the disputed matter. Counsel for the moving party shall file a certificate describing specifically the efforts to comply with this rule.
- B. A motion seeking not more than twenty additional days to answer a complaint may be granted ex parte by the clerk. A motion seeking not more than three additional days in which to: (a) answer or object to interrogatories under Fed. R. Civ. P. 31 and 33; (b) respond to requests for production or inspection under Fed. R. Civ. P. 34; or (c) respond to requests for admission under Fed. R. Civ. P. 36, may be granted ex parte by the clerk. A motion for further extensions of time shall be presented to the court and must describe all previous extensions.
- C. A motion for continuance or request for extension of time will not be considered without proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record, and all pro se litigants.

- D. A motion to consolidate filed in either a civil or criminal case shall be decided by the judge to whom the oldest numbered case involved in the proposed consolidation is assigned. Rulings on motions to consolidate shall be given priority. Cases consolidated shall be assigned for all further purposes to the judge to whom the lowest numbered consolidated case previously was assigned. A case not consolidated shall remain assigned to the judge before whom it was pending when the motion to consolidate was filed.

- E. A certificate of service or mailing shall not be sufficient unless it specifies the name and address of the person to whom the pleading or document was sent.

- F. A motion filed under Fed. R. Civ. P. 56 shall be accompanied by a concise brief. An opposing brief shall be filed within twenty days after service of the motion or such additional time as the court may set. A reply brief may be filed only upon leave of court requested promptly after service of the opposing brief.

- G. Any criminal or civil motion, other than a Rule 56 motion, shall briefly cite in its text authority to support it. No separate brief is required or allowed without leave of court.

- H. Briefs and motions shall be concise. A verbose, redundant, ungrammatical, or unintelligible brief or motion may be stricken or returned for revision, and its filing may be grounds for imposing sanctions. Limitations may be imposed on the length of any brief or motion.

- I. Every citation in a motion or brief shall include the specific page and statutory subsection to which reference is made.

- J. A motion for leave to file an amicus curiae brief shall state the interest of the applicant and grounds for the motion. A copy of the motion and brief shall be served on the attorney of record for every other party.

- K. Counsel shall notify the court in writing of related cases pending in federal or state courts, stating the names and addresses of all counsel, the caption of each such case, and the jurisdiction where it is pending. "Related" cases are those involving common questions of law or fact.

- L. Oral argument will be at the court's discretion.

- M. No agreement of counsel to shorten or extend any time limitation provided by the federal rules of civil or criminal procedure or these rules will be recognized or enforced, nor will such an agreement be considered just cause for failing to perform within the time limits established by those rules.

Only time variances specifically approved by court order upon motion made within the time limits prescribed by those rules will be recognized as having any binding or legal effect.

D.C.COLO.LR 16.1

UNIFORM PRETRIAL ORDER

Unless otherwise ordered by a judicial officer, all pretrial orders shall follow the "Instructions for Preparation and Submission of Pretrial Order" attached to these local rules as Appendix A.

D.C.COLO.LR 16.2

SCHEDULING ORDERS

B. Scheduling orders for discovery, joinder and amendment of pleadings are unnecessary in: (1) appeals from the bankruptcy court; (2) appeals from decisions of administrative agencies; (3) other cases where the action of the court is limited to reviewing a record; (4) habeas corpus proceedings; (5) pro se prisoner cases; (6) forfeiture proceedings; and (7) cases where service has been obtained by publication but no responsive pleading has been filed.

D.C.COLO.LR 29.1

DISCOVERY

Within 45 days after the appearance of a defendant, a scheduling conference will be convened by the district judge to whom the case is assigned or a magistrate judge to whom the case has been referred to develop a scheduling order pursuant to Fed. R. Civ. P. 16(b) and 26(b). Counsel for all parties who have appeared are directed to meet and attempt to agree on a scheduling order to be filed with the court no later than five days before the conference. Any area of disagreement shall be set forth separately with brief statements of the reasons for disagreement. It should be expected that the court will make modifications in the proposed order and will discuss limitations on discovery, simplification of the issues, stipulations of fact, and other matters affecting the management of the litigation. Accordingly, counsel responsible for the trial of the case will be present. The schedule established by a scheduling order shall not be modified except by leave of court for cause shown.

The following matters will be included in the scheduling order:

1. Concise and brief statements of all claims or defenses and identification by any party of those claims or defenses which, under the requirements of Fed. R. Civ. P. 11, are or should be withdrawn.

2. A plain, concise statement of all facts which are undisputed.
3. A limit on the time to join other parties or amend the pleadings.
4. A statement of damages with a description of the basis for calculating the damages claimed.
5. A statement concerning any agreements to conduct informal discovery, including joint interviews with potential witnesses, exchanges of documents, and joint meetings with clients to discuss settlement.
6. Limit the time for completion of discovery and limits on the numbers of depositions, interrogatories, requests for admissions, and requests for production.
7. A list of the names of the persons to be deposed and a prospective schedule for taking depositions.
8. A schedule for interrogatories and requests for production of documents.
9. A statement with respect to a need for expert witnesses, including areas of expertise being considered and the names of potential expert witnesses.
10. The desirability of convening status conferences and a pretrial conference.
11. Any other matters appropriate in the circumstances of the case.

D.C.COLO.LR 30.1A

REASONABLE NOTICE FOR DEPOSITIONS

Unless otherwise ordered by the court, "reasonable notice" for the taking of depositions shall be not less than five days, as computed under Fed. R. Civ. P. 6. Before sending a notice to take a deposition, counsel seeking the deposition shall make a good faith effort to schedule it by agreement at a time reasonably convenient and economically efficient to the proposed deponent and counsel for all parties.

Prior to scheduling or noticing any deposition, all counsel involved shall confer in a good faith effort to agree on reasonable means of limiting the time and expense to be spent for that deposition. During that conference they shall attempt in good faith to agree on a less expensive and time consuming method of obtaining the evidence sought, including without limitation, interviewing the witness under oath by telephone or in person.

D.C.COLO.LR 30.1C

SANCTIONS FOR ABUSIVE DEPOSITION CONDUCT

- A. The following abusive deposition conduct is prohibited:
 - 1. Objections or statements which have the effect of coaching the witness, instructing the witness concerning the way in which he or she should frame a response, or suggesting an answer to the witness.

2. Interrupting examination for an off-the-record conference between counsel and the witness, except for conferences during normal recesses in the deposition.
3. Instructing a deponent not to answer a question absent a clear legal ground for such an instruction stated on the record.
4. Filing a motion for protective order or to limit examination without a substantial basis in law.
5. Questioning that unfairly embarrasses, humiliates, intimidates, or harasses the deponent, or invades his or her privacy absent a clear statement on the record explaining how the answers to such questions will constitute, or lead to, competent evidence admissible at trial.

B. The prohibitions reflected in section A of this rule shall be treated as a standing order of the court for purposes of Fed. R. Civ. P. 37(b). Whenever it comes to the attention of the court that an attorney or party has engaged in abusive deposition conduct, the court may appoint a special master under Fed. R. Civ. P. 53, at the expense of the attorney or person engaging in such conduct (or of both sides), to attend future depositions, exercise such authority, and prepare such reports as the court shall direct.

The court, if it anticipates deposition abuse, may order that any deposition be taken at the courthouse or special master's office so that, at the request of any party, witness, or counsel,

any dispute may be heard and decided immediately by the court or special master.

Whenever the presiding judicial officer shall determine that any party or counsel unreasonably has interrupted, delayed, or prolonged any deposition, whether by excessive questioning, objecting, or other conduct, that party or its counsel, or both, may be ordered to pay each other party's expenses, including without limitation, reasonably necessary travel, lodging, reporter's fees, attorneys' fees, and videotaping expenses, for that portion of the deposition determined to be excessive. In addition, that party or its counsel, or both, may be required to pay all such costs and expenses for any additional depositions or hearing made necessary by its misconduct.

D.C.COLO.LR 40.1

ASSIGNMENT OF CASES

A. Insofar as practicable and efficient, cases shall be assigned to judges by random selection. Work parity shall be maintained among active judges, and senior judges shall be provided the opportunity to participate in the court's business. Whenever a majority of active judges determines that a workload imbalance is affecting litigants adversely, the chief judge shall review the pending case loads of the judges and suggest appropriate reassignment of existing cases. All reassignments or transfers of cases from one judge to another shall be subject to the chief judge's approval.

- B. The clerk shall provide a form on which the attorney or pro se party filing a civil case shall indicate, in addition to other information required, whether the case being filed is related to any other action or actions pending before the court or terminated within the previous twelve months.

- C. If a relationship is indicated, the case shall be referred to the judge with the earliest filed case who shall determine if the case is related. If the case is related, that judge shall be assigned to handle it. If found not related, the case shall be returned to the clerk for assignment by random draw. "Related" cases are those involving common questions of law or fact.

- D. The clerk shall maintain in a drawing wheel the civil case assignment cards bearing the names of all judges. The number of cards shall be equally apportioned among the active judges, except the chief judge who may receive a lesser apportionment commensurate with administrative responsibility.

- E. At 8:15 a.m. each business day, or as soon thereafter as is practical, the clerk or his designated deputy shall publicly draw the assignment card for each new unrelated civil case.

- F. A separate set of assignment cards bearing the judges' names shall be maintained for criminal cases. The number of cards shall be equally apportioned among the active judges, except the chief judge who may receive a lesser apportionment commensurate with administrative responsibility.

- G. Assignment of a judge to a criminal case shall be made publicly in open court by the magistrate judge at the defendant's initial appearance after the indictment or information is filed. The judge's card shall be drawn randomly from the assignment cards described in D.C.COLO.LR 40.1(F).

- H. No plea agreement involving dismissal of charges will be accepted unless written notification of the agreement is received by the court no later than ten days before the Monday of the week set for the trial.

- I. All pleas of guilty or nolo contendere shall be made before the judge assigned to the case.

- J. The chief judge may remove temporarily a judge from the draw for civil or criminal cases because of illness, disability, incapacity, or emergency.

K. Recusal of a judge shall be only by written order setting forth the reasons. Upon such recusal, the clerk shall redraw the case at the next regular draw. After the redrawing, the clerk shall add to the block of assignment cards then in use an additional assignment card bearing the name of the recusing judge.

L. CITIZENSHIP

Hearing contested applications for citizenship shall be assigned on a rotating basis by the chief judge.

M. GRAND JURY MATTERS

Grand jury supervision shall be assigned equally among the active judges. No indictment shall be sealed without the written order of a judicial officer. Upon the first defendant's initial appearance the indictment shall be unsealed.

D.C.COLO.LR 40.3

TRIAL CALENDARS AND EXPEDITED CASE HANDLING

Each judge shall maintain an individual trial calendar with due regard for the priorities and requirements of law. Selected cases may be expedited by the judge sua sponte or on motion of any party.

D.C.COLO.LR 53.2

ALTERNATIVE DISPUTE RESOLUTION

At any stage of the proceedings, on a district judge's motion or pursuant to motion or stipulation of counsel, a district judge may direct the parties to a suit to engage in an early settlement conference or other alternative dispute resolution proceeding. To facilitate settlement or resolution of the suit, the judge may stay the action in whole or in part during a time certain or until further order. Relief from an order under this section may be had upon motion showing good cause.

D.C.COLO.LR 72.1

MAGISTRATE JUDGES' GENERAL AUTHORITY

- A. Except as restricted by these rules, United States magistrate judges may exercise all powers and duties authorized by federal statutes, regulations, and rules of criminal or civil procedure.

- B. A chief magistrate judge may be appointed by the court. The chief magistrate judge shall have general administrative responsibility for the court's full-time and part-time magistrate judges. These administrative duties include but are not limited to the following:

1. Designation of magistrate judges to handle duties assigned to them in criminal proceedings to insure that there is a magistrate judge available 24 hours a day to carry out promptly the duties required by these rules; and
 2. Assignment or reassignment of cases among magistrate judges with consent of the judges to whom the cases are assigned.
- C. Each full-time magistrate judge will be paired with designated district judges.

D.C.COLO.LR 81.2

COPIES OF STATE COURT PROCEEDINGS IN REMOVED ACTIONS

If a hearing in the state court has been set before a case is removed, counsel removing the case shall notify the state judge forthwith of the removal and shall notify the federal judge to whom the case is assigned of the nature, time, and place of the state court setting. The removing party shall promptly file with this court copies of all state court pleadings, motions, and other papers.

D.C.COLO.LR 83.6

ATTORNEY DISCIPLINE

The rules of professional conduct, as adopted by the Colorado Supreme Court, are adopted as standards of professional responsibility applicable in this court.

D.C.COLO.LR APPENDIX A.

INSTRUCTIONS FOR PREPARATION AND SUBMISSION OF PRETRIAL ORDERS

Unless otherwise ordered, counsel for plaintiff is responsible for preparing the pretrial order.

Counsel are directed to meet in advance of the pretrial conference and jointly develop the contents of the proposed pretrial order. The proposed pretrial order shall be presented for court approval at the pretrial conference.

Listed below are matters to be included in the pretrial order. For convenience of court and counsel, it is suggested that the following sequence and terminology be used in the preparation of the pretrial order, with each of the items listed below capitalized as a heading:

I. DATE AND APPEARANCE

Date of the pretrial conference and appearances for the parties.

II. JURISDICTION

A statement of the basis for subject matter jurisdiction with appropriate statutory citations. If jurisdiction is denied, give the specific reason for the denial.

III. CLAIMS AND DEFENSES

Summarize the claims and defenses of all parties, including the respective versions of the facts and legal theories. Do not copy the pleadings. Identify the specific relief sought.

IV. STIPULATIONS

Set forth all stipulations concerning facts, evidence, and the applicability of statutes, regulations, rules, ordinances, etc.

V. PENDING MOTIONS

List any pending motion to be decided before trial, giving the dates of filing. Include any motions on which the court postponed ruling until trial on the merits. If there are no pending motions, please state "none."

VI. WITNESSES

List the witnesses to be called by each party. List separately (a) non-expert witnesses; and (b) expert witnesses.

Specify those who definitely will be present at trial and those who may be called. The following paragraph shall be included in the pretrial order:

Written summaries of opinions of expert witnesses and a description of experts' qualifications must be provided

to opposing counsel no later than thirty (30) days after the entry of the pretrial order. The names of any additional witnesses must be disclosed to opposing counsel within ten (10) days of their becoming known or their existence should have become known. In addition, a final written list of witnesses must be filed at the status conference referred to in Section XII (b).

VII. EXHIBITS

List the exhibits to be offered by each party and identify those to be stipulated into evidence. The following paragraph shall be included in the pretrial order:

Copies of exhibits must be provided to opposing counsel no later than the status conference referred to in Section XII (b).

VIII. DISCOVERY

Set forth applicable language Discovery has been completed.

OR: Discovery is to be completed by _____.

OR: Further discovery is limited to _____.

OR: The following provisions were made for discovery: (specify).

IX. SPECIAL ISSUES

List any unusual issues of law which the court may wish to consider prior to trial. If none, please state "none."

X. OFFER OF JUDGMENT

The following paragraph shall be included in the pretrial order:

Counsel acknowledge familiarity with the provisions of Rule 68, Federal Rules of Civil Procedure (Offer of Judgment), and have discussed it with the clients against whom claims are made in this case.

XI. EFFECT OF PRETRIAL ORDER

The following paragraphs shall be included in the pretrial order:

(a) Counsel acknowledge familiarity with the provisions of Rule 16, Federal Rules of Civil Procedure (Pretrial Procedure; Formulating Issues).

(b) Hereafter, this order will control the subsequent course of this action and the trial and may not be amended except by consent of the parties and approval by the court or by order of the court to prevent manifest injustice. The pleadings will be deemed merged herein. In the event of ambiguity in any provision of this order, reference may be made to the records of the pretrial conference to the extent reported by stenographic notes and to the pleadings.

XII. TRIAL AND ESTIMATED TRIAL TIME STATUS CONFERENCE

- (a) State whether trial to court or jury, estimated trial time, and any other orders pertinent thereto. The following paragraph shall be included in the pretrial order:
- (b) A status conference will be held by the court no later than thirty (30) days before the trial date. At this status conference counsel are directed to file final lists of all exhibits and witnesses. The court may also consider motions in limine, if any, on particular issues and other matters to expedite the trial.

The following format and language shall be used in the pretrial order:

DATED this ____ day of _____, 199__.

BY THE COURT

Name of District Judge
or Magistrate Judge

Pretrial Order Approved:

(Provide signature lines listing name, address, and phone number of counsel. Signatures of counsel are to be affixed before submission of the pretrial order to the district judge or magistrate judge)

* * * INFORMATION NOTE TO ATTORNEYS * * *

The practices vary among the judges with respect to the time for submission of jury instructions, voir dire questions, trial briefs, proposed findings of fact, conclusions of law, and other matters. Individual judges may cover these items in an addendum, the pretrial order, or in other court orders. If the case has been referred to a magistrate judge, the pretrial order shall be signed by the magistrate judge.

APPENDIX C

SUMMARY OF CJRA STATUTORY PROVISIONS IN THE PLAN

Plan Section Number	Statutory Provision
Section I.	(28 U.S.C. § 473 (a)(1))
Section II.	(28 U.S.C. § 473(a)(2),(3))
Section III.	(28 U.S.C. § 473 (a)(3))
Section IV.	(28 U.S.C. § 473 (a)(4))
Section V.	(28 U.S.C. § 473 (a)(2))
Section VI.	(28 U.S.C. § 473 (a)(5))
Section VII.	(28 U.S.C. § 473 (b)(4))
Section VIII.	(28 U.S.C. § 473 (a)(2))
Section IX.	(28 U.S.C. § 473 (b)(1))
Section X.	(28 U.S.C. § 473 (b)(2))
Section XI.	(28 U.S.C. § 473 (b)(3))
Section XII.	(28 U.S.C. § 473 (b)(5))
Section XIII.	(28 U.S.C. § 473 (b)(6))
Section XIV.	(28 U.S.C. § 473 (b)(6))

APPENDIX D

**UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**



**ADVISORY GROUP RECOMMENDATIONS
UNDER THE
CIVIL JUSTICE REFORM ACT**

CIVIL JUSTICE REFORM ACT

ADVISORY GROUP

THOMAS C. SEAWELL, ESQ., ADVISORY GROUP CO-CHAIR

PAUL A. BACA, ESQ.

JAMES T. BURGHARDT, ESQ.

MILES C. CORTEZ, JR., ESQ.

WILEY Y. DANIEL, ESQ.

HAROLD A. FEDER, ESQ.

MARY J. KELLY, ESQ.

FRANK R. KENNEDY, ESQ.

GARY LOZOW, ESQ.

JANE MICHAELS, ESQ.

GENE R. NICHOL, JR., ESQ.

MICHAEL J. NORTON, ESQ.

NEIL PECK, ESQ.

MS. ERIKA SCHAFFER

LANCE M. SEARS, ESQ.

CHIEF JUDGE SHERMAN G. FINESILVER, ADVISORY GROUP CO-CHAIR*

JAMES R. MANSPEAKER, CLERK OF COURT

JANET BIERINGER, CJRA ADVISORY GROUP REPORTER

*All of the district court judges attended various meetings of the group. The judges did not participate in writing the CJRA Report or the recommendations of the Advisory Group.

Consideration of the Advisory Group's Recommendations

RECOMMENDATION NUMBER 1

The Court should broaden the scope of matters referred to a magistrate judge to include the trial of cases with consent of the parties and reference of dispositive motions for recommended findings and ruling in selected cases.

Court's Response:

The court declines to make that change. Magistrate judges play an essential role in the court's plan to meet the demands made on the district court's resources in both civil and criminal matters. The court believes that its civil and criminal case management capacity would be undermined by delegating trials to magistrate judges. In addition, judges may refer dispositive motions for recommended findings, conclusions, and orders in selected cases. Adding trial responsibility to magistrate judges would diminish their availability to decide discovery disputes, conduct settlement conferences, serve as special masters, or conduct confidential case evaluations. The magistrate judges' capacity to facilitate dispute resolution is too valuable to be compromised.

RECOMMENDATION NUMBER 2

The court's district judges should review their administrative procedures for disposition of pending motions to determine whether speedier rulings can be attained. The resources available in the Clerk's office should be used in developing and implementing any review process or implementing changes in administrative procedures.

Court's Response:

Each judge will review the process used in chambers for tracking and deciding pending motions.

RECOMMENDATION NUMBER 3

The Local Rules of the District of Colorado should be modified to provide that a final pretrial conference be held not more than 60 days and not less than 30 days prior to trial. All motions, except evidentiary motions in limine, must be filed at least thirty (30) days before the date of the final pretrial conference and must be ruled on before or at the final pretrial conference.

Court's Response:

Time limits, subject to later modification by the court, are established at the scheduling conference through attorney cooperation. (D.C.COLO LR. 7.1, 29.1, and D.C.COLO LR. Appendix A.). They may be controlled by the Federal Rules of Civil Procedure.

RECOMMENDATION NUMBER 4

The Local Rules of the District of Colorado should be modified to provide that the court rule on all non-dispositive motions within 60 days after they are at issue. All dispositive motions should be ruled upon no later than 90 days after they are at issue.

Court's Response:

The court recognizes the importance of prompt rulings. No set time limits for civil cases can be followed because of the impact on judicial resources of criminal cases and emergency matters which must be given priority by statute and in the public interest.

RECOMMENDATION NUMBER 5

The court should expand its public access to information to include the Public Access to Court Electronic Records (PACER) system.

Court's Response:

The PACER system will be installed. Public access should be available by spring 1994.

RECOMMENDATION NUMBER 6

The court should adopt a policy statement expressing the court's support for litigants seeking ways to resolve their disputes outside the judicial system, but reinforcing the public's confidence that the court is accessible and available for all who properly choose to use its resources.

Court's Response:

The court takes a very active role in helping to secure the just, speedy, and inexpensive determination of every civil action while providing accessible and available service to the public. The court, while wanting to create a positive

settlement atmosphere early in the litigation and facilitate settlement (D.C. COLO. LR 53.2), does not want to thwart citizens' ability to litigate. The court, through its Local Rules, recognizes and supports the attorney's responsibility to advise a client of reasonably available alternative forms of dispute resolution. (D.C.COLO.LR 83.6).

RECOMMENDATION NUMBER 7

The Local Rules of the District of Colorado should be modified to require that the parties file, no later than the first Rule 16 conference, stipulations or individual written statements as to their plan for use of alternative dispute resolution (ADR) techniques or the reasons why they believe such techniques are inappropriate in their case.

Court's Response:

The court believes that the opportunity for implementing this recommendation is included in the Local Rules under a provision that counsel for all parties are directed to meet and attempt to agree upon a proposed scheduling order not later than five days before the scheduling conference to be convened by a judicial officer. (D.C.COLO.LR 29.1).

RECOMMENDATION NUMBER 8

The court should use a Differentiated Case Manager from within existing staff to develop and implement a pilot program with one or more judges and magistrate judges to recommend to the judges methods by which cases might be focused or streamlined and whether a case is suitable for disposition through ADR techniques. The pilot program should include procedures to measure its effectiveness and a sunset provision.

Court's Response:

The court directs the Clerk's office to develop and implement a Differentiated Case Management program.

RECOMMENDATION NUMBER 9

The court should include the subject of alternative dispute resolution (ADR) in seminars and other educational programs presented for the attorneys practicing before the court.

Court's Response:

The court accepts this recommendation.

RECOMMENDATION NUMBER 10

The court should provide opportunities for the judges and magistrate judges to learn more about available alternative dispute resolution (ADR) processes.

Court's Response:

The court will review educational opportunities available to the judges and magistrate judges. Subject to budgetary limitations the court will continue to encourage all judicial officers to take advantage of programs, videotapes, and written information pertaining to ADR, made available by the Federal Judicial Center.

RECOMMENDATION NUMBER 11

The court should establish a systematic procedure for monitoring the effectiveness of new local rules created to curb discovery abuse.

Court's Response:

The court has directed the Clerk to develop, for consideration by the court, a systematic procedure to monitor the effectiveness of the Local Rules addressing discovery abuse. The court will review the procedure prior to implementation. Data gathered by the procedure will be made available for public distribution.

RECOMMENDATION NUMBER 12

The court should assume the leadership role in establishing a practice resource group with the goal of providing attorneys additional training, mentoring, and practice in developing the skills, competence, and professionalism necessary to practice in the court.

Court's Response:

The court has initiated this process.

RECOMMENDATION NUMBER 13

The court should continue to assume early and ongoing control of the pretrial process through the involvement of a judicial officer in setting deadlines for filing motions, at the earliest practicable time.

Court's Response:

The court considers this a current and on-going process.

RECOMMENDATION NUMBER 14

The Local Rules of the District of Colorado (D.C.COLO LR 29.1) should be modified to provide that each party, including state and federal governmental agencies, must be represented by a person with the authority to bind such party as to all issues previously identified for discussion at each hearing or conference.

Court's Response:

The court agrees in principle with this recommendation but appreciates the impact and cost to governmental agencies. The court is monitoring pending litigation pertaining to this recommendation and is actively pursuing an agreeable procedure with the United States Department of Justice.

RECOMMENDATION NUMBER 15

The Local Rules of the District of Colorado (D.C.COLO. LR 53.2) should be modified to provide that (additions in capital letters), "At any stage of the proceedings, on a district judge's motion or pursuant to motion or stipulation of

counsel, a district judge may direct the parties to a suit to engage in an EARLY NEUTRAL EVALUATION, AN early settlement conference or other alternative dispute resolution proceeding. To facilitate settlement or resolution of the suit, the judge may stay the action in whole or in part during a time certain or until further order. Relief from an order under this section may be had upon motion showing good cause."

Court's Response:

The court agrees but recognizes the trial judge's discretion to determine the appropriateness of such proceedings on a case specific basis. (D.C.COLO. LR 53.2).

RECOMMENDATION NUMBER 16

The Local Rules of the District of Colorado should be modified to provide that the court shall require the presence of the parties at any settlement conference conducted under the auspices of the court. The only exception to this requirement shall permit parties who reside outside the District of Colorado to participate in the settlement conference by telephone if, at least ten days prior to such conference, such party has made a showing that presence at the conference would create an undue financial hardship for such party. If the party is a corporation, governmental agency, association or other entity, such party shall be represented at the settlement conference by a person with the authority to bind such party to a settlement agreement.

Court's Response:

The court agrees and presently considers these issues on a case specific basis.

RECOMMENDATION NUMBER 17

The court should adopt and place rules pertaining to bankruptcy matters in a separate Article or Appendix of the Local Rules. At a minimum, these rules should address withdrawal of reference, findings of fact, and conclusions of law in non-core proceedings, bankruptcy appeals, and general administrative procedures. The Local Rules should reflect a systematic method of handling matters between the district court and bankruptcy court.

Court's Response:

The court agrees and will work with the Local Rules subgroup of the CJRA Advisory Group and the bankruptcy court toward such rules.

RECOMMENDATION NUMBER 18

The Local Rules of the District of Colorado should be modified to provide that the court hold a status conference, if requested by one or more parties, for any bankruptcy matter brought to the district court from the bankruptcy court (whether on appeal or otherwise) within fifteen days of receipt of the bankruptcy court file, to determine the nature of the matter and its potential impact on the underlying case or other proceedings still before the bankruptcy court.

Court's Response:

The court does not believe that a local rule is needed. The enactment of such a rule may create additional expense for the litigants. Currently, parties can jointly or separately file a status report with the district court stating the potential impact on the underlying case or other proceedings still before the bankruptcy court.

RECOMMENDATION NUMBER 19

Congress should draft legislation with more precision to avoid litigation-causing errors or omissions. Statutory ambiguity, and failure to address threshold issues such as retroactivity, statutes of limitations, or jurisdictional limits, spawn unnecessary litigation.

Court's Response:

The court expresses no comment regarding the constitutional responsibility of a separate branch of government.

RECOMMENDATION NUMBER 20

Congress should expand resources available to the judiciary when creating additional areas of federal jurisdiction that will increase the workload of the federal courts.

Court's Response:

The court expresses no comment regarding the constitutional responsibility of a separate branch of government.

RECOMMENDATION NUMBER 21

The executive branch should evaluate the effectiveness of and work towards further implementation of the executive order⁶ encouraging use of expeditious dispute resolution methods in cases involving the United States.

Court's Response:

The court expresses no comment regarding the constitutional responsibility of a separate branch of government.

RECOMMENDATION NUMBER 22

The executive branch should nominate candidates for judicial vacancies in a timely manner and the Senate should act promptly on such nominations.

Court's Response:

The court expresses no comment regarding the constitutional responsibility of a separate branch of government.

RECOMMENDATION NUMBER 23

The court should request additional judgeships to meet the demands created by the sharp increase of complex civil and criminal cases.

Court's Response:

The court expresses no comment regarding the constitutional responsibility of a separate branch of government.

⁶Exec. Order No. 12778, 56 Fed. Reg. 55,195 (1991).