The Civil Justice Reform Act Expense and Delay Reduction Plans: A Sourcebook

David Rauma & Donna Stienstra

Federal Judicial Center
1995

This Federal Judicial Center publication was undertaken in furtherance of the Center's statutory mission to conduct and stimulate research and development for the improvement of judicial administration. The views expressed are those of the authors and not necessarily those of the Federal Judicial Center. This publication was prepared with the assistance of Abel J. Mattos, Frederick M. Russillo, and Mark S. Mishovsky of the Court Administration Policy Staff and Mark Shapiro of the Rules Committee Support Office, Administrative Office of the U.S. Courts.

Contents

Introduction 1
Abbreviations Used in the Tables 6
Table 1: Service of Process 9
Table 2: Case Scheduling/Initial Case Management Conference 15
Table 3: Other Pretrial Conference Provisions 63
Table 4: Differentiated Case Management 83
Table 5: Disclosure 105
Table 6: Discovery Requirements 131
Table 7: Motions 179
Table 8: Trial 205
Table 9: Duties of Magistrate Judges 227
Table 10: Pro Se and Prisoner Litigation 241
Table 11: Settlement Conferences 253
Table 12: Adoption of Alternative Dispute Resolution 269
Table 13: Alternative Dispute Resolution Methods 285
Table 14: Alternative Dispute Resolution Program Administration 299
Table 15: Miscellaneous Other Provisions 309
Table 16: Court Recommendations to Others 329
Table 17: Implementation of the Plan 345
Index of District Courts 359

Introduction

This sourcebook is a reference for the civil case management procedures and techniques contained in the Civil Justice Reform Act (CJRA) expense and delay reduction plans adopted by the U.S. district courts. The sourcebook's seventeen tables summarize that information in terms of common civil case management elements, such as service of process, motions, and alternative dispute resolution (ADR). We have produced this sourcebook because of the federal judges' and federal court practitioners' high level of interest in case management techniques.

To create this sourcebook, a summary of each district's plan was drafted and sent to the clerk of court for that district with a request to review the summary for accuracy and completeness and to supplement it with citations to local court rules when those rules rather then the CJRA plan address relevant district practices. Clerks in ninety of the ninety-four courts reviewed and returned the summaries. All ninety-four district summaries are included in this sourcebook. The following staff of the Federal Judicial Center and the Administrative Office prepared the initial summaries:

Research Division, FJC
David Rauma
John Thawley
Robert Niemic
Shannon O'Brien

Court Administration Policy Staff, AO
Abel J. Mattos
Frederick M. Russillo
Mark S. Mishovsky

Rules Committee Support Office, AO
Mark Shapiro

The sourcebook authors prepared the final summaries and the published document. Naomi Medvin, Susanna Carey, Jeannette Summers, Kim McLaurin, and Shannon O'Brien of the Federal Judicial Center provided valuable assistance.

This sourcebook appeared in a preliminary version as the second appendix to a report submitted to Congress on December 1, 1994, concerning the courts' expense and delay reduction plans.[1] This published version differs from the version sent to Congress in that all revisions in response to the courts' reviews have been completed.[2]

The tables in this sourcebook are best viewed as an overview of the U.S. district courts' CJRA expense and delay reduction plans. Readers who need to know specific requirements should not rely on these tables or cite them as legal authority. For more information, interested readers should consult the CJRA advisory group reports and expense and delay reduction plans directly. The reports and plans are available on WESTLAW, and the plans may also be found in a published compendium.[3] The district courts are also required to conduct annual assessments of their criminal and civil dockets, to determine whether additional actions may be taken to reduce cost and delay in civil litigation.[4] Interested readers should contact individual courts for these assessments.

---

[1] Judicial Conference of the United States, Civil Justice Reform Act Report: Development and Implementation of Plans by the United States District Courts (Dec. 1994). Unlike Appendix I of the report to Congress, which organizes the information from the plans into the case management principles and techniques set forth in 28 U.S.C. § 473, this sourcebook uses a more detailed set of categories derived from the types of procedures and issues addressed in the plans and from a general knowledge of court practices.

[2] A version of Appendix II that included all revisions was transmitted to Congress on March 1, 1995, and sent to the circuit and district courts, the executives of the circuit and district courts, the district court clerks, and the CJRA advisory group chairs.

[3] Civil Justice Expense and Delay Reduction Plans of the United States District Courts (Lawyers Cooperative Publishing, April 1994).

[4] 28 U.S.C. § 475.

Statutory Requirements of the CJRA

The Civil Justice Reform Act of 1990 required each U.S. district court to implement a civil justice expense and delay reduction plan that would "facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes."[5] Each district court developed its expense and delay reduction plan (or selected it from model plans) after considering the recommendations of an advisory group formed in accordance with 28 U.S.C. § 478. The members of each advisory group, appointed by the chief judge of each district court, were to include "attorneys and other persons who are representative of major categories of litigants in such court, as determined by the chief judge of such court."[6]

In formulating its recommendations, each advisory group was to consider a variety of factors that included:

1. the condition of the civil and criminal dockets in the district court;

2. trends in case filings and the demands placed on the district court's resources;

3. the principal causes of cost and delay in civil litigation in the district court, given the court's procedures and the ways in which clients and attorneys conduct litigation; and

4. the extent to which costs and delays could be reduced by better assessments of the impact of new legislation on the courts. [7]

The Act, as codified at 28 U.S.C. § 473(a), also required each district court to consider its advisory group's recommendations and the following six principles of litigation management and cost and delay reduction when preparing its plan:

1. 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 (28 U.S.C. § 473(a)(1));

2. early and ongoing control of the pretrial process through involvement of a judicial officer (28 U.S.C. § 473(a)(2));

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 (28 U.S.C. § 473(a)(3));

4. encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices (28 U.S.C. § 473(a)(4));

5. conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion (28 U.S.C. § 473(a)(5)); and

6. authorization to refer appropriate cases to alternative dispute resolution programs (28 U.S.C. § 473(a)(6)).

[5] 28 U.S.C. § 471.
[6] 28 U.S.C. § 478(b).
[7] 28 U.S.C. § 472(c)(1).

Section 473(b) of Title 28 further instructed the district courts to consider for possible inclusion in their plans these techniques of litigation management and cost and delay reduction:

1. a requirement that counsel for each party to a case jointly present a discovery/case management plan for the case at the initial pretrial conference (28 U.S.C. § 473(b)(1));

2. a requirement that each party be represented at each pretrial conference by an attorney with authority to bind that party regarding all matters under discussion at the conference and all related matters (28 U.S.C. § 473(b)(2));

3. a requirement that all requests for extensions of discovery deadlines or for postponement of the trial be signed by the attorney and the party making the request (28 U.S.C. § 473(b)(3));

4. a program for the presentation of the legal and factual basis of a case to a court-selected neutral evaluator at a nonbinding conference conducted early in the litigation (28 U.S.C. § 473(b)(4));

5. a requirement that, upon notice of the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference (28 U.S.C. § 473(b)(5)); and

6. any other techniques that the court considers appropriate after considering the advisory group's recommendations (28 U.S.C. § 473(b)(6)).

Ten district courts were designated by the Judicial Conference of the United States as pilot courts and were required to include the six principles and guidelines of § 473(a) in their expense and delay reduction plans.[8] The ten pilot courts are

Southern District of California
District of Delaware
Northern District of Georgia
Southern District of New York
Western District of Oklahoma
Eastern District of Pennsylvania
Western District of Tennessee
Southern District of Texas
District of Utah
Eastern District of Wisconsin

Furthermore, the Judicial Conference was required to conduct demonstration programs in five courts:[9]

Northern District of California
Western District of Michigan
Western District of Missouri
Northern District of Ohio
Northern District of West Virginia

The statute required the demonstration courts in the Western District of Michigan and the Northern District of Ohio to experiment with systems of differentiated case management. The courts in the Northern District of California, the Northern District of West Virginia, and the Western District of Missouri

[8] Civil Justice Reform Act of 1990, Pub. L. No. 101-650 (1990). The statute required the pilot courts to maintain their programs until December 31, 1994, and the Judicial Conference to submit a report to Congress no later than December 31, 1995, on the experience of the pilot courts. The Judicial Improvements Act of 1994 (Pub. L. No. 103-420) extended the pilot programs to December 31, 1995, and the report date to December 31, 1996.
[9] *Id.* at § 104.

were also required to experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution.[10]

Pursuant to 28 U.S.C. § 479, the Judicial Conference submitted a report to Congress on December 1, 1994, on the districts' expense and delay reduction plans. As noted earlier, a prepublication version of this sourcebook was the second appendix to that report.

Patterns Among the District Plans

In formulating their recommendations, the CJRA advisory groups were directed by Congress to examine and take account of the conditions and practices in their respective districts.[11] Consequently, the expense and delay reduction plans that resulted from the advisory group recommendations and the work of the district courts are as varied in their content as the districts they represent. Yet, there are some distinct patterns among the adopted plans that largely reflect the congressional directives to consider various principles and techniques of litigation management. It should be noted that only the ten pilot courts were required to include the six principles and guidelines of litigation management and cost and delay reduction in their expense and delay reduction plans. Other districts were free to consider them and adopt them if local conditions were judged to be appropriate. But many districts already had local rules, standing orders, or other policies that included these principles in varying degrees. Thus, the absence of a principle or guideline from a plan does not mean that that court rejected it; that principle or guideline may already be reflected in district practices that are not described in the expense and delay reduction plan. It is for this reason that the tables include local rule citations, provided directly by the district courts.

Regarding patterns among the plans, the courts are nearly universal in their adoption of some form of individualized or case-specific case management (see Table 4). Many districts have created differentiated case management (DCM) systems that place cases into broad categories or tracks. These tracks generally have their own time frames for the completion of discovery and trial as well as their own limits on discovery (e.g., limits on the number of interrogatories and depositions). Virtually every district that has a formal DCM system has some version of an expedited track, a standard track, and a complex track, and may have other, more specialized tracks. The Western District of Michigan has six DCM tracks, including two tracks for complex cases and a non-DCM track for a randomly assigned 10% of civil cases. This non-DCM track will be used for comparative analysis of DCM and non-DCM techniques of litigation management as part of the study of this demonstration program. Among those districts without a formal system, the vast majority subscribe to the principle of individualized case management, to be implemented through such techniques as case management plans jointly prepared by the parties and their attorneys, periodic status conferences, and final pretrial conferences (see Tables 2 and 3).

Virtually all of the district courts authorize some form of alternative dispute resolution, and many districts have one or more court-annexed programs (see Tables 12, 13, and 14). Among the most common ADR techniques are court-hosted settlement conferences and mediation. In addition to the twenty districts authorized under 28 U.S.C. § 658 to maintain mandatory or voluntary programs of court-annexed arbitration, some districts allow parties to employ private ADR providers who may use arbitration.[12]

[10] The Judicial Conference is required to submit a report to Congress no later than December 31, 1995, on the experience of the demonstration courts. *Id.* at § 104(a).

[11] 28 U.S.C. § 472(c)(1).

[12] The Federal Judicial Center and the CPR Institute for Dispute Resolution will jointly publish the Sourcebook on Federal District Court ADR and Settlement Procedures, a court-by-court description of district court ADR programs. Based on the CJRA plans and a survey of the courts, the ADR Sourcebook reflects developments under and subsequent to the CJRA and provides substantially more detail than we do here.

Many courts have codified several additional concepts of litigation management in their expense and delay reduction plans. One of the most common and oldest concepts is that of an early, firm trial date, typically established during or soon after the first discovery/case management conference (see Table 8). A number of courts have also adopted backup systems for ensuring that the trial date, once established, is postponed only in the most extraordinary circumstances. Some of these courts have another judge try the case if the assigned judge is unavailable. Others offer litigants the choice of another date or trial before a magistrate judge. Some districts exchange a firm trial date for consent by parties to have their case handled and tried by a magistrate judge (see Tables 8 and 9).

Not quite as common as the firm trial date—though very frequently found in the plans—is the requirement of a good-faith effort to resolve discovery disputes before requesting judicial involvement (see Table 6). Most districts with this requirement also require that certification accompany the discovery motion. Several districts require a good-faith effort to resolve the dispute and, if that effort is unsuccessful, a conference with a judge before the filing of a discovery motion.

Among the plans' provisions for controlling discovery, the most common provision is the adoption of schedules and time limits for completing discovery. How these schedules and deadlines are established varies greatly from court to court, but many use the Rule 16 scheduling order to set them. Many courts considered a requirement that attorneys and their clients both sign requests for extension of discovery deadlines (see Table 6), and while some courts did adopt this requirement, a greater number rejected it.

The expense and delay reduction plans vary in their response to the principle of voluntary exchange of information and the use of cooperative discovery devices (see Table 5).[13] At the time many of the courts were writing their plans, proposed changes to Federal Rule of Civil Procedure 26 were pending. Some courts declined to take a position on voluntary disclosure, choosing instead to wait for the outcome of the proposed changes. Other courts chose not to adopt the new version of the rule. As a result, the information on disclosure is preliminary and not necessarily indicative of current practices in the federal courts.[14]

The tables in this sourcebook also summarize information regarding the duties of magistrate judges (see Table 9), procedures for handling pro se and prisoner litigation (see Table 10), miscellaneous other provisions of the expense and delay reduction plans (see Table 15), and court recommendations to others regarding rules of procedure, criminal sentencing, and the impact of new legislation (see Table 16). The last table contains information on the implementation of the expense and delay reduction plans, including whether they were adopted by local rule, general order, or a combination thereof (see Table 17).

[13] 28 U.S.C. § 473(a)(4).

[14] For current information on the district courts' adoption of disclosure, see Donna Stienstra, Implementation of Disclosure in United States District Courts (Federal Judicial Center, March 24, 1995 update).

Abbreviations Used in the Tables

The following abbreviations are used throughout the tables in this sourcebook.

CJRA Plan	The district court's CJRA expense and delay reduction plan.
ADR	Alternative dispute resolution.
DCM	Differentiated case management.
IA	The information is absent from the district court's CJRA plan.
CR	The district court specifically rejects this procedure or rule.
PD	The district court's CJRA plan notes that the court's provision predates the CJRA.

The expense and delay reduction plans differ markedly in their content, as would be expected of plans formulated on the basis of local issues and needs. Thus, one district court's plan may not address issues that are dealt with in another court's plan. In the tables that follow, many of the entries contain the abbreviation IA, meaning that information on a particular topic is absent from a district's plan. The fact that the information is absent can mean any of several things. In many districts, the case management principles and techniques described in the tables had been adopted and implemented before the CJRA. Consequently, these courts may have believed that this information was not pertinent, perhaps because it was described in detail in the CJRA advisory group's report. Where it was possible to identify this situation in the expense and delay reduction plan, it is noted as PD (Predates the CJRA). Where it was not possible to identify this situation, IA is used. It is also possible that, based on the advisory group's report, the court did not believe that a change in district practice was needed; the advisory group may in fact have recommended that no change be made. When such a recommendation could be identified in the expense and delay reduction plan, the recommendation and its basis are described in the table. It is also possible that the courts rejected some principles and techniques. Where this situation could be identified, it is noted as CR (Court Rejects). Again, where it was not possible to identify the reason, IA is used.

The designation IA should not be read to imply that the courts had an obligation to include a particular case management practice in their plans. Only the ten pilot courts were required to include the six principles outlined in § 473(a). All other courts had the option of adopting any given practice. Furthermore, some of the practices included in these tables are not addressed by the CJRA, but are included here because they were found in the plans or are of interest to the courts.

CJRA Expense and Delay Reduction Plans

Table 1: Service of Process

Earlier Than 120 Days?—Is the deadline for the service of the complaint earlier than 120 days?

Show Cause Order Issued?—Is a show cause order issued?

Other—Are there other relevant provisions?

District	Earlier Than 120 Days?	Show Cause Order Issued?	Other
M.D. Ala.	IA	IA	
N.D. Ala.	IA	IA	
S.D. Ala.	IA	IA	
D. Alaska	IA	IA	
D. Ariz.	For cases on the pro se prisoner track, the maximum service date is pursuant to Fed. R. Civ. P. 4 or 60 days from the filing of the service order, whichever is later.	IA	
E.D. Ark.	IA	IA	
W.D. Ark.	IA	IA	
C.D. Cal.	IA Loc. R. 5.1	IA	The first request for an extension of time to respond to the initial complaint will no longer require court approval. Loc. R. 3.11.1
E.D. Cal.	IA Summary of Court Practices, at 3–4 (12/91)	IA	

Table 1: Service of Process

District	Earlier Than 120 Days?	Show Cause Order Issued?	Other
N.D. Cal.	Accelerated deadlines for serving complaints will be included as part of the Case Management Pilot Program. General Order 34 § III A–B (1/1/92; Revised 1/1/93, 12/1/93, 1/18/94)	IA General Order 34 § III C (1/1/92; Revised 1/1/93, 12/1/93, 1/18/94)	
S.D. Cal.	IA	IA	All complaints must be served within 120 days. Extensions will be granted only for good cause. If proof of service is not filed within 130 days (or 10 days after an extension is granted), the clerk will prepare an order dismissing the case without prejudice and submit it to the assigned district judge for signature. Loc. R. 4.1.b (12/91)
D. Colo.	IA	IA	
D. Conn.	IA	IA	
D. Del.	IA	IA	
D.D.C.	No	No	
M.D. Fla.	IA	IA Loc. R. 3.10 (7/1/84)	
N.D. Fla.	IA	IA Loc. R. 10 (Revised 84) Loc. R. 41.1(A) (Proposed)	
S.D. Fla.	IA	IA	
M.D. Ga.	IA	IA	
N.D. Ga.	IA	IA	
S.D. Ga.	IA	IA	IA
D. Guam	IA	IA	
D. Haw.	IA	IA	
D. Idaho	No	IA	
C.D. Ill.	IA	IA	

District	Earlier Than 120 Days?	Show Cause Order Issued?	Other
N.D. Ill.	IA	IA	
S.D. Ill.	IA	IA	
N.D. Ind.	IA	IA	
S.D. Ind.	IA	IA	
N.D. Iowa	IA Loc. R. 19(b)(1)(A)	IA	
S.D. Iowa	IA	IA	
D. Kan.	IA	IA	
E.D. Ky.	IA	IA	
W.D. Ky.	IA	IA	
E.D. La.	IA	IA Loc. R. 11.01E (5/89)	
M.D. La.	IA	IA	
W.D. La.	IA	IA	Loc. R. 1.09 (5/89; Revised 4/92) Loc. R. 5.02 (5/89; Revised 4/92)
D. Me.	IA	IA	The Civil ICMS electronic docketing system is programmed to identify any case in which service of process is not made within 120 days of filing. An order to show cause will thereafter be promptly entered.
D. Md.	IA	IA Loc. R. 103.8.a	
D. Mass.	IA Loc. R. 4.1 (9/90)	IA Loc. R. 4.1 (9/90; Revised 12/94)	
E.D. Mich.	IA	IA	
W.D. Mich.	IA	IA Loc. R. 33 (Revised 8/92)	
D. Minn.	IA	IA	

Table 1: Service of Process

District	Earlier Than 120 Days?	Show Cause Order Issued?	Other
N.D. Miss.	IA	IA	
S.D. Miss.	IA	IA	
E.D. Mo.	IA	IA	
W.D. Mo.	IA	IA	IA
D. Mont.	IA	IA	
D. Neb.	IA	IA	Loc. R. 4.1(a) (Revised 1/93)
D. Nev.	IA Loc. R. 160	IA Loc. R. 160	
D.N.H.	IA	IA	The clerk may grant one extension of 40 days for filing an answer; any further extensions require judicial approval.
D.N.J.	IA	IA	
D.N.M.	The deadline is 90 days.	The case is dismissed unless good cause is shown within 30 days.	
E.D.N.Y.	IA	IA	
N.D.N.Y.	Upon the filing of the complaint, the clerk will issue an order to the plaintiff that requires service of process upon all defendants within 60 days. Loc. R. 4.1(b)	IA	
S.D.N.Y.	IA	IA	
W.D.N.Y.	IA	IA	
E.D.N.C.	IA	IA	
M.D.N.C.	IA	IA	
W.D.N.C.	IA	IA	
D.N.D.	IA	IA	
D. N. Mar. I.	IA	IA	

District	Earlier Than 120 Days?	Show Cause Order Issued?	Other
N.D. Ohio	IA	IA	
S.D. Ohio	IA	IA	
E.D. Okla.	IA	IA	
N.D. Okla.	IA	IA	
W.D. Okla.	IA	IA	
D. Or.	IA Loc. R. 210-1	IA	
E.D. Pa.	IA	IA	The court endorses the recommendation of the Advisory Group that the 120-day limit for completion of service of process be substantially reduced through amendment of Fed. R. Civ. P. 4(j).
M.D. Pa.	IA Pa. R. Civ. P. 400	IA	
W.D. Pa.	IA	IA	
D.P.R.	IA	IA	
D.R.I.	IA	IA	
D.S.C.	IA Loc. R. 7.02 (12/1/93)	IA	
D.S.D.	IA	IA	Loc. R. 5.1 (1984) Loc. R. 5.2 (1992)
E.D. Tenn.	IA	IA	
M.D. Tenn.	IA	IA	
W.D. Tenn.	IA	IA	
E.D. Tex.	IA	IA	
N.D. Tex.	IA Loc. R. 3.1(g) (3/78; Revised 2/21/94)	IA	

Table 1: Service of Process

District	Earlier Than 120 Days?	Show Cause Order Issued?	Other
S.D. Tex.	IA	IA	
W.D. Tex.	IA	IA	
D. Utah	IA	IA	
D. Vt.	IA	IA	
D.V.I.	IA	IA	
E.D. Va.	IA	IA Loc. R. 6(a) (1/80; Revised 2/89)	
W.D. Va.	IA	IA	
E.D. Wash.	IA	IA	
W.D. Wash.	IA	IA	
N.D. W. Va.	IA	IA	
S.D. W. Va.	IA Loc. R. 1.04	IA	
E.D. Wis.	IA Loc. R. 10.01 Loc. R. 19.01	IA	
W.D. Wis.	IA	IA	
D. Wyo.	IA Loc. R. 6 (Revised 11/93)	IA Loc. R. 41	The court will continue its current policies and procedures for monitoring service of process and responses to complaints. The court will continue its policy of obtaining support from the bar to consistently enforce compliance with time limits. Relief will be granted only when genuine and unavoidable hardship exists. Requests for extensions of time to respond to a complaint will be handled in the same manner as requests for extensions of time to respond to written discovery requests. (See Table 6.)