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Second Amendment of the District's Civil Justice Expense and Delay Reduction Plan

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA

SECOND AMENDMENT OF THE DISTRICT'S CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

Effective Date: September 30, 1996

PRELIMINARY STATEMENT

Congress enacted the Civil Justice Reform Act of 1990 (CJRA) to spark review and reform of case management practices in the federal trial courts in order to reduce cost and delay in civil litigation. In accordance with CJRA mandates, in 1993, the CJRA Advisory Group for this District submitted to the Court an extensive report supporting a proposed Civil Justice Expense and Delay Reduction Plan, which the Court adopted, with virtually no change, effective December 1, 1993.[1]

The Advisory Group then performed the first of the annual evaluations required by the Act in order to determine the Plan's effectiveness. In June 1995, the Advisory Group issued its First Annual Assessment, covering the Plan period December 1, 1993 through November 30, 1994, and recommended only minor refinements to the Plan. The Court then adopted the Advisory Group's suggested First Amendment to the Plan, which became effective June 30, 1995.[2]

After careful consideration of the Advisory Group's Second Annual Assessment For the Plan Period December 1, 1994 through June 30, 1996, the Court, as ordered below, adopts the Plan revisions recommended by the Advisory Group in its Second Annual Assessment. Some of these changes are internal administrative concerns of the Court only

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1. *The Civil Justice Expense and Delay Reduction Plan for the District of North Dakota*, 69 N.D. L. REV. 860 (1993) [hereinafter *Plan*].

2. *First Amendment of the District's Civil Justice Expense and Delay Reduction Plan*, 71 N.D. L. REV. 905 (1995) [hereinafter *First Amendment to the Plan*].

and will have no direct effect on the practicing Bar. We urge a review of the Group's Second Annual Assessment for a more complete explanation of the Plan revisions adopted by the Court.

Any Plan provisions not mentioned in this Order remain in full force and effect as previously ordered by this Court. For a current statement of the Plan in its entirety, the original Plan, the First Amendment to the Plan, and this Second Amendment should be consulted. As an order of the Court, the Plan should be familiar to all District practitioners, who will be held to know and abide by its provisions. The Plan shall be read in conjunction with the Federal Rules of Civil Procedure, the Local Rules of this District, and any other applicable rules, orders, and procedures governing the practice and administration of law in this Court.

ACCORDINGLY, THE COURT ADOPTS THESE AMENDMENTS TO THE CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN FOR THE DISTRICT OF NORTH DAKOTA:

AMENDED PLAN PROVISIONS

2. Early and Ongoing Control of the Pretrial Process.

2a. Firm Trial Dates Set Early at the Rule 16(b) Scheduling Conference. The Court agrees with the Advisory Group's conclusion that "firm trial dates drive the pretrial process" and comprise the "foundation of [the CJRA] Plan . . . ." Accordingly, in order to facilitate the Group's ongoing responsibility to evaluate the Plan's effectiveness and the concomitant role played by the Court's setting early and firm trial dates, the Court directs the Clerk's Office to keep more detailed track of trial continuances so that the Group can more accurately assess the number of continuances requested and the reasons for those requests. Thus, future reports to the Advisory Group shall make note of all continuances, whether granted or denied. In addition, the revised report should list the reason for the continuance request and the length of time granted.

2b. Eighteen Month Benchmark for Trials. To help ensure compliance with this District's eighteen month benchmark for trials, the Court, when feasible, will set dispositive motion deadlines a minimum of 90-120 days before the final pretrial conference in order to allow

counsel sufficient response and reply time, and the Court, adequate ruling time. This minimum shall also be considered by the Court in selecting the trial date and in approving the discovery deadlines proposed by counsel.

2d. Joint Jury Instructions. Given the importance of the verdict form in the trial process, and consistent with this Court's final pretrial conference order, Local Rule 47.1CV(F) shall be amended to require joint discussion and presentation to the Court of the verdict form as well as the jury instructions.

Accordingly, as soon as practicable, the Clerk of Court shall initiate the formal administrative process for public comment on this proposed revision of Local Rule 47.1CV(F) (new text underlined and amended text in brackets):

> (F) REQUESTS FOR INSTRUCTIONS TO JURY
>
> At least five days prior to the commencement of all jury trials, and after sincere attempts by counsel to resolve any disagreements about the instructions to be given[,] and the verdict form to be used, a jointly prepared single set of requested instructions and jury verdict form shall be presented to the court and served upon each adverse party. The court may receive additional requests relating to questions arising during the trial at any time prior to the argument. All requests for instructions shall be plainly marked with the number of the case, shall designate the party submitting the same, and each requested instruction shall be numbered and written on a separate page, together with a citation of authorities supporting the proposition of law stated in the instruction. All disagreements about the instructions and verdict form shall be briefed and presented to the court at least five days before the start of the trial.

In the interim, this Plan Amendment shall stand as the order of this Court governing practice in this District.

2e. Sixty-Day Benchmark for Motions, Bench Trials, and Bankruptcy Appeals. To assist the Advisory Group's reassessment of the validity of the sixty-day benchmark for motions, bench trials, and bankruptcy appeals, the Clerk's Office shall prepare a revised motions status report, to be given to the Group sufficiently in advance of any CJRA meetings.

That report, to the extent feasible, shall (1) be computer-generated by the Clerk's Office, with the basic statistics collected for each judge, (2) be uniform in format, the periods covered, and the information conveyed, and (3) provide the reasons for the non-decision of any motions. Each judge shall review and annotate the basic statistical report on or about the last day of every second month in order to record those reasons while the information is still easily available.

3. **Pretrial Monitoring of Complex Cases through Discovery-Case Management Conferences.** This Court has already voiced commitment to more active case management by the district judges in complex cases. While there have not been many cases in this District requiring this type of involvement, the Court takes this opportunity to renew its commitment, and along with the Advisory Group, asks the Bar to inform the Court of cases which might benefit from the earlier and active involvement of the Article III judges.

Court-Appointed Experts and Science and Technology in the Courtroom. The Court encourages the Advisory Group, in its preparation of the Third Annual Assessment, to further consider the question of experts and the presentation of scientific evidence in the courtroom. In the interim, the Court will continue use, where appropriate, of the Federal Judicial Center's REFERENCE MANUAL ON SCIENTIFIC EVIDENCE.

4. **Voluntary Information Exchange and Cooperative Discovery Devices.** The Court agrees with the Advisory Group that no clear consensus about the operation of Rule 26(a)(1) has emerged in this District and more experience with this provision is needed before it is revised or rejected. Thus, the Court is inclined, at this time, to adhere to Rule 26(a)(1) as adopted and as interpreted by this District in Local Rule 26.1 because of the Rule's inherent flexibility and the need to give the Rule as written, in actual practice, a fair chance to realize the benefits of its intended application. Accordingly, for the reasons stated by the Advisory Group and in light of the Court's own experience with the Rule, these clarifications, emphasizing the operation of the current Rule 26(a)(1), shall be made to the Court's Rule 16(b) scheduling/discovery order and the Court's Sample Scheduling/Discovery Plan:

1. the Court's Rule 16(b) scheduling/discovery order to counsel shall be revised (a) to expressly require the Rule 26(f) conference and

counsel's good faith, in-person (whether face-to-face or over the telephone) participation, (b) to expressly require compliance with Rule 26(a)(1) unless, in good faith, counsel agree, with particularized reasons set out in the scheduling/discovery plan, that application of the mandatory discovery provisions of the rule is inappropriate in this particular case, (c) to state that counsel are free to delineate any areas—including or beyond those listed in Rule 26(a)(1)—for initial informal exchange, and (d) to state, as part of the discovery plan, that counsel must delineate which information will be exchanged informally and formally;

2. the Court's Sample Scheduling/Discovery Plan shall be revised to include a statement that the parties have, in good faith and in a live in-person or telephonic exchange, discussed (a) the nature and basis of their claims and defenses in reasonable detail sufficient to put counsel on notice of the basic issues to be explored in discovery and of the key information counsel seek in discovery and why, (b) the possibilities for a prompt settlement or resolution of the case, (c) the proposed discovery plan, and (d) the informal exchange, without written discovery requests, of the information delineated in the four Rule 26(a)(1) categories, especially what they need and why they need it, based on information then reasonably available to them; and

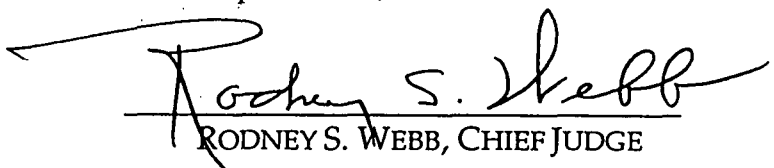
3. the Court's Sample Scheduling/Discovery Plan shall also be revised to require counsel to define the extent of initial disclosures they agreed to make and/or their reasons for failing to informally exchange the information listed in Rule 26(a)(1). This explanation will serve as the basis for the Court's assessment of good faith compliance so that the reasons listed must demonstrate, to the Court's satisfaction, that early disclosure has been completed to the extent feasible at this point in the litigation, would only add cost and delay to the discovery process, or would otherwise be unnecessary or unjust.

The Court encourages the Advisory Group, in due time, to revisit these changes once the Court and counsel have more experience with them and Rule 26(a)(1) can again be re-evaluated to determine whether its intended benefits are in fact accruing to all litigation participants or whether the Court should opt out of its requirements in whole or in part.

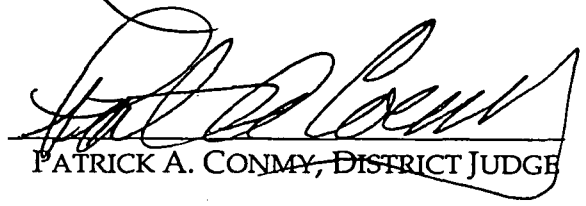
10. **Resources for the Judiciary.** The Court encourages Congress to provide the funding necessary for the Advisory Group to complete its

statutory tasks as required by the CJRA. Moreover, given the growing importance of science and technology in the courtroom, the Court also supports congressional funding for restricted, but nonetheless possible, use of court-appointed experts in those cases where the Court cannot depend upon the resources of the parties to provide the expertise needed for a just adjudication.

SO ORDERED.
Dated September 19, 1996



RODNEY S. WEBB, CHIEF JUDGE



PATRICK A. CONMY, ~~DISTRICT~~ JUDGE