

JUDICIAL CASE MANAGEMENT IN THE FEDERAL TRIAL COURTS OF THE UNITED STATES OF AMERICA

Edward A. Infante
United States Magistrate Judge
Northern District of California

I. Transition From The Passive Judicial Role To Active Case Manager

During the past twenty-five years, the civil caseload in the federal trial courts in the United States of America has increased dramatically with case filings rising to triple the number that existed in the early 1970s. Moreover, civil cases have become more complex and protracted with multiple parties, numerous factual issues, voluminous documents, and complicated legal issues. The explosive growth in civil litigation is due in part to population growth, the enactment of new federal statutes creating more rights and remedies, the expansion of commerce and business opportunities, a greater public reliance on the courts to find solutions to a variety of societal problems, and a large increase in the number of attorneys.

Although more judges and courtrooms have been added, the modest increase in judicial resources has not kept pace with the massive expansion of litigation. The result has been court congestion, increased costs, and excessive delay in the resolution of civil cases. Widespread concern among all segments of the legal community as well as the public led to the search for solutions designed to eliminate unnecessary expense and delay in civil litigation.

In the federal courts, the prevailing response was twofold: (1) the creation and expansion of less costly alternative dispute methods such as mediation, arbitration, and judicial settlement conferences; and (2) active judicial case management of each civil case.

Traditionally, the role of trial judges had been viewed primarily as presiding over trials, hearing and evaluating evidence, finding facts, applying the appropriate legal standards, making judgments, and dispensing justice. During the pretrial phase of civil cases, most judges assumed a passive role allowing the lawyers to control the progress and pace of the litigation.

Over the past two decades, the trial judge has emerged from a passive pretrial role to an active case manager in an effort to conduct the business of the courts with greater judicial efficiency. This transition has occurred contemporaneously with rule changes and legislation. Utilizing its rulemaking authority, the federal judiciary amended the Federal Rules of Procedure in 1983 to expressly provide for early judicial intervention in civil cases and authorizing judges to require attorneys and litigants to attend pretrial conferences and enter case management and scheduling orders setting time limits for the progression of the case including a firm trial date. (See Rule 16, Federal Rules of Civil Procedure, attached as Exhibit A).

In addition the United States Congress enacted the Civil Justice Reform Act of 1990

requiring each United States District Court to develop and implement a "civil justice expense and delay reduction plan." The legislation instructed each court to formulate a case management program providing for "early and ongoing control of the pretrial process through involvement of a judicial officer" whose responsibilities include "assessing and planning the progress of a case" and "setting early, firm, trial dates".

The practice of judicial case management has spread to most state courts. Today, trial judges throughout the United States are actively managing civil cases from filing through disposition with a purpose of achieving the "just, speedy, and inexpensive determination of every action." (Rule 1, Federal Rules of Civil Procedure).

II. Elements of Judicial Case Management

The basic concept behind case management is for early judicial involvement in identifying the principal factual and legal issues in dispute between the parties, and working with them and their attorneys to plan for and manage the conduct of future proceedings to achieve the earliest and most cost effective resolution of the dispute. The current process of case management in the federal courts requires that upon the filing of a lawsuit, an initial Case Management Conference is scheduled within 120 days before the assigned judge.

In preparation for the conference, the attorneys for the parties are required to meet to discuss the nature and basis of their claims and defenses and the prospects for a prompt settlement or resolution of the case. They are required by rule to: (1) exchange specified information relevant to the claims and defenses, such as the names of witnesses, documentary evidence, and computations of damages; (2) develop a discovery plan for further exchange of evidence; (3) discuss alternative dispute methods (other than trial) which may be useful in resolving the case; and (4) discuss dates for all future proceedings including trial.

After the meeting of counsel, they are required to file a Case Management report prior to the Case Management Conference. (A sample Form Report is attached as Exhibit B). At the Case Management Conference, the trial judge imposes deadlines that limit the time in which the parties can: (1) amend the pleadings and add other parties; (2) provide disclosures required by the rules; (3) complete discovery; and (4) file pretrial motions. A date for a final pretrial conference and a date for the trial will also be set as part of a comprehensive scheduling order.

One of the goals of the case management process is to structure pretrial proceedings of a particular case in a manner that promotes the early exchange of information on key issues, so that the parties will be in a better position to evaluate their claims and defenses and achieve an early settlement of the lawsuit. In those cases where an early settlement is not possible, the court can employ other management techniques designed to eliminate frivolous issues and streamline the case so that it may proceed to trial efficiently, solely on genuine issues of material fact.

The utilization of case management tools are tailored to meet the needs of the individual case depending upon its simplicity or complexity. Among the case management techniques being

utilized by U.S. federal trial courts are the following:

- Assigning the case at the outset to a court-sponsored Alternative Dispute Resolution Program, such as Mediation or Arbitration.
- Ordering the disclosure or discovery of information on particular factual issues.
- Inviting the parties to file written motions with a view to eliminating or narrowing the disputed issues of fact to be tried.
- Imposing quantitative limits on discovery or on the number of witnesses to save costs.
- Determining the order in which the factual or legal issues will be presented at trial.
- Requesting the parties to stipulate or agree to certain issues that appear undisputed, and to the admission of documentary evidence.
- Consolidating several cases which involve common issues into one case for pretrial discovery and trial.
- Scheduling multiple periodic case management conferences to monitor the pretrial process and discuss settlement.

To enable courts to enforce its case management orders, the Federal Rules (Rule 16) empower judges to prescribe sanctions or penalties for failing to comply with disclosure or discovery obligations, failing to appear at pretrial conferences, or failure to participate in good faith in case management. Sanctions may include: (1) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters; (2) an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof; and (3) an order requiring the offending party to pay reasonable expenses, including attorneys' fees, caused by the offending behavior.

III. Conclusion

The practice of active judicial case management in combination with the utilization of alternative dispute resolution programs has substantially reduced excessive litigation costs and undue delay in the resolution of civil cases in the federal trial courts in the United States. Approximately Ninety-five percent (95%) of civil cases are resolved without trial. While some cases are disposed of by dismissal or summary judgment under the Federal Rules of Civil Procedure, most of the cases are resolved by settlement. Effective case management tailored to each particular case enables the parties to evaluate their positions sooner and less expensively. The average time from filing to disposition in most federal district courts has been reduced to seven (7) months. Without active judicial case management, the courts would be hampered in achieving the just, efficient, and inexpensive resolution of civil disputes.

EXHIBIT A

FEDERAL RULES OF CIVIL PROCEDURE

Rule 16— Pretrial Conferences; Scheduling; Management

(a) Pretrial Conferences; Objectives. In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as

- (1) expediting the disposition of the action;
- (2) establishing early and continuing control so that the case will not be protracted because of lack of management;
- (3) discouraging wasteful pretrial activities;
- (4) improving the quality of the trial through more thorough preparation, and;
- (5) facilitating the settlement of the case.

(b) Scheduling and Planning. Except in categories of actions exempted by district court rule as inappropriate, the district judge, or a magistrate judge when authorized by district court rule, shall, after receiving the report from the parties under Rule 26(f) or after consulting with the attorneys for the parties and any unrepresented parties by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that limits the time

- (1) to join other parties and to amend the pleadings;
- (2) to file motions; and
- (3) to complete discovery.

The scheduling order also may include

- (4) modifications of the times for disclosures under Rules 26(a) and 26(e)(1) and of the extent of discovery to be permitted;
 - (5) the date or dates for conferences before trial, a final pretrial conference, and trial;
- and
- (6) any other matters appropriate in the circumstances of the case.

The order shall issue as soon as practicable but in any event within 90 days after the appearance of a

defendant and within 120 days after the complaint has been served on a defendant. A schedule shall not be modified except upon a showing of good cause and by leave of the district judge or, when authorized by local rule, by a magistrate judge.

(c) **Subjects for Consideration at Pretrial Conferences.** At any conference under this rule consideration may be given, and the court may take appropriate action, with respect to

(1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

(2) the necessity or desirability of amendments to the pleadings;

(3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;

(4) the avoidance of unnecessary proof and of cumulative evidence, and limitations or restrictions on the use of testimony under Rule 702 of the Federal Rules of Evidence;

(5) the appropriateness and timing of summary adjudication under Rule 56;

(6) the control and scheduling of discovery, including orders affecting disclosures and discovery pursuant to Rule 26 and Rules 29 through 37;

(7) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

(8) the advisability of referring matters to a magistrate judge or master;

(9) settlement and the use of special procedures to assist in resolving the dispute when authorized by statute or local rule;

(10) the form and substance of the pretrial order;

(11) the disposition of pending motions;

(12) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(13) an order for a separate trial pursuant to Rule 42(b) with respect to a claim, counterclaim, cross-claim, or third-party claim, or with respect to any particular issue in the case;

(14) an order directing a party or parties to present evidence early in the trial with

respect to a manageable issue that could, on the evidence, be the basis for a judgment as a matter of law under Rule 50(a) or a judgment on partial findings under Rule 52(c);

(15) an order establishing a reasonable limit on the time allowed for presenting evidence; and

(16) such other matters as may facilitate the just, speedy, and inexpensive disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed. If appropriate, the court may require that a party or its representative be present or reasonably available by telephone in order to consider possible settlement of the dispute.

(d) **Final Pretrial Conference.** Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

(e) **Pretrial Orders.** After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.

(f) **Sanctions.** If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

[As amended Apr. 28, 1983, eff. Aug. 1, 1983; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993.]

EXHIBIT B

Form 35. Report of Parties' Planning Meeting

[Caption and Names of Parties]

1. Pursuant to Fed.R.Civ.P. 26(f), a meeting was held on (date) at (place) and was attended by:
(name) for plaintiff(s)
(name) for defendant(s) (party name)
(name) for defendant(s) (party name)

2. Pre-Discovery Disclosures. The parties [have exchanged] [will exchange by (date)] the information required by [> Fed.R.Civ.P. 26(a)(1)] [local rule ____].

3. Discovery Plan. The parties jointly propose to the court the following discovery plan: [Use separate paragraphs or subparagraphs as necessary if parties disagree.]

Discovery will be needed on the following subjects: (brief description of subjects on which discovery will be needed)

All discovery commenced in time to be completed by (date). [Discovery on (issue for early discovery) to be completed by (date).]

Maximum of ____ interrogatories by each party to any other party. [Responses due ____ days after service.]

Maximum of ____ requests for admission by each party to any other party. [Responses due ____ days after service.]

Maximum of ____ depositions by plaintiff(s) and ____ by defendant(s).

Each deposition [other than of _____] limited to maximum of ____ hours unless extended by agreement of parties.

Reports from retained experts under Rule 26(a)(2) due:

from plaintiff(s) by (date)

from defendant(s) by (date)

Supplementations under Rule 26(e) due (time(s) or interval(s)).

4. Other Items. [Use separate paragraphs or subparagraphs as necessary if parties disagree.]

The parties [request] [do not request] a conference with the court before entry of the scheduling order.

The parties request a pretrial conference in (month and year).

Plaintiff(s) should be allowed until (date) to join additional parties and until (date) to amend the pleadings.

Defendant(s) should be allowed until (date) to join additional parties and until (date) to amend the pleadings.

All potentially dispositive motions should be filed by (date).

Settlement [is likely] [is unlikely] [cannot be evaluated prior to (date)] [may be enhanced by use of the following alternative dispute resolution procedure: [_____].

Final lists of witnesses and exhibits under Rule 26(a)(3) should be due

from plaintiff(s) by (date)
from defendant(s) by (date)

Parties should have ___ days after service of final lists of witnesses and exhibits to list objections under Rule 26(a)(3).

The case should be ready for trial by (date) [and at this time is expected to take approximately (length of time)].

[Other matters.]

Date: _____

(Added Apr. 22, 1993, eff. Dec. 1, 1993.)

ADVISORY COMMITTEE NOTES

1993 Adoption

This form illustrates the type of report the parties are expected to submit to the court under revised Rule 26(f) and may be useful as a checklist of items to be discussed at the meeting